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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, November 16, 2004, at 2 p.m

Senate

MONDAY, OCTOBER 11, 2004

The Senate met at 10 a.m. and was called to order by the President pro tempore [Mr. STEVENS].

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Majestic and Holy God, we give You honor and praise. We thank You for the spiritual awareness that prompted statements about Sabbath rest in this Chamber yesterday. Thank You also for the love of the sacred that led Senators and staff to participate in a weekend worship service in this building. As You healed people on the Sabbath long ago, grant that our weekend work will bring healing to this great Nation.

Thank You, finally, for the treasure of superb staff, the wind beneath the wings of our lawmakers. Bless those unsung heroes and heroines who enable our leaders to succeed in their work. Help these supporters to see that their seemingly secondary role is really a primary one in freedom's cause.

Today, bless our Senators. Use them as instruments of Your will. Give them the humility to trust You and obey Your teachings. Give them traveling mercies in these dangerous times.

We pray in Your Holy Name, Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, a good Columbus Day to everyone.

We reconvene today for what I expect to be the final day of business before adjournment.

Yesterday, we invoked cloture on the conference report to accompany the FSC or JOBS bill. With that vote and the subsequent agreement from last night, we will be able to finish the remaining items before the close of business today. The agreement reached last night provides for a vote on adoption of the FSC conference report at 12 noon.

Following that vote, the Senate will vote on the adoption of the Military Construction appropriations conference report and the Homeland Security conference report, along with some other housekeeping matters.

As stated last night, we will conduct a rollcall vote on the FSC bill, and all other actions should be completed without the need for further rollcall votes. Therefore, the next vote will be at noon today. That should be the only vote of the day.

We will also continue to work through other legislative items that can be cleared by unanimous consent.

Again, I thank all Members who were here yesterday as well as Saturday allowing us to invoke cloture on the conference report so that we are now on a glide path to finishing our work today.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

AMERICAN JOBS CREATION ACT OF 2004—CONFERENCE REPORT

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 4520, which the clerk will report.

The assistant legislative clerk read as follows:

Conference report accompanying the bill (H.R. 4520) to amend the Internal Revenue Code of 1986.

The PRESIDENT pro tempore. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I am glad that Senator FRIST and other Senators were able to work out the parliamentary maneuvering that it takes to get us to finality on this JOBS bill.

We obviously want to encourage the creation of jobs and manufacturing in America. We want to reduce reasons for outsourcing. This bill deals with all of those and some others as well.

Throughout this debate, I feel as though I was whipsawed in arguments trotted out by opponents of this bill. They complain about accommodations we have made to Members. Some of these accomplishments and accommodations have even helped folks in States of the critics. Then they complain about what is not in this bill that should have been included in this bill.

First of all, I don't know how many times I have to say this, but I think it

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

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needs to be continually said. This bill is revenue neutral. Yes, we decrease taxes for partnerships, family-owned businesses, and corporations that are involved in manufacturing, reducing that from 35 to 32 percent. Obviously, that brings in less revenue, but that does not mean the deficit of the United States is going to be increased. We pay for it by raising revenue from businesses, by closing corporate tax loopholes, and we collect that new revenue coming in to small businesses, especially to any size business that manufactures—large or small.

This bill is basically about manufacturing jobs. That is where the revenue in this bill goes.

There are those who talk about this bill as somewhat of a giveaway to business. You have some businesses not paying taxes because they are abusing the Tax Code through corporate loophole abuse, and they pay more money. Then you have the socially good provisions such as encouraging manufacturing in the United States to create jobs in the United States. I don't think people are correct in saying this is a giveaway to business because it balances out within the business sector of our country—some paying more and some not paying more. Because we are taxing them more, they are paying more because they can't cheat anymore. We are giving some benefits from that same revenue to create jobs in the United States.

Those who call this a giveaway for business need to put on their reading glasses and take a look at revenue tables produced by the nonpartisan Joint Committee on Taxation. These people aren't Republican or Democrat. They are professionals who decide how many changes are in the Tax Code, where revenue comes from. These tables show that this bill is revenue neutral; that financial reductions are paid for in new revenue coming in from the closing of corporate loophole abuse.

For those who are talking about this bill being a giveaway for business, I want them to stop using that argument. One statement was made last night that was egregiously in error. One of the hard-line opponents of this bill claimed that the tobacco buyout was paid for by the taxpayers.

I don't support the tobacco buyout but realize it was necessary to get this bill through the other body. I insisted on one of the Senate's positions in the tobacco buyout, and that position is that tobacco companies pay for this buyout. Opponents need to read this bill and the revenue tables. If they bother to do so they will see the buyout is paid for not by the taxpayers of America but by the companies that produce tobacco.

Now, let's put in context the mischaracterization of this bill as somewhat of a special interest bill. In part, the bill receives such widespread support because many Member items were accommodated. Literally dozens of tax benefits were adopted in committee and on the floor.

Let me define ''Member items.'' Constituents of one State came to their Senator and said: This part of the Tax Code is wrong, it is hurtful; or they said: We think the Tax Code ought to be changed this way. Maybe they do not come to me. Maybe they do not go to the other 99 Senators; they go to 1 Senator. That Senator is a representative of his people. It is his responsibility to bring that issue to the Senate. He does not have to. He can say: I don't agree with you, I will not do that. If he feels his constituents are justified in what they are requesting, then the matter is brought to the committee that has jurisdiction. That is the Senate Finance Committee, which I chair. Somehow there is something negative or derogatory about a Member bringing forth an item for all to consider. If we think that Member is crazy, we do not have to do it. If we think there is some justification to what that Member brings before the Senate, we ought to consider that. That is how our representative system of government works.

Literally dozens of tax changes were adopted in committee or in the Chamber. Before the conference, Senator BAUCUS and I received letters from virtually every Member of the Senate. In some cases those letters asked for items from the Senate to be retained. In other cases those letters asked for the Senate to accept items from the House bill, and in still other cases Members wrote asking for items that were not in either bill. Finally, some Members asked us to not accept certain provisions not in either bill.

I have a stack of letters with me. These letters are not all the letters, of course. There is no sense carrying a pile of letters out here. But Members representing the interests of their State bring these issues for our consideration.

I will go to the first category and follow up items from the Senate bill.

National care scholarships for nurses—Senator MURRAY and CANTWELL asked for that. It is in the bill.

Sickle cell disease and Medicaid, consideration of sickle cell disease, which is not covered by Medicaid—Senators TALENT, SCHUMER, CAMPBELL, DAYTON, COCHRAN, BOND, SPECTER, MIKULSKI, CANTWELL, LANDRIEU, STABENOW, KENNEDY, SARBANES, VOINOVICH, LAUTENBERG, MURKOWSKI. It is in the bill.

Some are going to say that Members' provision brought to us under the leadership of Senator TALENT should not be considered by this body, and I will explain why this is all in one bill. People watching might think if you have a sickle cell disease issue come before the Senate, maybe it ought to come up as a separate issue. On the next item up is a life insurance taxation issue; maybe it ought to come as a separate bill. Why doesn't it? Because under the rules of the Senate every little bill that comes out here could be amended by anything that is in the Tax Code. Eventually you have a little life insurance bill that becomes a vehicle for every member to bring up any bill they want to bring up.

So we saved the Senate from going through that exercise. That is what committees are about. We consider these issues—not always in committee; sometimes they are discussed when the bill comes to the Senate floor. Most of the time we give them a thorough study in the Senate Finance Committee. Sometimes we reject them and sometimes we include them. If we do not include them, maybe when they come to the Senate Chamber, that Senator is irritated with the chairman of the Senate Finance Committee and they add it on the Senate floor. They always end up in one bill.

Somehow that makes all of our journalists concerned, those who seem to not have an understanding of how the Senate works, pointing out that this bill is full of a lot of little things in it that are unrelated to the underlying bill. That is true, but that is how the Senate works.

The House of Representatives does not work that way. They put a bill together, they adopt a rule, and there is never an amendment. I shouldn't say never, but very seldom is a Member allowed to offer an amendment to a Ways and Means bill on the floor of the House. That is why the House of Representatives is like the House of Lords. That is why the Senate is like a House of Representatives. We allow the people of this country to bring anything they want to the floor of the Senate.

Another item is suspension of section 815, a life insurance company taxation issue. That was brought to us by Senator SPECTER. It is in the bill.

New York City revitalization tax benefits directly related to the attack of September 11, 2001, and the rebuilding of New York was brought to us by Senators SCHUMER and CLINTON—most of that, but not all of it, is in the bill.

Brownfields, unrelated business income tax relief—Senators LAUTENBERG, REED, JEFFORDS, STABENOW, SPECTER, SARBANES DOLE, AKAKA, CHAFEE, INHOFE—is in the bill. The use of green bonds for economic development in certain areas is something I was not for, but it is in the bill to satisfy Senators ALLARD, SCHUMER, MILLER, CLINTON, and CHAMBLISS.

We have IRS private debt collection. Senator ALLEN was pushing this. That is something I very definitely favor because this is one way of getting the private sector bringing in money from people who are tax cheats and are not paying their taxes.

Tribal government bonds—Senator CAMPBELL, very active in the Senate Committee on Indian Affairs—was also a matter of importance to Senator BAUCUS and others, but it is not in the bill despite being raised in conference.

Comprehensive energy tax relief package—Senator HUTCHISON—is not in the bill despite being raised in conference because the House of Representatives took the position that

there shouldn't be anything on energy in this bill because they think energy items need to be put together in a bill that ought to be dealt with separately, next session. Quite frankly, the House of Representatives passed a comprehensive energy bill last fall, and we were two votes short in the Senate because of a Democrat filibuster against the bill. They say that instead of doing the energy provisions in this bill before us now, the Senate ought to take up the bill that we obviously have a majority for—but because of a Democrat filibuster we are two votes short—and do the energy stuff there, not in bill before the Senate.

So I cannot blame the House of Representatives because they worked hard to get an energy bill passed, and it comes over here and you get a Democrat filibuster.

By the way, those two votes could be supplied by Senator KERRY and Senator EDWARDS because now they think we ought to have a national energy policy, and they did not vote last November. If they come in here before we go home and cast the 59th and 60th vote, we would have the comprehensive energy policy, not just little slivers of it that we get in a bill here and a bill there, but we would have a very comprehensive energy policy. They would be fulfilling what they are saying out there on the campaign trail we need to get done: have a national energy policy. We have 58 votes for it. We need a 59th and 60th vote, and they could be that. But at least I am telling you why we do not have the energy provisions in here that a Republican Senator, Senator HUTCHISON, wanted.

We have a request from Senators CRAPO, BINGAMAN, VOINOVICH, BIDEN, PRYOR, TALENT, ENZI, CHAFEE, CARPER, CLINTON, ALLARD, BOND, COLEMAN, SUNUNU, BENNETT, CHAMBLISS, HUTCHISON, HAGEL, NELSON of Florida, DAYTON, DOLE, REED of Rhode Island, DODD, KENNEDY, and LEVIN for mortgage revenue bonds liberalization. It is not in the bill, but it was raised in conference.

We have heard a lot about Senator LANDRIEU's Guard and Ready Reserve amendment. That was raised by Senators LANDRIEU, BOND, PRYOR, MURRAY, DODD, AKAKA, CANTWELL, DORGAN, SCHUMER, MIKULSKI, NELSON of Florida, LAUTENBERG, JOHNSON, FEINGOLD, LEAHY, DAYTON, LEVIN, SARBANES, WYDEN, and DURBIN. We discussed that provision a lot, and like the three items above, this item was raised at conference and rejected by the other body.

Mr. President, the letters I have cited reflect items Members raised. On some items we were able to reach agreement with the House, other items the House of Representatives rejected.

Let me point out that I offered three amendments that I filed. I won one and lost two. The House accepted an amendment I put in for rural letter carriers. The House rejected an amendment I had dealing with energy-efficient home appliances. The House rejected another amendment dealing with elderly housing connected to the Warrior Hotel in Sioux City, IA.

As the list above shows, a lot of Members of this body are satisfied because their items are in here; other Members are not satisfied. But that is not an unusual situation when you reach compromise. It also shows that for all of the unfair carping about this bill being a special interest bill, nearly every Member raised narrow-interest provisions. So if there is some fault about different provisions coming up, we all share that. We all do it. There is an old saying. It is: People who live in glass houses should not throw stones. We have a group of Members throwing stones at this JOBS bill. A lot of them are living in glass houses.

I will continue the discussion of Member items. We had the State sales tax deduction. Senators CANTWELL and HUTCHISON wrote Senator BAUCUS and me asking us to include the House sales tax deduction provision in the conference agreement. We also received letters from delegations of other States where the State tax base is a sales tax base. The House sales tax deduction is in this bill because we decided for our Senators from several States that it ought to be included.

We had timber tax relief provisions: Senators CHAMBLISS, PRYOR, CANTWELL, SESSIONS, SHELBY, COCHRAN, COLLINS, CRAPO, CRAIG, COLEMAN, GRAHAM of South Carolina, WYDEN, CORNYN, LUGAR, and MURRAY.

As many of these Senators know, the timber industry has been hard hit by the tax on our exports going to Europe. By the way, when this bill passes, those taxes go away. The industry is finally recovering from a long recession. Timber mills are reopening. Mill workers are returning to the mills. The House timber provisions are in this bill.

Charitable whaling activities. Senator MURKOWSKI wrote, asking us to accept the House provision that allows a deduction for charitable whaling activities. Now, some will criticize this provision, but it is important to the Natives of Alaska. Senator MURKOWSKI is looking out for the Natives of Alaska. She ought to be applauded for bringing that to our attention. This is in the bill. But it has also passed the Senate several times.

Senator BAUCUS and I received letters from Members asking us to take Senate provisions out of the conference agreement. One example is Senator STABENOW's letter regarding a revenue raiser involving donations of cars. As you heard yesterday, Senator HATCH shares Senator STABENOW's concerns. The conferees retained the Senate revenue raiser.

There is another category of letters that we received. An example is a letter from Senator MCCAIN and Senator REED of Rhode Island. In that letter they asked me to keep out a provision dealing with the church tax exemption and political activities. The provision was not in either bill. Chairman THOMAS and I kept provisions that were outside the scope of the bill out of the conference entirely. No matter what the merits of that proposal were, we played fair by Senator MCCAIN and Senator REED of Rhode Island.

The final category of requests dealt with the opposite of the MCCAIN and REED of Rhode Island request; that is, we had requests for items to be included that were not in either bill. I will give you a couple of sympathetic examples: a liberalization of tax-exempt rules as applied to charitable hospitals. Senator AKAKA raised this issue. Unfortunately, this provision was outside of scope.

Another example is penalty-free withdrawals from IRAs for hurricane victims. Right now, if you are hit by four hurricanes in Florida, who is going to argue with Senator NELSON of Florida bringing that to our conference? He asked us to raise this item. It was not in either the House or Senate bill. It would have been an entirely new item that we could have put in in conference. However, there was no way to address the proposal without then opening the door for a lot of other items that were not in either bill that somebody would want included at the last minute.

So at this point, Mr. President, I ask unanimous consent that these letters be printed in the RECORD.

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

SEPTEMBER 21, 2004.

Hon. CHARLES GRASSLEY,
Chairman, Finance Committee, U.S. Senate, Hart Senate Office Building, Washington, DC.

Hon. MAX BAUCUS,
Ranking Member, Finance Committee, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR FINANCE CHAIRMAN GRASSLEY AND RANKING MEMBER BAUCUS: We write to respectfully request that you include as part of the FSC/ETI (S. 1637) conference report the sickle cell amendment that would help treat and expand services for patients with the sickle cell blood disorder. Sickle cell disease affects approximately 70,000 Americans and more than 2,500,000 Americans, mostly African-Americans, have the sickle cell trait. There is still no comprehensive cure.

We are among the 49 Senate cosponsors of the bipartisan, bicameral legislation that is the basis for this amendment (S. 874/H.R. 1736) and strongly support its enactment into law. Passage of this amendment in the Senate was great news for the tens of thousands of Americans who suffer from this disease, which affects 1 in 300 African-American newborns. The disease causes normally round blood cells to take on a sickle shape that clog the bloodstream. These obstructions result in severe medical complications including strokes in infants and limit the average lifespan to 45 years of age.

In summary, this legislation is a disease management bill that allows states to combine Medicaid-reimbursed services to target sickle cell disease, and authorizes a small

Health Resources and Services Administration grant for research, treatment and community outreach through qualifying community health centers. This bill does not expand Medicaid eligibility or change the federal Medicaid matching formula and has a very small cost to the federal government.

This legislation has received exceptional support from nationally prominent children's, health, African-American, church and union groups including the National Association of Children's Hospitals, the American Medical Association, the NAACP, and the Catholic Health Association of America.

We are hopeful that you will include the sickle cell amendment as part of the FSC/ETI (S. 1637) conference report to help tens of thousands of Americans lead longer, healthier and more productive lives.

Sincerely,

Jim Talent, Chuck Schumer, Ben Nighthorse Campbell, Thad Cochran, Arlen Specter, Maria Cantwell, Debbie Stabenow, Ted Kennedy, George V. Voinovich, Norm Coleman, Mark Dayton, Kit Bond, Barbara A. Mikulski, May L. Landrieu, Jon Corzine, Paul Sarbanes, Frank R. Lautenburg, Lisa Murkowski, Sam Brownback, Peter G. Fitzgerald, Mike DeWine, Lindsey Graham, Barbara Boxer, Elizabeth Dole, Lincoln Chafee, George Allen.

U.S. SENATE,
Washington, DC, September 30, 2004.

Chairman CHARLES GRASSLEY,
Hart Senate Office Building,
Washington, DC.

DEAR CHAIRMAN GRASSLEY: As you continue your work on the FSC/ETI bill conference, I would like to ask your support for a Native Alaska subsistence whaling tax deduction. This legislation may be brought up as an amendment by Chairman Thomas in conference.

For your interest, I have enclosed a letter from the Inupiat community in Barrow, Alaska. I believe they give a good summary on the merits of this legislation. Thank you for your attention to this matter.

Sincerely,

LISA MURKOWSKI,
U.S. Senator.

U.S. SENATE,
Washington, DC, September 30, 2004.

Hon. CHARLES E. GRASSLEY,
Chairman, Committee on Finance,
U.S. Senate.

DEAR CHUCK: As we move closer to consideration of the conference report on the JOBS bill, I write to reiterate my request that you retain the Senate two-year suspension of Internal Revenue Code Section 815.

I wrote to you on July 19, 2004, concerning this matter and its importance to several of my Pennsylvania constituents. It would allow stockholder-owned life insurance companies to eliminate the surtax based on earned income between 21 and 46 years ago that otherwise would be triggered upon reasonable corporate restructuring. As I had stated, three of my constituent companies would have large potential liability under Section 815.

Thank you very much for your consideration of this request.

Sincerely,

ARLEN SPECTER.

U.S. SENATE,
Washington, DC, September 30, 2004.

Hon. CHARLES E. GRASSLEY,
Chairman, Committee on Finance,
U.S. Senate.
Hon. MAX BAUCUS,
Ranking Member, Committee on Finance,
U.S. Senate.
Hon. BILL THOMAS,
Chairman, Committee on Ways and Means,
House of Representatives.
Hon. CHARLES RANGEL,
Ranking Member, Committee on Ways and Means,
House of Representatives.

DEAR CHAIRMEN AND RANKING MEMBERS: The Senate-passed version of JOBS bill, S. 1637, contains an important provision that will give a well-deserved tax cut to employers who continue to pay the salaries of their employees who have been called to active duty in Iraq and Afghanistan. As you convene the conference committee on this important legislation, we want to encourage you to retain this provision in the final conference bill.

Over 410,000 members of the National Guard and Reserve have been activated to defend our Nation since September 11, 2001. They have done so with valor and honor, but the frequent and lengthy activations have exposed problems on the home front. The Government Accountability Office reports that forty-one percent of our Guard and Reserve personnel take pay cuts from their civilian jobs when they put on their uniforms. While a husband or wife is deployed overseas, spouses back home face difficulties in making ends meet because active duty paychecks are often far less than those received in the civilian world. This causes our troops to divert their attention from the mission to worrying whether or not their spouses can afford the mortgage, auto repairs, or child care.

Many employers have helped to ease this burden by making up the ''pay-gap'' between the civilian and military pay of their active duty employees, something that they are not required to do. However, the economic downturn has made it difficult for most employers to make up the pay-gap. Additionally, as we continue to rely on the Guard and Reserve for future deployments, those employers who currently make up the pay-gap may no longer be able to provide payments to employees frequently missing from work for months and years.

The provision in S. 1637 gives employers a 50 percent tax credit on the salaries they pay to employees during activations up to $30,000 of salary. This tax credit will encourage those employers already providing for their employees to continue this patriotic response. In addition, the provision also gives small businesses a $6,000 tax credit for hiring a worker to replace an active duty employee. Small manufacturers would receive a credit of up to $10,000 to help find a replacement.

We urge the Conference to retain the Reserve and Guard employer tax credits in the final JOBS Act. Our troops are putting everything on the line overseas. Their employers are helping them at home. These patriotic employers deserve this tax relief. Thank you for your consideration.

Sincerely,

Mary L. Landrieu, Mark Pryor, Chris Dodd, Daniel K. Akaka, Byron L. Dorgan, Barbara A. Mikulski, Frank R. Lautenberg, Kit Bond, Patty Murray, Jon Corzine, Maria Cantwell, Charles Schumer, Bill Nelson, Tim Johnson, Russ Feingold, Mark Dayton, Paul Sarbanes, Dick Durbin, Patrick Leahy, Carl Levin, Ron Wyden.

U.S. SENATE,
Washington, DC, October 1, 2004.

Hon. CHARLES E. GRASSLEY,
Chairman, Committee on Finance,
U.S. Senate.
Hon. MAX BAUCUS,
Ranking Member, Committee on Finance,
U.S. Senate.
Hon. BILL THOMAS,
Chairman, Committee on Ways and Means,
House of Representatives.
Hon. CHARLES E. RANGEL,
Ranking Member, Committee on Ways and Means,
House of Representatives.

DEAR CHAIRMEN AND RANKING MEMBERS: I have been made aware that my colleague, Sen. Graham, submitted an amendment dealing with hurricane relief to the corporate tax bill currently before your conference committee.

Specifically, this amendment, which mirrors legislation Sen. Graham and I introduced in response to the recent wave of hurricanes that have ravaged Florida, would allow victims of disasters to withdraw funds from retirement accounts without incurring proscribed penalties.

I respectfully request you support Sen. Graham's provision. I understand that this amendment may go beyond the scope of the conference, however I would argue that had the spate of hurricanes happened prior to Senate-consideration of the tax bill, a similar provision would have been included in the tax bill.

As you know, along with much of the Southeast, Florida has withstood a barrage of hurricanes resulting in billions of dollars in damage. Providing citizens of disaster areas with the means to access funds that otherwise would carry a substantial penalty can play an important role in alleviating their financial hardships.

With the conference working through various amendments to the corporate tax bill, I would implore you to give serious consideration to this provision, and to providing Americans who have seen so much devastation access to the funds they need to repair damage to their property and their lives.

Sincerely,

BILL NELSON.

Mr. GRASSLEY. Mr. President, I have spent a little time going through a sample of the many items that Members weighed in with at the conference. This is a small sample of those items raised. Many others were brought to the attention of Senator BAUCUS and this Senator through letters or oral communications. It is safe to say, Senator BAUCUS and I can relate to what Senator BYRD and Chairman STEVENS go through on the appropriations bills.

My point is, those who want to distort this bill by describing it as a special interest bill are ignoring a couple things. One, they are ignoring—perhaps conveniently, perhaps deliberately—their own efforts to advance their interests. Secondly, as I have said before, this bill is paid for by raising revenue, largely by closing abusive corporate tax loopholes.

Let the record be clear that this bill is fair, this bill is balanced. It is a balanced effort at resolving four objectives. One objective is ending the European tax on our exports going to Europe that are legal and legitimate, even though I disagree that it should have been done. I disagree with that decision. The United States lost a

World Trade Organization decision that our previous tax laws were violating the agreements that Congress had made with Europe, Congress made, because we passed these trade agreements as law.

If anybody thinks, well, it is wrong for Europe to levy a tax against us, we won a case against Europe on beef because they don't let our beef into Europe because we use hormones in the development of our beef, in the feed the cattle eat or that they are injected with, and Europe does not like that. But they are violating our right to send beef to Europe because they don't have a scientific basis for doing it. That is what the World Trade Organization said. But they still don't take our beef. So we put a tax on products coming from Europe to the United States to retaliate the same way they are retaliating for the reasons behind this bill.

This bill ends that European tax because we are conforming our tax laws to the international trading agreements Congress passed 10 years ago. We are also going beyond doing away with an impediment to our exports so that we lose jobs here in America because of that tax. We are putting a replacement benefit to manufacturers in the United States so jobs will be created here by lowering the corporate rate from 35 to 32.

No. 3, we are providing international tax reforms that will aid domestic manufacturers so we can compete in the global marketplace.

And lastly, we achieve these policy ends in a revenue-neutral way through the curtailment of abusive corporate tax shelters and abusive corporate loopholes by closing them.

I hope everybody agrees this bill is a well-balanced bill, accomplishing a goal we should have accomplished a year and a half ago, at least no later than March when these European taxes started on our products. I apologize to any Americans who have been laid off because our products are not competitive in Europe because of that tax and why it takes Congress so long to wake up, particularly when there are Members of Congress always complaining about outsourcing.

We started on this bill in March. It took us 15 days, over a period of 3 months, to get this bill through the Senate. And then we were a long period of time before the minority party agreed we could go to conference. But once we got to conference, thanks to the good cooperative working relationship between Senator BAUCUS and me for the Senate and between Mr. BAUCUS and me and Congressman THOMAS, chairman of the House Ways and Means Committee, we have this bill.

But for those laid-off workers, I am embarrassed this bill couldn't have been passed a long time ago and that we ran up against all of the impediments. Why? Because certain Members of this body don't want a Republican President signing a jobs bill a few days before the election.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from California.

CHRISTOPHER REEVE

Mrs. BOXER. Madam President, I send my deepest condolences to the family of Christopher Reeve, one of the bravest Americans, who fought so hard to prove that even with the most horrific injuries, one could still be involved in community life, and who dedicated himself to raising awareness for stem-cell research, for the hope and the dream of so many of our people who suffer every day, that they may have a cure in their lifetime.

Christopher Reeve was Superman in the movies, but that was make-believe. He was Superman in real life.

My heart goes out to everyone who knew him and to the disabled community who counted on him. It is such a tragedy to lose him.

EXPRESSIONS OF THANKS

Madam President, I have a number of people to thank.

On Friday night, the Senate passed the Veterans' Benefits Improvements Act and included my bill to designate the memorial being built at Riverside Veterans Cemetery as the National POW–MIA Memorial. Congressman CALVERT authored the House bill.

I am so proud the Senate acted first on this bill. I have been to the cemetery. I have seen a model of the memorial. This is going to be the veterans cemetery, national POW memorial. It is going to draw people from all across the country. So many of our people were at one time POWs. The numbers are staggering. And, of course, there are some who we don't know what happened to. They deserve this kind of memorial.

I thank Senators SPECTER and GRAHAM for helping me with this bill.

Second, last night the Senate passed a House bill by Representative GEORGE MILLER—I introduced the Senate companion piece—to adjust the boundaries of the John Muir National Historic Site in Martinez, CA. We are glad about this because it is going to bring some improvements to this area. I thank Senators DOMENICI and BINGAMAN for that.

Also last night something very special occurred here for the people of California and the people of this Nation. The Senate passed the California missions bill to help preserve the historic missions in the State of California. It has been a long, hard road. These missions are so important to the history of the West. These missions were built in the 1700s, and they are crumbling. We had to struggle to get the Senate into committee to pass the bill, and they did it.

I thank Senators DOMENICI, BINGAMAN, FEINSTEIN, and SMITH. I thank Judge William Clark, Stephen Hearst, Rick Ameil, Dr. Knox Mellon for everything they did. It is a very important day for us in California for these missions and for California history and American history.

FSC/ETI CONFERENCE REPORT

That gets me to the business at hand. I want to start off by thanking Senator MARY LANDRIEU of Louisiana for her impassioned defense of our National Guard and Reserve. Like her, I am shocked and dismayed that the House conferees on the FSC bill before us stripped out an important provision to give tax relief for those employers who continue to pay their reservist employees after they are called up for Active Duty and deployed.

Four in 10 members of the Guard and Reserves suffer a pay cut when they are called up for Active Duty. In other words, the pay they receive when activated is not as much as the salary they receive in the private sector. As a result of this pay gap, their families suffer. Car payments are missed, medical insurance lapses, childcare is unaffordable. Our Guard and reservists are sent to the front lines with the burden of knowing their families back home will struggle to make ends meet.

I could not say anything that could match the eloquence of Senator LANDRIEU and, of course, her chart that she gave me to hold up again. This says, ''What should $434 million pay for? One year of the Landrieu amendment on Guard and Reserve tax credit, or $44 million for ceiling fans?''

I think the answer is clear to most Americans. As a result of Senator LANDRIEU's eloquence, now America knows what happened in the back rooms, when the only thing missing was the cigar smoke—but maybe that was there as well when these bills were written.

Why is this so critical? Senator LANDRIEU explained it. Part of Senator LANDRIEU's amendment involves a bill that I wrote where we reimburse State and local governments who do the same thing. In other words, if a city in New York State suffers the loss of a policeman because he is called up and reactivated because he is in the Reserves, many cities across our great land are paying that differential to the Reservists or the National Guardsmen. I will tell you, it is hurting those entities very much to do this. I am very sad that part of the bill was dropped. And what we were able to get, with the help of Senator LANDRIEU, was a sense of the Senate that the conferees should, in fact, take a look at this, and the President ought to consider taking care of these governments and the cost of this payment to the Reservists and the Guard in his next budget.

I am very glad we were able to do that. I thank Senator DASCHLE, who phoned me late last night; Senator GRASSLEY, who was very helpful in writing that; of course, my staff, who worked hard with Senator LANDRIEU's staff to come to a solution; Senator HARRY REID, who is such a workhorse around here, who helped make it happen.

I have to hope that this President, who is sending our Guard there every day, sending our Reserves, and extending their time there, would feel a little

compassion—compassionate conservative—for these reservists and these guardsmen who are suffering a cut in pay to put themselves in harm's way. As we all know, well over a thousand are dead—not just guardsmen and reservists, but other military personnel as well.

I am confident that if we have a President KERRY, he will be eager to work with us to solve this problem because he knows war firsthand. He knows the worst thing you can do to someone who has a family back home is to put on top of their worry about whether they are going to make it through the war without a serious injury, or perhaps not make it through at all—put on top of that the fear that their families are going to be driven into poverty. Forty percent of the troops now in Iraq are members of the Guard and Reserve.

Last year when I visited Walter Reed Army Medical Center to visit our wounded troops, I came across one young soldier who was severely wounded. During the course of the conversation, he told me that from the time he was wounded, every aspect of his care, treatment, and transportation was carried out by members of the Reserves. This soldier told me he had the highest respect for the capabilities of our Guard and Reserve, and he was eternally grateful for their professionalism.

It is important to speak out and say we are in support of our troops. But in those closed-door meetings they are handing out tax breaks to people who import ceiling fans. It seems to me the first thing the conferees should have done is ensure that the Landrieu provision and Boxer provision were kept in. Senator LANDRIEU is on the floor of the Senate and, again, I thank her for her leadership. We all look forward to the day when our guards and reservists can return home, be reunited with their families, and have their jobs back and make sure their families are whole.

I ask unanimous consent to have printed in the RECORD a list of the States that are paying this money to these reservists and are getting nothing from us, when the Federal Government is taking these people out—this President—and activating the Guard and Reserves, putting them in harm's way and not reimbursing State and local government.

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

EXAMPLES OF STATE, COUNTY AND LOCAL GOVERNMENTS COVERING THE PAY GAP OF RESERVISTS

ALABAMA

State Government.

ARIZONA

City of Phoenix Police Department, Arizona.

ARKANSAS

State Government.

CALIFORNIA

State Government, City of Chula Vista, CA, Dos Palos Oro Loma School District, CA, City of Fremont, CA, City of Fresno, CA, City of Glendale, CA, City of Hercules, CA, City of Los Angeles, CA, Los Angeles County, City of Longbeach, CA, City of Sacramento, CA, City of San Diego, CA, City of San Diego Police Department, CA, City of San Francisco, CA, San Francisco County, CA, City of Santa Barbara, CA, City of Roseville, CA.

CONNECTICUT

State Government, City of Glastonbury, CT, City of New Britain, CT.

DELAWARE

State Government.

FLORIDA

State Government, Broward County School Board, FLA, City of Jacksonville Sheriff's Office, FLA, Miami-Dade County, FLA.

GEORGIA

DeKalb County School System, GA.

ILLINOIS

State Government, City of Chicago, Illinois, Cook County, Illinois.

IOWA

State Government.

KENTUCKY

State Government.

LOUISIANA

Caddo Parish Schools, LA.

MAINE

State Government.

MARYLAND

State Government, Howard County, MD.

MASSACHUSETTS

State Government.

MICHIGAN

State Government.

MINNESOTA

State Government.

NEVADA

State Government, City of Las Vegas, NV.

NEW HAMPSHIRE

State Government.

NEW JERSEY

State Government.

NEW YORK

State Government, New York City Police Department, Nassau County Police Department, City of Wallkill, NY, County of Westchester, NY.

NORTH CAROLINA

State Government, City of Charlotte, NC.

OHIO

State Government, City of Dayton, OH, City of Toledo, OH, Franklin County Police Department, OH, City of Kettering, OH.

OKLAHOMA

State Government.

PENNSYLVANIA

State Government.

RHODE ISLAND

State Government.

SOUTH CAROLINA

State Government.

TENNESSEE

State Government, Davidson County, Tenn., City of Nashville, Tenn.

TEXAS

State Government, City of Austin, TX, City of Grapevine, TX.

VIRGINIA

State Government, City of Bedford, VA, County of Henrico, VA, County of Prince William, VA.

WASHINGTON

City of Redmond, Washington.

WEST VIRGINIA

State Government.

WYOMING

State Government.

Mrs. BOXER. I see the Senator from Oklahoma here. His State pays for Guard and Reserve when they are called up, as do the others included in the list.

I say thank you to all of these States and cities for stepping up to the plate. You deserve the support of the Senate. You deserve to have legislation passed and not just a sense of the Senate, which I am happy we did, but I am not naive about these things; I have been here too long to know it is kiss-off to get a sense of the Senate. But at least we got there. What happened was this provision that passed the Senate was knocked out in conference while goodies were given all around.

I want to make a point about this bill. There are some good things in this bill. I wrote one of the main provisions, along with Senator ENSIGN, called the Invest In the USA Act. Some people don't understand it. It says we give a break to countries who have their funds abroad, and if they bring them home and put people to work with them, they get a tax break in the next 12 months. This is a stimulus and job creation. Economists, Democrats and Republicans, say it is going to be very effective.

Senator LINCOLN and I worked on runaway production. That is important. Of course, the underlying premise of a tax cut to encourage manufacturing is very important. We eliminate the preferential tax treatment of ethanol. That is important. We partially close the SUV loophole. I compliment Senator NICKLES for that. I think we can do more, but he stepped up to the plate on that. The thing with the $100,000 loophole was ridiculous. I am happy we have gone back to the original loophole of $25,000, which is still too much, but it is a big improvement.

I also thank Senator SNOWE for her tax fairness for naval shipbuilders, which is important. What is bad in the bill is the tobacco cave-in, where the FDA doesn't get the authority to regulate this tobacco, and there is a bailout. I don't have a problem with the bailout with farmers, but this was an opportunity to save our children.

The overtime regulation from Senator HARKIN is stripped from the bill. It is going to hurt our people badly when they no longer get overtime. Outsourcing—the provision by Senator DODD—passed 70–26. You would think we could have fought for that, but it is out. And, of course, the reservists tax credit that we talked about. There also was a tax credit for farmers for water conservation that I strongly supported. It was stripped from the bill.

The film industry was treated very badly in this bill.

We are killing the goose that lays the golden egg because the film business is a terrific export business and they get treated very badly.

So we had a chance to have a great bill. Instead, we have a bill that has some good provisions but also has some horrific provisions in it. It is a terrible way to legislate, but the Landrieu-Boxer provision that was stripped out which dealt with our reservists and our National Guard, all I can say to Senator LANDRIEU is that a picture speaks a thousand words. Her poster showing the choices that this Republican Congress made is something that I hope the American people are watching because this is unforgivable. I am going to fight with my friend from Louisiana until we fix this problem.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Madam President, under the agreement last night I have up to 30 minutes to speak, and I will be happy to yield additional time to Senator BOXER at a later time because I most certainly want to support her comments and to thank her for her great support of this amendment. Without Senator BOXER and many other Senators, the victory that we have achieved this morning would not have been possible.

Senator BOXER knows, because she represents the largest State in our Union, that 90,000 guardsmen and reservists reside in California. Today, as she and I are on this floor speaking on their behalf, 7,900 are currently on duty from California, having left their homes from Bakersfield—the home of Chairman THOMAS, or the center of his district—to San Francisco to Los Angeles, from Louisiana, from Oklahoma, and from Texas. Thousands of Guard and Reserve men and women have left their families, left their children, left their place of employment and gone to the front lines.

We decide where the front line is and we send them. Wherever we say to go, they go, and they have gone in large numbers.

I have spent the last few days speaking about this because it is of such critical importance for us in the Senate and for the Congress to understand that we are asking more and more of our Guard and Reserve. This was not always the case. It was not that way in World War I and World War II. It was not that way in the 1950s, 1960s, 1970s, or 1980s, but it is this way today.

From 1990 to 2004, we have called up 690,500 Guard and Reserve members. The Guard and Reserve now make up 40 percent of our whole force. We have 1.6 million active members of all of our services, and we have 1.2 million men and women in the Guard and Reserve.

Many of these men and women, as my colleagues know because I have said it—and I am sure my colleagues are now aware of this, that when many of our reservists signed up, they expected to make a sacrifice. They knew that one weekend a month they would go on duty, and they knew that in times of crisis they would be sent. What we did not tell them 10 years ago is that there would have been a terrorist attack on 9/11. What we were not able to tell them 10 years ago was that we would make a decision to reduce our Active Forces, thereby putting a greater burden on them.

They signed up under a different paradigm. Yet year after year some of us have come to this floor—not just this week, not just last year, but year after year. I have been here 8 years. There is not a year that I can think of that I have not mentioned this—maybe the first year I was here, but most certainly once I got on the Armed Services Committee and it became apparent to me and many others of the major shifts that we were making, and have argued, sometimes successfully and sometimes not successfully, not because I do not think our arguments are clear and compelling but because they seem to fall on deaf ears, that the Guard and Reserve need help.

I wish I could spend the time reading some of the hundreds, thousands of e-mails that I have received since this filibuster started. The filibuster is no longer in place because basically the amendment we asked for has been agreed to. It is going to be put in another bill. That is how this whole thing started, was to say that I know that it was impossible for us to amend $137 billion. We could not procedurally amend this bill. The only thing we could have done would have been to vote against it or send it to the President and ask him to veto it because the Guard and Reserve were left out. Both of those strategies were probably not going to happen. So I said that I would accept that, and I would stay here until Thursday or Friday, until I had to, with others helping me, to make sure we could find another vehicle that would be appropriate to put this amendment on as much intact as we could, and that is what happened.

There are a lot of Senators to thank, and I think I will spend a moment thanking the Senators before I go into more detail. First, I will just finish this one thought and then I will thank the Senators.

I was explaining how the paradigms changed and we are relying more and more on our Guard and Reserve. So when this bill began to be put together 2 years ago, some of us knew that this bill was going to start out at about $50 billion. But we also knew that it would grow because any time there is a tax bill before this Congress, lots of things get attached. NASCAR racing got attached; ceiling fans are in here; railroad reimbursements for maintenance of tracks is in here. I do not have a complaint about one of those items. That is not why we filibustered the bill.

What we complained about is the only item that was put in the Finance Committee and sent out of the Senate with 100 percent of us supporting it—all of the Republicans and all of the Democrats supported it—was stripped out by the House Republican leadership.

If we cannot find $2 billion of $137 billion in tax cuts to give to the men and women who are taking 100 percent of the risk, 100 percent of the bullets, what are we doing here? That was the point we made. The point was heard loudly and clearly.

So with the help of many colleagues, we have corrected the error. We have sent an amendment, in large measure whole. Senator BOXER is correct that a portion that she and I thought was very important, which was to help public entities that keep those paychecks whole as the Guard and Reserve go to the front line and lose 41 percent of their income, according to the GAO study—that was given to us not last week, not a month ago, this study was given to us 3 years ago. We knew 3 years ago that our Guard and Reserve take a 41-percent pay cut. The soldiers do not mind the pay cut. They are eating rations. They are living in tents. They are sleeping on the ground. This is not—well, it is about the soldiers, but it is more about the families they leave behind, about the children without health care, about the wives who have to take two jobs, about the gasoline that has to be put in the car, the car notes that have to be paid.

If we can find a tax bill and work on it for 2 years, which we did—2 years of work went into this bill. I am not on the Finance Committee, but I have a great member in Senator BREAUX. I know how hard he works, and I know how he supported this amendment as well. I have Congressman JIM MCCRERY and Congressman JEFFERSON who worked very hard. The Louisiana interests are well represented in this as well as in many other important bills. But what I objected to was that the Guard and Reserve amendment that would have given a tax credit to the thousands of businesses in this country that are doing the patriotic thing, the right thing, the good thing, and they are getting commended by our President and us, we could not provide them a 50-percent tax cut to keep this paycheck whole for those on the front line.

Mrs. BOXER. Will my friend yield for a very brief moment and I will be finished.

Ms. LANDRIEU. Yes.

Mrs. BOXER. I wonder if my friend would place in the RECORD a number of letters—I didn't have a chance to do it before—from various cities in California, also from the International Association of Firefighters. Will my friend do that?

Ms. LANDRIEU. Yes.

Mrs. BOXER. I wonder if my friend would mind if I could read one letter, which will take about 60 seconds.

Ms. LANDRIEU. No.

Mrs. BOXER. This is one of the typical letters from the City of Sacramento:

DEAR SENATOR BOXER: On behalf of the City of Sacramento, I am pleased to offer our support for S. 1845, which would assist local governments that continue to pay employees who are deployed to active duty.

Last year, eight of our permanent employees were activated to service in Iraq. We are

proud of these employees and support them by making up the difference between military and civilian pay. We also pay the City contribution for their families to continue their health benefits.

The cost to the City of Sacramento was approximately $73,000 last year. With the current budget crisis affecting California cities, S. 1845 is needed to ensure that cities like ours do not shoulder this financial burden alone.

If we can provide any further information or support as your office moves this legislation, please contact Aaron Chong, Law and Legislation Coordination, at (916) 808–6762. Thank you for your support of our brave men and women and their families.

This is a specific letter that wraps it up just the way the Senator has, in a very simple, straightforward way. But I do appreciate the Senator putting these letters in the RECORD and being able to stand shoulder to shoulder with the Senator until we fix this problem.

I thank the Senator.

Ms. LANDRIEU. Mr. President, I ask unanimous consent to have those letters printed in the RECORD.

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

CITY OF CHULA VISTA,
OFFICE OF THE CITY COUNCIL,
Chula Vista, CA, March 3, 2004.

Re notice to support S. 1845 (Boxer): Service to Country Reimbursement Act.

Hon. BARBARA BOXER,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR BOXER: The Chula Vista City Council, in keeping with the guidelines established in the City's Legislative Program, has taken unanimous action to support S. 1845 (Boxer), as introduced November 11, 2003. This proposal would require the Federal government to reimburse state and local governments for the salary costs of our employees who serve in the military reserves and have been called to active duty.

Under existing law, the City of Chula Vista pays the salaries of our reservist employees for the first 30 days of their active duty assignment. Beyond those first 30 days, the City pays the employees the difference between their military pay and their normal civilian salary. In addition, we incur the cost of hiring supplementary personnel to carry out the responsibilities of the reservists who have been called away.

Chula Vista has already incurred costs in excess of $500,000 during the current military actions in Iraq and Afghanistan. Passage of S. 1845 would be a tremendous benefit to local government agencies throughout the Nation. On behalf of our city, I am pleased to offer Chula Vista's strong support for your bill, and look forward to its successful passage.

Sincerely,

STEPHEN C. PADILLA,
Mayor.

CITY OF ROSEVILLE
CITY COUNCIL,
Roseville, CA, January 15, 2004.

Subject support for S. 1845—service to Country Reimbursement Act.

Hon. BARBARA BOXER,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR BOXER, On behalf of the citizens of the City of Roseville, California, I offer my support for S. 1845, which would assist local governments that continue to pay employees who are deployed to active duty.

Last year, five of our 946 permanent employees were activated to service in Iraq. We are proud of these employees and support them by making up the difference between military and civilian pay. We also pay the City contribution for their families to continue their health benefits.

The cost to our City was approximately $105,000 last year. With the current budget crisis hitting California cites, S. 1845 is needed to ensure that cities like ours do not shoulder this financial burden alone.

If we can provide any further information or support as you move this legislation, please contact Ellen Powell, Legislative Analyst, at (916) 774–5219. Thank you for your support for our brave men and women and their families.

Sincerely,

F.C. ROCKHOLM,
Mayor.

CITY OF SANTA BARBARA,
OFFICE OF THE MAYOR,
Santa Barbara, CA, January 27, 2004.

Re Service to Country Reimbursement Act—S. 1845.

Hon. BARBARA BOXER,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR BOXER. On behalf of the Council of the City of Santa Barbara, we unanimously support the Service to Country Reimbursement Act. We also want to express our sincere appreciation for your leadership in sponsoring this bill.

Since October 2001 the City has voluntarily provided approximately $250,000 in salaries, benefits and retirement fund contributions for City employees who have been called to active military duty. While we remain committed to this policy, we do not have unlimited resources. The City has not yet recovered from the revenue losses due to the economic recession and September 2001 terrorist attack. In addition we have incurred significant increased costs to provide higher levels of police security and emergency preparedness.

This situation in combination with the loss of revenue (incurred and projected) due to the California state budget crisis places us in a very untenable position. Although S. 1845, if enacted, will not resolve all of these issues, it will provide resources to fund a major portion of our potential future costs for continuing support for our employees, and their families, who are activated for military service.

We encourage you to make enactment of this bill a high priority and ask that you call on us for support and advocacy with others as the bill progresses through hearings. Thank you again for taking the initiative to sponsor this bill.

Sincerely,

MARTY BLUM,
Mayor.

CITY OF FREMONT,
OFFICE OF THE MAYOR,
Fremont, CA, November 24, 2003.

Re Support for S. 1845, the Service to the Country Reimbursement Act

Hon. BARBARA BOXER,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR BOXER: I am writing on behalf of the Fremont City Council to let you know of our strong support for your S. 1845, the Service to the Country Reimbursement Act.

This needed legislation will reimburse state and local governments for the costs of paying the difference between the civilian salary of government employees and the military pay of a National Guard or reserve member who is activated for more than 30 days.

We have several employees who have been called to active duty since September 11, 2001. We are supplementing their military pay with City funds during their deployment because we strongly believe that serving your country should not become a financial hardship. We have already spent more than $120,000 to supplement the salaries of our active duty employees and more than $30,000 on their health benefits. With the significant budget problems we are facing this year, we greatly appreciate any assistance the federal government can provide us.

Thank you for introducing this important legislation.

Sincerely,

GUS MORRISON,
Mayor.

INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS,
Washington, DC, April 24, 2003.

Hon. TOM LANTOS,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN LANTOS: On behalf of the 260,000 professional firefighters and emergency medical services personnel who are members of the International Association of Fire Fighters (IAFF), I am pleased to offer our enthusiastic support for H.R. 1345, a bill to support our citizen soldiers.

As you are aware, many fire fighters serve in either the National Guard or Reserves. As a result of our nation's multi-front war against terrorism, many of these brave men and women of the IAFF have been called up to active duty.

While some conscientious jurisdictions have voluntarily agreed to make up the difference between military pay and fire fighter pay, too many have not. H.R. 1345 would address this issue by helping local governments with the burden of making up the difference in the lost wage. We applaud your efforts to ensure that those serving abroad will have the comfort of knowing that their families will not face financial hardships.

Please contact me if the IAFF can be of additional service.

Sincerely,

BARRY KASINITZ,
Governmental Affairs Director.

STATE OF NEW HAMPSHIRE,
OFFICE OF THE GOVERNOR,
Concord, NH, June 19, 2003.

Senator JOHN SUNUNU,
Manchester, NH.

DEAR SENATOR SUNUNU: I am writing to express my support for House Resolution 1345 which provides incentives to State and Local governments, as well as private employers, who reimburse their employees who are called to active military duty for the difference between their civilian pay and their military pay. I feel strongly that the men and women who are called to active military duty should not be penalized financially for serving our country. When I was chief executive officer of Cabletron, I was proud to support my employees who were called to active duty during the Gulf War by making up the difference in pay between what they were paid by Cabletron and what they received from the military. As Governor, I again had the opportunity to support our military by issuing an executive order that ensures that state employees who were called to serve in Operation Iraqi Freedom will not lose any benefits or receive a reduced salary as a result of their service.

House Resolution 1345 provides reimbursements to states like New Hampshire who support our military. I urge you to support this bill on behalf of our State and on behalf

of the men and women who serve our country.

Sincerely,

CRAIG R. BENSON,
Governor.

Ms. LANDRIEU. I thank the Chair.

Mr. President, I would like to continue by thanking all of the Members of this body, particularly the members of the Finance Committee, particularly the Senator from Oklahoma, who stepped forward and helped us to negotiate a very good end to this situation. But the original cosponsors of this amendment were Senator MURRAY, Senator TIM JOHNSON, Senator MARIA CANTWELL, Senator JON CORZINE, Senator KERRY, Senator DURBIN, Senator DODD, and Senator PRYOR. There were 21 Senators who signed the letter to the conferees and I am going to submit their names to the RECORD, but among them was Senator BOND, who has been a strong advocate for the Guard and Reserve; Senator AKAKA, who came to the floor over the weekend to lend his support and his help; Senator BILL NELSON, who came to the floor as well and gave his help and his support. I also wish to thank the leadership, Senator DASCHLE and Senator REID in particular, as well as the Republican leadership, who worked hard through these couple of days to make this good end come to be today; particularly Senator HARKIN, who was in the Chamber advocating for a different issue that was his primary focus, but without his help in being able to hold the floor and being able to keep the procedure moving in the direction that helped us to make our point, it would not have happened. I also wish to thank the Senator from Alabama, Mr. SESSIONS, for spending many hours in the Chamber. He and the Senator from South Carolina, LINDSEY GRAHAM, have spoken hour after hour after hour on this floor about the needs of the Guard and Reserve.

Perhaps we are not making our arguments clear enough; I do not know. But they seem to sometimes leave our mouths and fall on deaf ears. I do not think it is complicated; 690,000 Americans have been called up by our Commander in Chief to go to the front line. As we put bills together here, tax bills, health care bills, education bills, transportation bills, could we please not keep them in mind but put them in the bill and not leave them out. They are not asking for much. They are not asking for 100 percent of any tax credit. But surely $2 billion out of 137 is something we could have done. I know there were arguments, and I think somewhat legitimate—perhaps the amendment was not written in the correct way. Perhaps it was a little more complicated. We have successfully cleared up those complications. I have said there were other amendments in here that to me seemed quite complicated.

One in particular was a reimbursement for railroad track maintenance. I guess we trust the railroads to tell us how many miles. I don't think we send out people to walk the tracks and measure the railroad tracks. So I think we trust employers when they say they are paying their Guard and national Reserve and they put that on their tax return. I think most certainly we can trust them and trust the members of our Guard and Reserve. We are trusting them to fight for us and we stand with them. We are honoring the employers, small and large companies that are keeping those paychecks whole, and the least we can do is to provide a 50-percent tax credit.

I also wish to thank the floor staff: Lula Davis and Mary Paone, as well as the Republican staff who helped this weekend, and the Senate Finance Committee staff which helped us to work out the final details. On my own staff: Jason Matthews, Jeffrey Wiener, Kevin Avery, Kathleen Strottman, Brian Geiger, Amy Cenicola, and Linda Cox, and particularly my husband and my children, who were supportive of this effort because it could have gone on for many more days.

I want to, in the few minutes I have remaining, submit a few more things to the RECORD.

One of them is a letter that came to this Congress, not from the current Secretary of Defense, but from the former Secretary of Defense, Bill Cohen, in 1998, saying basically, while we support the concept of providing incentives to employees of Reserve component members, the Federal Government, we at this time cannot afford such a program, but with the increased use of the Guard and Reserve, particularly for unplanned contingency operations, employers of our Guard and Reserve members are often faced with the unplanned absences of their reservist employees. They may incur additional business expenses associated with the unplanned absences. The report suggests that a financial incentive might be helpful to ameliorate some of the employer problems, particularly for small business owners.

There you have the Secretary of Defense, the former Secretary of Defense, outlining that while they couldn't afford to do it in a Defense bill, we most certainly could afford to do it in a tax bill. That is why we started working with the tax bill and with the Finance Committee. I am pleased to say we have come to a good end. So in a few minutes, by a voice vote, this amendment will be adopted. It will go over to the House and to the House leadership on both the Republican and the Democratic side. I urge them to look carefully at what we have sent over there, to pass it the way it is. If they do, it will become law right away. Perhaps when we come back after this election or perhaps before the election, that could be done. But clearly the Senate has acted with respect, with care, with cooperation, and again I thank the Republican leadership and the Democratic leadership for working so well over the weekend to send this amendment, basically intact as we put it together, over to the House. It is now in their court.

How much time do I have remaining?

The PRESIDING OFFICER (Mr. COLEMAN). There is 11 minutes remaining.

Does the Senator ask unanimous consent to have the documents printed in the RECORD?

Ms. LANDRIEU. Yes.

THE SECRETARY OF DEFENSE,
Washington, DC, March 17, 1998.

Hon. FLOYD D. SPENCE,
Chairman, Committee on National Security, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Department of Defense report, enclosed, has been prepared in response to the National Defense Authorization Act for Fiscal Year 1997. Section 1232 of that Act directed submission of a report and draft legislation to provide tax incentives to employers of members of Reserve components.

The Department of Defense does not support submission of legislation at this time but is submitting draft legislation as a drafting service.

Sincerely,

BILL COHEN.

Enclosure: As stated.

A REPORT TO CONGRESS CONCERNING INCENTIVES TO EMPLOYERS OF MEMBERS OF THE RESERVE COMPONENTS

This report responds to the requirements of section 1232 of the National Defense Authorization Act for Fiscal Year 1997 (P.L. 104–201, September 23, 1996), which requires a report to the Committee on the Armed Services of the Senate and the Committee on National Security of the House of Representatives regarding tax incentives to employers of members of Reserve components to compensate for absences of Reserve employees due to required training and performance of active duty.

OVERVIEW

Increasingly, members of the National Guard and Reserve are being called upon to augment the active duty forces in the post-Cold War world. This is a sound use of resources and an integral part of our national military strategy. More recently, Reserve component members have responded to the call in Operation RESTORE HOPE in Somalia, Operation UPHOLD DEMOCRACY in Haiti, and Operation JOINT ENDEAVOR/JOINT GUARD in Bosnia.

Previous Congresses have viewed legislation that would provide incentives such as tax expenditures as having a fixed and recurring budgetary effect. A number of methods could resolve such a problem.

BACKGROUND

Generally, members of the Reserve components (both National Guard and Reserve members) are required to attend one weekend of inactive duty training per month and 14 days of active duty training annually. Over and above this training, members are often required to participate in mobilization training, formal schools, and special training. Additionally, many Reservists are called upon to provide PERSTEMPO relief (reducing the active duty Service members time away from home station). For some individuals, this may exceed the normal Reserve participation requirements. Some Reserve members, who support specific weapons platforms, are actually spending up to 180 days a year on military duty. This is compounded by involuntary call-ups to support missions such as Operation DESERT STORM and JOINT ENDEAVOR, which required the use of the Reserve components.

In addition to this busy Reserve schedule, the vast majority of Reserve component (RC)

members are employed full-time in civilian occupations. So, not only are RC members working full-time in the civilian community, they are meeting their Reserve obligation, which has substantially increased beyond the minimum 38 days a year prescribed by law.

This ''part-time'' Reserve obligation is substantially different from any other part-time activity in which most employees participate. They may be involuntarily called to active duty in times of national emergencies. Although efforts are made to reduce any conflict these absences may cause, some conflict is unavoidable. Title 37 U.S.C. section 1008(b) mandates that each Quadrennial Review of Military Compensation (QRMC) conduct ''a complete review of the principles and concepts of the compensation system for members of the uniformed services.'' The Sixth QRMC stated that conflicts between RC members and their full-time civilian employers account for nearly one-third of all personnel losses incurred by the Reserve components.

DEMONSTRATED NEED

Employer concerns

From an employer's viewpoint, unscheduled absences create a variety of problems.

While Reservists repeatedly demonstrate that their military training and experience benefit their civilian employers, budget-minded employers must also consider the impact of unexpected long-term absences on their businesses. positive approach to the pressures caused by unplanned employee absences than simply enforcing Reservists rights.

Department of Defense concerns

Trained and equipped members of the National Guard and Reserve are an integral part of the national military strategy. With a smaller active duty force, the Department is maximizing all available resources to meet mission requirements. This has increased the day to day use of the Reserve components. There are substantial economic benefits to the government to use the Reserve components as they cost the government less to maintain—anywhere from 25% to 75% of the cost of their active duty counterparts. This is part of the rationale for the dramatic shift of missions and force structure from the active to the reserve forces. It is the nation's advantage, therefore, to use its Reserve components.

Retention of RC members becomes critical. It is in the government's best interest to keep well-trained individuals in the military, rather than incurring the additional training costs (roughly $26,000 per new recruit). The train-up time associated with recruiting new individuals into the force is also considerable. In spite of our efforts to provide a benefits package that makes continued Reserve service an attractive proposition, employer conflict is often cited as the number one reason why individuals decide to leave Reserve component military service.

DEPARTMENT OF DEFENSE EFFORTS

The DoD has undertaken several initiatives to reduce conflicts between Reservists and their employees. Since 1970, the DoD has developed an aggressive program to encourage employer support. The National Committee for Employer Support of the Guard and Reserve (NCESGR) is an agency within the Office of the Assistant Secretary of Defense for Reserve Affairs that promotes cooperation and understanding between RC members and their civilian employers. This program has grown from several hundred employers and professional and labor organizations to more than 3000 community leaders nationwide. Despite these efforts, the Sixth QRMC stated that 10 to 20 percent of RC members continue to experience significant employment-related conflicts.

In an effort to protect Reserve employees, the 103rd Congress passed the Uniformed Services Employment and Reemployment Rights Act (USERRA). This legislation protects ''non-career service members'' from job discrimination based on Uniformed Service. USERRA has simplified statutory employment protections and provided a system of local arbitration for individual cases. While protecting the employee, USERRA does not, however, address any adverse effects Reserve service may impose upon employers. Employers are required to provide seven basic entitlements by statute: prompt reinstatement, status, accrued seniority, health insurance coverage, training/retraining, special protections, and other non-seniority benefits.

Despite these efforts, the major employer disincentive to encouraging employee participation in the Reserve components is the additional costs and reduced profits stemming from Reserve participation.

PREVIOUS LEGISLATIVE PROPOSALS

Recognizing the substantial role that employee attitudes and practices have on Reserve readiness, legislative proposals granting a monetary incentive (in the form of a tax credit) to employers of National Guard and Reserve members have been introduced several times, the most recently in the 103rd Congress. The Department understands that there may be other methods to soften the employer's burden. The main points of the most recent legislative proposals are outlined below.

Summary of past proposals

DoD 100–49 (100th Congress): Credit and deduction; 20 percent of amount paid and 10 percent of amount unpaid; any training; nonrefundable; and annual maximum of $2000 per member.

H.R. 71 (103rd Congress): 50 percent of amount paid and 10 percent of amount unpaid of actual compensation paid when employee was performing qualified active duty; annual maximum of $2000 per member; and no credit for employee not scheduled to work.

Additionally, the Sixth QRMC made the following recommendations:

Nonrefundable credit of 50% paid to Reservist on military leave and 10% credit for amount unpaid;

Include credit for self-employed individuals; and

Certification of Veterans' Reemployment Rights compliance.

DRAFT LEGISLATION

The Department has developed draft legislation, as a drafting service, for a tax credit program for employers of Ready Reservists and self-employed Reservists as required by section 1232 of the National Defense Authorization Act for Fiscal Year 1997. Because of associated costs in the form of federal tax receipt losses for such a program, neither the Department of Defense nor the Administration support submission of the legislation at this time. Because section 1232 requests the draft legislation, however, the attached draft is submitted as a drafting service pursuant to paragraph 7i, Office of Management and Budget Circular A–19, dated September 20, 1979.

CONCLUSION

Assistance to employers who support National Guard and Reserve participation by their employees could reduce an employer's costs associated with employee absence due to their participation in the National Guard and Reserve on contingency operations. The Department understands the loyalty of the employers burdened with the costly and unanticipated absences of their Reserve employees. We salute such employers and seek their continued support. Tax or other incentives for employers might help to ameliorate some of their problems. Any such plan, of course, must compete for resources in the ever shrinking availability of Federal programs.

Ms. LANDRIEU. I will reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? If no one yields time, the time not used will be equally divided.

The Senator from Oklahoma.

Mr. NICKLES. I yield myself 5 minutes.

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

Mr. NICKLES. Mr. President, I want to make a couple of comments on the bill and a couple of comments on the amendment which has been discussed by Senator LANDRIEU and Senator BOXER.

On the bill itself, let me just say, again, I want to compliment Senator GRASSLEY and Senator BAUCUS, and, frankly, all the conferees, for their work on this bill. There was a lot of work that went in on this bill. This bill has a lot of good provisions, and in this Senator's opinion it has a lot of bad provisions. It has a lot of tax cuts, and it has a lot of tax increases. So you have to kind of weigh the pluses and the minuses. The plus is we are going to be WTO compliant and get away from these enormous fees that are on our exports, taxes that are on our exports that make our exports less competitive. It is a 12-percent tax right now, that goes to 17 percent by next March. We don't need a trade war with Europe.

I remember talking to Chancellor Helmut Kohl when they were pushing the European Union. I said: I am a little concerned about the European Union becoming more protectionist. He assured me that is not the case. But, frankly, the European Union is becoming more protectionist. We don't need a trade war. They don't need a trade war, and we don't need a trade war. So it is necessary for us to pass a bill to be compliant. I don't want to give the World Trade Organization too much of a blank check, but it is important that export subsidies not be egregious. They have determined in the past FSC/ETI was; the foreign sales corporation was. So we repealed that in this bill.

We are replacing it with a tax cut for manufacturers. We defined ''manufacturers'' very broadly. We didn't give a corporate tax cut for corporations that are in the services, financial services or other services. I object to that. I think that is a mistake. I used to be a manufacturer, so if I went back into manufacturing I guess I should say this is great because you are going to reduce my income tax by 10 percent in about 7 years, 6 or 7 years. So maybe I should be happy. But I just look at the complexity of it, trying to determine what portion of income is manufacturing and what portion is financial or other services, and I can see it is going to be very confusing.

For example, in the bill we defined construction as manufacturing. So if you had a contractor who was working in construction, their tax rate would be 32 percent in a few years. If they also do service work, that work will be taxed at 35 percent, i.e., a plumbing contractor who is building new units is going to be taxed at 32 percent. If he is doing a service, replacing your plumbing, that would be taxed at 35 percent. That doesn't make sense. That is what is in this bill.

Take a big corporation—and they have a lot of accountants and lawyers—they will work it out. But General Electric, they have big manufacturing. Those units will be taxed at 32 percent, but they are probably bigger in financial services and other services. That will be taxed at 35 percent. So they are going to have to allocate resources and expenses to whichever category they belong. I find that to be far too confusing and will cause a lot of compliance problems. It is probably more trouble than it is worth.

Canada had a differential rate for manufacturing for about 20 years, and they repealed it. My guess and prediction is that Congress will come back and have to fix this as well because the differential rate is not worth it, and we should have a uniform corporate rate.

I tried that. Senator KYL tried that. I compliment my colleague, Senator KYL. We were not successful in convincing our colleagues, House or Senate, in doing it. That being said, we tried our best. But it is still important for us to pass this bill, and we and others will be trying in the future, I am sure. I hope in the administration, when they do a comprehensive tax reform proposal, they will come up with a uniform corporate rate. I bet they will, and I bet any commission or group that says we need tax overhaul, simplification, they will come up with a uniform corporate rate. It only makes sense. This proposal does not, this differential rate.

But we are not going to be able to fix that now, and we can't fix it in the next 3 months, not with the current makeup. So I urge our colleagues to vote for it.

I heard a couple of our colleagues say this provision Senator LANDRIEU was talking about was stripped in the conference. That is not correct. Not one member of the conference—we have 23 Senate conferees, and not one person raised this in an individual amendment. I will say all conferees had amendments that we wanted. Some were accepted and some were not accepted. But to be accepted, you had to raise the amendment. You had to fight for the amendment. You had to have it offered. I think this particular amendment was offered in a large group of 10 or 12 amendments. The House did not concur. That didn't mean it was stripped out in conference. There were hundreds of amendments that were proposed by the Senate, not agreed to by the House, or vice versa. That is the makeup of a conference. So I want to make sure people understand that.

On the substance of the bill, I heard it was supported by 100 percent of the Congress. It passed by a voice vote. It was not supported by this Senator. On the substance of it, I am not sure that we should give reservists and guardsmen serving in the trenches with Active-Duty—give them $20,000 more or $15,000 more in pay from the Government. That is what the essence of the proposal was.

It says we will give a credit to employers for keeping them whole. But think about it. If you have a guardsman driving a truck doing the same thing an Active-Duty person is doing, should they be paid $20,000 more for doing the exact same job? I am not sure that makes sense. I do know, if you are going to do it—Mr. President, I yield myself an additional 2 minutes.

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

Mr. NICKLES. If we are going to do it, we should not do it through the Tax Code. I believe it should be done through the Armed Services Committee. I have great respect for Chairman WARNER and Senator LEVIN. Let them have hearings on it. Let them decide if there should be greater incentives for Guard and Reserve. If they believe it is necessary, that is the way it should be done. The money should be appropriated in the Appropriations Committee. Chairman STEVENS, head of the DOD subcommittee—they should be making these decisions to keep a proper balance between Reserve and Active-Duty.

I happen to be a former guardsman. I support the Guard. But I don't think they should be paid through a tax credit that may funnel to them or may not funnel to them. I don't think that is good policy. If they are to be paid, they should be paid by the Government and they should be paid on a monthly basis by the Government and their benefits should be given by the Government, not through a refundable tax credit that they may or may not receive down the road.

We sometimes pass amendments by voice vote to expedite passage. We passed the sense-of-the-Senate amendment by voice vote, and I compliment the authors. But I would have voted no. Just because something passes by voice doesn't mean every Senator concurs. I did not and still do not agree with this amendment.

I do agree with one portion of it, and I compliment my colleague from Louisiana. We worked to make something acceptable. Legislation is the art of compromise. We compromised on one thing. One section is let's have GAO do a study about what kind of compensation we need for Guard and Reserve: How does it balance with the Regular Army? A tax credit, would this be the proper mix? So I think we need some additional study on it, and we will do that. I think we improved her amendment substantially, we changed it substantially, and I compliment her as well.

Again, on final passage, I think the underlying product leaves a lot to be desired, but I still think it is an improvement. We need to fix the WTO problem, and I urge our colleagues to vote in favor of the conference report. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Louisiana.

Ms. LANDRIEU. Under the previous order, I think I still have——

The PRESIDING OFFICER. The Senator has just under 11 minutes.

Ms. LANDRIEU. Mr. President, I want to take the time to thank the Senator from Oklahoma. I know he has some concerns about some of the details of this amendment. But because of his work and because of other Senators who worked through the weekend on this, we have put a very solid, substantial, largely intact amendment in place that is going to be passed to the House. Now it will be in the hands of the House leadership to decide if they want to pass this amendment, which is a tax bill specifically for the Guard and Reserve. The underlying bill actually will allow the Guard and Reserve a tax benefit to remove the 10-percent penalty if they would want to take money out of their IRA to help them through tough financial times.

According to the hundreds and thousands of e-mails that we have received, myself and many others, we know that our Guard and Reserve are having a tough time.

I would just like to read this for the RECORD. I know the Senator himself has received notices like this.

This is from—Janice is her name. I will find out where she is from in a moment. She writes,

> Senator Landrieu, I have 3 nephews and 2 nieces that are in our National Guard and they are being sent over to Iraq. I am so angry right now that I hope that I don't have to see others go to this war. But let me just say that my nephews and nieces have left behind 11 children without health coverage. I am their aunt and my husband is their uncle. We are taking care of these three children. It is hard for us. We are tired living on a fixed income.

This is what this amendment is all about—taking on the burden of having the Guard and Reserve on the front line, and paying those paychecks. Yes, it helps the soldier on the front line, but mostly it helps the families back home. That is what the Senator was able to help us come to terms with. That is what the Senate is sending over to the House—supporting this effort on the House side.

I look forward to working with them when we come back in, perhaps after the election—working with the Senators who have spoken up over the weekend and others who were not able to speak up and sent letters in support and cosponsored this effort, Republicans and Democrats, to say let us craft a tax provision, or several tax provisions, that will help our Guard

and Reserve, or let us dig a little deeper in the Defense bill to give them the support they need, whether it is health care, whether it is paycheck protection, whether it is other support services, so they can do the job better we are asking them to do.

Frankly, I don't think they could do it any better, but they could do it with more peace of mind knowing their families are able to pay the bills, are able to keep the roofs over their heads, are able to put gasoline in their automobiles, and pay the extra childcare expenses.

I know other Senators feel as strongly as I do—everyone in this Chamber. But let us not only feel strongly but remember them when we pass these bills. Again, we don't have to remember them only on the Defense bill. Then we end up having to make tough choices and ask the military, Do you want a rifle, or a helmet, or health coverage, or to send a whole paycheck to your family? I don't think our men and women in uniform should be asked to make those decisions, not when we are giving $137 billion in tax cuts to everybody else. That is my point.

I know people may disagree. Maybe this vehicle was the right one. But because we were told 3 years ago there was no money in the Defense bill to do this, what option were we left with? We asked it be included. It was included when it left the Senate.

I am proud of that. Now we have a chance again sometime in the near future to get this fixed. I am proud of the effort.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY. Mr. President, I yield 4 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Thank you, Mr. President. I thank the Senator from Iowa, the distinguished chairman of the committee. I also thank the chairman and ranking member of the Finance Committee for working with the House to produce an excellent bill which will reduce taxes on more people in our country and, therefore, help this economy to continue the recovery.

I am very pleased. I have heard the debate on the tax credit for employers for Guard and Reserve units. I know all of us will be working to try to assure that this is done. Our Guard and Reserve units have stepped up to the plate.

I have been to Iraq. I have been to Afghanistan. I have visited with Guard troops who are on their second and third call who didn't expect this kind of activity when they signed up. But they are there doing their job, and doing a great job.

On the other hand, the people at home are, too. The employers are, too. The families are, too. They are sacrificing as well. I think help for families, help for the men and women on the ground in Iraq and Afghanistan and other places, and help for the employers is certainly something we should do in the right way.

I am very pleased we are going to continue to work on this issue. We need to do everything we can to support our young men and women in the field and the people who are supporting them at home.

I will never forget when I was visiting a base in Saudi Arabia and asked one of the young guardsmen what was their biggest problem, thinking he was going to say something about his tour of duty, or something on the ground there. He said, My biggest problem is my wife can't get a pediatrician for our child at home who is having heart problems. I said we can't let this happen. We have to make sure we are giving them all the support they need.

This is a good bill. It is a bill that is going to help our manufacturers in this country compete on a level playing field.

A ruling by the World Trade Organization found our existing extra-territorial income tax regime was prohibited under an international treaty. Therefore, the European Union imposed retaliatory sanctions on a variety of United States products in March of this year. These tariffs have increased every month we have not acted. They are now at 12 percent. A tariff like that can be the difference between whether an American product can be purchased overseas, whether it gets in and can compete on a level playing field.

We will restructure our Tax Code for businesses in order to replace the ETI and end the confiscatory tariffs that are hurting manufacturers in this country.

At a time when our country is losing manufacturing jobs, we talk about outsourcing every day. We have to act to give our manufacturers every possible advantage we can to be competitive with Europe. That is what the heart of this bill is. It is very important for jobs in our country. It is very important for the manufacturers who are trying to keep jobs in our country to be able to have that level playing field. I am very pleased about that.

In addition, there is a broad range of manufacturers who are helped, including certain oil and gas producers. We know with the prices of oil and gas so high right now that we need to encourage our producers to be out there cutting costs wherever possible, and hopefully this will allow them to be able to produce more in our country and create those manufacturing jobs.

Lastly, there is a sales tax deduction that is very important to my State and six other States in our country. Some States in America do not have a State income tax. That doesn't mean our State taxpayers aren't paying taxes. We pay very high, substantial sales taxes and we pay high property taxes. Some of those are going up. For us not to have a deduction for our State sales taxes on our Federal income taxes like those who pay an income tax do is unfair.

That inequity is eliminated in this bill for the next 2 years. We will be able now to have equity in our Tax Code. We will now be able to give those in a non-income tax State the ability to deduct sales taxes just as those who pay income taxes are able to do. In fact, it allows people in an income-tax State to choose to deduct sales taxes instead of income taxes if they want to. It is for everyone.

But in reality, the States that have been shortchanged are the ones that choose to tax with sales tax and rather than income tax. That inequity is going to go away in this bill. It will mean $300 on average for every family in Texas. That is going to be welcome news for people who have had to live with this inequity since 1986.

Thank you. I urge adoption of this very important bill.

Mr. LOTT. Mr. President, I thank the distinguished chairman of the Finance Committee for yielding me this time.

When we look back on the results of this year, the legislation that had the greatest impact, this will be the bill we will refer to and remember. This is the most important achievement of this session of Congress.

I give credit to the chairman of the Finance Committee, and the ranking Member, Senator BAUCUS of Montana. They were diligent and hung in there. They were determined we would get this result. Yes, we had to go a little overtime, but here we are. We will get it done today. They deserve an awful lot of credit.

Also we should give credit to Congressman THOMAS, the chairman of the Ways and Means Committee in the House. This is very complicated legislation, but he worked with these two Senators and they produced a very important product.

I could not fathom the idea that we might leave here and not complete legislation that will stop the fees that were being put on American products as a result of the WTO ruling on our domestic tax provisions. That import fee was going up 1 percent a month. It was up to 12 percent and going to 13 percent. How in the world could we not complete legislation that would deal with this alleged subsidy and take that money that was saved by eliminating some provisions and move it into other areas in manufacturing and small business in a way to create jobs? It was important we complete this legislation. We got it done. We will comply with the WTO ruling, but we will take that money that was going into the questionable provisions and move it into areas that will create jobs for the American people. We will keep more jobs here. This is a very significant achievement.

At long last we repeal the 4.3-cent-per-gallon diesel fuel tax that railroads and barges have had to pay. This is not

about one railroad or just a barge company; all the other parts of the economy that have been paying that 4.3-cent-per-gallon tax had been released from having to pay it or send it to an infrastructure trust fund. This was a question of fairness. Once again, it is in an area where we can create more jobs. The railroad industry is saying in the next few months they will create thousands of new jobs. This is a critical provision.

I thank Senator GRASSLEY particularly for working with me to make sure this provision to repeal that tax over a period of 3 years would be included in this bill. The bill also improves the tax treatment for shipbuilding. Unfortunately, shipbuilding companies have to pay the tax on the entire amount of a ship even though they do not get the money sometimes for 3 or 4 years down the road. Incremental funding is how you should pay your taxes.

There are important timber provisions in the legislation. We should encourage the planting of more trees as well as responsible harvesting of trees. There are three different provisions that will help the timber industry in this country.

It also includes income averaging for farmers and fishermen. Others have that opportunity; why shouldn't farmers and fishermen? This will be very helpful.

The tobacco buyout provision is included. This is a provision I opposed, and I do oppose it now, but the conferees, working with the Senators from the States that were affected, came up with the best possible of the solutions they could have reached; therefore, I was willing to support what they came up with because I thought it was as fair as you could get for all involved.

We have tax incentives for United States-flag shipping companies, shortline railroads, energy provisions that will produce more energy, critical improvements for small businesses, small subchapter S reform and expensing.

This is a big achievement. I commend those involved and tell the American people this will help the economy of our country.

Mr. LEVIN. Mr. President, I voted for the Senate version of this FSC/ETI legislation. While I had a number of misgivings about that bill, those were outweighed by my concerns over the crisis in our Nation's manufacturing sector and the sanctions being imposed as a result of the FSC/ETI regime. However, I will oppose this conference report. It fails to include too many of the important provisions from the Senate bill and has a number of added bad provisions.

The Senate bill we passed in May did a lot to crack down on tax dodgers, but the House Republican leadership, with pressure from the administration, has refused to include most of these provisions in this legislation. While men and women in our military are putting their lives on the line every day for America, too many corporations are stiffing our country by dodging their taxes. They are depriving our country of funds needed to strengthen homeland security, support our troops, care for the sick, educate kids, and more. To make things fair for our U.S. manufacturers that play by the rules, we need to close loopholes that allow the tax dodging corporations to avoid paying their fair share.

One of the most glaring of these omissions from this legislation is the provision passed by the Senate numerous times that would have required business transactions to have actual ''Economic Substance'' in order to receive tax benefits. Refusing to include this anti-abuse tool means that tax dodgers will still be able to escape paying their fair share by using phony transactions that have no business purpose other than tax avoidance. It also means we miss the opportunity to collect from these tax dodgers a much needed $15 billion over 10 years.

Another distressing decision by the House Republicans is the slashing of the penalty imposed on those who design and peddle abusive tax shelters. These abusive shelters are undermining the integrity of our tax system, robbing the Treasury of tens of billions of dollars a year, and shifting the tax burden from high-income corporations and individuals onto the backs of the middle class. The amendment Senator COLEMAN and I offered, which became part of the Senate bill, set the penalty on an abusive tax shelter promoter at 100 percent of the fees earned from the abusive shelter. This penalty would have ensured that the abusive tax shelter hucksters would not get to keep a single penny of their ill-gotten gains. But that provision was cut in half in this conference report, setting the penalty at 50 percent of the fees earned, meaning the promoters of abusive shelters get to keep half of their gain.

Why should anyone who pushes an illegal tax shelter that robs our Treasury of much needed revenues get to keep half of his ill-gotten gains? And what deterrent effect is created by a penalty that allows promoters to keep half of their fees if caught, and all of them if they are not? This half-hearted penalty is not tough enough to do the job that needs to be done.

And this conference report completely leaves out yet another Senate provision that is critical in the fight against abusive tax shelters. In addition to those who are considered ''promoters'' of these abusive shelters, there are the professional firms—the law firms, banks, and investment advisors—that aid and abet the use of abusive tax shelters and enable taxpayers to carry out these abusive tax schemes. For example, a law firm is often asked to write an ''opinion letter'' to help taxpayers head off IRS questioning and fines that they might otherwise confront for using an abusive shelter. Under current law, these aiders and abetters face a penalty of only $1,000, or $10,000 if the offender is a corporation. This penalty is a joke. It provides no deterrent at all, when law firms are getting $50,000 for each of these cookie-cutter opinion letters. A $1,000 fine is like a parking ticket for raking in millions illegally. With the Levin-Coleman amendment, our Senate bill upped this fine to 100 percent of the gross income derived from the prohibited activity. Unfortunately, it appears the House conferees thought it was ok to let these aiders and abetters continue to profit handsomely from their wrongdoing instead attempting to deter this behavior that robs tens of billions of dollars from the U.S. Treasury.

Another gaping tax loophole that this conference report weakened is the unfairness to the taxpayers that arises when companies renounce their citizenship, going through phony reincorporations by establishing a shell headquarters on paper in Bermuda or other tax-haven countries when, in reality, their primary offices and production or service facilities remain right here in the U.S. These corporate expatriates get all the benefits of being U.S. companies without contributing their fair share of the bill.

The Senate FSC/ETI bill had a provision that would have shut down a significant portion of this loophole. I have long preferred an even stronger fix, such as the one Senator REID of Nevada and I put forward in S. 384, the Corporate Patriot Enforcement Act of 2003. But at least the provision passed by the Senate went much further than the one before us. The provision included in the conference report lets all the companies that used this gimmick prior to March of 2003 continue to avoid the taxes that their American-based competitors face. The Senate version would have cracked down on these tax dodgers to the tune of more than $3.1 billion over 10 years while this weak provision raises only $830 million. It is shocking that the House Republican conferees were willing to leave $2.3 billion in dodged taxes on the table when that money could have gone to implement Senator LANDRIEU's amendment that would offer real help to our activated guardsmen and reservists.

I understand that during the conference negotiations, the Senate conferees offered an amendment that would have reinstated many of these important curbs on tax dodges. The amendment would have raised an additional $40 billion over 10 years. But, once again the House GOP refused to accept these anti-abuse measures, and the amendment was defeated on a party line vote.

The problems with this legislation are not limited to the fact that we are letting tax dodgers off way too easy. At a time when many corporations pay no tax at all and corporate tax revenues are at historic lows, this bill is full of special interest tax breaks. It also includes new tax benefits for the offshore operations of U.S. multinational companies, such as allowing companies

with earnings held overseas to bring them back at a tax rate lower than the rate paid on domestic profits. The cost of these international provisions is estimated at $43 billion over 10 years, but this estimate is misleadingly low because some of these provisions are ''temporary'' or do not kick in until later years. While I support incentives to create and support U.S.-based manufacturing jobs, I am concerned that some of these international provisions will provide an incentive for companies to keep resources, facilities, and employees abroad, and subsidize the movement of jobs and resources overseas.

Furthermore, while the official cost estimate of this bill says that it is essentially budget neutral over the next 10 years, this paints a deceptively optimistic picture. Throughout the measure there are many gimmicks to keep the numbers even, like phasing in some of the tax cuts and setting up others as ''temporary.'' According to the Center on Budget and Policy Priorities, just extending the ''temporary'' provisions would reduce revenues by nearly $80 billion over the next 10 years.

I am also troubled by the elimination of provisions pertaining to regulation of tobacco by the Food and Drug Administration, FDA. According to a recent report by the Surgeon General, tobacco consumption by America's youth is one of our country's leading health risks. The Senate passed strong bipartisan provisions that would deal with both the FDA and tobacco regulation: provisions that would give the FDA sweeping authority to prevent overt marketing of tobacco products to children under the age of 18; provisions that would allow the FDA to regulate prior approval of statements on tobacco products; and provisions that allow the FDA to restrict the sale, distribution and promotion of tobacco if they are deemed to be a danger to public health. These provisions are essential to protecting our children from the dangers of smoking, but the House conferees have killed any chance in the near future to give the FDA the tools it needs in this critical area.

I am also troubled by the exclusion of Senator HARKIN's overtime amendment that would keep essential overtime protections for middle class working Americans. And finally, it seems unfathomable that in this $137 billion bill the conference committee would leave out the Senate provision sponsored by Senator LANDRIEU that would have helped the large number of our activated Guardsmen and Reservists who face a reduction in their salaries during activation by assisting those civilian employers who continue to pay these employees after they have been called up.

While this legislation includes some provisions which I support, overall it falls far short of the bill which the Senate sent to conference, and I cannot support it.

Mr. FEINGOLD. Mr. President, I will support this conference report, but I do so with a great deal of reluctance.

One of the more frequently used phrases voiced on the Senate floor is that we must not let the perfect be the enemy of the good. That hackneyed expression is flung about when the body is asked to support a measure that may not be everything that it should be. It would be an overstatement to suggest that this measure even rises to that level. This bill falls far short of being good, but it is necessary. At its most fundamental, it meets two essential tests. First, it repeals the Foreign Sales Corporation/Extra Territorial Income, USC/ELI, tax provisions that have resulted in the imposition of increasingly punitive tariffs on American-made products, including products made in Wisconsin.

Second, it provides a needed tax break for domestic manufacturers, a group that has been especially hard hit in recent years. If this absolutely vital sector is to have a chance to get back on its feet, providing this tax incentive is essential.

I regret that much of the rest of this bill is wholly unmerited. There are some exceptions, of course, but if Congress had focused its efforts on just those two essential tasks—repealing USC/ETI, and providing some tax incentives for domestic manufacturers—the bill would have been much better.

I was pleased to cosponsor S. 970, introduced by Senator HOLLINGS, which was just such a bill. And I was encouraged when the Senator from Iowa, Mr. GRASSLEY, and the Senator from Montana, Mr. BAUCUS, offered a proposal based on S. 970, along with some sensible improvements.

But as this measure has worked its way through the legislative process, it has only degenerated. Dozens of special interests have nosed their way into this bill, and have taken advantage of what is essentially a ''must-pass'' measure. I can only say that I am glad we are passing this measure now, before it gets any worse.

There are many candidates for worst tax policy in this measure, but at the very top of that list must be those provisions that actually provide a tax incentive for those corporations that move their operations overseas. Such a policy is never justified, but in the current economic climate it is particularly hurtful and counterproductive. During the debate on this measure in the Senate, I was pleased to support the Senator from North Dakota, Mr. DORGAN, in his effort to eliminate one of these perverse incentives and I was pleased to support an amendment offered by the Senator from Louisiana, Mr. BREAUX, and the Senator from California, Mrs. FEINSTEIN, which was similarly targeted. I regret the body rejected those sensible proposals.

I will vote for this bill with the hope that its net effect will be to improve the climate for domestic manufacturers. But we should remove all doubt by acting at the next opportunity to close down the tax provisions in this bill that provide incentives for corporations to move facilities overseas.

On this same subject I was disappointed that conferees stripped Senate provisions relating to the disturbing trend of the outsourcing of American jobs. These provisions would have prohibited federal funding from being used to support the outsourcing of goods and services contracts that are entered into by the Federal government, or by the States if those contracts are being supported by Federal dollars.

With this bill, Congress had an opportunity to support American workers by ensuring that taxpayer money is not used to encourage companies to relocate American jobs. With the deletion of this outsourcing provision, we missed an opportunity for the Federal Government to set a strong example of buying its goods and services from American companies that use American workers.

I also regret that the administration was again successful in blocking language included in the Senate-passed bill that would have reversed the harmful provisions of the Department of Labor's new overtime rule. Despite repeated bipartisan opposition to this rule in both Houses of Congress, members of the conference committee stripped this provision, which would have prevented millions of workers from losing their overtime benefits under the Bush administration's rule.

Finally, let me briefly mention the energy tax provisions. I remain committed to supporting legislation to encourage alternative energy research and production. With respect to overall energy policy, we must develop cleaner, more efficient energy sources and promote conservation.

During Senate debate on this bill, I voted for the amendment offered by the senior Senator from Arizona, Mr. MCCAIN, to strike the energy tax title to the Senate version because the bill did not extend the energy tax credits in a more fiscally responsible way. I support many of the tax credits in the conference report, such as the volumetric ethanol excise tax credit fix and provisions that would specifically benefit rural cooperatives and small renewable fuel producers. I also support provisions that would result in the increased supply of renewable fuels like biodiesel and ethanol.

I remain concerned, however, about the fiscal and environmental costs of this section of the bill. The oil and gas incentives in the bill, for example, would cost taxpayers billions and allow companies to deduct the costs of mineral exploration and marginal oil wells. The conference report still includes a ''nonconventional fuel credit'' to the synfuels industry and coalbed methane industry, which could cost the taxpayers over $2.5 billion. The bill also opens a loophole for energy companies to take advantage of a manufacturing

tax credit. The revenues dedicated to these tax expenditures would have been better used to relieve the burden of debt we are heaping onto our children and grandchildren.

It is the very need for the central provisions of this bill that has invited the kind of abusive provisions we have seen included in it. Were this bill something less than absolutely necessary, we could just defeat it, and hope for something better down the road.

But we do need to pass it. We have to stop these trade sanctions, and we need to help our manufacturers. For that reason, I will vote for this flawed legislation.

Mrs. FEINSTEIN. Mr. President, I will vote against this FSC/ETI conference report and I want to explain why.

The original purpose of this legislation was simple and clear—to bring the United States into compliance with a World Trade Organization, WTO, ruling which said that portions of our Federal Tax Code run counter to international trade regulations.

It is critical that we fix this problem, or U.S. companies will face increased European tariffs, costing U.S. jobs.

This conference report, however, goes far beyond the simple legislative fix needed to bring the U.S. into compliance with the WTO ruling.

In fact, the cost of bringing the U.S. into compliance with the WTO is $49 billion, while the cost of the final bill is $145 billion. The difference is $96 billion in benefits to special interests paid for with certain revenue fixes that should be used to balance the budget.

In fact, this bill provides billions of dollars in benefits to special interests at a time of unprecedented budget deficits. Let me give you a few examples cited in Thursday's Washington Post, ''Conferees Agree on Corporate Tax Bill'':

> NASCAR racetrack owners get a provision to write off $101 million worth of improvements over ten years.
>
> Foreign gamblers at U.S. horse and dog racing tracks would no longer have to pay taxes on their winnings upfront. This is estimated to be worth $27 million.
>
> Home Depot would secure a temporary suspension of tariffs it owes for imported Chinese ceiling fans. This is estimated to be worth $44 million.

At a time when we are facing unprecedented Federal deficits and a mounting debt, it is simply unconscionable to approve this giveaway to special interests. Although the 10-year cost is offset, these offsets could well be used to bring down the deficit.

Policymakers should be taking steps to reduce the deficit and improve the economy, not eroding it further by doling out tax breaks to special interests. But one industry was singled out for penalty in this bill. I cannot accept that—and that industry happens to be the film industry.

In fact, this final conference report will cost the motion picture industry $5 billion over the next 10 years—because they will have to make changes in the way they account for revenues.

The film industry employs 750,000 people nationwide, and the major motion picture studios are publicly owned and pay annual dividends to shareholders.

Rather than allowing the industry to account for its activities on a product line-by-product line basis as was done in the Senate bill, this conference report means that the industry will have to adopt unified accounting.

For example, the Disney film called The Alamo was produced in the United States and did not perform as well as expected.

Under the final conference report, the losses from The Alamo are lumped with all other company revenues—TV, DVD sales, theme parks, merchandise, and music. This is known as unified accounting.

In the Senate version of the bill, Disney would have been able to account for this loss within its film division, separate from its other divisions. This is known as product line-by-product line accounting.

If you assume a $50 million loss, requiring unified accounting will cost the studio an additional $2.6 million in additional taxes.

If you assume a $75 million loss, requiring unified accounting will cost the studio an additional $3.9 million in additional taxes.

So the bottom line is that unified accounting will mean that Disney, and other entertainment companies, will have to pay significantly more in taxes as much as $5 billion over the next 10 years.

I cannot believe that we would in effect raise taxes on an industry that does so much to help our economy.

This simple accounting change would have significantly helped reduce the impact from this legislation.

But in the end, this provision was stripped from the final conference report.

What is worse are reports that this was not due to the merits of the provision, but out of base, political concerns.

A story in yesterday's edition of Roll Call, ''Studios Take Hit in Tax Bill'', asserts that lawmakers stripped the Senate film amendment in retribution for the film industry's decision to hire a Democrat—a former Cabinet Secretary in fact—to head its trade association.

Let me quote from the article:

One GOP Lobbyist for the industry said:

> The Glickman thing is going to cost them. No Republican will fight for the movie industry.

Another Republican Lobbyist added:

> They were not overly helpful to Republicans, so Republicans don't want to be overly helpful to them.

Ordinarily, I do not believe much of what I read on many days and so there would be reason perhaps to dismiss this.

But I also know that the word has been put out on K Street that only Republicans are welcome as lobbyists so this article takes on new credibility.

This is especially egregious given the fact that the film industry was not even involved in the unfair trade practices that led the WTO to declare that U.S. international tax rules were unfair.

I have the opinions of two former U.S. Trade Representatives—one Republican and one Democrat—Carla Hills and Mickey Kantor—which make the case.

Carla Hills wrote:

> Having previously served as [U.S. Trade Representative], I would like to share with you my views regarding the consistency of your amendment with applicable trade law The [General Agreement on Tariffs and Trade] does not apply to 'audiovisual services' and does not include any general prohibition against export contingent subsides.

Mickey Kantor wrote:

> Audiovisual services are . . . not within the purview of the WTO FSC/TTI decisions In my view the adoption of [your amendment] . . . would not violate or contravene the WTO rulings in the FSC/ETI case.

As one can see, two former U.S. Trade Representatives agree that the entertainment industry was not involved in the unfair trade practices.

However, the entertainment industry is being singled out for a tax increase in this bill in order to pay for tax cuts going to multinational firms that hold their profits overseas in order to avoid paying taxes.

The bill allows many of these companies having profits overseas to repatriate these billion at a 5.25 percent tax rate.

These are the multinational firms which now will be allowed to bring those foreign-earned profits back to the United States at one half the rate that the poorest American's are required to pay on their income under this bill. This is not fair and equal treatment.

I cannot believe that the other House would utilize political vengeance to disadvantage a sector of American business, while so advantaging other sectors.

Another major flaw with this bill is that it removes the Senate language permitting long-sought FDA regulation of tobacco. The Senate voted overwhelmingly—78 to 15—in favor of a carefully crafted amendment to allow FDA regulation of tobacco.

This amendment linked FDA regulation with a 5-year, $12 billion buyout of tobacco growers. Regulatory authority over tobacco would have allowed the FDA to begin to reduce the addictive and carcinogenic elements of these products. It would have made a difference and, over the long run, it, alone, could have saved millions of lives.

Despite the broad, bipartisan support for this provision, the House rejected a proposal by Senator KENNEDY to provide an additional $2 billion for tobacco growers as long as it was linked with FDA regulation of tobacco. Even Philip Morris supports FDA regulation of tobacco. Let me quote from two letters

from senior executives from Altria, the parent company of Philip Morris.

Steven Parrish, Senior Vice President, Corporate Affairs, Altria Group wrote that the provision on FDA regulation of tobacco ''is the result of many difficult choices and compromises by all those involved, and it reflects a balance of the perspectives of many stakeholders. We believe the bill embraces the core principles that are necessary to provide the Food and Drug Administration with comprehensive, meaningful and effective regulatory authority over tobacco products.

Together with our domestic tobacco operating company, Philip Morris USA, we enthusiastically support passage of your bill in its entirety.''

John Scruggs, vice president, Government Affairs, Altria Group wrote separately that the provision on FDA regulation of tobacco ''address[es] nearly all'' of the ''issues relating to retailers'' and we should ''disregard the strident and unfounded arguments of those who refuse to look to the future and the need for change in the tobacco industry.''

Congress had the opportunity to finally allow the FDA to regulate tobacco—but it failed to do so. This is deeply disappointing and shows the true colors of the House Republicans.

You may ask, what would FDA regulation of tobacco do to help stop smoking and prevent these premature deaths? FDA regulation of tobacco would do two important things.

First, it would control the deceptive and manipulative advertising used by cigarette companies. Young people across the country are bombarded every day with deceptive advertising and misleading claims made by cigarette manufacturers.

The tobacco industry spends $11 billion on marketing their products. Their latest campaign involves cigarettes that come in fruit flavors and bright colors to target adolescents and women. The cigarettes are given names such as California Dreams, Midnight Madness and Kauai Kolada. The cartons are a different shape and size so as to be hidden from unsuspecting parents and teachers.

And the manufacturer describes them by saying: 'Each is as enchanting and mysterious as the darkest night. And, live in color with California Dreams 'cigarettes in color' for your individual taste and attitude.' This is truly a new low. These slogans, these flavors, and these colored wrappers cannot hide the fact that cigarettes kill more than 400,000 American each year—and that's the second reason that FDA regulation is so important.

FDA regulation, over time, would ratchet down the carcinogenic and addicting ingredients of tobacco products. Just think how many fewer Americans—young people, old people would avoid the addiction.

Today, 42 million Americans today are addicted to cigarettes and other tobacco products. A number of these will end up with lung disease and many of them will die.

Lung cancer is the number one cancer killer—and the number one cause of lung cancer is smoking. Today and every day, 4,000 children under the age of 18 will try smoking for the first time, 2,000 of these children will become regular smokers, and 1,300 will die prematurely because of smoking.

The bottom line is this: Congress had the opportunity to take a major step forward in improving the health of America's children. But the Republican members of the House chose the tobacco industry over our children—and they should be held accountable for that choice.

There is one more item that did not make it into this bill, which I find deeply troubling. The Senate language to protect overtime rights was removed from the bill. This means that millions of American workers may very well lose long-guaranteed job overtime protection. This is a setback for the American worker.

There are a number of items contained within this conference report that I do support. This bill will provide an expansion of the production tax credit for renewable energy including open-loop biomass, geothermal energy, and solar energy; a provision to eliminate the preferential treatment for ethanol-blended gasoline. Without this provision, California would lose $2.7 billion in highway funds over the next 5 years; and a provision that removes a business tax deduction for the purchase of gas-guzzling SUVs.

These provisions do not make up for the rest of the bill. I think we all would have supported a straight fix to the WTO ruling, but this bill goes too far. It fixes the WTO problem, but then it contains all these other giveaways.

So what was a $49 billion problem to solve becomes a $145 billion bill. This is just plain wrong. I hope in the future that we can remedy some of the shortcomings of this bill, but on balance, this is a deeply flawed billed which I simply cannot support.''

Mr. President, I ask unanimous consent to print in the RECORD a ''Roll Call'' article, to which I referred, and three letters dealing with different provisions of the FSC/EIT bill.

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

[From the Roll Call, Oct. 7, 2004]

STUDIOS TAKE HIT IN TAX BILL

(By Brody Mullins)

Three months after Hollywood slapped the Republican Party by hiring Democrat Dan Glickman to head its Washington trade association, Congressional Republicans sliced more than $1 billion in tax credits for movie studios from a far-reaching international tax bill that the House and Senate plan to take up today.

Though the tax credits for Hollywood were included in a version of the bill approved by the Senate this summer, a Republican-dominated conference committee voted Tuesday evening to leave the provisions on the cutting-room floor.

Led by Ways and Means Chairman Bill Thomas (Calif.) and Majority Leader Tom DeLay (Texas), House GOPers on the conference committee voted as a bloc to oppose the tax breaks, calling them bad policy and too expensive to be included in the $140 billion bill.

But other lawmakers, Congressional aides and movie industry lobbyists said Republicans refused to fight for the Senate tax credits in order to punish Hollywood for hiring Glickman, a former House Member from Kansas and secretary of Agriculture under then-President Bill Clinton, to head the Motion Picture Association of America.

''The Glickman thing is going to cost them. No Republican will fight for the movie industry,'' said one GOP lobbyist for the industry.

Another Republican lobbyist added: ''They were not overly helpful to Republicans, so Republicans don't want to be overly helpful to them.''

Thomas, the chairman of the conference deliberations, declined to comment on the motivation for removing the tax credits for the movie industry.

''I don't deal with rumors and unconfirmed reports,'' he said.

DeLay said he voted against the provision because ''it just cost too much.''

When asked whether the MPAA's move influenced his vote, DeLay said that employment decisions in the private sector ''don't enter into our consideration. That's the first time I ever thought of Glickman.''

A spokeswoman for the MPAA declined to comment on the vote.

Despite DeLay's comments, Glickman was on the minds of other Republican lawmakers in the past few weeks as votes on the tax bill neared, according to Republicans on the Ways and Means Committee.

Before the vote, Rep. Mark Foley (R–Fla.), a key Hollywood advocate, said he worried that GOP resentment about Glickman's hire could scuttle the tax credits for the studios.

''Thomas has said some things. I've heard a lot of grumblings. They have said that they thought that a Republican should have gotten'' the job, Foley said. ''Mr. Thomas has to acquiesce to the Senate language and right now that doesn't look good with the lingering resentment. That's probably a tough sell right now.''

Foley added that the movie studios ''may get dealt a bad hand, but I'm not sure it's based entirely on Mr. Glickman.''

Rep. Jim McCrery (La.), a top Republican on the Ways and Means Committee and a member of the conference deliberations on the tax bill, said he did not think Glickman's hire was ''a deciding factor'' in the decision by Republicans to exclude the movie studio tax credits.

Still, he acknowledged that Republicans on Capitol Hill were upset the MPAA tapped a Democrat for the position.

''It's a fact that the Republicans control the Congress and the Ways and Means Committee so it's a good idea to have someone who can communicate with those who are in power,'' McCrery said. ''It's a consideration that any organization hiring a lobbyist should take into account.''

At issue is an international tax bill being put together on Capitol Hill to replace $50 billion in U.S. export subsidies that have been struck down by the World Trade Organization.

Current law provides movie studios such as MGM, Universal Studios and 20th Century Fox with about $600 million a year in tax credits to export movies to other countries.

The tax incentive helped transform the U.S. movie industry into one of the nation's leading exporters, surpassing exports of Boeing's jets and Detroit's autos, according to figures provided to Congress by the movie industry.

When the export subsidy was found to be illegal by the WTO, Hollywood figured to be one of the biggest losers. At issue was just how much they would lose.

The Senate version of the corporate tax bill would retain $350 million annually in export subsidies for the studios. The House bill, authored by Thomas, provided less than $100 million per year for the industry.

In a partisan vote Tuesday evening, Republicans on the conference committee rejected an effort by Sen. Max Baucus (D–Mont.) to include the Senate's credits for the industry.

Senators on the conference committee voted 14–8 to add the credits, but House Members voted along party lines against the industry.

A majority vote of both chambers is needed to add amendments to legislation in conference committee.

Some were quick to point out that Republicans had legitimate policy reasons to vote against the credits.

Grover Norquist, the president of Americans for Tax Reform, said there were three reasons Republicans voted against the movie industry provisions: ''One, it's bad tax policy because it's industry specific. Two, it's bad tax policy because it subsidizes an industry for signing bad labor contracts and, three, Hollywood has recently expressed contempt for the Republican leadership in the House, Senate and White House.''

Well before the Glickman hire, Republicans on Capitol Hill have been unhappy with Hollywood and its Washington trade association.

Since 1990, U.S. movie studios and Hollywood executives have contributed $42 million in political donations to Democrats, while giving just $6 million to the GOP, according to figures from the nonpartisan Center for Responsive Politics.

After controversial documentary filmmaker Michael Moore began promoting ''Fahrenheit 9/11'' this spring, GOP bitterness against Hollywood spilled over in a closed-door Republican meeting.

During the meeting, Manzullo complained that the international tax bill being crafted by Thomas and the Ways and Means Committee included expensive tax breaks for the movie studios while small businesses and manufacturers were losing thousands of jobs.

''Why should we vote on an international tax reform bill that rewards Hollywood while disadvantaging our nation's manufacturers,'' Rep. Don Manzullo (R-Ill.) asked in a letter he sent to his colleagues.

Other Members agreed. Thomas quickly watered down the industry's tax credits and the situation seemed to go away.

But Hollywood infuriated Congressional Republicans again in early July when the MPAA announced its hire of Glickman.

Two weeks after Glickman was hired, Sen. Rick Santorum (R–Pa.) convened a meeting of top Republicans to discuss the move.

In the weeks leading up to the tax vote, Republicans continued to whisper about punishing the MPAA. As a result, Glickman has let it be known that he is looking to hire a big-name Republican lobbyist to join him at the MPAA after the November elections.

In the meantime, supporters of the industry on Capitol Hill, like Foley, hope the whole thing will blow away. ''There may be a few people's noses out of joint, but people get over these things pretty quickly,'' Foley said.

HILLS & COMPANY,
Washington, DC, March 19, 2004.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: I write with respect to the amendment (S. AMDT. 2690) that you have offered to the FSC–ETI legislation (S. 1637) pending in the Senate.

S. AMDT. 2690 provides, in part, that the present-law ETI rules would remain in place with respect to income from activities treated as ''audiovisual services'' under the General Agreement on Trade in Services (''GATS'').

Having previously served as USTR, I would like to share with you my views regarding the consistency of your amendment with applicable trade law. The underlying legislation (S. 1637) is intended to bring the United States into compliance with the World Trade Organization rulings that the ETI regime violates the General Agreement on Tariffs and Trade (''GATT'') prohibition on export-contingent subsidies. The GATT does not apply to ''audiovisual services'' governed by the General Agreement on Trade in Services (''GATS''). Further, the GATS does not include any general prohibition against export-contingent subsidies.

Thus, the adoption of S. AMDT. 2690, which would preserve ETI benefits for audiovisual services covered by the GATS, would not violate GATT or contravene the WTO rulings.

Sincerely,

CARLA A. HILLS.

MAYER, BROWN, ROWE & MAW,
Washington, DC, March 19, 2004.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR DIANNE: I am writing with respect to your amendment (S. AMDT. 2690) to S. 1637, the JOBS Act, that would repeal the current FSC/ETI tax regime in order to bring the U.S. into compliance with the WTO rulings in this case.

As a former U.S. Trade Representative, I would like to share my views regarding the consistency of your amendment with applicable trade law. Specifically, your amendment would allow the ETI rules to remain in place for income from activities defined as ''audiovisual services'' under the General Agreement on Trade in Services (GATS). The WTO decisions in the FSC/ETI cases found that the U.S. FSC/ETI regimes violated provisions in the Agreement on Subsidies and Countervailing Measures (SCM Agreement), which is a part of the General Agreement on Trade and Tariffs (GATT). The GATT governs trade in goods, while the GATS covers trade in services. Audiovisual services are covered by the GATS and are not subject to the SCM agreement, and thus are not within the purview of the WTO FSC/ETI decisions. Further the GATS does not include any general prohibition against export-contingent subsidies.

It is my view that adoption of the S. AMDT. 2690, which preserves benefits for audiovisual services covered by the GATS, would not violate or contravene the WTO rulings in the FSC/ETI case.

Sincerely,

MICKEY KANTOR.

ALTRIA GROUP, INC.,
Washington, DC, July 15, 2004.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: After many years of debate, the Senate today is considering comprehensive tobacco legislation that will address a range of issues important to all Americans, from the diseases caused by smoking to the plight of our nation's tobacco farmers. There were some legitimate issues connected to FDA regulation of concern to retailers; the good news is that the DeWine/Kennedy bill has already addressed nearly all of these. The continued opposition of one national retailer group to this important legislation, notwithstanding all that has been done to address their concerns, is unfair and unfounded. This is the same organization that expressly promised to remain neutral in 1998 when FDA legislation—with far fewer protections for retailers—was debated in the Senate.

Below are just a few of the inaccuracies contained in the attacks on this legislation that would finally empower FDA to work on reducing the harm caused by smoking:

All Retailers Treated Equally. The bill expressly provides that any access and advertising restrictions cannot discriminate against any category of retail outlet, and cannot favor ''adult-only'' stores over other kinds of outlets.

Enforcement Will be Fair, and Apply to All. The bill requies FDA to contract with State officials for enforcement to the extent feasible.

Responsible Retailers Benefit. In total contrast to some claims, the legislation explicitly provides a ''good faith'' defense against enforcement actions for any retailer that takes the necessary steps to train its employees. The great majority of outlets that take pride in working hard to keep tobacco products away from kids should have nothing to fear from enforcement of FDA rules.

New Tools for Retailers. Under the authority granted to FDA under the legislation, the agency will be authorized to implement all manner of innovative new tools to assist retailers with their compliance efforts, including electronic age verification. Moreover the legislation is adequately funded, to better ensure that new approaches can be pursued.

Advertising Restrictions Are Subject to Review. Some of the advertising restrictions FDA issued in 1996 may well be unconstitutional; that is exactly why the DeWine/Kennedy bill empowers FDA to re-examine those rules to ensure that they comport with the First Amendment. And, even if the agency decides not to change them, interested parties would still be able to test them in court, where any remaining Constitutional objections can and will be resolved.

Beyond these specific points, the arguments advanced by one national retailer association conveniently make no mention of some key benefits the legislation provides for retailers—enlisting FDA in the fight against counterfeit tobacco products, and authorizing the agency to regulate Internet sales to ensure that kids can't buy tobacco online. Both of these provisions could result in substantial long-term benefit for brick-and-mortar retailers for years to come.

I respectfully request that you disregard the strident and unfounded arguments of those who refuse to look to the future and the need for change in the tobacco industry, from growers to manufacturers to retailers. Thank you for your consideration of the DeWine/Kennedy/McConnell amendment.

Sincerely,

JOHN F. SCRUGGS,
Vice President, Government Affairs.

ALTRIA GROUP, INC.,
New York, NY, May 20, 2004.

Hon. MIKE DEWINE,
Hon. EDWARD M. KENNEDY,
U.S. Senate,
Washington, DC.

DEAR SENATORS DEWINE AND KENNEDY: It has been a pleasure to work with you on the Family Smoking Prevention and Tobacco Control Act. This legislation has the potential to reduce the harm caused by smoking, and to establish clear rules applicable to all manufacturers of tobacco products sold in this country.

The DeWine/Kennedy bill is the result of many difficult choices and compromises by all those involved, and it reflects a balance of the perspectives of many stakeholders. We

believe the bill embraces the core principles that are necessary to provide the Food and Drug Administration with comprehensive, meaningful and effective regulatory authority over tobacco products.

Together with our domestic tobacco operating company, Philip Morris USA, we enthusiastically support passage of your bill in its entirety. We hope the Senate will give your legislation favorable consideration at the earliest opportunity. We stand ready to work with you and others in support of your bill.

Among the bill's many important features are:

FDA would be given the authority to impose performance standards for the design and manufacture of cigarettes in order to reduce the harm caused by smoking. Under the bill, FDA would, as part of its effort to reduce or eliminate harmful ingredients and smoke constituents, consider whether a new performance standard would significantly increase the demand for contraband cigarettes. We believe this is an important consideration in order to prevent the unintended consequences of black market cigarettes. It is also important that the bill provides the FDA cannot ban the sale of cigarettes to adults.

The bill would change the language of the current cigarette health warnings, substantially enlarge the size and authorize FDA to require new warnings in the future. The bill would not, however, change the Supreme Courts rulings regarding the product liability implications of compliance with warning requirements.

The bill would authorize FDA, as well as states and localities, to replace the time, place and manner of cigarette advertising and promotion, consistent with the First Amendment's protection of commercial free speech to adults.

The bill provides that FDA's product standards would be consistent on a nationwide basis.

FGA would be authority to combat the existence of counterfeit, contraband and other illicit tobacco products.

The bill contains a number of other provisions that would benefit the public health and provide important oversight for all tobacco manufacturers. For example, FDA would be authorized to: conduct educational efforts regarding the dangers of tobacco use; take new steps to curb underage tobacco use; strictly regulate new tobacco products that may reduce the risk of disease or exposure to harmful compounds in cigarette smoke; and ensure that tobacco products are not adulterated.

As noted above, you have attempted to address the views of a wide range of stakeholders in your FDA bill. We look forward working with all stakeholders in order to make progress on the many issues surrounding tobacco use in this country. In particular, we believe it is imperative that the plight of the American tobacco grower be addressed. We believe it is time for a tobacco quota buyout and we hope to be able to work with you and other stop make that a reality.

Your bill is a truly historic opportunity to establish, for the first time, a comprehensive and coherent national tobacco policy. Thank you for your leadership and for the hard work of your staffs on this extremely important legislation.

Sincerely,

STEVEN C. PARRISH.

Mrs. FEINSTEIN. A September 22, 2004 report by the Citizens of Tax Justice and the Institute of Taxation and Economic Policy reveals that 82 of the 275 (30 percent) large and profitable, Fortune 500 companies studied paid no tax on federal income or received rebates from the Treasury in at least one year from 2001 to 2003.

In the years they paid no income tax, these 82 companies reported $102 billion in pretax U.S. profits. Moreover, instead of paying $35.6 billion in income taxes as the statutory 35 percent corporate tax rate required, these companies received tax rebate checks from the U.S. Treasury totaling $12.6 billion. These rebates meant that the companies made more after taxes than before taxes in those no-tax years.

Twenty-eight corporations enjoyed negative federal income tax rates over the entire 2001–2003 period. These companies, whose pretax U.S. profits totaled $44.9 billion over the 3 years, included: Pepco Holdings (−59.6 percent tax rate), Prudential Financial (−46.2 percent), ITT Industries (−22.3 percent), Boeing (−18.8 percent), Unisys (−16.0 percent), and CSX (−7.5 percent), the company previously headed by Secretary of the Treasury Snow. General Electric topped the corporate tax breaks recipients with $9.5 billion in tax breaks over 3 years.

The average effective rate for the 275 Fortune 500 companies was only 17.2 percent in 2002–2003, though the corporate tax rate is 35 percent.

How is this happening? Accelerated depreciation. Legislation adopted in 2002 and 2003 vastly increased corporate write-offs for ''accelerated depreciation'' and made it easier for corporations to use their excess tax subsidies to generate tax-rebate checks from the U.S. Treasury, at a 3-year cost of $175 billion.

Offshore tax sheltering. Over the past decade, corporations and their accounting firms have become increasingly aggressive in seeking ways to shift their profits, on paper, into offshore tax havens, in order to avoid their tax obligations. Corporate offshore tax sheltering is estimated to cost the U.S. Treasury anywhere from $30 to $70 billion a year.

Senator LEVIN has been aggressive in trying to close these loopholes and some of his ideas were adopted in the Senate version of the Jumpstart Our Business Strength (JOBS) bill.

Stock options. Of the 275 corporations studied, 269 received stock-option tax benefits during the 2001–2003 periods, which lowered their taxes by a total of $32 billion over three years. Microsoft had the largest tax savings with $5 billion.

Tax credits. The federal tax code provides tax credits for companies that engage in research, exporting, hiring low-wage workers, affordable housing, and enhanced coals usage. For example, Bank of America cut its taxes by $590 million over 2001–2003 by purchasing affordable-housing tax credits.

Ms. SNOWE. Mr. President, I rise today to express support for this conference report on the American Jobs Creation Act of 2004. At the outset, I commend Finance Committee Chairman GRASSLEY and Ways and Means Committee Chairman BILL THOMAS for their leadership during the conference negotiations and bringing this bill to completion.

We're here, after nearly 2 years of discussion and work on legislation that, once enacted, will jumpstart the manufacturing sector of our economy and create jobs. Indeed, although this legislation is to repeal the FSC/ETI rules and stop the imposition of WTO sanctioned trade tariffs, the real reason we must pass this legislation is to assist our struggling manufacturers throughout the country.

According to the National Association of Manufacturers, between January 2001 through January 2004, manufacturing employment in our Nation declined by 16 percent. In New England, there was a 20 percent decrease in manufacturing employment during that same time period. This means that between January 2001 and January 2004, New England's manufacturing sector employment declined by an alarming 28 percent faster rate than it did nationally.

My home State of Maine has shed manufacturing jobs at an alarming rate over the past decade and all the more so in the past two years. From January 1993 through June 2003, a 10½ year period, Maine lost 18,900 manufacturing jobs. More specifically, from July 2000 to June 2003, Maine has lost 17,300 manufacturing jobs, the highest loss of any state during that time period.

Our objective was clear: not only must we adopt a conference report that complies with international trade law, but more importantly, we need to offer our country's manufacturers a solution that will jumpstart their production and create jobs, and we must do so now. As a result of our loss at the WTO, certain U.S. goods exported to Europe are being hit with a 12 percent tariff. Critically, this bill will remove that tax on our exports.

Were we to neglect this duty to ensure that our nation's manufacturers are simply given the chance to compete on a level playing field with foreign competitors, we would only be compounding the current situation.

Instead, this conference report will ''reallocate'' the nearly $50 billion in revenues that replacing the FSC/ETI rules will generate and provides an additional $25 billion towards a tax deduction for our manufacturers. I am pleased that the conference report follows the Senate manufacturing deduction that is available to all domestic manufacturers and does not discriminate based on the manufacturers entity classification.

Indeed, the original legislation in the House would have extended the tax relief benefits solely to regular corporate entities, or C-corporations. In the Senate, I fought to secure the benefits for S-corporations and partners in partnerships as well.

This decision to provide a manufacturing deduction that is not entity specific, rather than a corporate income

tax cut, is cruial because the ETI rules applied not only to corporations but also to S-corporations. As small business manufacturers constitute over 98 percent of our nation's manufacturing enterprises, employ 12 million people, and supply more than 50 percent of the value-added during U.S. manufacturing, it is imperative that we do not increase taxes on our country's job creators—small businesses.

In the face of record deficits, this bill also maintains our fiscal responsibility by including offsets that will crack down on abusive tax cheats. Both the Senate and House bills contain a variety of provisions that stop the proliferation of abusive tax shelters. Enacting these rules and other revenue offsets will ensure that we will be able to pay for this bill without adding to the deficit. This was a key priority for me during this conference and I am pleased that the conference supported a revenue neutral final bill.

I am also pleased that the conference report includes a provision that will restore equity and fairness into the tax code for our country's naval shipbuilders.

Quite simply, this provision would put navy shipbuilders on par with commercial shipbuilders in that they would be able to pay a portion of their income taxes upon delivery of the ship rather than during construction. Currently, navy shipbuilders must estimate profits during the construction phases of the shipbuilding process, and they must pay tax on those estimated profits—a process known as the ''percentage of completion method'' of accounting.

The major shortcoming of this method is that shipbuilders must report progress payments as ''revenue'' rather than as a source of financing, whch had been recognized and permitted for the 64 years between 1918 and 1982. Additionally, this accounting method creates a ''legal fiction'' of an ''interim profit,'' when in reality a profit or loss is not reasonably known until after a ship is completed. This places a financial burden on shipbuilders during the critical construction phase, reduces the resources available to invest in facilities and process to reduce construction costs, places a burden on the cash flow management of the shipbuilder, and weakens the financial health of the defense shipbuilding industrial base.

The provision in the conference eport will permit navy shipbuilders to pay 40 percent of their estimated income tax during the contract and pay the remaining 60 percent in the year in which construction is completed. In addition, shipbuilders will be able to report their taxes on a ship-by-ship basis rather than on a contract-by-contract basis, which therefore reduces the potential for abuse.

Now, naval shipbuilders will be able to pay their income taxes in a manner similar to how commercial shipbuilders pay their taxes. The main difference, though, is that commercial shipbuilders are permitted to utilize this 40/60 treatment for only 5 years rather than the 8-year period under my amendment. This 5-year period for commercial shipbuilders is appropriate for them because most commercial ships take no more than three years to build. However, as many navy shipbuilders spend at least 8 years when building submarines, aircraft carriers, and destroyers, a 5-year window for them is simply inadequate. Consequently, this amendment provides for an 8-year window because that is the necessary time to assist the majority of our navy shipbuilders.

Let me stress that this provision in no way reduces the amount of taxes that these shipbuilders ultimately pay. Rather, it merely allows them to defer paying their taxes until their profit is actually known, just as commercial shipbuilders are already permitted to do.

Not only does this change embody sound tax policy, but so too does it improve our National Security. Indeed, this provision is limited exclusively to naval shipbuilders, that are charged with building our Navy's fleet of ships that protect our homeland. During this time of war, the last thing we should do is allow an inequity in the tax code to cause these companies financial hardship that might affect their production and output. I am certainly not saying these companies should get a free pass, and this provision in no way provides them with one, but what I am saying is that they deserve to be treated fairly given the instrumental role they play for our Nation, and this amendment will do just that.

This conference report contains a great many benefits for small businesses that will play a vital role in improving our economy. For example, the report includes an amendment I offered that will extend the current $100,000 small business expensing limitation and $400,000 phase-out through the end of 2007. Although the Jobs and Growth Tax Act increased these levels from their previous $25,000 limitation and $200,000 phase-out, these limits will sunset at the end of 2005 and return to those lower levels. I believe it is imperative to inject certainty into the tax code so our small business owners can plan accordingly in purchasing the capital and equipment they need to run their operations, and this amendment will go a long way toward doing so.

It was imperative that Congress take action to extend these benefits for our Nation's small businesses. By doing so, qualifying businesses will be able to deduct more of their equipment purchases in the current tax year rather than waiting 5, 7, or more years to recover such costs through depreciation. This change represents substantial savings both in tax dollars and also in the time small businesses would otherwise have to spend complying with the complex depreciation rules.

For example, the IRS estimates that a taxpayer should expect to invest nearly 50 hours in order to learn the law, perform the necessary bookkeeping, and complete the forms in order to claim a depreciation deduction for an average amount of depreciable property. That is valuable time that the owner must take away from running the business. And in too many cases, it translates into additional fees for accountants to figure out these indecipherable depreciation rules.

By maintaining the $100,000 limitation, small businesses will save time and accounting costs, freeing them to spend their scarce time and resources on what they do best—running successful businesses and creating jobs in America.

I am also pleased that the report includes my amendment to modify the unrelated business taxable income rules to allow small business investment companies to receive investments from tax-exempt entities. By enacting this provision into law, small businesses will have better access to capital through the Small Business Investment Company Program.

Small Business Investment Companies are government licensed, government regulated, privately managed venture capital firms created to invest only in original issue debt or equity securities of U.S. small businesses that meet size standards set by law. In the current economic environment, the SBIC program represents an increasingly important source of capital for small enterprises.

While Debenture SBICs qualify for SBA-guaranteed borrowed capital, the government guarantee forces a number of potential investors, namely pension funds and university endowment funds, to avoid investing in SBICs because the woul be subject to tax liability for unrelated business taxable income UBTI. More often than not, tax-exempt investors opt to invest in venture capital funds that do not create UBTI. As such, an estimated 60 percent of the private-capital potentially available to these SBICs is effectively ''off limits.''

The amendment I offered corrects this problem by excluding government-guaranteed capital of Debenture SBICs from debt for purposes of the UBTI rules. This change would permit tax-exempt organizations to invest in SBICs without the burdens of UBTI record keeping or tax liability.

As a result, small businesses will have greater access to capital, enabling them to grow and hire new employees. According to the National Association of Small Business Investment Companies, a conservative estimate of the effect of this amendment would be to increase investments in Debenture SBICs by $200 million per year from tax-exempt investors. Together with SBA-guaranteed leverage, that will mean as much as $500 million per year in new capital assets for Debenture SBICs to invest in U.S. small businesses.

Moreover, as people know, Maine is a rural State. In that light, I am pleased that this bill contains important to the

timber industry patterned after S. 1381, the Reforestation Tax Act, a bill I introduced last year.

Under the conference report, owners of timber lands would be able to elect to immediately deduct their reforestation expenditures on their timber property—up to $10,000 per year. This change would allow taxpayers to recoup more of their investments in qualifying timber property at a more rapid pace, thereby encouraging investments in reforestation and strengthening the future growth of our forests. The bill provides other relief important to the timber industry, such as the ability to treat outright sales of timber as a capital gain and be taxed at a lower rate. Likewise, it contains a provision to allow real estate investment trusts that own timberland to avoid a 100 percent penalty tax when they sell timber land in the ordinary course of their business. With foreign competition in the timber industry fierce, these provisions will enhance the ability of U.S. timber companies to compete.

Furthermore, I am pleased that tax credits for biomass facilities are included, which are similar to the ones I introduced. For the first time, the current production tax credit will be available to biomass facilities that use waste products to produce energy. This will put the industry, currently at a competitive disadvantage, on a more equal footing with other renewable power, such as wind. The biomass facilities in my state of Maine are not only an alternate electricity-producing source, but they supply good paying jobs in rural areas of the state and are a large source of tax revenues.

The Maine biomass industry uses forest waste, such as those unused portions of trees—tops and limbs—that are not put into making paper products, to produce electricity at their biomass plants. This helps to lessen the use of fossil fuel to make electricity. Since a barrel of crude oil has gone over $50 a barrel for the first time in history in recent days, these savings help what is becoming a critical—and expensive—situation. Using the forest waste also helps avoid an environmental and safety problem the mills would have if they had to store the wood waste on site.

Additionally, the report contains a provision that co-sponsored that will greatly benefit our domestic film industry, which is an industry that plays a vital role in the economy of our country and also in my home state of Maine.

Film makers will now be able to deduct up to $15 million of qualified costs during the first year of production. The remaining costs incurred will then be amortized over a 7-year period. Similar to the small business expensing provision, it is critical that we provide taxpayers with opportunities to recover their costs in a more expeditious manner rather than under the time-consuming and cumbersome depreciation rules. This film provision provides just that, and will in turn provide a key incentive for film makers to make their products in the United States.

Another ''job-creating'' provision contained in the bill is a provision that I was pleased to cosponsor that will potentially increase the number of taxpayers that are eligible to claim new markets tax credits. Without question, the new markets tax credit program has had a profound impact on my home state. This conference report will further improve that program by extending the geographic area to low-income communities regardless of whether they fell under the previously-designated census tracts. Indeed, this provision will benefit rural communities throughout America, particularly those in Maine, because now areas will qualify for this critical investment opportunity based on their income and not on an arbitrary ''census tract'' determination.

This report contains even more tax incentives to encourage job creation throughout America. For example, rail operators will not be able to claim a tax credit based on the amount of expenses incurred to maintain and upgrade short-line railroad tracks. Insurance companies will now not incur a penalty tax on old policy holder income when they restructure their operations, which in turn will permit them to save this money and reinvest it in their operations.

Clearly, the provisions in this bill to assist our manufacturing base are numerous, deserved, and long overdo. Fortunately, however, we were also able to provide other sectors of our economy with much needed tax relief. For example, the bill contains a provision to permit rural letter carriers to deduct more of their carrier expenses. In addition, the report contains a provision that will allow fishermen to ''average'' their income over a period of several years to account for the cyclical nature of their industry and to ensure they will be able to fully take advantage of the losses that unfortunately often arise in their business.

I am also pleased that the conference report includes measures I cosponsored to assist our Nation's shipping industry. For example, the Report includes a provision to permit shippers that adhere to the ''two ship'' rule to avoid falling under the complex, cumbersome subpart F rules. While the subpart F rules have an important role under the tax code in preventing the deferral of passive investment income, shippers should not be subject to them regarding their profits earned from their active shipping business.

An additional provision that will benefit our shippers is one that will permit them to satisfy their tax liability in a manner similar to how shippers in other countries pay their taxes. Specifically, the report contains a provision to permit shippers to elect to pay tax on the ''tonnage'' of weight of their freight, rather than a tax based on their income. Providing for this election will increase the competitiveness of domestic shippers because it allows them to pay their taxes in a more efficient, less complicated manner, which in turn will allow them to spend less time and money in trying to navigate the complicated Tax Code.

Notwithstanding all of the considerable benefits contained in this conference report, I want to take a moment to lament the report's coverage of tobacco legislation.

As you all know, the Senate reached an important compromise on the issue of tobacco in order to get this bill to conference by adopting both an industry-funded buyout of tobacco growers' quotas and a grant of authority to the Food and Drug Administration to regulate tobacco. The agreement crafted by my colleagues, Senators DEWINE, KENNEDY, and MCCONNELL, would have given the FDA the authority to require tobacco manufacturers to list the ingredients on all of their packaging; to submit specified health information to the FDA for analysis; to regulate sale, distribution, and advertising related to tobacco; and to force the cigarette makers to substantiate, through scientific testing, any labels they might use to indicate that their product posed a lower health risk, such as ''light,'' ''mild,'' or ''low.''

I believe FDA regulation of tobacco is imperative because we simply cannot afford to ignore the toll that smoking has taken on our society. Every year 400,000 Americans die as a result of cigarette smoking, and approximately 8.6 million people suffer from smoking-related illnesses or conditions. In addition to the human cost, these staggering numbers have taken a financial toll on our country's health care system as well: annual public and private health care expenditures caused by smoking amount to over $75 billion, $23.5 billion of which is shouldered by federal and state governments.

Even more disturbing is the fact that the next generation is being targeted by ''Big Tobacco'' while they are still in middle and high school. Virtually all of my colleagues have been visited in the past several weeks by members of the Coalition for Tobacco Free Kids, who brought in samples of new candy-flavored cigarette packs such as ''Caribbean Chill,'' ''Midnight Berry,'' and ''Mocha Taboo.'' Everyone knows that lifelong adult smokers have no interest in buying these flavored cigarettes. That kids are the targets of this marketing is consistent with a Brown & Williamson memorandum uncovered 6 years ago which stated, ''It's a well known fact that teenagers like sweet products. Honey might be considered.''

In the final analysis, I wanted to vote for a conference report that contained the Senate's tobacco provisions. As we know, the Senate conferees agreed and voted 15–8 to include FDA regulation in the conference report—but the House rejected its adoption. Failing that, I would have wanted the buyout provision stricken as well, and I voted for an

amendment in conference to do just that, but that was also rejected. In short, at every opportunity I supported FDA regulation. At the end of the day, the conference report—designed to create jobs, bolster our exports overseas, and end the penalties against Maine's and America's manufacturers—was simply too critical to the economic future of our nation, and therefore I voted for this vital jobs bill.

Likewise, I am disappointed that this conference report failed to include an important provision in the Senate bill that would have benefitted our military reservists. Under the Senate bill, businesses would have received a tax credit for payments made to an employee who was called to active military reservist duty. Proudly, I supported this provision when it was offered to the Senate bill, and I supported it during the Senate and House conference. Nevertheless, the final report, regrettably, failed to include this sensible, deserved tax relief. While we must pass this conference report to stop the imposition of World Trade Organization tariffs, I am deeply disappointed we did not take this opportunity to compensate our military reservists and their employers for their sacrifices. Unquestionably, I hope and expect that addressing this issue will be one of the first items we consider when Congress reconvenes next year.

Finally, the bill before us today is silent on an issue of great importance to working Americans—the administration's new regulations updating overtime eligibility requirements that could deny millions of workers the overtime pay protections guaranteed by the Fair Labor Standards Act, FLSA. In May, I was one of 52 Senators who voted in support of the Harkin amendment to the Senate FSC/ETI bill which would clarify that the administration's regulations can result in no worker losing their overtime eligibility. In September, both the House of Representatives and the Senate Appropriations Committee voted decisively to overturn the new overtime regulations.

At issue is a Department of Labor regulation, which went into effect in August, updating the so-called ''white collar exemptions'' to the FLSA overtime protection. While DOL asserts that 107,000 middle- and upper-income workers will lose their overtime eligibility under the proposal, other sources put the number of affected workers as high as six million. Whatever the final impact of the DOL's changes on American workers, I have serious concerns as to whether this is the right time to take steps to jeopardize the right to overtime pay, which provides economic security for so many American families. As such, I was disappointed that the Harkin amendment was not included in the FSC/ETI conference report.

This bill is a historic achievement and will benefit our economy. Many of these changes to the tax code are long overdue. In the end, the provisions of this bill will bolster our manufacturing base, increase the attractiveness of doing business in the United States and give a jumpstart to business, particularly small businesses, to create jobs.

I urge my colleagues to support this conference report.

Mr. DURBIN. Mr. President, this legislation began as a modest effort to repeal an illegal export subsidy. It has grown to 633 pages with nearly $140 billion in corporate tax breaks over the next decade. The conference report replaces the $50 billion export subsidy with a $77 billion manufacturing tax cut—a net tax cut for domestic manufacturing of $27 billion after the loss of the subsidy, $43 billion in tax breaks on overseas income, and $17 billion in tax breaks for special interests.

The bill does not include FDA regulation of tobacco, a Senate-passed provision to block new overtime rules that hurt workers, and a Senate-passed provision giving a tax break to companies that make up the pay gap for activated Reservists and Guardsmen.

It does include a tobacco buyout that gives most of the benefits not to small farmers but to anyone who owns tobacco quotas and will do nothing to help farm communities, a huge amount of corporate pork, and almost twice as much in new international tax breaks as in domestic manufacturing tax breaks, which will encourage companies to move operations and assets abroad. It also uses the same accounting tricks as the previous Bush tax cuts to make the bill appear revenue neutral when it will actually cost billions.

The Senate approved a tobacco buyout with $2 billion in transition assistance to communities that depend on tobacco production. The conference report drops this assistance entirely.

The Senate approved a buyout with limitations on who would be eligible. This was an attempt to make sure small farmers got most of the benefit. Farmers had to be actively engaged in production in the last few years and quota holders had to be in the system since 2002. Those restraints were completely dropped in conference. Under this bill, 80 to 85 percent of the people who benefit are quota owners who don't qualify as growers, according to the Wall Street Journal.

In Kentucky, Virginia, North Carolina, and Wisconsin, beneficiaries include country clubs, churches, colleges, universities and high schools that own land in tobacco-growing counties.

Larry Flynt and his brother Jimmy own land that had a quota to grow 600 pounds of tobacco in 2003, according to the Environmental Working Group. They will benefit from the buyout. The Wall Street Journal quoted Jimmy Flynt, president of Hustler Entertainment, on the buyout. He said:

> We got out of the tobacco business and into the porn business. We walked away from that blood, sweat and tears.

The Senate approved a tobacco buyout combined with FDA oversight of tobacco by a vote of 78 to 15. The legislation was a hard fought and painstakingly crafted balance between public health and struggling farm economies. Now it is gone from the bill, but the tobacco buyout remains. The conferees dropped FDA regulation even as the tobacco industry inflicts terrible damage on people's health. It kills more Americans than AIDS, alcohol, car accidents, murders, suicides and fires combined 400,000 people a year. Every day, 4,000 children will try a cigarette for the first time and 2,000 will become regular smokers. Of those 2,000, one third will die prematurely of smoking related illnesses.

We have missed an opportunity to protect children from tobacco addiction and save them from premature death. If you think I am overstating the case, look at the tobacco industry's latest advertising campaigns to attract our children to candy-flavored cigarettes: R.J. Reynolds has recently marketed Kauai Kolada cigarettes, with ''Hawaiian hints of pineapple and coconut,'' and Twista Lime cigarettes, described as ''a citrus tiki taste sensation.''

Without FDA authority, the tobacco companies will continue to target our children with their products. We talk about Leaving No Child Behind when it comes to education. We should not leave them behind when it comes to tobacco either.

The Senate version of the bill blocked the Bush administration's new rules that stripped the right to overtime pay from six million Americans. For workers who receive overtime pay, that overtime compensation accounts for 25 percent of their paychecks. So the Bush administration's regulations slash the paychecks of hundreds of thousands of Americans by 25 percent.

Both the Senate and House have voted to block the overtime rules. This clearly has the support of a majority of both the House and the Senate, yet it was stripped in conference. Corporations are getting huge tax breaks from this bill, but not one worker will have his or her well-earned overtime pay restored.

This bill is loaded with $17 billion in special interest tax breaks. Does anyone outside the Finance Committee really know everything that is in this bill? Does anyone inside the room even know? Some of the tax breaks it includes are:

$500 million for railroad companies;

$494 million for restaurant owners;

$234 million for beer, wine, and hard liquor producers;

$101 million for NASCAR track owners;

$44 million for ceiling fan importers, inserted at the request of Home Depot;

$42 million for Hollywood producers;

$28 million for cruise ship operators, which greatly benefits Carnival Corporation and Royal Caribbean;

$11 million for makers of tackle boxes, which will benefit Plano Molding Corporation, a company

headquartered in the district of the Speaker of the House, Dennis Hastert;

$9 million for makers of bows and arrows;

A $9 million break on customs duties for the importation of steam generators and nuclear reactor vessel heads, inserted at the request of General Electric;

$4 million for makers of sonar fish finders;

$4 million for native Alaskan whalers;

$27 million for foreign gamblers who win at U.S. horse and dog tracks.

Is the intention of this bill to give tax breaks for foreign gamblers who win at U.S. horse and dog tracks? I thought the point of this bill was to solve the FSC/ETI problem so that U.S. goods would no longer face tariffs abroad, and perhaps to promote domestic manufacturing. After all, it is called a ''JOBS'' bill by its authors. So now we have to entice foreigners to visit the United States and plunk down their money at the track, by giving them tax breaks on their winnings, in order to create jobs in the United States?

The conference report does not just include a huge amount of pork. It also fails to effectively close corporate tax loopholes. The Senate version banned accounting techniques that have no economic purpose except to shield corporate income from taxes. This would have saved $15 billion in lost tax revenue over the next 10 years. The conferees refused to include this measure.

The bill also fails to take a strong stand against companies that have moved overseas for tax purposes. The Senate version ended tax advantages for companies that relocate to Bermuda or other tax havens and would have eliminated $3 billion in lost tax revenues. The conferees severely weakened this provision by not making it retroactive. They replaced it with a House version that will eliminate only $800 million in lost tax revenue.

The $3 billion saved by the stronger Senate measure would have been enough to pay for the tax break for companies that make up the pay gap for Reservists and Guardsmen. But this break for our men and women in the military was dropped.

Instead, other companies will benefit. As the Wall Street Journal reported on Wednesday, the bill grandfathered in four Houston-based companies—Cooper Industries, Weatherford International Limited, Noble Corporation, Nabors Industry—that recently relocated to the Cayman Islands and Bermuda.

The bill includes $43 billion international tax breaks that will encourage companies to relocate to tax havens like Bermuda and to move jobs out of the country. According to an analysis published last month by the Tax Policy Center, a joint venture of the Brookings Institution and the Urban Institute, these tax breaks increase the already strong incentives of U.S. multinational firms to operate abroad and to shift profits to low-tax locations. Even corporate executives admit they are moving assets and operations overseas. In February of this year, the Financial Times quoted one corporate tax official as saying:

> You only have to look at the way we tighten our belts in the United States through layoffs to understand what is happening.

More than a dozen companies such as Tyco, Foster Wheeler, and Ingersoll Rand have relocated their headquarters to foreign tax havens in the past decade alone. And jobs are moving abroad as well. Since President Bush took office, 2.7 million manufacturing jobs have been lost. It is no mystery where these jobs have gone: out of the country in search of cheap labor and low tax rates. We should not encourage this kind of behavior with new tax breaks on overseas operations.

Some of the $43 billion in international tax breaks include:

An $8 billion tax break that makes it easier for companies to use taxes on one kind of foreign income to reduce what they owe on foreign income of a different type—General Electric pushed hard for this provision and got it;

A $7 billion tax break that allows companies to carry their foreign tax credits forward for 10 years, compared to the current law that allows only 5 years;

A $5.6 billion tax break that allows companies to reclassify domestic income as foreign income to take advantage of unused foreign tax credits;

A $3.3 billion tax holiday to encourage companies to bring foreign profits back to the United States, supposedly for investment here.

This tax holiday provision is worth looking at more closely. The Center on Budget and Policy Priorities calls it the ''Oracle'' tax break because the software company Oracle will reap huge benefits. Companies leave profits abroad to take advantage of lower tax rates and to defer payment of their American taxes. This bill gives them a temporary reduction in the tax rate to repatriate these funds. The supporters of this tax holiday say the bill requires companies to reinvest these repatriated funds to create jobs in the U.S. But according to the Tax Policy Center, the conditions on the use of these repatriated funds are difficult to enforce and are unlikely to create new investment in our country.

I am not the only one who thinks the tax holiday is a bad idea. Even the Bush administration opposes it. Treasury Secretary John Snow sent a letter to the conferees that said:

> U.S. companies that do not have foreign operations and have already paid their full and fair share of tax will not be able to benefit from this provision. Moreover, the Council of Economic Advisers' analysis indicates that the repatriation provision would not produce any substantial economic benefits. The Administration believes the $3 billion revenue cost. . . could be better used to reduce the tax burden of job creators in the United States.

Even the centerpiece domestic manufacturing tax cut has serious problems:

The oil and gas industries were never eligible for the FSC/ETI export subsidy, but they will get the manufacturing benefit, even though oil prices are at historic highs.

Corporate farms, but not family farms, will be eligible.

Engineering firms like Bechtel and Halliburton will be eligible.

Starbucks secured a provision declaring that coffee roasting is a form of manufacturing, so the company will benefit from the tax cut.

Deceptive figures to make the bill appear revenue neutral.

The bill's supporters say it is revenue neutral. But since 2001, the Republican leadership has repeatedly relied on budgetary gimmicks to hide the true cost of their tax cuts. This bill is no different. It will increase the deficit at a time when it is at record levels.

The Congressional Budget office reported last week that we had a $415 billion deficit in 2004. This is $41 billion higher than last year. It is the fourth straight year of increasing deficits. This is the first time since World War II that we have had 4 consecutive years of increasing deficits.

Because of the huge deficit, the Washington Post reported on Friday that the White House has ordered a draft budget for 2006 that cuts Homeland Security, Veterans Affairs, and Education.

The bill slowly phases in the manufacturing tax cut over 5 years. Because of the phase-in, about one-third of the total cost is concentrated in the last 2 years. According to the Center on Budget and Policy Priorities, the long-run cost of the measure would likely be significantly higher than the $77 billion estimated for the first 10 years.

The bill also has tax breaks that expire before the end of the 10-year period. There are nearly a dozen provisions in the bill that sunset between 2005 and 2008. According to Citizens for Tax Justice, the cost of the legislation could balloon to $230 billion over 10 years if those tax breaks are extended. This far exceeds the $140 billion in revenue offsets.

The expiring provisions and their supposed cost and true cost if extended are:

Small Business Expensing $1 billion True cost: $33 billion';

State and Local Tax Deduction $5 billion True cost: $30 billion;

15-year Straight Line Cost Recovery $2 billion True cost: $11 billion;

Other Expiring Cuts $1 billion True cost: $4 billion.

These cuts supposedly cost only $7 billion over 10 years, but in reality they will cost $80 billion if extended. And as we have repeatedly seen, the Republican leadership is more than willing to extend ''temporary'' tax cuts again and again without any concern about the effect on the budget, despite the record deficits we face. I have no doubt this will happen again with these cuts.

The conference report has many flaws, but it also includes an historic ethanol program that I have worked for many years to pass. The ethanol tax credits in the bill are important to Illinois and the Nation's energy policy, and I would like nothing better than to vote to pass these measures.

The bill enacts the Volumetric Ethanol Excise Tax Credit, which changes the administration of tax incentives for renewable fuels to avoid a reduction in highway funding. It extends the ethanol tax incentive through 2010. It also allows small ethanol producer cooperatives to pass credits through to cooperative members.

Ethanol has been an important issue for me throughout my 20 plus years in Congress. In 1987 I was the first member of Congress to propose that Congress require the gasoline supply to include 5 billion gallons of ethanol.

I am greatly disappointed to have to vote against this bill, despite the ethanol provisions, because of the outrageous and unacceptable way that it deals with the central issue of replacing the export subsidy.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. LEAHY. Mr. President, the tax bill conference report that will overwhelmingly pass the Senate today is an opportunity lost. This bill is a fiscally irresponsible giveaway full of hundreds of special interest provisions that will ultimately cost the taxpayers billions of dollars.

I voted in favor of the Senate version of this important legislation when it passed by an overwhelming vote of 92–5 back in May. What began as a legislative fix to bring our Tax Code into compliance with international trade laws has turned into a deficit busting give away to special interests. This conference report lacks the balance and restraint that was critical to passage of the Senate bill.

The math on how this bill adds to the deficit is simple. Repeal of the so-called FSC ETI tax breaks for U.S. multinational companies will increase revenue by $50 billion. Incredibly, the conferees could not help themselves but take the opportunity to not only spend that $50 billion but also spend another $100 billion with almost no comparable spending offsets—adding straight to the ballooning Federal budget deficit.

The conference report is being sold as a godsend for American manufacturing workers, yet Senate provisions to tie corporate tax breaks to actual job creation have been stripped. I have to chuckle when I hear the White House referring to this as the ''JOBS'' conference report.

I am also disappointed that the conferees chose to drop the Senate provision sponsored by Senator LANDRIEU to provide tax credits to employers who make up the pay that employees lose when they are called up for National Guard or Reserve duty. Senator LANDRIEU has eloquently and forcefully highlighted to the Senate over the past couple of days why this provision should not have been dropped from the final conference report. I agree with her outrage that the conferees included many special interest tax provisions—one even for ceiling fan manufacturers—but could not include a provision that helps the men and women who are serving their country.•

Mr. BUNNING. Mr. President, I rise today to bring attention to section 852 of the conference report of H.R. 4520 before us today. First, I thank the managers of the conference report for accepting my amendment which added this provision to the conference report. The amendment codifies current Treasury proposed regulations defining off-highway vehicle. My intention in proposing this amendment was to confirm that Congress feels it is proper that vehicles which do not make use of, or make only very limited use of, the public highways should not be considered a ''highway vehicle'' for purposes of various excise tax sections, including, but not limited to, sections 4053, 4072, 4082, 4483, 6421, and 7701, of the Internal Revenue Code.

When used on public highways, heavy trucks put a greater stress on our roadways than average vehicles. In the past, Congress has passed laws to impose various excise taxes for large vehicles to use our national highway system. For example, there is a 12-percent retail sales tax for large on-highway vehicles, special taxes on tires weighing more than 40 pounds, additional large vehicle gasoline taxes, and there is even an annual use tax imposed on these heavier vehicles. The overwhelming majority of the revenue generated from these provisions is placed in the highway trust fund to rebuild our Nation's infrastructure.

This issue of off-highway vehicles and their tax status is of grave importance to my state of Kentucky. Many companies use heavy machinery and oversize vehicles. In Kentucky, they are used most often at coal mines. Some of these large vehicles are used only internally on the mine lands while others are used to haul materials over our Nation's public roads.

However, the Internal Revenue Code itself has not defined what constitutes a ''highway vehicle.'' The legislative intent of past Congresses seems clear—to impose excise taxes on vehicles that disproportionately stress our highways. It is important that we clarify who should pay these taxes through the legislative process. Current Treasury regulations contain a number of exclusions from the definition of highway vehicle and therefore provide exclusions from the imposition of a number of excise taxes which are dependent upon this definition. One of these exclusions exempts certain vehicles specially designed for off-highway transportation for which the special design substantially limits or impairs the use of such vehicle to transport loads over the highway.

I proposed the amendment to codify this off-highway vehicle exception—an amendment which became section 852 of this conference report—because I believe that these excise taxes should not be imposed on vehicles which make little or no use of the public highways. Under the definition of off-highway vehicle which is provided in this conference report, a vehicle is not treated as a highway vehicle if it is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design its capability to transport a load over the public highway is substantially limited or impaired. In determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether it is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether it can transport a load at a sustained speed.

The Statement of Managers accompanying this conference report states that, when determining whether a vehicle qualifies for the off-highway exception, the fact that its considerable physical characteristics for transporting its load other than over the public highway, when compared with its physical characteristics for transporting the load over the public highway, establish that it is specially designed for the primary function of transporting its load other than over the public highway. These types of vehicles should not be defined as a highway vehicle and should not be subject to the excise taxes at issue.

We often have situation in the mining area of my state where large trucks are used to haul coal in off-highway operations. When these trucks are designed and built, many thousands of dollars are spent to modify standard truck chassises before bed installation. Generally, heavier axles, transmissions and other drive train components, as well as other modifications needed to allow the vehicles to operate at lower operating speeds carrying loads significantly heavier than those legally allowed on the highways, must be added to the trucks. The trucks generally have beds which, along with the truck itself, cause the vehicle's width to exceed that which is allowed to be operated on the public highways of any state. Often these trucks do not need to be licensed like on-highway vehicles in Kentucky and neighboring coal states because the trucks are an off-highway vehicles by state standards. These trucks are actually so large that it is not even legal to drive them on highways, except in very limited circumstance usually involving special trip permits. In fact, very substantial modifications would need to be made to the vehicles to cause them to be legal for highway use. Insurance agents, State licensing agents, State sales tax officials, and even our own transportation laws all recognize these vehicle as ''off-highway.'' It is clear

that, by reason of special design, the use of such vehicles to transport loads over the public highways is substantially limited or substantially impaired.

I am concerned about the interpretation of these rules by the administration. Make no mistake about it, as a member of the Senate Finance Committee, I will be watching this issue closely to ensure that the intent of Congress is being followed with regard to the imposition of taxes on highway vehicles and the exception of nonhighway vehicles from these taxes. I will not hesitate to urge the Congress to address this issue again if necessary to ensure that congressional intent is being properly implemented.

Mr. ROCKEFELLER. Mr. President, on behalf of all hard working West Virginians who are worried about keeping their jobs, I must oppose the corporate tax bill the Senate is considering today. For more than a year, I have been working with my colleagues to craft legislation that would address the needs of our manufacturing industry, and I was proud to vote for a Senate bill earlier this year that promised real relief for our economy. However, the legislation before us bears only a faint resemblance to the bipartisan Senate bill, and I believe it would do more harm than good. I urge my colleagues to reject this legislation. We can do better than this, and we owe it to American workers.

Last September, I introduced legislation that would offer help to our struggling manufacturing sector. My bill would repeal the Foreign Sales Corporation/Extraterritorial Income tax provisions to ensure that European tariffs against American exports are lifted. It would create a new tax deduction for domestic manufacturers to essentially lower their corporate income taxes by 3 percent. In addition, my legislation calls for a tax credit to make health care for older workers more affordable. Finally, my legislation would strengthen our trade protections.

On May 11, 2004, the Senate voted 92 to 5 to support the Jumpstart Our Business Strengths, JOBS, Act, which contained the core manufacturing deduction I support. This Senate bill was the product of constructive, bipartisan negotiations. While I did not like every last provision in the bill, it represented a balanced set of tax incentives that would help our factories compete globally.

Having worked so hard to craft the good legislation produced by the Senate, I am extremely disappointed to be faced with such a bad conference report. This conference report is riddled with problematic provisions. But the most fundamental flaw is that this bill actually does more to reward companies for moving jobs overseas than it does to help companies who are struggling to keep their American factories open.

Right now workers in my state are worried about being laid off. Nationwide, we have lost almost 3 million manufacturing jobs in four years. American companies are struggling to succeed in a tough global marketplace. Yet, this Congress is considering legislation that provides tens of billions of dollars in tax breaks for American companies with factories abroad, but includes very little for American factories that are struggling to stay open at home. Many factories are simply not profitable enough to benefit from the deduction provided in this bill.

I supported two key provisions in the Senate-passed version of this bill that would provide relief to struggling companies. The net operating loss carryback provision would allow unprofitable companies to reclaim some of the taxes they had paid on previous earnings. And a provision to allow companies to use alternative minimum tax credits in lieu of favorable depreciation rules would have provided a real incentive for factories to invest in America. But both of these provisions have been excluded from the final bill. By contrast, this bill does include a new 30 percent tax break for companies that moved factories overseas and then kept the profits offshore to avoid paying their fair share of taxes.

Rewarding companies for offshoring is just one of the ways that this bill makes American workers less secure. In spite of Senate support for a provision to prevent the federal government from outsourcing its contracts to foreign workers, this legislation includes no such restriction. The conference committee also dropped a provision to protect the overtime pay of millions of workers across the country.

Instead of protecting workers, this legislation is rife with giveaways to corporate interests. For just one example, the legislation repeals a 4.3-cent excise tax on railroads diesel fuel. By providing no corresponding relief to captive shippers, the bill ensures that consumers will have to pay more for many goods shipped on the Nation's railways.

In another effort to appease corporate interests, the conference committee actually protected many abusive tax shelters. To ensure that every company and individual pays a fair share of taxes, and to mitigate this bill's effect on our spiraling national debt, the Senate supported a number of strict provisions to close tax loopholes. Unfortunately, $40 billion worth of tax shelters will remain available even if this legislation passes. I will put my colleagues on notice right now that I intend to continue the fight to shut down those abusive tax schemes.

Among the corporate interests that are best protected by this bill are tobacco companies that peddle their deadly products to our Nation's children. The House of Representatives ignored a bipartisan Senate compromise to link a buyout for tobacco farmers with regulation of tobacco products by the Food and Drug Administration. As a result, more children will take up the awful habit of smoking.

And while I am on the subject of America's young people, let me mention the bill they can expect from the legislation we are considering today. The Senate insisted that the legislation be revenue neutral, that is, it must not add to the debt. However, as we have seen time and time again from this Congress, this goal was met using gimmicks. Many of the tax breaks in this bill are either phased in slowly or sunset after a few years. If expiring provisions are extended, as there will certainly be great pressure to do, the net cost of the bill over the next 10 years would be almost $100 billion.

Regrettably, as we are accumulating more debt for our children to pay off, we are not building the technological infrastructure that will be necessary to make America's economy competitive in years to come. The United States has now slipped to 11th in the world for broadband penetration, with rural areas lagging behind considerably. The Senate JOBS Act included a provision I have championed to provide tax incentives for the deployment of broadband. I am extremely disappointed that this provision, like so many others, was dropped from the final bill.

I have just gone through a laundry list of important reasons to oppose this bill, but in the end, my judgment about this legislation came down to a very simple test: Is this in the best interest of working West Virginians? I cannot support this bill because the fact is, it is not in the best interest of working West Virginians. I urge my colleagues to reject this bill and work with me to pass legislation that will truly benefit American workers.

Mr. REED. Mr. President, this week, a conference committee filed its report on legislation that was originally designed to repeal provisions in the tax code that have been found by the World Trade Organization to be illegal export subsidies. Months ago the European Union began imposing retaliatory tariffs on select American exports, including such important Rhode Island exports as machinery and jewelry. The targeting of the jewelry industry is especially troubling because Rhode Island is among the three biggest jewelry-producing States, and this sector accounts for 36 percent of the total trade targeted by the retaliatory duties. Without congressional action to repeal these export tax provisions, these tariffs would grow progressively until reacing 17 percent by March of 2005.

Unfortunately, I have serious concerns that the conference agreement before us today would not even provide immediate relief to our jewelers and other businesses targeted by these tariffs. The Senate-passed JOBS Act included a carefully crafted transitional benefit for those firms currently receiving FSC/ETI assistance. However, the bill before us includes transitional relief that is still export-contingent and could be challenged by the EU as still not being WTO-compliant. In fact,

according to an article yesterday in the Washington Post, EU spokesman Anthony Gooch suggested that this legislation would not accomplish its central goal of lifting European sanctions due to the transitional assistance. This is the reason we have this legislation in the first place, and I am disappointed that the House conferees have potentially set up a repeat of tariffs on our Nation's domestic manufacturers and exporters.

That brings me to the other compelling reasons for the original JOBS Act: the bill, as passed by the Senate, replaced the Foreign Sales Corporation and Extraterritorial Income regimes with a more robust set of incentives for domestic manufacturing. At a time when domestic manufacturing, long the backbone of the American economy, is bleeding prized jobs to foreign countries, it is incumbent on Congress to put forward a responsible economic plan and provide important assistance to manufacturers that keep their operations here in the United States.

While the conference agreement does include a tax deduction to provide assistance to a broad-based group of manufacturers, unlike the Senate-passed legislation, it does not make a distinction between manufacturing domestically or abroad. It removed the so-called ''haircut'' that would have provided an incentive for companies to do their manufacturing here at home instead of shipping it abroad. Yet again, we see that House Republicans are unwilling to stand up for those manufacturers, small and large, that have kept their operations here in the United States.

In fact, if we look at the bill as a whole, we see that of the broad-based tax incentives, a larger net amount of money would be dedicated to international provisions than those targeted at production here at home. It is difficult to reconcile the very real challenges facing domestic manufacturers with the inclusion of huge tax breaks for multinational corporations. Ultimately, providing tax breaks to multinationals means that manufacturing jobs are going overseas.

The corporate repatriation provisions in H.R. 4520 are responsible for a significant amount of these costs, but there is little evidence that they will ultimately help to create jobs. Even Secretary Snow, speaking for the Administration, seemed to understand this inequity. He wrote in a letter to Chairman GRASSLEY, and I quote:

> [T]he Administration also has concerns regarding the fairness of the repatriation provision included in both bills. This provision would offer international corporations a partial ''tax holiday'' for repatriating foreign income that is currently held overseas. U.S. companies that do not have foreign operations and have already paid their full and fair share of tax will not be able to benefit from this provision. Moreover, the Council of Economic Advisers' analysis indicates that the repatriation provision would not produce any substantial economic benefits. The Administration believes the $3 billion revenue cost of this provision could be better used to reduce the tax burden of job creators in the United States.

This is not the only place where this bill failed to live up to its full potential to help domestic manufacturers. I am deeply disappointed several months ago that last-minute lobbying by multinational corporations were effective in removing from the Senate bill a commonsense provision to help reduce offshore outsourcing termed contract manufacturing.

Similarly, House Republicans voted to leave out the Dodd offshoring amendment, which would have prevented Federal taxpayers' dollars from being used to support outsourcing in future government contracts. This is a commonsense measure to make sure that the Government does not actively contribute to outsourcing, and its rejection by the conferees is a sign of their strong disregard of the practice of ''buying American.''

This brings me to the subject of corporate tax shelters. We have been fighting to close these loopholes benefiting large companies for a decade. A recent study commissioned by the IRS estimated that abusive corporate tax shelters cost honest Americans as much as $18 billion annually, or $180 billion over 10 years. Put another way, every month that the majority and the administration obstruct efforts to shut down corporate shelters, it costs honest taxpayers over $1.5 billion. It has been several years now since the Enron debacle, and yet the majority has still not sent to the President a tax bill to shut down these shelters. While the Senate has taken actions over and over again to target shelters, they have been blocked by the majority party.

For example, in June 2002, the Senate passed tax shelter legislation as a stand alone bill and as part of the CARE Act. The other chamber did not. The Senate passed it again in April 2003 as part of the CARE Act; and the other body rejected it. The Senate passed shelter legislation as part of the energy bill in July 2003, and the other chamber rejected it. The Senate passed shelter legislation as part of the Jobs and Growth stimulus bill in May 2003, and it was stripped out in conference.

So I was pleasantly surprised to hear that tax shelter provisions were included in the conference agreement. Then I had a chance to look a little more closely. The conference bill is a shadow of the Senate-passed version, raising $40 billion less by closing corporate tax loopholes than the Senate-passed version. $15 billion of this lost opportunity to make the Tax Code fairer for all Americans would have eliminated phony transactions that have no economic substance and have been used by companies like Enron to avoid taxes. Another measure modified by the majority conferees would continue to allow those individuals who promote tax shelters to make profits while doing so. In contrast, the Senate would have levied a 100 percent penalty to prevent them from making any such profit at the expense of taxpaying Americans.

Sadly, while the underlying core components of the bill are flawed at best, much of the rest of the bill is deeply defective. I am perhaps most disheartened over the section on tobacco—and the notable absence of language authorizing the FDA to regulate it. This might just be the largest children's health issue facing Congress. The tobacco industry spent more last year than ever before on advertising—over $11.5 billion—and children continue to become hooked on smoking while they are young and unable to understand the health ramifications of smoking. It is now believed that smokers could lose on average 10 years off their lifespan—an entire decade. At a time when we are talking about soaring health care costs, it is vital that we regulate a substance that causes 440,000 deaths each year and results in more than $75 billion in direct medical costs annually—much of which is paid for by taxpayer-financed health care programs.

The Supreme Court has acknowledged that tobacco is ''perhaps the single most significant threat to public health in the United States'' and has effectively reaffirmed that the FDA is the most appropriate agency to regulate tobacco products, given the general scope of its authority and its emphasis on protecting the public health. It is now that Congress must act to clearly give the FDA the long overdue authority it requires to protect Americans, and particularly our children.

I was willing to accept the inclusion of a tobacco buyout under the clear understanding that it would remain linked to giving the FDA regulatory authority over tobacco. Americans want us to take this important step, and but this report falls short. We all know that tobacco is a substance that reduces the quality of life and results in untimely death with lifelong use. We had a unique opportunity with this bill to make a real difference in helping to protect our nation's children and the majority conferees killed this bipartisan effort that Senators KENNEDY and DEWINE spearheaded.

The conference agreement left out other very important and widely supported worker protections that would have prevented President Bush's regulations that will deny overtime protections to 6 million hard-working men and women, including registered nurses, cooks, clerical workers, nursery school teachers, and many others from taking effect.

The Senate has voted against the Bush overtime rule three times, and the other Chamber twice. The Senate FSC bill included two amendments that preserve workers' overtime—the Harkin amendment that would block only the parts of the overtime rule that strip workers of overtime rights, and the Gregg amendment that passed 99 to 0, which would preserve overtime

for 55 job categories. Majority conferees, at the behest of the White House, stripped the overtime protections from the report. Even after the Senate conferees voted yet again to retain the Harkin amendment, it was stripped out.

The Fair Labor Standards Act was enacted in the 1930's to create a 40-hour workweek, and it requires workers to be paid fairly for any extra hours. American workers work more hours than any others in the world—1,900 hours per year. Yet, still, they need more to get by and make ends meet. With 8 million Americans out of work, and with so many other families struggling to make ends meet, cutbacks on overtime are an unfair burden that America's workers should not have to bear. Especially in times like these, it's an incentive for job creation, because it encourages employers to hire more workers, instead of forcing current employees to work longer hours.

I am amazed that the majority has again stripped this provision which has overwhelmingly passed both the House and the Senate on 5 separate occasions. This is a clear example of how the majority and this administration continue to turn their backs on working families.

Now, in addition to leaving out a number of the important provisions that I've just enumerated, it also contains many costly and extraneous ones; $101 million for NASCAR by changing the tax treatment of grandstand facilities; $44 million for importers of Chinese made ceiling fans; $28 million for cruise ship operators; $231 million in taxpayer funds to finance bonds for four so-called ''Green Bond'' mall developments; $247 million in bonus depreciation of some jets and planes; $5 billion over only two years for a new deduction for state and local sales taxes in a select few states; and $27 million for horse and dog gamblers. This one is especially interesting because it exempts foreign gamblers from paying taxes up front on their winnings at horse and dog tracks.

My question is: Where's the special tax break that will help struggling working families in my state? How does it help American workers by giving tax breaks for Chinese fans to be imported tax free to the United States? The Administration seems to agree, and Secretary SNOW also wrote in his letter to Chairman GRASSLEY that:

> Both the House and Senate-passed bills include a myriad of special interest tax provisions that benefit few taxpayers and increase the complexity of the tax code. Legislation taking up more than 1000 pages of statutory language (or even 400 pages) goes far beyond the bill's core objective of replacing the FSC/ETI tax provisions with broad-based tax relief that is WTO-compliant.

At the same time, the majority party voted to strip the legislation of an amendment offered by Senator LANDRIEU that would provide a tax break to companies for paying the salaries of activated National Guardsmen and Reservists.

Lastly, it continues to employ the same budget gimmickry as previous tax bills put forward by the majority party and the administration over the past 3 years. For example, a dozen of the tax cuts in this report will expire between 2005 and 2008. Assuming that these provisions are extended, the cost to the Treasury will increase by an estimated $80 billion!

This bill could have been an ideal vehicle for bipartisan efforts to shape a comprehensive economic policy for our nation's manufacturing sector. Unfortunately, it proved to be too alluring for the special interests who just could not restrain themselves. At a time of a record Federal budget deficits—most recently pegged at $422 billion for Fiscal Year 2004—this bill contains too many giveaways to corporations and not enough to help domestic manufacturers and working families. Most regrettably, its passage does not seem to guarantee that the EU will lift its harmful sanctions against numerous United States products. Companies in our home states are hurting from EU retaliatory tariffs, like jewelry manufacturers in Rhode Island, and the conferees should have taken the responsible path in assisting those who are struggling. But they did not.

• Mr. MCCAIN. Mr. President, I voted against cloture on this measure yesterday because it is loaded with corporate pork and special interest tax provisions. This conference report, at 633 pages and $148 billion, serves as a sad example of the way business is done around here. The special interests continue to rule at the expense of the hardworking American taxpayer.

The original intent of this legislation was laudable. Earlier this year, we missed a golden opportunity to pass a good, clean bill that would have brought us back into compliance with World Trade Organization, WTO, agreements and stop the burdensome tariffs now imposed on our manufacturers. Simply repealing the extraterritorial income, ETI, exemption tax benefit for exports would have saved $50 billion. Instead, because this was known to be a ''must pass'' piece of legislation, it was loaded up with billions and billions of dollars in tax breaks for big corporations and special interests of all types. I recognize the need to pass legislation to bring the United States back into compliance with the WTO, and I am more than willing to support a bill that accomplishes that goal. Unfortunately this legislation's worthy purpose has taken a back seat to a host of special interest tax provision add-ons and a big buyout for tobacco farmers.

In an editorial on the issue, The Washington Times, noted that ''the ideal solution would have been a quick, simple repeal of FSC–ETI, which is bad economic policy in any case. The $50 billion in savings could then have been used to streamline and simplify the corporate tax code.'' I couldn't agree more. The Tax Code is far too complex and is in dire need of reform. While campaigning in recent months, the President has stated, with tremendous approval from every audience, that reforming and simplifying the Tax Code would be one of the main objectives of his second term. I will support him in that effort, and I encourage him to take the first step in that reform by vetoing this bill.

We have a deficit that is quickly approaching $500 billion—that is half of a trillion dollars. The proponents of this bill say that it's ''revenue neutral.'' Well, I doubt that, and I am not alone in my skepticism. The Center for Budget and Policy Priorities has figured that the bill would actually cost $80 billion if the temporary tax cuts are extended for the full 10 years. Sadly, I have no doubt that those extensions will happen—because we simply don't say no to anyone anymore. We are told that this bill is offset by closing tax loopholes, and I will be the first person to say that I support closing those loopholes, but can anyone explain to me the rationale behind closing loopholes in order to raise revenues to open more loopholes? It is remarkable. It makes no sense.

As I have said many times in the past, we need to start making some very tough decisions around here about our fiscal future. We need to be thinking about the future of America and the future generations who are going to be paying the tab for our continued spending. It is simply not fiscally responsible for us to continue to load up bills with good deals for special interests and their lobbyists. We have had ample opportunities to tighten our belts in this town in recent years, and we have taken a pass each and every time. We can't put off the inevitable any longer.

Here is the stark reality of our fiscal situation. According to the General Accounting Office, the unfunded Federal financial burden, such as public debt, future Social Security, Medicare, and Medicaid payments, totals more than $40 trillion or $140,000 per man, woman and child. To put this in perspective, the average mortgage, which is often a family's largest liability, is only $124,000—and that is often borne by the family breadwinners, not the children too. Instead of fixing the problem, and fixing it will not be easy, we only succeeded in making it bigger, more unstable, more complicated, and much, much more expensive.

The Committee for Economic Development, the Concord Coalition, and the Center on Budget and Policy Priorities jointly stated that, ''without a change in current (fiscal) policies, the federal government can expect to run a cumulative deficit of $5 trillion over the next 10 years.'' They also stated that, ''after the baby boom generation starts to retire in 2008, the combination of demographic pressures and rising health care costs will result in the costs of Medicare, Medicaid and Social Security growing faster than the economy. We project that by the time today's

newborns reach 40 years of age, the cost of these three programs as a percentage of the economy will more than double—from 8.5 percent of the GDP to over 17 percent.''

Additionally, the Congressional Budget Office has issued warnings about the dangers that lie ahead if we continue to spend in this manner. In a report issued at the beginning of the year, CBO stated that, because of rising health care costs and an aging population, ''spending on entitlement programs—especially Medicare, Medicaid and Social Security—will claim a sharply increasing share of the nation's economic output over the coming decades.'' The report went on to say that, ''unless taxation reaches levels that are unprecedented in the United States, current spending policies will probably be financially unsustainable over the next 50 years. An ever-growing burden of federal debt held by the public would have a corrosive . . . effect on the economy.''

So what do we do when we are faced with these problems? We pass a tax bill that is loaded with corporate pork.

This conference report is called the JOBS Act, but I think we should call it what it truly is: ''the corporate tax haven act.'' I doubt it will create any new jobs but it will certainly allow a few lucky folks, who have extremely well paying jobs, to make even more at the expense of the taxpayers. I'm sure the energy corporations are pleased that they won't have to wait for the energy bill to add to their over-flowing coffers.

Yesterday we passed a bill to address the issue of FDA regulation of tobacco products. Essentially, the consideration of a free standing bill to address this issue at this stage means nothing. We're supposed to be appreciative that the FDA bill was taken up and passed quickly—we all know that passing a controversial Senate bill on a Sunday at the end of the session is meaningless. The House will not move the bill, and, even if by some miracle they did, there certainly would be no conference held. This is a sham—plain and simple. The Senate had already addressed the issue of FDA regulation of tobacco. Sadly, the conferees on the FSC/ETI bill stripped that provision from this conference report.

What the conferees did was unconscionable. They turned their backs on the health of our nation's youth and opted to strike the DeWine-Kennedy amendment that would have granted authority to the Food and Drug Administration, FDA, to regulate tobacco products. It is a very sad day for public health. They have used the FDA tobacco authority language as a linchpin to effectuate the passage of the underlying tax bill. It was nothing more than a sweetener to them and now that it is no longer of use, the conferees have discarded the language, and with it, who knows how many lives.

In striking this historically important provision, the conferees ignored the public and medical health community, child health advocates, and registered voters who in a recent poll overwhelmingly, 69 percent favor FDA authority over tobacco. Even in the six leading tobacco growing states, support for FDA authority is above 65 percent.

Without FDA authority over tobacco, there will be no regulation of tobacco marketing, no information disclosure such as nicotine and carcinogenic content, no requirement that can force the tobacco industry to remove harmful components from their products, and no pre-market approval of ''new products'' marketed as ''safer cigarettes.''

Tobacco-related illnesses and deaths in this country have reached epidemic proportions, but according to the Surgeon General, tobacco use is ''the single most preventable cause of death and disease in our society.'' The Surgeon General estimated 400,000 U.S. citizens lose their lives each year as a result of a smoking-related illness. This figure translates into approximately 1,200 smoking-related deaths per day. This loss of life has a significant economic impact accounting for an estimated $75 billion per year in health care expenses. Most tragically, however, the Surgeon General estimates that approximately 2,000 kids start smoking every single day, and that one third of them will die from a smoking-related illness.

I thank Senators DEWINE and KENNEDY for their commitment to our Nation's youth, and I am certain that they will continue to fight for FDA authority over tobacco because it is simply too important not to continue to fight. We must protect the public health and hold the tobacco industry accountable for the production and marketing of its products, particularly as their business practices affect children, but I fear we have lost yet another opportunity.

Not only have the conferees jeopardized the health of our Nation's youth by striking the FDA authority provisions of this bill, they left provisions that would eliminate the quota system and channel $10 billion—into the pockets of tobacco farmers—many of whom no longer even farm tobacco—and disguised the money as a buyout to encourage such ''farmers'' to shift their crops to something other than tobacco. According to the Wall Street Journal, among these ''tobacco farmers'' who would benefit from a tobacco buyout are Larry Flynt and his brother, who admittedly abandoned the ''blood, sweat, and tears'' of the tobacco business to pursue pornography.

I fear that the conferees have failed to realize that, by not setting domestic production restrictions, and not restricting new market entrants from farming tobacco, they may be creating new opportunities for more tobacco farming. In doing so, they create the possibility that a greater supply of tobacco will result in reduced prices thereby making tobacco products more accessible to kids. Studies have shown that increases in the cost of cigarettes directly correlate to reduced youth smoking rates. Greater youth accessibility to tobacco products coupled with a lack of FDA authority over the marketing and information disclosure of these cheaper products is the most invidious combination possible. By turning their backs on FDA tobacco authority while simultaneously making it easier to grow and sell tobacco, the conferees may be exposing kids—not to mention adults—to an even greater health risk than they are today.

As if the lack of FDA language wasn't bad enough, let me go through some of the other ridiculous items contained in this conference report.

Many provisions in this bill remind me of the golden oldies we saw in the energy bill. One of the more generous tax breaks in this bill is a creative provision that allows energy companies to reclassify energy production as a manufactured good in order to qualify for potentially tens of billions of dollars in new tax deductions. The manufacturing tax deduction is currently available only to traditional manufacturing industries as an incentive for job creation. While this change in the tax code may not create manufacturing jobs, it does create a tax balloon, which increases to a maximum of 9 percent of a company's production income after 2009. The total estimated cost of this golden parachute is $76.5 billion. Other industries that will now be considered to be ''manufacturers'' are movie studios, real estate development, and construction companies. But the greatest share of this tax break will go to the oil and gas industry and electric utility companies.

Fear not, not all of the largess goes to oil and gas companies. There are equal opportunities for other corporate and special interests to make profits at the expense of the taxpayers. An article in the Wall Street Journal on October 6, refers to the legislation as ''a trove of obscure breaks and perks'' and identifies four companies in Houston that were singled out for special treatment. These companies recently changed their addresses to the Cayman Islands and Bermuda when the Senate proposed a retroactive crackdown on businesses that incorporate offshore to shave their U.S. tax bills. Fortunately for them, the provision in this bill is no longer retroactive. Not only does the bill allow these companies to slip comfortably away, but others contemplating such actions will be heartened by the fact that the bill doesn't include a provision that would have supported Federal judges and the IRS in bringing companies that indulge in these improper tax shelters to justice.

This bill also contains a tax credit totaling more than $2 billion over 9 years for industries generating electricity from alternative fuel sources. Let me be clear that I support clean renewable energy technologies as a

means to reduce greenhouse gas emissions and increase energy independence, but most of these subsidized technologies aren't clean. No matter how you look at it, chicken droppings simply are not a clean alternative fuel. Just how, exactly, does the public benefit from the subsidies provided for the burning of municipal trash and poultry waste, both which create significant air pollution?

The most outrageous provision in this section could be easily missed. It defines ''refined'' coal as a qualifying renewable resource. According to the Tax Code, refined coal is just another name for synthetic fuel. I would be greatly relieved if my colleagues could document that this is not the case, but it appears to me that the synthetic fuel credit has been snuck in here along with so-called renewable sources of electricity.

I have spoken before about the synthetic fuel tax credit scam that was revealed by Time reporters in October 2003. It is shameful for Congress to perpetuate this expensive hoax, which has cost taxpayers $4 billion since 1999. The IRS followed up the Time report with a November 2003 bulletin stating, ''The Service believes that the processes approved under its long standing ruling (that a synthetic fuel must differ significantly in chemical composition from the substance used to produce it) do not produce the level of chemical change required.'' Incredibly, it goes on to say, ''Nevertheless, the Service continues to recognize that many taxpayers and their investors have relied on its long-standing ruling to make investments.'' So, basically, we should just ignore the fact that chemical change isn't occurring. They should have just said that if Congress wants to continue this shameful scam, then the IRS will let it pass.

The original intent of the synthetic fuels tax credit was not sheer folly. It is just that, for a variety of reasons, a synthetic fuel industry never materialized in the United States. Canada invested heavily in synthetic fuel production over the past decades and sells millions of barrels of synthetic crude oil to the United States annually. The only evidence of a U.S. synthetic fuel industry is this gigantic tax shelter. One doesn't need to be in the oil or gas business to strike it rich with synthetic fuels either—one of the greatest beneficiaries of this tax shelter—and that is all that it is—a tax shelter, is a very profitable hotel chain, Marriott. This is an equal opportunity bill for wealthy corporate interests.

Wait, we can't forget ethanol! $77 million from this bill will go to ethanol manufacturers. No tax break bill would be complete without subsidies for this synthetic fuel, ethanol gasohol, created and perpetuated by Congress. And it all starts with corn. Ten percent of the corn grown in this country is used to produce ethanol. Of course, corn producers, like producers of other major crops, receive farm income and price supports. In the 107th Congress, this body passed the Farm bill which appropriated more than $26 billion in direct assistance to corn-growers over 6 years. That is an average of $4.3 billion in direct subsidies each year just to corn-growers!

In addition to the subsidies going primarily to agribusiness corporations, the public pays for ethanol in other ways as well. More energy is used in the production of ethanol than it provides to consumers, it increases the per gallon cost of gasoline, and it results in environmental degradation. Finally, to add to all these insults, ethanol subsidies increase the public's grocery costs. Subsidized corn results in higher prices for meat, milk, and eggs. This happens because about 70 percent of corn grain is fed to livestock and poultry in the U.S. Increasing ethanol production further inflates corn prices and subsequently food prices.

So the American public provides billions to create this artificial market for ethanol, and then pays more for their groceries and what do they get in return? I will tell you what they get in return—absolutely nothing. No reduction in petroleum fuel use. No reduction in air pollution. There is one reduction, however, consumers are rewarded with—reduced fuel economy. More gasohol must be used to go the same distance as conventional fuel. So no one can honestly claim that subsidizing ethanol is in the public interest or an element of sound national energy policy.

Another objectionable provision is the ''green'' bond program. The original form of this provision prompted the ''hooters'' part of my ''hooters and polluters'' reference to the energy bill. Well, the hooters is gone, but this program is still top-heavy with tax breaks—$231 million for the real estate corporations that are going to develop these projects. With or without a hooters, I don't see how it's in the public's interest to pay for enormous commercial facilities in three or four States. These projects all sound like enterprises that can stand or fall on their own—they don't need the taxpayers throughout the country giving them a big boost.

Let me give you a sense of the ''public works'' that benefit from this provision:

Destiny USA in Syracuse, NY is an entertainment and retail development touted as an economic stimulus for upstate New York. The primary developer has committed to 3.2 million square feet of space with a price of close to $700 per square foot. They estimated these green bonds would save them close to $100 million.

Belmar in Lakewood, CO is a $500 million redevelopment of a mall, which will include many restaurants, clothing stores, shops, and office space.

Atlantic Station in Atlanta GA is a 138-acre redevelopment of a former steel mill which will include 12 million square feet of retail, office, hotel space, and parks.

Riverwalk Development in Shreveport, LA, minus the Hooters, this $150 million project will feature stores, restaurants, movie theaters, hotels, and entertainment spots.

These all sound like grand, money-making ventures to me—they don't need taxpayer support. Pork called ''green bonds'' is still pork.

Some of the other notable giveaways in this grab bag of corporate tax delights are:

The ''hummer in every home'' provision is still intact. It is just not quite as expensive as it has been the past. This provision extends the existing $100,000 tax deduction for the purchase of vehicles weighing over 6,000 pounds. The original intent of this deduction was to benefit farmers and other business owners in need of heavy-duty vehicles. Unfortunately, some individuals unscrupulously seized on this loophole in order to purchase Hummers, Escalades and other expensive, gas guzzling SUVs. Thankfully, due to the insistence of Senator Nickles, those purchasing luxury sport utility vehicles can no longer take advantage of the $100,000 deduction. However, they can still take a deduction of up to $25,000. This could cost our Treasury $350 million for every 100,000 taxpayers who take advantage of this loophole. Again, it is not as bad as it used to be, but it is still too expensive and should be eliminated. The cost of foreign oil is about $53 a barrel. Shouldn't we, as a practical matter, be encouraging the use of smaller, more fuel efficient vehicles?

There is a tax break for ''small refiners'' of oil to improve clean air standards. Unfortunately, ''small'' is defined as those with refining capacity below 205,000 barrels per day, so some of the large oil companies can get in on this one too.

Three of the world's richest energy companies—BP, Exxon Mobil, and Conoco Phillips—stand to be the primary recipients of two tax breaks, totaling $445 million, for building an Alaskan natural gas pipeline and for processing natural gas for the project. Considering that these three companies have enjoyed after-tax profits of $95 billion since 2001, the wealthy shareholders of these companies—not taxpayers—should foot this bill. In addition, these three companies are allowed to depreciate their natural gas pipeline over seven years, costing taxpayers another $150 million.

There is $27 million for dog and horse race tracks to help lure more foreigners to gamble at U.S. horse and dog racing facilities; $995 million for the treatment of aircraft leasing and shipping income. This provision would provide a tax exemption on income derived from an aircraft or vessel leasing business.

There is $28 million for a cruise ship tax break. This provision would allow the cruise industry to delay paying taxes on airplane tickets, hotels, and other excursions it sells in the United States. The delay would save the Carnival Corp. $15 million, and Royal Carribean would save anywhere from $8 million to $10 million.

There is $9 million for a tax break on archery products; $11 million for a provision that would reduce the excise tax on fishing tackle boxes; $44 million for the importers of Chinese ceiling fans; $4 million to repeal the excise tax on sonar devices that are used for finding fish; $247 million for a provision that is designed to help the producers of small jets and planes, 60% of which are built in Kansas. Lear Jet and Cessna benefit greatly from this provision; $27 million for providing tax-free treatment if farmers replace livestock because of weather related conditions; $101 million for NASCAR track owners; $57 million for a tax break for shipping companies; $501 million for a tax credit for the maintenance of railway tracks; $336 million for a tax break for Hollywood studios; $234 million for a tax break for the producers and

marketers of alcoholic beverages; and $495 million for Naval shipbuilders.

Where is it going to end? We have to face the facts, and one fact is that we can't continue to cater to wealthy corporate special interests any longer. The American people won't stand for it, and they shouldn't—they deserve better treatment from us. I strongly encourage my colleagues to vote against this conference report.●

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS. I yield 1 minute to the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana now has 6 minutes.

Ms. LANDRIEU. I intend to use 2 minutes and yield back the remainder of my time to the leadership.

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

Ms. LANDRIEU. Mr. President, while the leaders are in the Senate with their final remarks, I take the opportunity again to thank them for their work—Senator BAUCUS and Senator GRASSLEY as the leaders of the Finance Committee—as we work toward a very significant victory and a conclusion on the issue of a tax credit for the Guard and Reserve. The Senate is going on record again this morning, as we did several weeks ago when this bill left the Senate, to include them in a tax provision. They will not technically be included in this bill, but there will be a bill sent back over to the House, as we said. That would not have happened without the help of Senator BAUCUS from Montana and Senator GRASSLEY from Iowa. I personally thank them along with thanking Senator DURBIN and Senator BOXER for their help on this original amendment.

We have explained it as well as we can, the arguments as to why our Guard and Reserve deserve our focus and attention to provide help to their families while they are serving for all Americans on the front line. I am so pleased we could come together as Members of the Senate to provide that help for them.

Now it is in the hands of the House of Representatives. As we return from this break, however long or short it is, we will then take up this issue as they decide over in the House how they would like to handle it. I hope they will take the bill as we have sent it, pass it, and then it will go to the President's desk for immediate signature because we all want to give them the help and support they most certainly are giving us at this special time.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. I yield myself such time as I consume.

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

Mr. BAUCUS. Mr. President, I first thank the chairman of our committee, CHUCK GRASSLEY, for the tremendous job he has done. I am blessed. We are all blessed to have him as chairman of our committee. He is very smart. He is very perceptive. He has terrific common sense and is wonderful to work with. He is as straight as they come. His word is his bond. If he tells you something, that is it. At the same time, when we work with him, it is very cooperative. In fact, he goes overboard. It reminds me of ''To Kill a Mockingbird'' when the protagonist, the lawyer, says: You walk around in his shoes to see that person's point of view. CHUCK GRASSLEY has the uncanny trait that he does not have to take the effort to walk around in another person's shoes because he already knows. He has walked around in so many shoes around Iowa. He has common sense that is rooted in the ground. He is a wonderful person. We are all very grateful to have him as chairman. I can say this having worked with him as the senior Democrat on the Finance Committee.

Second, I deeply thank all of our staff who helped with this legislation. They have been wonderful. I ask unanimous consent to have their names printed in the RECORD.

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

This legislation would not have been possible without the help of many.

I appreciate the cooperation we received from the Republican staff, especially Kolan Davis, Mark Prater, Ed McClellan, Elizabeth Paris, Dean Zerbe, Christy Mistr, John O'Neill, Everett Eissenstat and Stephen Schaefer, and Adam Freed.

I thank the staff of the Joint Committee on Taxation and Senate Legislative Counsel for their service.

I also thank my staff for their tireless effort and dedication, including Russ Sullivan, Patrick Heck, Bill Dauster, Matt Genasci, Matt Jones, Matt Stokes, Jon Selib, Anita Horn Rizek, Judy Miller, Melissa Mueller, Liz Liebschutz, Lara Birkes, Ryan Abraham, Wendy Carey, Tim Punke and Brian Pomper. I also thank our dedicated fellows, Rhonda Sinkfield, Scott Landes, Justin Bonzey, Jodi George, and Cuong Huynh—and our dedicated law clerk Jeremy Sylestine.

Finally, I thank our hardworking interns: Mary Tuckerman, Kelsie Eggensperger, Paige Lester, Priya Mahanti, Brittney McClary, and Audrey Schultz.

Mr. BAUCUS. Finally, my greatest thanks are to the people of the State of Montana. I express my gratitude and thanks to the people of Montana for sending me here as their representative. I will never forget the people I work for. They are my bosses. They are my employers and the best anyone could ever have. I know each Member feels that way about his or her State. I am blessed to be able to represent Montana.

Frankly, it is for that reason that, preparing for this bill last year, my staff and I spent a lot of time in Montana meeting with workers and owners of businesses all across our State. We visited over 140 companies, 8 accounting firms and law firms, 11 economic development organizations in Montana. We spoke with about 60 companies over the phone, asking them what they thought about this legislation. How are Montana companies and interests affected by this bill? I simply wanted to know the biggest problems facing Montana businesses, I wanted to know what is working for them and what is not working for them, and I wanted to make sure that the manufacturing deduction in this bill will work for Montanans. Obviously, they had a lot of concerns.

People in my State, as in many States, are worried about job security, health security, and economic security. Will they have jobs tomorrow? Will their jobs be cut because business is slow? What about health insurance coverage with health care costs going up? Will their businesses be able to grow and compete with foreign competition?

We learned that any bill targeted to just corporations—that is, the standard corporation called C corporations—leave out most Montana businesses. That is because in Montana most businesses do not operate as conventional corporations. They work as partnerships or other enterprises that report their income not on a corporate basis but an individual income tax basis.

We needed a broader definition of manufacturing to ensure that Montana farmers and ranchers got some tax relief. That is what we are enacting in the bill.

I thank the hard-working men and women of Montana. Carlyle once said: All work is noble.

I thank the hard-working men and women of Montana for their help in formulating this legislation. I thank them for supporting me as we advanced this bill. And I thank them for their hard work in the businesses they run. So it is to them today we dedicate this bill.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY. Mr. President, I yield the Senator from Kentucky, our whip, 5 minutes.

The PRESIDING OFFICER. The majority whip.

Mr. MCCONNELL. Mr. President, today is a truly historic day for my State, the Commonwealth of Kentucky. Burley tobacco production has been a part of our way of life going back to 1792 when Kentucky joined the Union. Tobacco itself—there are tobacco leafs painted in various places here in the U.S. Capitol—was the most important export product from the Colonies, predating the formation of our country.

Over the last 40 years, we have come to understand that the use of tobacco products is certainly not good for our health. More Americans, correctly, are choosing not to use tobacco products. Consumption has, therefore, declined, as, frankly, it should.

Back in the 1930s, when tobacco was still at its peak but we were in a national Depression, during the New Deal

a Federal tobacco program was created. After that program was enacted into law by President Roosevelt, employees from the U.S. Department of Agriculture went around and surveyed the farms in Kentucky and Tennessee and Virginia and the Carolinas and Georgia to find out what their historical production had been and assigned those what we now call quotas to the land.

That quota was like an asset. It could be sold. It could be leased. It was an asset attached to the land. And that quota had in some early years grown but, of course, over the last few years it dramatically contracted. That asset was on its way to becoming worthless, many people felt, in my State.

To give you a sense of how pervasive tobacco has been in the Commonwealth of Kentucky, when I came to the Senate some 20 years ago, we grew it in 119 of our 120 counties. We had 100,000 producers. The average base then was about three-quarters of an acre. So you had a lot of people in our State who got some income off burley tobacco. It provided for many families a significant portion of their income. For a whole lot of other families, because of the auction warehouse system under which it was sold in the fall, it provided Christmas money for the family, a second income, an opportunity for some extras. For a lot of other Kentuckians, it was very much a basic part of their income.

Well, all this is in the process of changing. Six years ago, I advocated a buyout. At that time that was controversial in my State. In fact, I think a majority of the tobacco farmers thought I was in the wrong position. That certainly was the view of the Kentucky Farm Bureau and the burley council and the burley co-op, all of whom thought I was in the wrong position.

A few years later, I noticed I was then being treated as a visionary who was ahead of my time and had sensed that this thing was heading in the wrong direction and we better try to figure out some way to achieve a buyout or we would never get an opportunity.

A lot of people have contributed to this day. This buyout that is in this bill is not paid for by the taxpayers. And it is, indeed, a buyout. It terminates the program. The program is entirely terminated and off the books. People who vote for this bill will be able to say, among other things, that they ended the Federal tobacco program.

It is paid for by a manufacturer's fee, which will no doubt be passed along to the consumers. And as public health advocates will tell you, the higher the cost of tobacco products, the fewer the number of people who will use them. So it even has a public health aspect to it.

That is the version of the buyout, $10.1 billion over 10 years. That is in this underlying bill.

Mr. President, as I say, today is a historic day for Kentucky and other tobacco producing States that have suffered for far too long under a Government program that destroyed their assets, sapped their competitiveness, and destabilized their communities.

The tobacco buyout included in this legislation is culmination of many years of hard work and difficult sacrifice.

Kentucky has long been known for its three ''B''s: Bourbon, basketball, and burley tobacco. Burley tobacco has been the lynchpin of Kentucky's agricultural economy since Kentucky first became a State in 1792.

Since the early years of the Commonwealth, burley tobacco provided a steady and reliable income for farmers with small patches of land unsuitable for the production of other crops. There are virtually no other crops that can provide the return per acre that tobacco production does, and it has a unique place in the economy and the culture of Kentucky.

However, in recent years, increased foreign competition combined with decreased consumption, increased taxation, and a broken Federal tobacco program created a perfect storm that had the potential to bring about an economic disaster of epic proportions for Kentucky.

The passage of this buyout will end the Federal tobacco program and end the suffering caused by this outdated program. The buyout will pay owners of quota for what remains of their disappearing asset, and it will provide assistance to growers to help them move into other forms of agricultural production.

Those that choose to continue to produce tobacco will do so without the price supports or Federal programs that support other crops. They will have to compete on the free market. However, without this buyout, they would not have been able to compete at all.

This is indeed a great day for the Commonwealth of Kentucky. But, no project of this magnitude is undertaken alone, and there are many people to whom I am grateful.

Many people deserve thanks for bringing us to the day we experience today. I thank Chairman GRASSLEY. I know he, as indicated, was not in favor of this, but this was part of the compromise worked out in the conference.

I particularly thank Chairman BILL THOMAS over in the House, who did support it and aggressively advocated it, helped work with us to craft a final version.

I particularly thank RICHARD BURR from North Carolina, who was on the conference and a particularly significant player in this whole process.

Here in the Senate, I thank Senator ELIZABETH DOLE, whose tireless effort on behalf of farmers in North Carolina is truly inspirational. I thank her staffer David Rouzer, who also worked for Senator Helms, for being a critical part of all of this. Senator Helms, of course, was so much associated with tobacco over the years.

I also thank Senator BUNNING and Congressman LEWIS of my State. I thank my own staff, former staffers Mason Wiggins and Hunter Bates, who in the early days were extremely important in this. I thank my chief of staff Billy Piper, Scott Raab, and Michael Zehr, my agriculture aid. They were all indispensable.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, before I yield to my friend from Louisiana, I would like to say how much I personally deeply appreciate and will miss the Senator from Louisiana. I don't know any Senator who works harder on a bipartisan basis to get things done than the Senator from Louisiana. He is amazing. He has so many talents.

Now, maybe he is partly Cajun, I don't know, but it is that Louisiana stuff that enables him to see more, do more, be more creative, think of more ideas than the rest of us mortals in the Senate. He is amazing. He is always thinking, always working. Many times in the Finance Committee I look over to the Senator from Louisiana and he is there working. He is reading reams of briefing materials. He has his magic marker out and he is underlining and learning this stuff. And he knows it so well.

There are many areas he does know so well. One is health care. He knows health care intricacies probably better than anybody else in this body. He has worked with it on several commissions. He cares passionately about reforming our health care system.

Tax policy, Social Security, you name it, if it is before the jurisdiction of the Finance Committee, he is very knowledgeable about it. He also, frankly, wants solutions. It is not just that he has knowledge and is very smart, but he is looking to try to find solutions, looking for compromises, looking for ways to get things done.

We are going to sorely miss him; I mean sorely. I do not know what we are going to do without him because he is a catalyst, not the only catalyst but one of the major catalysts, here to get agreements, to get solutions. We all know how partisan this place is. He is one of those who is cutting against the grain to try to do what is right, do what is right for Louisiana, do what is right for the country, getting a practical solution: Come on, let's get something done here that makes sense. You may not like it totally, you may not like it completely, but, heck, you all know this is more than half a loaf, it is three-quarters, seven-eighths of a loaf, so it is certainly better than no loaf. So come on, let's get something done here.

He is wonderful. I want him to know how much I am personally going to miss him.

Ms. LANDRIEU. Will the Senator yield for 30 seconds?

Mr. BAUCUS. I yield to the Senator.

The PRESIDING OFFICER. The junior Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I see the senior Senator from Louisiana on the floor. I know he will want to respond in a moment. I so appreciate the comments from the Senator. But I would like to add, very briefly, that as you have spoken about the senior Senator from Louisiana, the great consensus builder that he is, and helping us to move very important pieces of legislation, always with the greatest sense of dignity and principle, I want to say, as his partner in the Senate, I could not have a better partner. He is a person who works in such a complementary way with me. We work well together, and it is because of the great spirit he brings to his work. I think because of his spirit, we have been a better team together than we are individually for our State. I learned that from him. I want to give him so many compliments this morning and thank him for his great service.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, before I yield to the Senator, one final point. I know he had a hard time deciding whether to retire, a very hard time. I spoke with him several times. I did not want to prejudice him or bias him: Is there some way I can help JOHN make this decision? And I mean that in the best sense of the term because, of course, I want him to stay.

On the other hand, I didn't want to influence his decision. I wanted him to do what is best for him. Because it was such a hard decision, that to me is very strong evidence again of the deep public service spirit and desire he has. He loves public service, serving the public as well as Louisiana but specifically the country generally.

He decided there are other things in life besides the Senate. I will not get into that subject. I don't think that is a subject on which very many of us want to tread. But we deeply appreciate the friendship, the legislative talents of the Senator from Louisiana.

The PRESIDING OFFICER. The senior Senator from Louisiana.

Mr. BREAUX. I was going to talk about the tax bill, but after the kind words of both the distinguished ranking member and my colleague from Louisiana, just let me say a very sincere thank you to both for their very generous comments. I will remember and cherish them always.

Russell Long told me one time, when I asked him about a tax bill they were working on over in the Senate—at the time, I was a relatively very young Member of the House—I said: Russell, that thing doesn't look very pretty. He said: It is not supposed to look pretty; it is supposed to be effective, and that is not necessarily pretty.

This bill probably represents that. It is not everything everybody would like to have, but it is effective tax policy. The chairman, the Senator from Iowa, Mr. GRASSLEY, and Senator BAUCUS have worked very hard under very difficult circumstances to bring this measure to the Senate. It was not an easy task. A lot of compromises had to be made. The House, led by Chairman BILL THOMAS, was very strong in its positions and opinions. The fact that we have a final product goes a long way to the good work of both the chairman and the ranking member.

To my colleague from Louisiana, I was not here over the weekend, but she was handling the floor very well and was insisting on her point, as she always does, very eloquently. Hopefully, ultimately she will get what she deservedly should get as a result of her efforts with regard to protecting the National Guard. This fight is far from over. I will have more, perhaps in a lameduck, to say about what I think about this body and how much I have loved it, how much I will always remember it during our period of time in our lameduck session. But to Senator BAUCUS and my colleague, Senator LANDRIEU, I thank them very much. They have both been a guide for me in learning the Senate Finance Committee, which has been a wonderful place to serve.

I yield back my time.

The PRESIDING OFFICER. Who yields time?

Mr. BAUCUS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, today is a historic day in the world of tax policy. We are about to pass the most significant reform of American business taxation since 1986. I am not talking about large corporate reforms. This bill contains some of the most important small business reforms in years. This bill represents the most comprehensive agricultural, small business, rural community tax incentive package ever written by Congress. The bill contains far-reaching measures to revive the manufacturing base in America by cutting taxes and creating incentives to invest and create jobs in the United States. This manufacturing tax goes to large and small corporations, family-held S corporations, partnerships, sole proprietorships, farmers, and co-ops.

This is the football season. With apologies to the Senate's chart expert, my colleague from North Dakota, Mr. CONRAD, I am going to use one last chart for this bill. This chart behind me is about the football. It is a chart that I used about 7 months ago. During that time, spring drills were about the only football activity. The chart shows several sets of goalposts. As this important bill has wound its way through the legislative process, at each stage the goalposts were moved and moved and moved. Sometimes we had to call timeout. But at each stage we held on to the ball. We had an overtime regulation goalpost. We had a trade adjustment assistance goalpost. We had an unemployment insurance goalpost. Those were Senate floor goalposts. We passed each goalpost. Then we got to conference. In conference we ran into the Food and Drug Administration tobacco buyout goalpost.

We have passed the final goalpost now. In this bill we had to go straight over the tackle, and we did, just like good old-fashioned Big Ten football. I will see the Senator from Minnesota the last Saturday of November. We are finally now in the end zone.

Now I would like to thank the team that got us over the goal line. The first is Senator BAUCUS. I am certain that we would not be here without his good work and cooperation. In addition, I thank all other members of the Senate Finance Committee for their time and energy in making this bill a reality.

I would like to point out a special thanks to a couple senior members of the Senate Finance Committee, Senator NICKLES and Senator JOHN BREAUX.

Senator NICKLES has been a Finance Committee member since 1995. He has left a big impact on trade, tax, health care issues that have come before the committee. He and I have not always seen eye to eye on all issues, but he is a hard-working, tenacious Member of the Senate. He takes the work of the committee seriously.

Senator BREAUX has been on the Senate Finance Committee since 1990. He succeeded Senator Long in the Senate. Senator Long was a legendary member of the Finance Committee, the longest serving chairman it has ever had, a major architect of much tax legislation. Senator Long left a legacy on the Finance Committee. Senator BREAUX followed up on the legacy of Senator Long, taking the practical, constructive, and creative approach of Senator Long. Senator BREAUX has blazed his own trail on the Senate Finance Committee.

In many cases, the Senate is paralyzed by partisan politics. I am proud that the Finance Committee is still a workshop of bipartisan problem-solving. Senator BREAUX has been a key element at that continuing bipartisan tradition. Hopefully, the Democratic caucus, which has been steadily moving to the left over the years, will replace him with a like-kind pragmatist. The country will be better off for it.

Over the last couple of years, the States of Oklahoma and Louisiana have been well represented on the Finance Committee. Unfortunately, there will be a bit of a vacuum with the departure of Senators NICKLES and BREAUX. I am pleased that this bill contains many priorities of these two Senators. For Senator NICKLES, there was the depreciation change that he has fought for over the years. For Senator BREAUX, important priorities for his State of Louisiana included significant changes in the tax treatment of key Louisiana interests such as agriculture, aquaculture, energy production, shipbuilding, forestry, and shipping. It is a fitting tribute to these two members of the Finance Committee.

We are also saying goodbye to Senator BOB GRAHAM of Florida. Senator

GRAHAM has been on the Finance Committee since 1995. In the 1990s, Senator GRAHAM was also a bipartisan bridge builder on tax and trade issues. Senator GRAHAM faithfully attended to Florida's interests during his service on the committee.

I thank also Senator FRIST for backing me all the way on this bill. He took months to get it to the Senate floor. At times many of our Republican caucus questioned whether it was worth the price of unrelated controversial amendments that were thrown our way. Our leader stayed the course. I appreciate that very much.

I would like to thank my staff on the Senate Finance Committee as well: Kolan Davis, our staff director; Mark Prater, chief tax counsel, and the other tax counsels—Ed McClellan, Elizabeth Paris, Dean Zerbe, Christy Mistr, and John O'Neill, as well as John's predecessor, Diann Howland. These individuals, along with Adam Freed, the staff assistant for the tax team, have been the workhorses for the committee—keeping the lights burning long into the night to make this bill possible.

Finally, thanks go to the hard-working interns and law clerks. I refer to Casey August, Grant Menke, and Peter Jordan. Grant took the summer off to call balls and strikes as an umpire in the New York-Penn league. Grant helped us with this bill in the spring and returned in time for the conference.

Let me extend my thanks also to George Yin and the staff of the Joint Committee on Taxation for providing guidance in this effort. I want to particularly point out the good work of Ray Beeman, David Noren, and Gray Fontenot. The Finance Committee tax staff refers to this trio of specialists as the ''three amigos.'' The three amigos helped us find a lot of gold out there in corporate loophole land. Brian Meighan recently left the three amigos for the private sector.

I would like to thank the leadership staff for all their assistance. From Senator FRIST's staff, I thank Lee Rawls, Eric Ueland, Ronit Kumar, and Libby Jarvis. I also thank our Senate leadership team and their staffs, especially our able whip, Senator MCCONNELL.

Finally my thanks to go Jim Fransen, Mark Mathiesen, Mark McGunable and their capable staff at legislative counsel for taking on our ideas and drafting them into statutory language. These talented lawyers are the true wizards of the legislative process. They handle enormous pressure with professionalism and amazing dexterity.

I invite everybody to relax a bit today. After the vote tonight, everyone should go home and get a good night's sleep. As for me, now we are getting ready to wrap up. I am looking forward to going home to Iowa. It is harvesttime in the fields. I have some work to do on the farm. We also have a bit of an election coming up. God willing, the good folks of Iowa will send me back here to continue to do the people's business.

I yield the floor.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the conference report to accompany H.R. 4520.

Mr. GRASSLEY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent from today's vote—the Senator from Colorado (Mr. CAMPBELL), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Arizona (Mr. MCCAIN), the Senator from Pennsylvania (Mr. SPECTER), and the Senator from New Hampshire (Mr. SUNUNU).

Mr. REID. I announce that the Senator from North Dakota (Mr. DORGAN), the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KERRY), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Vermont (Mr. LEAHY), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

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

The result was announced—yeas 69, nays 17, as follows:

[Rollcall Vote No. 211 Leg.]

YEAS—69

Alexander	Dole	McConnell
Allard	Domenici	Mikulski
Allen	Ensign	Murkowski
Baucus	Enzi	Murray
Bayh	Feingold	Nelson (FL)
Bennett	Fitzgerald	Nelson (NE)
Bingaman	Frist	Nickles
Bond	Graham (SC)	Pryor
Breaux	Grassley	Reid
Brownback	Hagel	Roberts
Bunning	Harkin	Santorum
Burns	Hatch	Schumer
Cantwell	Hutchison	Sessions
Chafee	Inhofe	Shelby
Clinton	Inouye	Smith
Cochran	Jeffords	Snowe
Coleman	Johnson	Stabenow
Conrad	Kyl	Stevens
Cornyn	Landrieu	Talent
Craig	Lieberman	Thomas
Crapo	Lincoln	Voinovich
Daschle	Lott	Warner
Dayton	Lugar	Wyden

NAYS—17

Akaka	Corzine	Kennedy
Biden	DeWine	Levin
Boxer	Dodd	Reed
Byrd	Durbin	Rockefeller
Carper	Feinstein	Sarbanes
Collins	Gregg	

ANSWERED ''PRESENT''—1

Kohl

NOT VOTING—13

Campbell	Hollings	Miller
Chambliss	Kerry	Specter
Dorgan	Lautenberg	Sununu
Edwards	Leahy	
Graham (FL)	McCain	

The conference report was agreed to.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, there are a few of us who would like to be heard on different subject matters. Maybe we could work out some arrangement so we don't have to wait around. I have about 20 minutes to speak on the bill that was just agreed to. I know other colleagues will also request time on various matters.

I will ask unanimous consent that once matters of business are finished, I be recognized for 15 minutes in morning business.

GUARDSMEN AND RESERVISTS FINANCIAL RELIEF ACT OF 2004

The PRESIDING OFFICER. Under the previous order, the Finance Committee is discharged from further consideration of H.R. 1779, the Senate will proceed to the consideration of the amendment at the desk, which is agreed to, the motion to reconsider is laid on the table, the bill, as amended, is read a third time and passed, and the motion to reconsider is laid on the table.

The amendment (No. 4061) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (H.R. 1779), as amended, was read the third time and passed.

REFUNDABLE TAX CREDITS FOR MUNICIPALITIES

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to consideration of S. Res. 464, which the clerk will report by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 464) relating to refundable tax credits from municipalities.

The PRESIDING OFFICER. Under the previous order, the resolution is agreed to and the motion to reconsider is laid on the table.

The resolution (S. Res. 464) was agreed to.

The resolution reads as follows:

S. RES. 464

Whereas, the Senate today passed a free standing measure which is designed to address tax relief issues relating to Reservists and National Guardsmen;

Whereas, one of the provisions of the package provides tax relief to employers of Reservists and National Guardsmen;

Whereas, the employer provision is targeted to businesses and tax paying entities;

Whereas, State and local governments are facing budgetary pressures, particularly with regard to homeland security;

Whereas, many local first responders have been called to active duty in the National Guards and Reserves, and many state and local governments have continued to pay their salaries, thus increasing the budgetary pressure on state and local governments;

Whereas, the Senate recognized this pressure by including in the FSC–ETI bill a provision to compensate state and local governments for closing the pay gap of first responders who are called to active duty in the National Guards and Reserves: Now, therefore, be it

Resolved, That it is the Sense of the Senate that:

1. The Senate should reiterate its support for reimbursing state and local governments for closing the pay gap for first responders who are called to active duty in the National Guard and Reserves by considering expanding the employer tax relief provisions to cover state and local governments; and

2. The President should consider including such a proposal in his Fiscal Year 2006 Budget Submission.

The PRESIDING OFFICER. Under the previous order, the Senator from California, Mrs. BOXER, is to be recognized for 30 minutes.

Mr. REID. Mr. President, I yield the time.

MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2005—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 4837, which the clerk will report.

The assistant legislative clerk read as follows:

Making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for fiscal year ending September 30, 2005.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Senator from California, Senator FEINSTEIN, and I have 5 minutes to speak on the military construction bill.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, I ask unanimous consent that the Senator from Connecticut be recognized following the disposition of the business the Chair has.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, the Military Construction bill is a very important bill this year. Senator FEINSTEIN, the ranking member, and myself as chairman of the committee wanted to talk about its importance.

This is a bill that focuses on the quality of life for our military personnel and also makes sure they have the family housing and training facilities they need.

In addition to our Military Construction bill, this is the disaster supplemental. This is the bill that was chosen to provide help for hurricane victims in Florida and drought relief for our farmers. Also, the Alaska pipeline that is so important to the economy of our country as well as to the economy of Alaska is in this bill. I am very pleased we were able to produce a bill that encompassed all of these very important items at the close of this very important session.

There is in the military construction conference report $4.5 billion for active components construction and $9.45 million for Guard and Reserve construction. It is important that we increase the quality of the training facilities for our Guard and Reserve. Senator FEINSTEIN and I made a point of doing that during this conference because we felt the Guard and Reserve is way behind in keeping up with the training facilities they need and for the job we are asking them to do. They certainly deserve it.

We increased funding for military housing and worked with the defense authorization committee to make sure that the privatization cap was lifted—a very important step for the quality of housing for our military personnel.

I am very proud of this bill. I am proud that we are meeting the military construction needs. I am proud we were able to provide for the needs of Florida in their disaster recovery efforts and also the drought that has actually been funded for not only the present drought in certain parts of our country but droughts in the past in Texas and other places where the money has run out.

I am proud of this bill. I thank my ranking member, Senator FEINSTEIN, for her help and valuable assistance in making this happen.

Mrs. FEINSTEIN. Mr. President, I am pleased that the conferees on the fiscal year 2005 Military Construction Appropriations bill have reached agreement, and I would like to say a few words about the bill.

The conference report includes important funding for the reconstruction efforts in States affected by recent hurricanes and assistance for agricultural producers suffering from drought and other natural disasters.

First, let me address the military construction portion of the agreement. While the President's budget request was $9.55 billion, only 2.5 percent over last year's enacted level, the conference report provides $10 billion for military construction and family housing programs for fiscal year 2005.

These new facilities are crucial to the well being of our troops, especially at a time when our active and Reserve forces are, along with their families, being asked to make enormous sacrifices for our country.

The conference report also provides $11.6 billion in disaster assistance, including $8.8 billion for hurricane-related relief which is designated as emergency spending and $2.8 billion in assistance for agricultural producers suffering through drought and other natural disasters, which is offset by a cap on spending for the Conservation Security Program.

I think we all recognize the importance of this assistance package, but I am disappointed that the majority insisted on treating emergencies in different part of the Nation unequally.

Drought relief for farmers in the Midwest and across the Nation is no less important than hurricane relief in the Southeast and should not have required an offset from the Conservation Security Program.

Offsetting this funding hobbles the effectiveness of one of the most important environmental programs in the Department of Agriculture.

I was also concerned that the package requested by the President leapfrogged Federal Highway Administration assistance for damage done by the hurricanes ahead of the backlog of projects required to repair damage from past disasters.

However, this concern was addressed by an agreement to fully fund the backlogged emergency relief program in the pending omnibus bill.

Chairman HUTCHISON indicated at the conference that Speaker HASTERT and Majority Leader FRIST have committed to fully fund the States that need this assistance, and I appreciate their help on this issue.

There are currently $752 million in projects that have not been funded, even though they have already qualified for emergency relief.

California alone has over $240 million in projects that have not been funded. I appreciate Chairman YOUNG's willingness to rectify this situation and look forward to the emergency relief funding program being funded in the omnibus.

The conference agreement also includes Senator STEVENS' provision on the Alaska Natural Gas pipeline.

Senator STEVENS has worked for the past few years to authorize funding for this pipeline, and I am pleased that we could get this done for the senior Senator from Alaska.

The provision authorizes the construction of a pipeline from Prudhoe Bay, AK, to the lower 48, with a dedicated supply of natural gas to California.

The provision provides Federal loan guarantees to whatever entity builds/decides to build the pipeline, as Senator STEVENS requested.

The demand for natural gas in this country is growing exponentially, particularly in my State of California. Natural gas prices have risen dramatically over the past several years, from $2 per thousand cubic feet in 1998 to over $7 just this week.

We need more natural gas, and I hope that Senator STEVENS' provision to bring Alaska natural gas down to the lower 48 states and particularly California will help meet that demand.

Mr. President, while I would have preferred to pass the Military Construction bill without the contentious issues surrounding this disaster assistance package, I support this conference report and hope my colleagues will do the same.

Finally, I want to thank Senator HUTCHISON for the manner in which she handled this process. I have long admired her integrity and her leadership in reaching this agreement was outstanding.

Mr. President, this is a good bill. It has had some hiccups along the way. One of them, of course, was the House put in the disaster relief package and had the signatures and would have eventually rolled us in conference.

However, Senator HUTCHISON said that we would have another conference, that she would not do this, and she kept her word. That is a very big thing in this body, that if you give your word, keep your word, and she did. I am very grateful for that.

Because of this conference we were able to receive an amendment from the Senator from South Dakota, Senator JOHNSON, on drought relief. It was defeated, but then we were able to pass the bill without rancor and without a sense that in the dark of night the Democratic side had been done in.

I am very proud to say that I think it is a good bill. I want to give Senator HUTCHISON credit for that. She kept her word. That is a very big item.

I thank Senator HUTCHISON, and I appreciate the time.

Mrs. HUTCHISON. Mr. President, if I could just say thank you. I am very humbled by the remarks of the Senator from California and appreciate very much her recognition. Her leadership also got a commitment and will be in a colloquy regarding the highway funds that will also be attached to this report. The Senator from California and myself and other States took a back seat to the Florida highway needs after the hurricane, but we got assurances from the Speaker, the majority leader of the Senate, and the chairman of the Appropriations Committee on the House side that we would address this issue and get the funds for previous emergencies from the highway fund back into the 39 States that gave them up for Florida to receive help right now.

FEDERAL HIGHWAY ADMINISTRATION EMERGENCY RELIEF

Mrs. MURRAY. Mr. President, as the ranking member of the Appropriations Subcommittee on Transportation, Treasury, and General Government, I rise to discuss a matter of great importance to my State and 33 other States—namely, the continuing backlog of claims for the Federal Highway Administration's Emergency Relief program.

The Military Construction Appropriations conference report that we are currently debating includes a title containing emergency disaster assistance. Within that title, a total of $1.202 billion is made available for the Emergency Relief Program. This appropriation carries with it the necessary language designating the funding as emergency spending.

While I support the overall funding for the Emergency Relief Program, I strongly object to the bill language governing this appropriation. At present, there are 90 projects from a total of 34 States that have been waiting to receive emergency relief funds for road projects stemming from Presidentially declared disasters. A great many of these projects stem from disasters that took place years ago and those States have been waiting an inordinate length of time for reimbursement. Despite this fact, the language governing the appropriation contained in this conference report effectively places the needs stemming from the four recent hurricanes as well as one hurricane that took place 2 months ago to the head of the list. This language makes the $1.2 billion in the bill available only for those five hurricanes and then stipulates that, if there is any funding remaining after those needs are met, that remaining funding can be used for the projects on the backlog list.

To my knowledge, we have never allowed certain natural disasters to get preferential treatment over other disasters under this program. And this new precedent will work a hardship on my state and a great many others. My State of Washington is still waiting for reimbursement of some $19.4 million stemming from six separate disasters dating as far back as the Nisqually earthquake in February 2001. The same can be said for 33 other states that are also owed varying amounts.

Based on my objection and those of several other Senators, I understand that there have been a series of discussions among the appropriate congressional and administration leaders to set forth a plan on how this backlog of emergency relief claims will be addressed in the near future. This plan was discussed during the conference committee deliberations on the military construction bill so I would welcome the comments of the managers of that bill on this matter.

Mrs. HUTCHINSON. I thank my friend from Washington for raising this issue. I share her concern that the existing backlog of emergency relief projects has not been adequately addressed under the disaster assistance title of this bill. Indeed, my State of Texas is still waiting to receive at least $17.2 million from no fewer than seven separate disasters including floods, hurricanes and ice storms dating all the way back to the end of calendar year 2000.

During our conversations leading up the final conference meeting on this bill, the chairman of the House Appropriations Committee, Mr. YOUNG of Florida, assured me that an agreement had been reached on this matter between himself, the Speaker of the House and our majority leader. Under that agreement, sufficient emergency funding will be provided in the final omnibus appropriations bill for this year to ensure that the existing backlog of projects will be fully compensated. I made mention of this agreement during our open conference committee deliberations and I want to assure my friend from Washington that our mutual concern over this matter will be addressed fully in the final omnibus appropriations bill.

Mrs. FEINSTEIN. Mr. President, I too wish to thank the Senator from Washington for raising this critically important issue. Indeed, no State has been more disadvantaged than my own by the decision to target the available emergency relief funding in this bill largely if not exclusively to the recent hurricanes. That decision was not made by the conferees on the military construction portion of the bill. Rather, it was made by the full committee leadership. As such, I am grateful to the subcommittee chairman, Senator HUTCHISON, for working with her own leadership and Chairman YOUNG in gaining their assurance that these outstanding emergency relief claims will be fully funded in this year's omnibus appropriations bill.

Mrs. MURRAY. I thank the managers of the bill for their attention to this matter and I'm pleased that they have received assurances that this problem will be addressed fully in the omnibus appropriations act. For the interest of all Senators, I ask unanimous consent that the most up-to-date backlog list provided to me by the Federal Highway Administration be printed in the RECORD.

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

CURRENT EMERGENCY RELIEF PROGRAM FUND REQUESTS

[Updated 10/4/04 8:00 a.m.]

State	Event	Amount Requested	Subtotal by State
Alaska	AK02–1, Spring 2002 Flood	603,262	
Alaska	AK03–1, October & November 2002 Floods	9,931,409	
Alaska	AK03–2, November 3, 2002 Earthquake	30,296,337	40,831,008
American Samoa	AQ03–1, May 2003 Flooding/Landslides	4,243,500	
American Samoa	AQ04–1, January 4, 2004 Tropical Cyclone Heta	15,725,525	19,969,025
Arizona	AZ01–1, October 2000 Flood	514,800	
Arizona	AZ02–1, Rodeo-Chediski Wild Fire 2002	2,280,200	2,795,000
Arkansas	AR01–1, December 2000 Ice Storm	4,586,937	
Arkansas	AR04–1, April 2004 Flooding	1,585,011	6,171,948
California	CA83–1, 1983 Devil's Slide	150,316,533	
California	CA03–1, December 2002 Storms	45,863,000	
California	CA04–1, October 2003 San Diego Wildfires	44,300,000	240,479,533
Colorado	CO03–1, June 2003 Sinkhole I–70	2,048,928	2,048,928
Connecticut	CT04–1, March 25, 2004 I–95 Truck Fire	9,200,000	9,200,000
Delaware	DE03–1, 2003 Hurricane Isabel & Storm Henri	1,058,000	1,058,000
Guam	GQ02–1, October 13, 2001 Earthquake	264,000	

CURRENT EMERGENCY RELIEF PROGRAM FUND REQUESTS—Continued

[Updated 10/4/04 8:00 a.m.]

State	Event	Amount Requested	Subtotal by State
Guam	GQ02–2, July 2002 Typhoon Chata'an	1,581,500	
Guam	GQ03–1, December 2002 Typhoon Pongsonga	8,442,526	10,288,026
Idaho	ID02–1, April 2002 Flood	287,000	287,000
Illinois	IL02–1, April 2002 Storm	3,001,600	3,001,600
Iowa	IA04–1, May/June 2004 Storms and Flooding	3,000,238	3,000,238
Kansas	KS03–1, June 2003 Flood	868,285	868,285
Louisiana	LA03–1, 2003 Hurricane Lilli	6,029,552	6,029,552
Maryland	MD03–1, September 2003 Hurricane Isabel	4,413,500	4,413,500
Michigan	MI02–1, April 2002 Flood	1,035,000	
Michigan	M103–1, May 2003 Storms	1,779,736	2,814,736
Minnesota	MN01–1, April 2001 Flood	404,016	
Minnesota	MN02–1, June 2002 Flood	2,148,415	2,552,431
Mississippi	MS03–1, April 2003 Storms	2,381,684	2,381,684
Missouri	MQ02–1, April 2002 Flood	1,177,000	1,177,000
Montana	MT04–1, November 18, 2003 US 2 Bridge Damage	3,678,076	3,678,076
Nebraska	NE02–1, July 2002 Flood	2,262,000	
Nebraska	NE03–1, May, 2003 I–80 Overpass Collapse	1,269,000	3,531,000
New Hampshire	NH03–1, August 2003 Storms	2,282,000	2,282,000
New Jersey	NJ99–1, 1999 Hurricane Floyd	1,692,000	
New Jersey	NJ00–1, August 2000 Flood	3,564,000	
New Jersey	NJ01–1, June 22, 2001 I–80 Truck Fire	1,028,000	
New Jersey	NJ02–1, May 30, 2002 Creek Road Br over I–295	335,769	6,619,769
New York	NY01–1, December 2000 Flood	121,000	
New York	NY02–1, April 20, 2002 Earthquake—Clinton Co.	584,016	
New York	NY03–1, April 2003 Ice Storm	5,662,951	
New York	NY03–2, Summer 2003 Storms	2,241,669	
New York	NY03–3, August 2003 Power Outage	846,000	
New York	NY04–1, May/June 2004 Storms and Flooding	1,600,000	11,055,636
N. Mariana Islands	CN02–1, July 2002 Typhoon Chata'an	21,579	
N. Mariana Islands	CN03–1, December 2002 Typhoon Pongsonga	988,157	1,009,736
North Carolina	NC03–1, December, 2002 Winter Storm	15,231,000	
North Carolina	NC03–2, February 2003 Ice Storm	5,077,000	
North Carolina	NC03–3, September 2003 Hurricane Isabel	16,923,000	37,231,000
North Dakota	ND01–1, Spring 2001 Devils Lake	19,157,000	
North Dakota	ND04–1, Spring 2004 Flooding in NE ND	1,980,949	
North Dakota	ND04–2, May 2004 Devils Lake	13,572,000	34,709,949
Ohio	OH04–1, January 3, 2004 Flooding	32,423,648	
Ohio	OH04–2, May/June 2004 Flooding	2,610,000	35,033,648
Oklahoma	OK01–1, Dec/Jan 2001 Ice Storm	2,938,000	
Oklahoma	OK02–1, May 26, 2002 I–40 Bridge Failure	11,665,000	14,603,000
Pennsylvania	PA01–1, June 2001 Flood	447,000	
Pennsylvania	PA03–1, July 2003 Storms	1,616,956	
Pennsylvania	PA03–2, September 2003 Flooding	2,743,600	
Pennsylvania	PA04–1, January 24, 2004 Route 33 Sinkhole	5,839,886	10,647,442
Puerto Rico	PR01–2, November 2001 Flood	516,000	
Puerto Rico	PR03–1, Rains, Runoff, & Flooding, April 2003	2,200,000	
Puerto Rico	PR04–1, November 2003 Rainfall	5,800,000	8,516,000
South Dakota	SD01–1, Spring 2001 Flood	282,000	282,000
Texas	TX01–1, Dec/Jan 2001 Ice Storm	925,000	
Texas	TX01–2, June 2001 Storm Allison	850,000	
Texas	TX01–3, Sept.15, 2001 Qn. Isabella Br. Failure	3,253,000	
Texas	TX02–1, July 2002 Flood	5,366,000	
Texas	TX03–1, 2003 Hurricane Claudette	898,212	
Texas	TX04–1, April 2004 I–20 Bridge Failure	4,766,192	
Texas	TX04–2, May 2004 Flooding	1,156,871	17,215,275
Vermont	VT03–1, August 2003 Storm	690,500	690,500
Virginia	VA01–1, July 2001 Flood	702,034	
Virginia	VA02–1, March 2002 Flood	3,738,073	
Virginia	VA03–1, September 2003 Hurricane Isabel	29,921,948	
Virginia	VA04–1, August 2004 Tropical Storm Gaston	12,787,000	47,149,055
Virgin Islands	VI04–1, November 2003 Rainfall	1,100,000	1,100,000
Washington	WA01–1, Feb 28, 2001 Nisqually Earthquake	3,989,000	
Washington	WA02–1, Nov/Dec 2001 Flood	725,000	
Washington	WA02–2, January 2002 Storm	549,000	
Washington	WA03–1, February 2003 Storms-Multiple Cos.	1,460,000	
Washington	WA04–1, October 2003 Storms & Flooding	11,508,000	
Washington	WA04–2, November 2003 Storms & Flooding	1,185,000	19,416,000
West Virginia	WV01–2, July 7, 2001 Flood	925,000	
West Virginia	WV02–1, May 2002 Flood	3,216,000	
West Virginia	WV03–1, February 2003 Storms	3,468,152	
West Virginia	WV03–2, June 2003 Storms/flooding	3,126,695	
West Virginia	WV04–1, November 2003 Rains & Flooding	6,202,805	
West Virginia	WV04–2, May 2004 Flooding	5,063,199	22,001,851
Wyoming	WY02–1, August 2002 Flood	1,097,955	1,097,955
FLH Manag. Agencies	Various events	114,862,000	114,862,000
Subtotal		752,099,386	752,099,386
Various States	2004 Hurricanes (Charley, Frances, Ivan, Jeanne)*	764,000,000	
Total		1,516,099,386	

*Preliminary estimates.

Mr. COCHRAN. Mr. President, I am pleased to recommend approval by the Senate of the fiscal year 2005 Military Construction appropriations conference report, which contains emergency supplemental appropriations needed by States seeking Federal funding from the disaster relief fund administered by the Federal Emergency Management Agency.

On September 8, the President signed into law $2 billion in supplemental appropriations for FEMA. Since then, the President has made 3 more requests for funding for various departments within the Government. Today we are responding to those requests and including $6.5 billion in emergency funding which will return the balance of the disaster relief fund to a healthy level. This is in addition to the $2 billion supplemental the Congress provided immediately following the devastation caused by Hurricane Charley. Additional appropriations for FEMA's disaster relief fund cannot wait because the balance of this important program has again been depleted to a dangerously low level following three additional hurricanes and other natural disasters.

This funding will not only be needed by the victims of recent hurricanes in the southeast but will also be used for the several hundred repair projects and mitigation activities across the country resulting from every other federally declared disaster of the past few years. I have been assured by the Department of Homeland Security that these funds are sufficient to cover the current needs of our Nation's disaster victims and I support this funding.

Mr. BYRD. Mr. President, on Friday night, as Senators headed home after the final vote of the day, the House-Senate conference on the military construction appropriations bill reached its conclusion. With the conferees in agreement, all that remained to be

done on that bill was to file and pass the conference report.

But work on that bill did not stop there. In the dead of night, the leadership intervened in the conference to jam an additional $11.6 billion funding package onto that bill. The Senators who served on that conference committee didn't know what hit them. This disaster supplemental was never considered, debated, or voted on by the Senate. Senators never had a chance to examine or weigh in on this spending.

Appropriations for disaster relief to address the problems resulting from the four recent hurricanes are undoubtedly required. However, there are extensive backlogs of unfunded needs resulting from earlier disasters that are not addressed at all in this relief package. This bill fails to provide the funds to address the $752 million backlog for 34 States in the emergency highway program or a $128 million backlog for 43 States in the USDA debris removal programs. In 43 States, the debris from past floods and other disasters has yet to be cleaned up. So, the next time a flood comes rolling down the valley, the water will have no place to go, making the damage even worse. What kind of a short-sighted policy is that?

Sadly, our President and administration seem to only be able to focus on the immediate crisis. By all means, we should provide the $11.6 billion of assistance to the victims of the four recent hurricanes. But why has the President shown no interest in helping the communities hit by past disasters in West Virginia, Pennsylvania, Ohio, or California? The Federal Government owes just those four States over $307 million. I simply do not under why this so-called compassionate President can treat the victims of disaster in one State differently than victims in other States.

The military construction conference report also includes $2.9 billion in emergency assistance for farmers experiencing crop losses caused by natural disasters, such as drought conditions, hurricanes and other disasters.

It is a worthwhile effort for the Congress to assist the Nation's farmers in their time of need. However, the same relief package includes an onerous provision which decreases another farm aid program by nearly $3 billion to pay for the drought disaster aid. In short, this disaster relief package robs Peter to pay Paul. While it increases aid to farmers with one hand, it takes it away with the other.

This is no way to run the United States Senate. I signed the conference report for the military construction aspect alone. That funding went through normal procedures. It was debated and voted on by both Houses, and it was subject to bipartisan negotiations in conference.

I commend the two managers of this bill for their perseverance in following regular order to the great extent that they did. The managers were under great pressure from the Republican leaders of Congress to cut a backroom deal in the dead of night, simply to allow members of the House to leave town before the Senate.

The managers stuck to their guns and insisted that the conferees meet again in open session to consider the whole package. This is as much as they could do in the face of the majority leadership. The managers of the military construction bill held as firm as they could against the arm-twisting of the Republican leaders. But the deck was stacked, and the leadership never intended to allow the Senate a moment of debate on this spending package. It was just jammed in at the last minute.

In this respect, my refusal to sign the conference report, except for the military construction aspect, reflects my solidarity with the Senator from Iowa, Mr. HARKIN, and his battle to implement the Conservation Security Program, which he authored as part of the 2002 farm bill. It is unfair for this Senator to have to keep fighting for the survival of this program year after year before. Any Senator who is familiar with the difficult decisions a farmer must make to operate a successful business knows that when a farmer decides to commit to the conservation practices required by this important environmental program, that farmer is making a long term commitment. But year after year, the Republican majority tries to shackle this program with new limits. How can a farmer make a long term commitment to conservation when the rules keep changing?

I hope that the Senate will return to its prior way of doing business, when the regular order was followed and the rights of all Senators, including those in the minority, were fully protected. Such practices serve this institution well. It promotes respect among Members and quells unnecessary disputes.

The leadership of the Senate would do well to turn away from the increasingly common gambit of trying to jam legislation down the throats of Senators at the last possible moment. It is most unfortunate that the Republican leaders chose to pursue this tactic on spending that is intended to help countless Americans recover from recent disasters.

It is some small consolation that the Senate has recognized its obligation to the Senator from Iowa, Mr. HARKIN, by agreeing to adopt a concurrent resolution relating to the enrollment on the fiscal year 2005 military construction appropriations bill. This concurrent resolution, if adopted by the House, would have the effect of deleting the onerous offset against the Conservation Security Program that the Senator from Iowa, Mr. HARKIN, and others find so offensive. The concurrent resolution would, in contrast to the FY 2005 military construction appropriations bill, substitute language similar to that employed with regard to the hurricane disaster aid, thus making the drought aid to farmers an emergency without an offset.

I yield the floor.

Mrs. FEINSTEIN. Mr. President, I am pleased today that the Senate will accept by voice vote the fiscal year 2005 Military Construction Appropriations Conference Report.

The conference report includes important funding for the reconstruction efforts in States affected by recent hurricanes and assistance for agricultural producers suffering from drought and other natural disasters.

First let me address the military construction portion of the agreement. While the President's budget request was $9.55 billion, only 2.5 percent over last year's enacted level, the conference report provides $10 billion for military construction and family housing programs for fiscal year 2005.

These new facilities are crucial to the well being of our troops, especially at a time when our active and reserve forces are, along with their families, being asked to make enormous sacrifices for our country.

The conference report also provides $11.6 billion in disaster assistance, including $8.8 billion for hurricane-related relief which is designated as emergency spending and $2.8 billion in assistance for agricultural producers suffering through drought and other natural disasters, which is offset by a cap on spending for the Conservation Security Program.

I think we all recognize the importance of this assistance package, but I am disappointed that the majority insisted on treating emergencies in different parts of the Nation unequally.

Drought relief for farmers in the Midwest and across the Nation is no less important than hurricane relief in the Southeast and should not have required an offset from the Conservation Security Program.

Offsetting this funding hobbles the effectiveness of one of the most important environmental programs in the Department of Agriculture.

I was also concerned that the package requested by the President leapfrogged Federal Highway Administration assistance for damage done by the hurricanes ahead of the backlog of projects required to repair damage from past disasters.

However, this concern was by an agreement to fully fund the backlogged emergency relief program in the pending omnibus bill.

Chairman HUTCHISON indicated at the conference that Speaker HASTERT and Majority Leader FRIST have committed to fully fund the States that need this assistance, and I appreciate their help on this issue.

There are currently $752 million in projects that have not been funded, even though they have already qualified for emergency relief.

California alone has over $240 million in projects that have not been funded. I appreciate Chairman YOUNG's willingness to rectify this situation and look forward to the emergency relief funding program being funded in the omnibus.

The conference agreement also includes Senator STEVENS' provision on the Alaska Natural Gas pipeline.

Senator STEVENS has worked for the past few years to authorize funding for this pipeline, and I am pleased that we could get this done for the senior Senator from Alaska.

The provision authorizes the construction of a pipeline from Prudhoe Bay, AK, to the lower 48, with a dedicated supply of natural gas to California.

The provision provides Federal loan guarantees to whatever entity decides to build the pipeline, as Senator STEVENS requested.

The demand for natural gas in this country is growing exponentially, particularly in my State of California. Natural gas prices have risen dramatically over the past several years, from $2 per thousand cubic feet in 1998 to over $7 just this week.

We need more natural gas, and I hope that Senator STEVENS' provision to bring Alaska natural gas down to the lower 48 States and particularly California will help meet that demand.

While I would have preferred to pass the Military Construction conference report without the contentious issues surrounding this disaster assistance package, I support this conference report and I am pleased that my colleagues have agreed to accept it.

Finally, I thank Senator HUTCHISON for the manner in which she handled this process. I have long admired her integrity and her leadership in reaching this agreement was outstanding.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. LEAHY. Mr. President, I would like to focus the attention of the Senate on the recent devastation to many nations in the Caribbean as a result of a half a dozen hurricanes and tropical storms in the autumn of this year, 2004.

More than a thousand people have perished; many are still missing. Thousands of families are homeless and jobless. Non-governmental organizations such as the International Red Cross, the United Nations, and religious organizations, rushed to the scene with relief aid and volunteers to help the survivors. The United States Government has sent U.S. AID teams to assess the damage. Early estimates reveal hundreds of millions of dollars of physical damage to homes and businesses. On the Island of Grenada industries have been completely wiped out. There are riots in the streets of cities in Haiti where stockpiles of nonperishable food and potable water are diminishing fast.

In April, 2001 President Bush instituted the ''Third Border Initiative'' that anticipated a quick response by our government that would, in his words, ''. . . fund disaster preparedness and mitigation efforts to shield critical commercial and environmental infrastructure from natural disasters, such as hurricanes.'' This is important because it signals a focus not only on emergency assistance, but on trying to reduce the amount of damage caused by future hurricanes. In other words, the President was also signaling a welcome focus on rebuilding homes and businesses in a manner that is resistant to potential damage by hurricanes. These types of buildings would also reduce the dreadful death toll of future hurricanes.

We have an opportunity to aid our friends and partners in the Caribbean. The administration has attached a $50 million request for the Caribbean to a larger package of help for Florida and other States in the South hit by the rolling series of storms this summer and fall. Our colleagues in the U.S. House of Representatives have requested an additional $50 million, so the total is $100 million for the Caribbean. Secretary Colin Powell recently visited Grenada and stated that the first aid will come in phases, starting with an emergency shipment of food, medicine, construction materials and other supplies, about a quarter of which will go to Grenada.

It is at this time that we have an opportunity to thoughtfully help the region. As Secretary Powell said, ''. . . that help was needed not simply to repair homes and schools, but also to restore the economic infrastructure of the country.'' He went on to say that, ''experts had begun discussing 'creative suggestions' for how Grenada could diversify its agricultural output. . . .'' I agree with Secretary Powell that the time has come to try to better spend our assistance dollars. As is the case with weather disasters, economic disasters also ruin the hopes of families. As long as we are helping in the rebuilding efforts, we should try to make more permanent improvements in infrastructure.

The region needs many ''creative suggestions'' for its redevelopment. At the University of Vermont, the students and faculty have made many suggestions, from agriculture and food processing to sustainable permanent modular housing solutions utilizing recycled materials. One appropriate solution has been devised by world acclaimed architect Adam Kalkin. It is the Quikbuild Modular System. An example of this unique, sustainable housing solution is on display in the permanent collection of the Shelburne Museum, in Shelburne, Vermont.

This type of dwelling utilizes recycled cargo containers, many of which are being shipped down to the region with a full load; they will remain there empty without the cargo to fill them; and with no place to ship them. Each is an ecological disaster waiting to happen. They also present a great opportunity if we take advantage of using them.

Recycled containers may be converted into durable, sustainable, watertight, hurricane-proof dwellings that can be used as permanent housing as well as field kitchens, medical triage units, schools, dormitories, as well as structures for commercial businesses and meeting places. Ten percent of the funds we provide should be for these more permanent housing solutions. It is imperative that the community planners consider mid-range and long-term solutions today as they manage the ''first response'' mission. We have seen in many regions around the globe that well-intentioned temporary and transitional housing ultimately becomes permanent housing. Priorities shift, money runs out and a new disaster knocks the old disaster off the front page. The inherent nature of shanty towns, full of permanent refugees, takes away the dignity and hope of their inhabitants.

I have received pleas from the family members residing in the United States to help their loved ones. I have received a strong request from the Ambassador of the Republic of Trinidad and Tobago, Ambassador Marina Valere, on behalf of the affected nations imploring us to also think about permanent housing solutions, that also respects their unique and fragile ecosystem. This request made clear that some portion of the aid package should be set aside for this purpose. Our friends in the Caribbean need permanent, safe, secure dwellings otherwise this crisis will repeat itself, year after year.

In addition to urgent emergency aid, America should help the survivors in the Caribbean to rebuild their communities with permanent housing solutions as well as rebuild their respective economies.•

• Mr. MCCAIN. Mr. President, with reservations I support passage of the conference report to the fiscal year 2005 Military Construction Appropriations Act. This bill provides $10 billion in funding for important military construction activities including base housing as well as the construction and maintenance of base infrastructure.

When we passed the Senate version of this legislation, I declared that this appropriations bill was a good example of how the legislative process is expected to work, wherein the work of the authorizers is fully taken into account by the appropriators. The legislation was relatively free of earmarks and riders that were not related to Military Construction. However, during the conference, a legislative rider that has no business in an appropriations bill found its way into the conference report.

I am referring to the section of the conference report that authorizes a $18 billion loan guarantee program for the construction of an Alaska natural gas pipeline. This authorizing provision is found in neither the House nor the Senate version of this legislation, yet with characteristically little attention, it has found its way into the conference report. Once again, it pays to have powerful members of the Appropriations Committee representing your State or district.

Congress has a legislative process that has two separate tracks for authorization and appropriation. Merging

these tracks and eliminating the essential discourse and deliberation necessary to establish sound public policy is not in the Federal taxpayers interest. Nevertheless, here we are again, faced with the necessity of approving appropriations for military construction with an enormous pork program attached at the last minute. All the more problematic is that this same piece of legislative text was included in the failed energy bill. The Senate rejected this provision then, but we are unable to do it again, as it was snuck into a conference report on a totally unrelated bill. It is a clear violation of the legislative process, specifically Rule 28, and it's simply wrong.

My objections to the Alaska pipeline provision are not only procedural. Many of my colleagues may not be aware that what they are approving here is an economic cushion for three extremely wealthy corporations. Undoubtedly, these three corporations have the financial resources to proceed with this project without taxpayers' dollars, but once again, we will manage to provide generous financial incentives to corporate interests with public funds. These selective subsidies are clearly inequitable and contrary to the interests of the rest of American taxpayers.

The sponsor of this provision may maintain that the American public will benefit from the natural gas supply that may flow through this pipeline years from now. Undoubtedly, if the supply is there, the consumers will be, too. And that is my point. This is an economic venture that will yield significant profits for those companies involved. It is my understanding that as a result of the financial promise of this venture that there are other companies that would very much like to be involved. What this provision does is to codify the terms set by these three corporations to provide an even sweeter opportunity with $18 billion in federally backed loan guarantees.

These loan guarantees are the thick rich icing on the tax break cake included in the FSC–ETI conference report, which also passed today. Tax breaks totaling $445 million are provided for pipeline construction and gas processing, again directed to the same corporations, which together have shown after-tax profits of $95 billion since 2001. I am certain that American taxpayers do not appreciate paying twice for their expensive energy supplies. Once at the pump and for their home heating bills, and then again for tax subsidies to profitable energy subsidies.

Also contained in this legislation is funding for drought assistance. I sympathize with the proponents of this agricultural disaster assistance and I do not question that drought and abrupt changes in climate are having a severe impact on the crops grown in the states covered in this conference report. While I do agree that prolonged drought and other natural disasters are having devastating effects on many Americans and sectors of our economy, crop assistance does not belong on Military Construction funding legislation.

When the Senate considers legislation to address drought-induced and other climate damages, shouldn't all affected states receive assistance? How are we to say that one group of people or sector of our economy deserves financial assistance over another? According to the Congressional Research Service, Congress provided about $3 billion in assistance for crop and livestock losses in 2001 and 2002. Coupled with all the other billions in agricultural subsidies, American taxpayers could conclude that Congress has determined, without clear deliberation, that this is the priority need.

There are many States, including Arizona, that are facing terrible drought-induced problems and do not receive assistance in this conference report. Destructive wildfires have spread through the Western United States because of the dry conditions there, causing billions of dollars in property and resource damage. Drought-induced insect infestations have increased wildfire risks to our communities and natural resources. Water levels in reservoirs in our parched states have dropped dramatically, reducing water supplies, causing millions of dollars in losses to the recreation and tourism industries and reducing hydropower generation. In some areas, the lack of precipitation and water supply recharge, has resulted in wells running dry. I can't think of a more disastrous situation than that. However, the people who fall into these categories are not covered by the drought assistance provisions.

I have found this report contains 62 earmarks totaling $98.7 million. I am also troubled by a provision in the explanatory statement that accompanies this conference report. According to the explanatory statement, ''The language and allocations set forth in House Report 108–607 and Senate Report 108–309 should be complied with unless specifically addressed to the contrary in the conference report and statement of the managers.'' This has the composite effect of essentially doubling the number of earmarks in the Military Construction Appropriations Act. As legislators we are often forced to make difficult budgetary decisions. However, in the instance of this conference report, the most difficult decisions were avoided. With looming budget deficits, it is as important as ever to practice fiscal responsibility and avoid the practice of earmarks.

The above statement ensures all $44.7 million in earmarks added by the Senate as well as the $38.5 million in earmarks contained in the House version of this legislation. As I stated when we considered that legislation, nearly all of these earmarks are funded under the minor construction account. Normally, this account is intended to be used for urgent and unforeseen requirements and therefore neither the President's budget nor the authorizing committees identify specific projects to be funded. Once the Services decide to spend the money, the authorizing and appropriations committees must approve or disapprove of the minor construction project to which the Services plan to fund. By earmarking the funds in the minor construction account, the appropriators have usurped the authority of the authorizing committee to approve or reject these projects. I can only hope that next year, when the appropriators stray from this practice.

With the passage of the conference report to the fiscal year 2005 Defense Authorization Act, the legislative branch has once again affirmed its support for the important round of base closure and realignment that will occur next year. With this being an election year and Member's parochial concerns being as strong as ever, I am encouraged to see that my colleagues have resisted the temptation to add pork to bases in their states in what would be a misguided effort to save their bases from base closure. Such efforts would be a waste of taxpayer money, and would not prevent their base from being closed.

I commend the chairman of the Military Construction Subcommittee, Senator HUTCHISON, and the ranking member, Senator FEINSTEIN, for their hard work on this bill and their continued support for our military. Their attention and commitment to only supporting high priority projects for the Navy, Marine Corps, Army, and Air Force is once again exemplary and provide for a sound measure to fund military construction in the coming fiscal year. I only wish they were able to hold to the Senate version of this legislation and were able to keep extraneous non-military construction provisions out of this conference report.●

The PRESIDING OFFICER. Under the previous order, the vote on the motion to invoke cloture is vitiated.

The question is on agreeing to the report to accompany H.R. 4837.

The conference report was agreed to.

CORRECTING THE ENROLLMENT OF H.R. 4837

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to consideration of S. Con. Res. 144, which the clerk will report by title.

The assistant legislative clerk read as follows:

A resolution (S. Con. Res. 144) to correct the enrollment of H.R. 4837.

The PRESIDING OFFICER. Under the previous order, the concurrent resolution is agreed to and the motion to reconsider will be laid upon the table.

The concurrent resolution (S. Con. Res. 144) was agreed to, as follows:

S. CON. RES. 144

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of H.R. 4837, an Act making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes, the Clerk of the House is hereby authorized and directed to strike subsections (e) and (f) of section 101 of division B and insert the following new subsection:

(e) The amounts provided or made available by this section are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

INSTRUCTING CONFEREES ON AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION

The PRESIDING OFFICER. Under the previous order the Senate will proceed to consideration of S. Res. 465, which the clerk will report by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 465) to instruct conferees to the Agriculture, Rural Development, Food and Drug Administration, and related agencies appropriations bill, 2005, or on a consolidated appropriations measure that includes the substance of that act.

The PRESIDING OFFICER. Under the previous order, the resolution is agreed to, and the motion to reconsider is laid upon the table.

The resolution (S. Res. 465) was agreed to, as follows:

S. RES. 465

Resolved, That for the purpose of restoring the provisions governing the Conservation Security Program to those enacted in the Farm Security and Rural Investment Act and restoring the practice of treating agricultural disaster assistance as emergency spending, the Senate instructs conferees to the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2005, or a Consolidated Appropriations Measure that includes the substance of that act, to insist that the conference report contain legislative language striking subsections (e) and (f) of section 101 of division B of H.R. 4837, An Act Making Appropriations for Military Construction, Family Housing, and Base Realignment and Closure for the Department of Defense for the Fiscal Year ending September 30, 2005 and for Other Purposes.

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2005—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the conference report to accompany H.R. 4567, which the clerk will report.

The assistant legislative clerk read as follows:

Conference report accompanying (H.R. 4567), making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005.

The PRESIDING OFFICER. Under the previous order, the vote on the motion to invoke cloture is vitiated.

Mr. COCHRAN. Mr. President, I am pleased to present for the Senate's approval today the conference report on H.R. 4567, the fiscal year 2005 Homeland Security Appropriations Act.

The conference agreement provides total new budget authority for the Department of $33.1 billion. Of the amount provided for fiscal year 2004, $32 billion is for discretionary programs.

To further strengthen the capacity of the Nation's first responders to prepare for and respond to possible terrorist threats and other emergencies, this conference report provides a total of $3.9 billion for the Office for State and Local Government Coordination and Preparedness, including: $1.1 billion for the State and local formula-based grant program; $400 million for law enforcement terrorism prevention grants; $885 million for high-threat, high-density, urban area grants; $150 million for port security grants; $150 million for rail and transit security grants; and $715 million for the firefighter assistance grant program, of which $65 million is set-aside to begin implementing the SAFER Act. The conference report also includes a separate appropriation of $180 million for emergency management performance grants.

The conference report includes a total of $5.1 billion for the Transportation Security Administration, furthering our commitment to secure all modes of transportation. The conference committee made air cargo security a priority and provides $115 million for air cargo security, an increase of $30 million from the President's request. This funding will allow the Department to enhance its efforts to target and prohibit the transportation of high-risk cargo on passenger aircraft; as well as to advance efforts to research, develop, and procure the most effective and efficient air cargo inspection and screening systems. In addition, there is a statutory requirement for the tripling of cargo inspections on passenger aircraft.

Additionally, $8.8 billion is provided to secure our Nation's borders; $5.5 billion is provided for emergency preparedness and response; $7.37 billion for the Coast Guard; and $2 billion for research, analysis, and infrastructure protection. To increase rail security the conference report provides $172 million for rail compliance inspectors; canine explosive detection teams; rail, freight, and transit security grants; vulnerability assessments; and research and development of technologies to prevent suicide bombers. A total of $662 million is provided for the Federal Air Marshals, $50 million more than the requested amount.

A matter of concern to some of my colleagues are the items funded through the offset provided by the extension of the customs user fees. The largest single item that was funded through this mechanism was speeding up the development and deployment of permanent airwings across our northern border. Unfortunately, once the customs user fee extension was dropped from this bill, we lost the offset available to enhance funding for these important items and not exceed the fiscal constraints placed on our subcommittee.

The conference committee met on Thursday, October 7, 2004, and the conference report was filed on Saturday, October 9, 2004. It was adopted by the House of Representatives later that day by a vote of 368 yeas to zero nays. Senate passage of this conference report today will send this fiscal year 2005 appropriations bill to the President for signature into law.

In closing, I thank the ranking member of the subcommittee, my colleague from West Virginia, Senator BYRD; the chairman of the House subcommittee, Mr. ROGERS; and the ranking member of the House subcommittee, Mr. SABO, for their substantial contributions to this bill throughout the year. It has taken many hours of hard work by these Members and their staff members to bring this bill to a successful conclusion. I would also like to thank the chairmen ranking members of the House and Senate full Appropriations Committees and their staff members for the assistance and guidance they have provided to us throughout the process.

I recommend the adoption of the conference report.

Mr. BYRD. Mr. President. I thank Chairman THAD COCHRAN, the House chairman, HAROLD ROGERS, Representative MARTIN SABO, Representative DAVID OBEY, and all of the House and Senate conferees for their hard work on this important legislation. We all share the goal of ensuring that the new Department of Homeland Security has the resources it needs to secure the homeland.

I also commend the thousands of men and women who are on the front lines of homeland security. While I remain very concerned that we are not giving these men and women the tools they need to do their jobs, that in no way detracts from their commitment to serve the Nation every hour of every day.

It is particularly appropriate for us to be considering this legislation as Congress reviews the recommendations of the 9/11 Commission. The President, the Vice President, the Attorney General, the Secretary of Homeland Security, the FBI Director, and the CIA Director invoke the threat of another terrorist attack on an almost weekly basis. The 9/11 Commission concluded that on September 11, 2001, our government agencies were not prepared to deter or respond to such attacks. We are still not prepared to deter or respond to such attacks.

In light of all of these threats, one might anticipate that the President would have amended his anemic 2-percent proposed increase for the Department of Homeland Security. One might have anticipated that the President,

our war President, would have requested increased appropriations for securing our mass transit systems, for screening airline passengers for explosives, for inspecting more containers coming into our ports, for increasing inspections of air cargo, or for increasing the number of Federal Air Marshals. Sadly, this President talks the talk when it comes to homeland security, but when it comes to doing the hard work of making the Nation more secure, the President takes a walk.

The conference report that is before the Senate provides $33.1 billion, a level that is $896 million above the President's request. This is an increase of only 5-percent over the levels approved by Congress last year, only 5-percent. At a time when our war time President and his entire administration is telling the Nation to expect another attack, we are approving what is essentially a status-quo homeland security bill.

The conference report that is before us does make several modest improvements to the President's budget. In response to the Madrid bombings and threats of similar attacks here at home, we include funding for mass transit and rail security. We increase funding for port security. We do more to secure air cargo on passenger aircraft. The bill begins to invest in technologies to screen airline passengers for explosives.

While these are important improvements, regrettably, the conferees were simply not given sufficient resources to address serious gaps in our security that we all know exist.

I am particularly disappointed that the Senate majority leader changed his mind and acquiesced to a demand from the Speaker that the conferees drop the customs user fee extension and the $784 million of homeland security spending that the Senate approved last month. The funding that was stripped from the bill is vital to the security of this Nation. Not one Senator objected to adding the additional funding because it provides needed investments to protect our borders, equip first responders, enhance air and rail security, hire more Federal Air Marshals, and secure nonprofit institutions that are threatened by terrorists.

The 9/11 Commission report includes recommendations to deploy explosives detection equipment at our airports, to address the communications interoperability problem, to focus homeland security dollars based on the greatest risk, and to secure non-aviation targets. This bill simply does not do enough to respond to these recommendations.

Mr. President, time and again, Senators on this side of the aisle have tried to plug the holes in our Nation's security. We have worked to address some of the most basic, and most dangerous, holes in our protections from another terrorist attack. But at virtually every turn, the President and the Senate majority tell us no. The American people are told no. Why? It costs too much. It costs too much to protect the people's lives. It costs too much to close our borders. It costs too much to screen cargo on our airplanes and to check passengers for explosives. It costs too much to save lives.

This Administration has repeatedly warned that it isn't a question of if another terrorist attack will happen, but when. Unfortunately, I think that the Administration has failed to heed its own warning. By failing to support a significant investment in homeland security, by ignoring the gaps that we all know exist, the White House foolishly is gambling with the lives and the safety of the American people.

However, we have done the best we can with the limited resources that have been given to us and I urge Senators to support its passage. Finally, I want to thank the staffs of the Homeland Security Subcommittee. Both Chairman COCHRAN's staff and my staff have worked diligently this year to produce this important legislation. We had an excellent series of hearings this year that I believe helped the subcommittee to produce a bill that contains significant improvements to the President's request.

Again, I urge Members to support the conference report.

Mrs. CLINTON. Mr. President, I rise to state my intention to vote for the conference report to the fiscal year 2005 Homeland Security Appropriations Act because communities and first responders across our Nation desperately need the funds provided in this legislation.

I want to express my extreme disappointment, however, with many provisions in this conference report, and with the decision by the Republican leadership in the Senate and House to fail to improve the conference report language, and in some cases making it even worse, despite having many opportunities to do.

It is hard to know where to begin, but three aspects of this bill are especially egregious; they defy common sense and are simply not in the best interest of our Nation's homeland defense.

First, in outright defiance of recommendations of the National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission, and of commissions before it, the leadership inserted language into this conference report that requires the Department of Homeland Security to allocate homeland security formula grant funds, such as funds under the State Homeland Security Grant Program and the Law Enforcement Terrorism Prevention Grant Program, on a per capita basis. This is directly contrary to the recommendations of the National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission.

Specifically, in its report, the 9/11 Commission stated:

> We understand the contention that every state and city needs to have some minimum infrastructure for emergency response. But federal homeland security assistance should not remain a program for general revenue sharing. It should supplement state and local resources based on the risks or vulnerability that merit additional support. Congress should not use this money as a pork barrel.

The 9/11 Commission also recommended that an advisory committee be established to advise the Secretary on any additional factors the Secretary should consider, such as benchmarks for evaluating community homeland security needs. As to these benchmarks, the Commission stated that ''the benchmarks will be imperfect and subjective, they will continually evolve. But hard choices must be made. Those who would allocate money on a different basis should then defend their view of the national interest.''

In short, the Commission made unequivocally clear that the current method of allocating federal homeland security resources, i.e., on a per capita basis alone, must be changed.

Indeed, just a couple of weeks ago, 9/11 Commission Chairman Kean stated:

> We have recommended very strongly that homeland security funds should be distributed according to assessment of risk, and not simply by population or pork barrel or any other way. Our understanding is that that recommendation, which is a very important one to us, is not moving, and that other people are saying that we should now remove the discretion that Governor Ridge has now over those funds and mandate that it be only by population. That would fly totally in the face of our recommendations. We feel very strongly that the best ways to distribute those funds are by the proper assessments of risk.

Not only did the 9/11 Commission recommend that such changes be made in how Federal homeland security funds are allocated, but commissions before it, such as the Homeland Security Independent Task Force of the Council on Foreign Relations, chaired by former Senator Warren, have strongly recommended it as well. Indeed, the Rudman Commission stated more than a year ago that ''Congress should establish a system for allocating scarce resources based less on dividing the spoils and more on addressing identified threats and vulnerabilities. . . . To do this, the federal government should consider such factors as population, population density, vulnerability assessment, and presence of critical infrastructure within each state.''

Moreover, the Senate just last week passed landmark legislation, the National Intelligence Reform Act, which contains the Homeland Security Grant Enhancement Act of 2004, which the Senate passed by voice vote as an amendment to the intelligence bill.

The Homeland Security Grant Enhancement Act of 2004, originally introduced by Senate Governmental Affairs Committee Chairwoman COLLINS, contains a number of good provisions, but among the most important is one that requires the majority of Federal homeland security grant funds intended for State and local governments

to be allocated based on threat and risk and other factors rather than on the basis of population alone.

This legislation was the result of almost 2 years of work in the Senate. Legislation that calls for threat-based funding has also been introduced by House Select Committee on Homeland Security Chairman COX, which has been included in the intelligence reform legislation that the House of Representatives just passed.

In short, the language in the conference report to the Fiscal Year 2005 Homeland Security Appropriations Act reflects an utter disregard for the hard work performed over years by members of the Senate and House as well as the expert evaluations and recommendations of the 9/11 and Rudman Commissions.

For the sake of our Nation's homeland defense, I hope that the Congress will soon act on the conference report to the intelligence reform legislation that has now initially passed both the Senate and House. Both the Senate and House bills direct that homeland security funds for States and local communities be allocated based on threat and other factors. Then, the tremendous wrong in this conference report that was done to our Nation's homeland defense will be made right.

Second, this conference report actually includes less funding for our Nation's first responders for fiscal year 2005 than was appropriated for our fire fighters, police officers, EMTs and other first responders in fiscal year 2004, less funding for this year than last year, and at a time when the threat of terrorist attack against many of our communities, especially the City of New York, and our Nation as a whole remains.

This conference report has less funding for the State Homeland Security Grant program, less funding for the Law Enforcement Terrorism Prevention Grant program, less funding for the FIRE Act, and less funding specifically for high-threat urban areas.

Lastly, much of the improvements that the Senate made to the homeland security appropriations bill during the Senate's initial consideration of the bill were stripped from the conference report by the House Republican leadership. And when the conferees had the opportunity to remedy this egregious mistake by supporting an amendment by Senator BYRD to restore $784 million in cuts, that amendment was defeated.

As the conference report itself states, the conference agreement deletes section 518 of the Senate-passed bill, which included $200 million in additional funding for the Northern Border Air Wing, so that the air wings across our border can be appropriately operated; $50 million for nonprofit organizations that are at greater risk of terrorist threats; $50 million in additional critical funding for FIRE Act grants, and $50 million for Emergency Management Performance Grants.

Though I am disappointed with other provisions either contained in this bill, or missing, I am pleased that the conference committee included language from an amendment I sponsored to include funding for the firefighters and police officers of New York City.

Specifically, I commend the conferees of both the House and Senate for requiring the Federal Emergency Management Agency to provide $4,450,000 for Project Liberty pursuant to the request of the Governor of New York. We know that $25,000,000 remains unexpended, and unobligated, at the Federal Emergency Management Agency and I know they will respond to the direction of the Appropriations Committee to speed these funds to New York.

We owe these heroes every penny available for mental health counseling. Our firefighters and police officers have been receiving this counseling since losing so many of their brothers, sisters, friends, and family members in the attacks. Our firefighters and police officers have had to cope with the unimaginable and yet they stand strong on the front lines to protect the homeland.

The men and women of the New York City Fire Department and New York City Police Department, their families, and retirees, have helped this country cope with the tragic losses of that day, and this Congress has sent a clear message that we stand with them in helping them cope with their own losses.

I will continue to do whatever I can in my capacity as a Senator from New York to make sure our firefighters and police officers receive the funding they need not only in the area of mental health counseling but in all areas of homeland security.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. LEAHY. Mr. President, the conference report before the Senate today includes an important provision that will put a stop to the ill-advised attempt by the Department of Homeland Security to privatize jobs that are vital to keeping Americans safe. The conference report prohibits DHS from spending money to process or approve the privatization of Immigration Information Officer, Contact Representative, or Investigative Assistant positions. The House voted for this exact amendment earlier this year by a vote of 242–163, with 49 Republicans supporting it. The Senate voted 49–47 for this language. During the meeting of the conferees, both the Senate and House delegations voted in favor of this language.

Immigration Information Officers, IIOs, are responsible for screening applications for immigration benefits for fraud, and for performing criminal background checks on applicants. There are more than 1,200 IIOs and Contact Representatives around the nation, working for the Citizenship and Immigration Services, CIS, branch of DHS. The work they do in attempting to discover and prevent immigration fraud—and prevent dangerous people from abusing the immigration system—is clearly ''inherently governmental,'' making them an inappropriate target of a privatization effort.

As our Nation continues to face the threat of terrorism, CIS carries a heavy burden in its attempt to process immigration and naturalization applications while ensuring that terrorists—along with other fraudulent actors—do not abuse our immigration system. Information Officers have played a vital role in meeting this burden. Indeed, the agency's own job description requires that IIOs have the ''[s]kill to identify fraudulent documents in order to prevent persons from appealing for benefits for which they are not eligible,'' a skill that is obviously all the more important in this era. They are also required by DHS to have ''[k]nowledge and skill in interviewing techniques and observation of applicants in order to determine if an applicant is misrepresenting the facts in order to appear eligible for a benefit.'' Weeding out potential fraud in our immigration system must remain a responsibility of government employees, especially when the perpetrator of the fraud may be a dangerous criminal or terrorist. This conference report will ensure that is the case.

I have a personal interest in this issue because about 100 fine Vermonters currently work as IIOs. I know the fine work they do, and I know that my staff and indeed all of our staffs rely on them and their counterparts throughout the country when we are seeking to help our constituents. I know that our Nation will be better off because these fine men and women will remain in their current positions.●

Mr. KOHL. Mr. President, I am pleased today to support the passage of Department of Homeland Security appropriations bill. This bill accomplishes in large part what must continue to be this Nation's first priority—protecting our country from terrorist attack.

This bill funds essential national programs which protect our borders, our aviation security, our ports, our emergency management assistance, and our critical infrastructure, such as nuclear power plants. In addition, the bill funds essential programs that do not only protect us, but also prepare our States and communities should we be faced with an emergency. These grant programs support our firefighters and other first responders whom we rely on in times of need.

The State Homeland Security Grants enable the States to organize their first responders and communications systems to respond to a terrorist attack. Further, the Urban Area Security Initiative recognizes that our largest cities, such as Milwaukee, have special needs given their large populations that require more directed assistance.

For all of these reasons, I am pleased to support the Homeland Security appropriations bill today and I am encouraged that we are doing what we can to protect our Nation.

FEMA AND FAITH BASED ORGANIZATIONS

Mr. SANTORUM. Mr. President, I commend the leadership of the chairman on this important disaster relief bill.

In the context of this Federal Emergency Management Agency FEMA disaster assistance bill, I want to express my appreciation for recent FEMA policy updates for disaster relief to faith-based organizations. These ongoing challenges and tragedies provide FEMA an opportunity to make certain that they are implementing these policies in a manner consistent with the President's policy which includes faith-based organizations among those community-based organizations helping on an equal basis in these hurting communities.

On December 12, 2002, President Bush announced, ''I have directed specific action in several Federal agencies with a history of discrimination against faith-based groups. FEMA will revise its policy on emergency relief so that religious nonprofit groups can qualify for assistance after disasters like hurricanes and earthquakes.'' FEMA acted quickly to serve eligible religious groups, issuing policy statement 9521.3 concerning Private Non-Profit Facility Eligibility to provide guidance in delivering future grant awards.

In the words of the former FEMA Director Joe Albaugh, ''Disasters don't discriminate, and neither should our response to them.'' The administration recognized this important principle in the case of the Seattle Hebrew Academy. The academy's main building was rendered unfit after it was damaged in the Nisqually earthquake of 2001, but the academy's first application for FEMA relief was denied. After the Academy entered a legal challenge, the Office of Legal Counsel at the Department of Justice entered an opinion on September 22, 2002, which stated, in referring to FEMA's original denial, ''We believe that the Acting Regional Director's reading of 44 C.F.R. section 206.221 (e) is not the better interpretation of that regulation.'' This is a commonsense policy of fair treatment.

Mr. COCHRAN. Mr. President, I commend the Senator from Pennsylvania for highlighting the importance of community-based organizations, including faith-based organizations, in disaster assistance efforts. I also concur that religious organizations should not be excluded when they are victims of disasters. I concur with the Senator that FEMA should continue to see that faith-based organizations are treated fairly in accordance with the President's policy and for the benefit of those in need in times of crisis.

Mr. FRIST. Mr. President, on behalf of myself and Senator SPECTER, I wish to express my appreciation to Senator COCHRAN, chairman of the Homeland Security Appropriations Subcommittee, for bringing out of conference $25 million in assistance for 501(c)(3) nonprofits ''determined by the Secretary of Homeland Security to be at high-risk of international terrorist attack.'' I know this was difficult to achieve because the House bill did not have a similar item and due to the loss of the customs users fees as a funding mechanism for our Senate provision.

There are a number of compelling reasons for dedicating homeland security funds to nonprofits. First, nonprofits provide vital health, social, community, educational, cultural, and other services to millions of Americans every day. Second, if nonprofits are forced to divert funds to cover the entire cost of security measures, those funds will deplete resources for vital human services, including capacity to respond to disasters. Third, intelligence reports and the 9–11 Commission Report indicate some nonprofits are among the most vulnerable, highest risk institutions. Fourth, nonprofit institutions of all types serve as gathering places for millions of American citizens every day of the year, and finally the security needs of the nonprofit sector have been largely unmet.

This assistance is intended for basic security enhancements to protect American citizens from car bombs and other lethal terrorist attacks. This assistance is not intended for facility construction; rather, it is intended to be used for installation of equipment such as concrete barriers, blast-proof doors, Mylar window coatings, security fences and hardened parking lot gates, as well as associated training.

The Director of Central Intelligence has stated that al-Qaeda has turned its attention to ''soft targets.'' Terrorists' willingness to attack soft targets of all types has been made readily apparent with attacks in the United States, England, Canada, Israel, Spain, Germany, Iraq, Tunisia, Kenya, Morocco, Egypt, and Turkey, including an international Red Cross building, synagogues, schools, and cultural and community centers.

It is my intention, as sponsor with Senator SPECTER of the Senate provision, that the Secretary should issue regulations to ensure that such funds are disbursed in a manner that ensures basic assistance for the maximum number of institutions and are dedicated to protecting Americans operating or utilizing nonprofits from international terrorist attacks and are not used for other purposes.

Once again, I commend the distinguished subcommittee chairman, my good friend Senator COCHRAN, and my distinguished colleague Senator SPECTER, on their assistance with this vital initiative to protect our Nation's nonprofits.

The question is on agreeing to the conference report to accompany H.R. 4567.

The conference report was agreed to.

TO REAUTHORIZE THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The PRESIDING OFFICER. Under the previous order, the Senate having received from the House a message, the Senate agrees to a request for a conference on H.R. 1350, the Senate agrees to the request for a conference on the disagreeing votes of the two Houses, and the Chair appoints the following as conferees on the part of the Senate.

The Presiding Officer (Mr. COLEMAN) appointed Mr. GREGG, Mr. FRIST, Mr. ENZI, Mr. ALEXANDER, Mr. BOND, Mr. DEWINE, Mr. ROBERTS, Mr. SESSIONS, Mr. ENSIGN, Mr. GRAHAM of South Carolina, Mr. WARNER, Mr. KENNEDY, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mr. JEFFORDS, Mr. BINGAMAN, Mrs. MURRAY, Mr. REED of Rhode Island, Mr. EDWARDS, and Mrs. CLINTON conferees on the part of the Senate.

ORDER OF PROCEDURE

The PRESIDING OFFICER. Under the previous order, the Senator from Connecticut is recognized.

Mr. REID. Mr. President, prior to his beginning a speech, it is my understanding the two leaders have some business they want to conduct.

Following their conducting of business, I ask on the Democratic side Senator DODD be recognized for 20 minutes; following that, on our side, Senator KENNEDY for 30 minutes, Senator DURBIN for 20 minutes, Senator JEFFORDS for 8 minutes, Senator SARBANES for 20 minutes, Senator HARKIN for 45 minutes. He has 2 hours under the order that has been entered, but he said he would use part of that time at a later time today. Senator CANTWELL for 8 minutes and Senator HARKIN for 1 hour and 15 minutes. We correct that. After Senator KENNEDY, Senator FEINSTEIN be recognized for 10 minutes.

Senator KYL has already worked out something with Senator DODD that he would be recognized for up to 3 minutes prior to Senator DODD. The Republicans, of course, would be interspersed if they are here and they want to take time and we would go back and forth.

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

The majority leader is recognized.

Mr. FRIST. I ask unanimous consent to engage in a colloquy with the Democratic leader.

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

APPOINTMENT OF CONFEREES TO S. 2845

Mr. FRIST. Mr. President, I want to discuss with the Democratic leader the appointment of conferees to S. 2845, the 9/11 legislation.

I am so proud of the Senate's work on this legislation as anything we have done these past 2 years. Chairman COLLINS, ranking member LIEBERMAN, and all Senators did a superb job in moving this bill forward.

There was no partisanship in their Committee and they developed a bill that has been endorsed by both the 9/11 Commissioners and many of the family's personally affected by the 9/11 attack.

The Democratic leader and I have worked closely together throughout this process, and I appreciate his leadership and cooperation. Now I hope we can complete the process by appointing conferees today and reaching a final agreement with the House as quickly as possible.

Mr. DASCHLE. I thank the majority leader for his kind words and for his exemplary work on this bill. Both the process and substance of the Senate bill reflect upon the best traditions of the Senate, and the Leader deserves enormous credit for that.

Our side wants to appoint conferees and send a bill to President Bush as quickly as possible. But many on our side have concerns about what will happen when we meet with the House.

The Senate bill passed by a 96–2 margin. It was, as you said, a model of bipartisan cooperation from start to finish. And every Republican Senator voted for S. 2845.

The House followed a different approach. Virtually every House Republican just voted against the bill that every Republican Senator voted for. So this could be a difficult conference.

In addition, many on our side are concerned over the pattern that's emerged in conferences with the House.

Almost a year ago Republican and Democratic Senators reached a consensus on an omnibus appropriations bill. But when we went to conference, that consensus gave way to the House demand that their position prevail. So Senate position on overtime, country-of-origin labeling, and other issues were dismissed.

Earlier this year the Senate overwhelmingly passed legislation dealing with our Nation's pension system; the House passed a bill that had no bipartisan consensus.

In that conference there was one outstanding issue regarding multi-employer pensions. And despite the bipartisan consensus in the Senate, the House again demanded that the Senate position be dropped. And it was.

Just last week, we had a conference on the FSC bill. This bill passed the Senate almost unanimously. But on critical issues dealing with FDA regulation and overtime provisions, the House conferees succeeded in demanding that the House position again prevail.

So there is considerable apprehension on our side what will happen in this conference if the House again demands that its position be accepted. All of those previous bills were important, but I think we all would agree that nothing is more important than making our country safe from attack. We have to get this bill right and the Senate bill does that.

Mr. FRIST. I have a markedly different view than Senator DASCHLE about some of his legislative history, but I understand his concern.

We do have to get this bill right and our side is committed to that. We have to work together in conference just as we worked together in the committee and on the floor. I have talked with Senator COLLINS, who will lead the Senate conferees, and she has agreed that she will not pursue a conclusion to the conference, nor sign any conference report, that undermines the bipartisan working relationship that has existed in the Senate.

If changes are made to the Senate bill, they will be the result of the mutual, good-faith effort to reach agreement among Senate conferees. Moreover, the Democratic leader has my commitment that should the process break down due to disagreements over either substantive matters or extraneous provisions, then I will not bring a conference report to the floor.

We are prepared to make these commitments on our side, but want to be sure that we have your commitment to continue to work with us in good faith on this legislation and to complete action as quickly as possible.

Mr. DASCHLE. I thank the majority leader for his comments and assurances. For the Senate to work effectively we need to be able to rely on each other's word. We accept your word that the Senate conferees will stay together, and you have my word that we will continue to work in good faith and do everything possible to complete action on this bill as soon as possible.

As we act quickly we ought to make sure that we minimize logistical problems for the conferees.

I think we can avoid scheduling difficulties if there is at least 48 hours notice prior to meetings, and that there be an understanding that there will be ample time to meet and deliberate before decisions are made on significant matters. I hope that's acceptable to the majority leader.

Mr. FRIST. I agree that's sensible and acceptable to our side.

Mr. DASCHLE. I thank the majority leader and I am happy to yield.

Mr. KENNEDY. I appreciate the statements of both of our leaders, and I think all Members understand the importance of this conference. I particularly appreciate the desire to work in good faith on these provisions. I have noted that in the House bill there are some extraneous provisions, particularly with regard to both immigration and refugees.

There are important changes in asylum standards that turn back our tradition in terms of refugees, which has been more of an ideological position, but really it is unrelated to the challenges, to the threats. And there have also been very important provisions in terms of deportation that is to a far extent. We have not had any of those hearings on the Judiciary Committee, and those are very important issues and questions.

I thank our leaders for their willingness to say that we want to work on what is the underlying legislation. There are extraneous issues that have been added in the House. If they were to come back and be as negative as they are in the House bill, then it seems to me that it would fail to meet the kind of standards that have been outlined in good faith.

So I thank both of our leaders for their excellent statements. I appreciate our leader raising these questions on some very substantive, important issues that are completely unrelated to the whole question of terrorism or intelligence. It would need a good deal of discussion here on the Senate floor before they were done.

I thank the Senator.

Mr. DASCHLE. Mr. President, I thank the distinguished Senator from Massachusetts. I share his view about the importance of these matters and about the urgency with which we must work to ensure the completion of our work on the same bipartisan basis that we demonstrated to pass the bill here on the floor.

DISASTER ASSISTANCE

Mr. DASCHLE. Mr. President, today is a day that has taken too long to come. But it is a day of victory for hard-pressed farmers and ranchers who have been devastated by various natural disasters around the Nation. Today, we have approved $2.9 billion in emergency relief for family farmers and ranchers across America.

From Florida to Washington State, all along the eastern seaboard and into the Midwest and upper Midwest, farmers and ranchers have faced circumstances beyond their control.

In my State of South Dakota, we have seen 5 years of drought. Farmers have gone out of business and ranchers have sold entire herds. This is not just an issue for farmers and ranch families alone, it is an issue for the rural communities in which they live as well.

In a State like mine, whose primary industry is agriculture, weather-related disasters are truly economic disasters for the entire State's population. That is why many of us have been fighting for adequate disaster assistance for so long.

When we passed the farm bill in 2002, a bill that I am very proud to have been a part of, we added a new program, the Counter-Cyclical Program. It only provides assistance to producers when prices are low. In fact, this program has now saved $15 billion just in the last 2 years.

We said at the time we would not need any economic disaster assistance, and we have not. But we will need weather-related disaster assistance. That is something that the administration has failed to acknowledge. In fact, in 2002, in the middle of the worst drought since the Dust Bowl year of 1936, the President came to our State and told farmers and ranchers to tighten their belts, that they were not going to get any disaster assistance. That

statement stunned many of us who had witnessed firsthand the devastation that the drought had caused for farm and ranch families and the communities in which they live. As the drought persisted in 2003, we still had no opportunity for help.

Finally, in difficult negotiations over the last several weeks and with bipartisan support in both the House and the Senate, we have managed to craft disaster assistance that will go to the President for his signature. So today the Congress is now approving the $2.9 billion in agriculture disaster assistance. That is the good news. It is a win for farmers and ranchers, and it will allow many of them to stay on the land and continue their businesses and continue a rural way of life. This bill will provide payment for farmers who have lost over 35 percent of their historic yields and livestock producers who have lost over 40 percent of their available grazing land.

I thank Congressman CHARLIE STENHOLM. We would not have any disaster aid without his leadership in the House. I thank my colleagues in the Senate, especially Senator BAUCUS, who led a bipartisan group of Senators, all of whom supported disaster aid and worked to pass this important legislation.

I also thank Senator HARKIN for his passionate support for the recognition that this aid ought to be declared an emergency like all other forms of assistance that we have passed for other parts of the country.

America's family farmers and ranchers do not just produce commodities, they produce communities. They are an important part of our national identity. They reflect our national values. For too long, they have been suffering, not because they made bad decisions but because of bad weather. We cannot do anything about the weather, but we can take steps to help family farmers and ranchers weather this crisis.

So I am proud of what we have been able to do today, and I hope the USDA will immediately begin the process of distributing this much needed assistance to farmers and ranchers across the Nation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

NATIVE HAWAIIANS

Mr. KYL. Mr. President, I want to take just a couple minutes to engage three of my colleagues in a brief colloquy: Senators INOUYE, Senator AKAKA, and Senator DOMENICI, to inform our colleagues of an agreement that was reached in an effort to clear a group of bills that the Energy and Natural Resources Committee had worked on very hard and very long, for a long period of time, and have, in fact, cleared the Senate and been sent to the House, and to ensure that at some point next year, before August 7, a bill relating to native Hawaiians, similar to or the same as S. 344, would be considered by this body.

We reached that agreement, which was embodied also in a letter from the two leaders to Senators DOMENICI and INOUYE, who had inquired of that possibility, in which the leaders promised their best efforts to ensure that a native Hawaiian bill equivalent to S. 344 would be brought to the Senate floor for debate and resolution no later than August 7 of next year.

I had told both Senators from Hawaii I would express publicly my personal commitment to assist in that effort to ensure that no procedural roadblocks would be thrown in the way of the consideration of that legislation, nor a final vote on it. I will indeed do that and encourage all of my colleagues to work with us toward that end.

I thank Senator DOMENICI for his leadership on that large group of bills that were so important to so many Members of this body and for his work on this particular issue, as well as our good friends from Hawaii, Senators AKAKA and INOUYE, for their cooperation in helping us reach this resolution.

Mr. DOMENICI. Will the Senator yield?

Mr. KYL. I am happy to yield.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I note that Senator AKAKA and the distinguished senior Senator from Hawaii are on the floor. First, I want to say they have been gracious. Many Senators had a part in this very major bill, with 24, 28, maybe even 30 pieces of legislation for their States.

I say to the Senators from Hawaii, you had a perfect right to insist that your bill, which has just been described by the distinguished Senator from Arizona, be in that bill. That could have caused the bill to probably be here a long time, the big bill, and you graciously said, if we can work something else out, let's try. We did.

As a result, we passed this bill for many Senators, and we said to you, both Senators from Hawaii, we will do our best to get your very important bill, described by the Senator from Arizona, up. We cannot assure that. I cannot guarantee that. This is the Senate. But we do have a letter with all of the people who are in the leadership, I, myself, by the distinguished two Senators from Arizona, that we will do our best. We described it and everyone knows of it.

Today we thought we would tell the Senate and give this assurance in the RECORD to our two Senators from Hawaii that we are serious, that we will do our part in trying to make sure their bill comes to a vote in the Senate by the date they have agreed to and we have agreed to.

I say to Senator KYL, I thank you for your diligent efforts in helping with this. Every Senator who got something in that legislation that is now going to the House will know what we have done.

Thank you very much.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I am extremely grateful for those reassuring words of my distinguished friend from Arizona and my distinguished friend from New Mexico. We look forward to working with them next year on this most important bill, a bill for the native Hawaiians.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. AKAKA. Mr. President, I want to express my sincere gratitude to Senator KYL particularly and also to Senator DOMENICI for working with us on our Hawaiian bill. Especially I want to express my gratitude for your grace and your commitment for next year. Again, I want to do this, as we say in Hawaii, with much aloha.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Mr. President, if I may, everyone is anxious to speak today. We have an order entered. Senator HARKIN is willing to give up his time of 45 minutes. He will do the bulk of his time after basically everyone has completed their statements today. In exchange for that, I ask unanimous consent that he be allowed to speak after Senator KENNEDY for 10 minutes and then his hour and 50 minutes would be at the end of the day. I think that is fair. I appreciate everyone's patience. Also following Senator CANTWELL, Senator BYRD on our side, will be recognized for 30 minutes.

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

The Senator from Connecticut.

CHRISTOPHER REEVE

Mr. DODD. Mr. President, I would like to express my deep sorrow that many of my colleagues and many millions of Americans share over the loss of Christopher Reeve a remarkable individual who, as a result of a tragic paralyzing injury that he suffered while horseback riding, dedicated his last 10 years to making a positive difference. Rather than wallowing in his own misery and sorrow, he used those 10 years to inspire and change America in terms of our attitudes and perceptions about people with such serious injuries and disabilities. I know that we will miss him very much. We have admired him immensely for his courage and dedication.

I express my condolences to his family. I wish to express the deep sorrow I feel over the loss of someone I knew not terribly well, yet someone I had the pleasure of meeting on a number of occasions.

Some of my colleagues, particularly Senators HARKIN and KENNEDY, knew him better than I and may express their own views on the subject. It was a sad day for America to lose this courageous individual. I hope his message on a number of subject matters, not

the least of which was stem cell research, will be heard and that his memory and the work he was engaged in will be our work in the coming years.

FSC/ETI

Mr. DODD. Mr. President, I rise this afternoon to speak about the most recently passed piece of legislation; that is, the FSC/ETI tax bill that consumed a great deal of time over the last several days. I begin by congratulating Senators GRASSLEY and BAUCUS who wrote a very good bill in the Senate.

When that bill left the Senate, I thought that it was a very sound piece of legislation, one that not only addressed the immediate problem dealing with trade issues, but also incorporated some other good ideas that all of us believed were important to be a part of that legislation. All of them were in one way or another bipartisan amendments offered on the floor of the Senate.

The legislation provided tax deductions for American manufacturers to stimulate job growth in our economy. It protected American workers' overtime provisions that had been adopted by this body and the other body on several occasions over the last year.

The legislation limited the outsourcing of American jobs with the use of American taxpayer money. Senator SPECTER and I and 68 of our colleagues endorsed that amendment which was before the Senate.

In addition, the Senate-passed bill contained an extremely important and delicate compromise worked out between the Senator from Massachusetts and the Senator from Kentucky that would have provided financial relief to hard-pressed tobacco farmers, while at the same time establishing critical new protections for the health and safety of our children, 2,000 of whom start smoking each and every day in the United States.

The Senate bill was a very good piece of legislation. It was a sensible bill and a well-crafted bill. Senators BAUCUS and GRASSLEY did an outstanding job.

Unfortunately, that bill is at best dimly reflected in the conference report that we voted on today. The Senate bill essentially has been mugged, if I might say, by the other body and by the administration. In its place, the Senate was asked to consider a conference report that lacks many of the provisions most important to America's small businesses and to workers. In their place, the conference report has added a number of provisions that amount to little more than sops to a variety of special interests from NASCAR to makers of ceiling fans.

In the process the bill neuters the ability of Congress to make meaningful contributions to economic growth. At the same time it creates new threats to fiscal discipline, which is at an all-time low.

Allow me to discuss several of these shortcomings in more detail, and to discuss other provisions that were either left out of this conference report or changed dramatically from the legislation that left this body only a few weeks ago.

First, I am concerned that this bill may not achieve its central goal: lifting the European Union duties, which currently are at 12 percent and could reach as high as 17 percent. Instead of simply repealing the Foreign Sales Corporation and Extraterritorial Income Exclusion (FSC/ETI), the conference report uses House language which phases the subsidy out over two years and allows companies to receive a percentage of the subsidy based on what they export each year. We were told early on that the European Union would find the Senate language acceptable for the removal of sanctions. We were also told that the language from the other body raises serious reservations within the European Union.

In last week's Washington Post, the European Union spokesman Anthony Gooch was quoted as saying:

"The export subsidy phases out of existence slowly when it should be lifted immediately."

So here we are, about to pass a massive tax bill that is supposed to fix our FSC/ETI problem, and yet we are not even sure if it will do that job. In other words, we might have to do this all over again. The E.U. had said that the Senate-passed language would be acceptable, but had expressed concern over the House language. And here we are with a conference report with the House language. I find this baffling and deeply troubling. And while some would welcome another opportunity to pass even more special interest tax cuts in another FSC/ETI bill, this Senator would certainly not.

Second, instead of meaningful, broad-based, and fiscally responsible tax relief for manufacturing here in the United States, the conference report includes a smorgasbord of special provisions. Even the administration's Treasury Secretary just last week highly criticized this legislation as including a "myriad of special interest tax provisions that benefit few taxpayers and increase the complexity of the tax code." I am quoting the Secretary of the Treasury about this bill we just overwhelmingly adopted.

Let me mention some of these provisions, and then ask your own constituents whether they think this is a wise use of their tax dollars. We are going to provide a $101 million tax break that would allow NASCAR racetracks to recover costs over 7 years; a $445 billion Alaska energy tax break; $42 million for film and television production; $27 million to the horse and dog racing industries. Ask your constituents whether they think these provisions are critically important at a time when we have massive deficits, whether these interests are the kinds of interests we should be including in a bill primarily designed to increase manufacturing, to limit the kinds of export problems we have as a result of trade agreements.

It seems to me we have gone far afield of what we should have been doing, far afield of what the Senate did only a few weeks ago.

I might point out as well that in this legislation we are not doing what we ought to be doing, and that is, of course, trying to provide some real relief for the manufacturing sector in our economy. It is a well-known fact that our manufacturing sector is hurting. The erosion of our manufacturing base is of great concern. Under the present Administration we have lost nearly 2.7 million manufacturing jobs. Just last Friday, the September unemployment numbers showed that we only added 96,000 new jobs. This is one-third the job growth of 300,000 per month that would have been achieved if job growth had occurred at the rate this average for a recovery. The September unemployment numbers also showed that we actually saw manufacturing jobs fall by 18,000—the largest drop since December, 2003. Despite this fact, this conference report weakens language that would have rewarded domestic manufacturing by giving an even bigger tax cut to companies that manufacture more of their goods in the U.S. It expands the definition of what constitutes manufacturing to include industries that hardly fall within the category of manufacturing. By diluting the definition of manufacturing and expanding this out by some 9 or 10 percent, we are going to make it harder for the very industries which are critically important to our long-term economic growth to create jobs. By expanding that definition, we have set ourselves back.

According to the Joint Committee on Taxation's complex analysis of the manufacturing deduction in this bill, which they are required to do by law and which was tucked away at the end of the conference report, only slightly more than 10 percent of small businesses will be affected by these provisions. Only 10 percent of small businesses will be able to enjoy the benefits of this legislation. Since the title of this bill is a jobs bill, I would have expected more help for our smaller companies which are the biggest source of job growth in our Nation.

The Joint Tax report also notes that "the provision will result in an increase in disputes between small businesses and the IRS." Reasons for such a dispute "include the complexity of the provision and the inherent incentive for small businesses and other taxpayers to characterize the activities as qualified production activities to claim the deduction under the provision." Just what a small business needs, a more complex Tax Code and problems with the IRS.

Third, this legislation changes a major provision which was adopted in the bill as it left the Senate—a provision that stopped the use of federal tax dollars to subsidize the outsourcing of American jobs. As the author of this provision dealing with outsourcing, I

am terribly disappointed that, despite the fact that an overwhelming majority of our colleagues on a bipartisan basis approved language that prohibited the use of American taxpayer money to outsource jobs outside of the United States, this provision was stripped out in the conference report.

We ought to be exporting our products and our services, not jobs in this country. At a time when as many as 14 million white-collar jobs could be lost over the next 10 years from outsourcing and with 2.7 manufacturing jobs already lost in the last four years, the American people deserve a majority in Congress to stand up against the surge of outsourcing afflicting this country.

The unanimous vote of the 12 conferees on the Republican side to take the outsourcing provisions out of this bill, I think, is a slap in the face of American workers. The fact we would be using Federal taxpayer money to hire someone offshore to do a job that ought to be done in the United States I think is wrong. I am for fair trade and free trade. We ought to stand up for the American worker. They are worried and concerned about their future. They are bothered about whether they are going to have enough to take care of their families' needs.

Yet we found nothing wrong with continuing to have provisions in our policies that allow tax money to be used to hire people outside of this country, when jobs are needed in the U.S. We have the worst job production in almost 70 years in the U.S. We ought not to be stepping back. This bill stripped out a provision that was adopted here by a vote of 70 to 26. I think that was a great mistake. I regret that my colleagues on the conference committee sought to do that.

It is no secret how much this Administration supports outsourcing. They believe, it is, in their words ''a good thing.'' They said so in the President's Economic Report to Congress this year, and they so again in this conference agreement.

Fourth, the conference report does nothing to protect overtime pay. Six million citizens rely on overtime pay to provide for their families' needs. So many families are struggling to make ends meet. The cutback in overtime is an unfair burden that American workers should not have to bear.

Overtime pay amounts to about 25 percent of the income of workers who work overtime. These include police officers, firefighters, nurses, and many others. Workers stripped of overtime protections will end up working longer hours for less pay.

The Bush administration's overtime regulation would deny overtime protections to as many as 6 million hard-working men and women, including registered nurses, cooks, clerical workers, nursery schoolteachers, and others. Even veterans, who have served in Iraq and Afghanistan, would be hurt. If they received some training as soldiers that would give the administration an excuse to classify them as ''managers'' in the civilian workforce, they could be denied overtime—even if they resume the same job. That is an outrage.

The Senate has voted against the Bush rule three times and said you should not impose that rule. The House voted twice to say don't impose that rule. Yet the conference committee sought to drop it entirely.

So the Bush administration's rule on overtime will affect 6 million Americans adversely. Fifty-five categories of jobs that qualify for overtime pay are gone. That is now out, despite the fact we insisted it be part of this legislation.

Fifth, the conference report breaks an agreement we made not only to protect tobacco farmers but also children. It was a bipartisan agreement that simply said that if we were to help out tobacco farmers, we were going to have FDA regulations to protect children from the life-threatening dangers of tobacco. These dangers—and the costs they pose to our nation—are enormous.

By regulating tobacco products and taxing them higher, tobacco farmers are going to be adversely affected. Some tobacco—specifically tobacco made into cigar wrappers—is grown in my State. I see my colleague from North Carolina here and I know how important that issue is to her and her constituents, just as it is in Kentucky. I think they deserve help as a result of this legislation, but I also believe part of the deal here was that we were going to allow this industry to be regulated by the FDA. To strip the FDA provision out, I think, was a great mistake. I think that we will regret it.

It costs us $75 billion a year in health care costs to deal with tobacco-related illnesses in America. According to the Centers for Disease Control and Prevention, tobacco use by pregnant women alone causes between $400 million and $500 million per year due to complications of low birth weight, premature births, and sudden infant death syndrome.

Every day, another 2,000 kids start smoking in America, one third of whom will die prematurely. That is not speculation. That is a fact. Yet this bill stripped it out and said we would provide relief to tobacco farmers but forget about doing a better job of regulating an industry that is causing so much harm and sadness in our country because of the related illnesses and death caused by people who smoke.

Sixth, the conference report is missing a provision included in the Senate bill I cosponsored, which is the Landrieu amendment. We are going to have a separate vote on that later. It is not a likely amendment that will be offered and voted on in the House. We will vote on it, but it is still not going to be included in legislation that goes to the President for signature. That was the provision that would have honored patriotic employers who continue to pay the salaries of their employees, who are members of the National Guard and Reserve and are deployed in the war on terrorism—whether it be in Afghanistan or Iraq. Employers would have been eligible for a 50-percent tax benefit for wages they paid to members of the National Guard and Reserve while on Active-Duty status. The credit would have been good up to 12 months, about the length of a standard deployment in Afghanistan or Iraq.

Forty-one percent of activated Guard and Reserve take a reduction in pay when called to duty. This places a tremendous burden on their loved ones back home. Yet conferees stripped the provision out of the conference report.

As my friend and colleague from Louisiana pointed out earlier, the $44 million tax credit for ceiling fans included in the conference report would have paid for 1 year of Guard and Reserve tax credits. Yet the conferees chose ceiling fans over businesses, or saving jobs for our National Guard and Reserve people.

Finally, this conference report is fiscally reckless. While the offsets are likely to expire, the tax breaks are likely to be extended—if past history under this leadership is any guide. That will only add tens of billions of dollars to the deficit. We have the highest deficit in the history of our country. This is a birth tax on young children being born because we already know they bear an obligation to pay back in interest to the Federal Government a staggering amount of money. The idea we are going to have higher mortgage rates, higher car payments, and tuition costs because of mounting deficits, because $1.8 trillion of America's debt is held by nations outside of the United States—principally Japan and China. That is dangerous, in my view. This bill adds tremendously to the national debt. We are not paying for it.

For all of those reasons, I think we would have been wise to wait when cooler heads prevail, and deal with what we should have been dealing with, or at least draft legislation that was the rationale for bringing it up in the first place, and deal with the trade issue. We didn't do that well in this bill.

I was in a small minority to vote against this, but I believe strongly that if you think something is as wrong as this is, you have to speak out against it. For the reasons outlined here, and because we so emasculated what we did in the Senate a few weeks ago and brought back a piece of legislation that hardly resembled what we did in the Senate, I could not vote for this legislation.

I hope we come back in January and reconsider some of the provisions included in this bill and do a better job on behalf of the American taxpayer and future generations of Americans.

I yield the floor.

For his last 5 years, Jesse's right hand on tobacco issues was David Rouzer, and David has been my senior

adviser as we have worked through this buyout.

At a young age, David began working on his family's tobacco farm in Johnston County, NC. He understands the stress that tobacco farmers have been under, and he has labored tirelessly to get us to this day.

I made the buyout a top priority when I arrived in the Senate because our tobacco-producing communities have suffered terribly—terribly—in recent years. The rigid Government program created in the 1930s was not designed for the intense world competition of today. It was not designed to withstand the consequences of the master settlement agreement.

In past years, our farmers led the world in tobacco production. Now they account for only 7 percent of flue-cured tobacco sold worldwide. The time has come to end the last of the Depression-era farm programs. Our farmers want to operate in a free market.

As the U.S. market share of tobacco has slipped, the quota system, with its price supports, kept U.S. producer costs artificially high. These high prices led to tobacco imports from lower cost countries, such as Brazil and China. Under the current tobacco program formula, the decline in demand for American tobacco produced a cut in quota, the amount of tobacco a farmer can grow and sell.

In just the last 5 years, the tobacco quota has been cut almost 60 percent. That is the equivalent of cutting your paycheck by 60 percent. There is not a business in America that would not take a serious hit with a 60-percent cut in revenue. And according to agricultural economists, these farm families were about to get an additional 33-percent cut in quota for the 2005 crop-year. These cuts have had profound impacts on North Carolina's tobacco communities. For almost 70 years, the U.S. Government-issued tobacco quota was something you could take to the bank, literally.

Under permanent law, they could expect a yearly return on investment. Farmers used it as collateral for loans in order to put the next year's crop in the field. Families handed quota down from generation to generation. That paid the death tax as part of keeping family farms alive. Widows have counted on quota as an investment to supplement their Social Security.

By buying out these quota holders, we give families the option of retiring with dignity. We give them the ability to pay off the banks for loans made against an ever-shrinking collateral. By getting the buyout done before the next quota cut, literally thousands of families in rural North Carolina will be saved from bankruptcy.

Rather than having to quit the farm, this buyout gives our farmers the ability to compete in the free market, and if farmers want to continue to grow leaf, they can compete worldwide without the artificial cost increase.

Many will also use this opportunity to invest in new equipment and transition to other crops. This tobacco buyout will help not only the farmers and their families, but their hard-pressed communities. It is the retailers, equipment dealers, chemical and fertilizer dealers, and a whole array of small local businesses that will also benefit from the tobacco buyout. These are the very small businesses that create the majority of new jobs in tobacco-producing States—jobs that are much needed.

With our action today, we come to the end of an era in tobacco policy. We stop conceding tobacco production to countries such as China and Brazil. We stop foreclosures to thousands of farmers, and we stop the negative economic ripple effect throughout rural communities in the Southeastern States. For that, we can all be extremely proud.

To those who have worked so hard on the tobacco quota buyout, on behalf of the thousands of farm families in North Carolina and throughout the Southeast, a heartfelt thank you. What has been accomplished is a legislative miracle and a monumental achievement. It has been a great privilege to work with you.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Massachusetts.

Mr. KENNEDY. I ask the Chair—I believe I have 30 minutes—when I have 2 minutes left to notify me.

TRIBUTE TO CHRISTOPHER REEVE

Mr. KENNEDY. Mr. President, I join with others in the Senate to say it is with deep sorrow I note the death of Christopher Reeve. Christopher set a wonderful example of courage and perseverance for men and women all over this country who are afflicted by disabilities, and particularly those who have spinal cord injuries.

Christopher never gave up hope that eventually he could be cured. He worked hard to keep his body in the best shape possible to prepare for the day when an effective treatment for his injury would be available, and he fought unceasingly to foster the scientific research that offers hope and help to millions of others afflicted with severe injuries or dreaded disease.

He was particularly involved in the battle for stem cell research because he saw it as the best opportunity for curing not only his injury but also a host of other diseases from Parkinson's and diabetes to heart disease. This election is critical in achieving Christopher Reeve's vision because only one candidate for President, JOHN KERRY, is committed not only to stem cell research but to good science generally, science not constrained by ideology or partisanship.

I am going to come back to this subject matter in just a moment.

LEGISLATIVE AGENDA

OVERTIME PROTECTIONS

Mr. KENNEDY. Mr. President, I take note that the Senate, a little while ago, for the fourth time, passed the overtime protections bill yesterday. This is the same bill the House has already passed twice. So I hope they act as soon as possible on the bill we sent them yesterday. There is no reason we cannot get the discharge petition in the House of Representatives on that and also the provisions that we passed on FDA protections for children.

I hope President Bush is listening to the bipartisan majorities in the House and Senate who repeatedly tell him to repeal those parts of his regulation on overtime that take away pay for hard-working, middle-class Americans.

FSC/ETI

Mr. KENNEDY. Mr. President, on the FSC legislation that was just passed, I want to say a few words. The American middle class is the heart and soul of our country, but you would never know it from the FSC bill. We should be helping middle-class families, not hurting them, but this bill uses your taxes to ship your jobs overseas. It allows President Bush to cut your overtime pay, and it allows big tobacco companies to market cigarettes to your children.

On issue after issue in this legislation, elite corporate interests are the winners at the expense of average Americans. If the middle class is the backbone of America, then this bill is contrary to American values. And if President Bush really cared about the middle class instead of just big corporations, he would veto this bill when it comes to his desk.

EDUCATION

Mr. KENNEDY. Mr. President, on another matter, President Bush may be leaving 5 million children behind in our schools, but he is sparing no expense in a national campaign to cover up the failures of his administration on public school reform. Somehow the Bush administration can never find the money in the budget to hire and train teachers to help failing schools to expand after-school programs. But when it comes to politics and PR campaigns, he can find thousands and thousands of your tax dollars for White House propaganda. In a line that President Reagan made famous: There you go again.

They use taxpayers dollars to produce political ads for their bad Medicare bill, and they are doing it again with their failed education program.

I refer to the October 11 AP story by the education writer, Ben Feller. He writes:

> The Bush administration has promoted its education law with a video that comes across as a news story but fails to make clear the reporter involved was paid with taxpayer money. The Government used a similar approach this year in promoting the new Medicare law and drew a rebuke from the investigative arm of Congress which found that the videos amounted to propaganda in violation of Federal law.

That is why we ask Secretary Paige to take this propaganda off the airways

now. You just used a similar process on Medicare, and the GAO found it violated Government law. They are following the same procedure. This violates Government law, and it ought to be taken off the air and taken off now.

The videos and documents emerged through a Freedom of Information Act request by People for the American Way that contends the Department is spending public money on a political agenda. The group sought details of a $700,000 contract Ketchum received in 2003 from the Education Department.

One service the company provided was a video news release geared for television stations. The video includes a news story that features Education Secretary Rod Paige and promotes tutoring now offered under law. It does not identify the Government as the source of the report. It also fails to make clear that the person purporting to be a reporter was someone hired for the promotional video. Those are the same features, including the voice of Karen Ryan, that were prominent on videos the Health and Human Services Department used to promote the Medicare law and were judged covert propaganda by the General Accounting Office in May.

It is the same business, a different subject matter, and it is completely unacceptable. Enough is enough. It is time to get serious about improving our schools. It is time for the Bush administration to realize improving education in America is not about slogans. It is not about propaganda. It is time to get about the hard work of training more teachers, smaller class sizes, extra help for the children who need it.

STEM CELL RESEARCH

Now, to get back to my earlier comment about stem cell research—and I see a number of my colleagues on the floor who will address this issue as well—last evening I noted and saw my good friend the majority leader take the Senate floor to defend the indefensible, President Bush's stem cell policy. Here is what the majority leader said: Stem cell research shows great promise. It shows great promise, and the President's policy harnesses that promise and it also strikes a balance with the values of our people.

The fact is that the President's position does not strike a balance. It does not harness the promise of stem cell research. In fact, it is an attempt to have it both ways. It is an attempt to satisfy the group of the President's supporters who oppose stem cell research on religious grounds while pretending to the vast majority of Americans who support such research that he is really behind it. No amount of rhetoric can hide the fact that the biggest obstacle to finding cures for paralysis or Parkinson's disease or juvenile diabetes or heart disease through use of embryonic stem cell is President Bush.

President Bush is fond of claiming that he is the first President to approve funds for stem cell research. That sounds good, but it is not true. Here is the actual record: For a number of years, the Congressional Appropriations Act had carried a prohibition against using Federal funds for research that destroyed an embryo. Now that we better understand the importance of embryonic stem cell research, a prohibition would never pass today. President Clinton had asked a special committee at NIH to reexamine this policy, and they concluded that the use of embryos for research was ethical and scientifically important.

In January of 1999, the HHS General Counsel concluded that despite the appropriations bill language, NIH money could be used to support research on cell lines derived from embryos as long as NIH did not pay for the destruction of embryos. Following this decision, NIH set up a special committee to review grant applications for such research. In April of 2001, the new Bush administration suspended the committee and barred NIH from awarding any funds for embryo research.

In August 2001, President Bush announced the policy that has effectively slowed stem cell research to a crawl. Under his policy, only stem cell lines that had been created prior to 8 p.m., August 9, 2001, would be available for funding with Federal money. Virtually every scientist involved in the field said this policy was hopelessly restrictive, but President Bush did not listen.

The experience of Professor Douglas Melton at Harvard, a distinguished medical researcher, illustrates the folly of the Bush restrictions. Professor Melton has created 17 stem cell lines that meet all of the ethical guidelines laid down at NIH, but his stem cell lines were created after the date in the President's Executive order. He receives no Federal funding for his work. He has had to create a whole separate lab to conduct his research because his regular lab had received Federal funds. For this dedicated researcher, the barriers created by President Bush's policy in lost time and denied resources and, most of all, in potential missed opportunities for patients have been tragic.

The fact is that some of our most distinguished scientists are moving abroad to do their research. The last thing we need is a reverse brain-drain.

When President Bush announced his policy, he claimed that more than 60 stem cell lines would be available. At the time, experts said that the President was simply wrong, and he was wrong, but he has not changed his policy. The reality is that only 22 cell lines can actually be used by scientists. The rest have failed to develop into usable lines. Even the few lines that NIH will fund are all contaminated with mouse cells. Because of the danger of using these contaminated lines, FDA rules make it almost impossible to use any of these lines to develop or test cures in human beings.

Worse yet, every single one of those lines comes with a restrictive contract known as a materials transfer agreement that actually prohibits doctors from using them in patients. Let me make sure my colleagues understand this. NIH researchers are legally barred from using any of the stem cell lines available to them to help treat patients. Do not just take my word for it; go look it up. All the restrictions are laid out in black and white on the NIH stem cell Web site.

Most people would look at the facts that have come out since George Bush laid down his policy and admit they made a mistake and then make a change. No shame in that. But will George Bush admit he made a mistake, admit that it is time for a change? Oh, no, he is never wrong. He has never made a mistake. Sound familiar?

The reality is that the American people know the Bush policy is denying help and hope to millions of American patients and their families. The majority of the Senate knows it, too. Fifty-eight Senators sent a letter to President Bush to reverse this disastrous policy before more precious time is lost in the battle against diseases such as diabetes, Parkinson's, spinal injury, and more. That letter was signed by 14 Republicans, including prominent pro-life conservatives such as ORRIN HATCH, TRENT LOTT, TED STEVENS, KAY BAILEY HUTCHISON, and GORDON SMITH. These pro-life conservatives understand that the embryos that would be used in research are byproducts of in vitro fertilization procedures to be used to help couples who would otherwise not be able to have children. If these embryos are not used in research they will be discarded or frozen in perpetuity. We are not talking about destroying embryos for research; we are talking about using embryos in research that would otherwise be destroyed in any event.

In an eloquent editorial published in the Salt Lake Tribune in April 2002, Senator HATCH wrote:

> Regenerative medicine is pro-life and pro-family. It fully enhances, not diminishes, human life. If encouraged to flourish, it can improve the lives of millions of Americans and could lead to new scientific knowledge that is likely to yield new treatments and cures.

Why would anyone oppose that? As everyone knows, Nancy Reagan strongly supports that position. The Nation's scientific community knows that embryonic stem cells have a unique potential to repair injury and treat disease. According to a letter signed in 1999 by 36 Nobel laureates, those who seek to prevent medical advances using stem cells must be held accountable to those, and their families, who suffer from horrible disease, as to why such hope should be withheld.

A later letter was sent by 80 Nobel laureates, and it said: Current evidence suggests that adult stem cells have markedly restricted differentiation potential. Therefore, for disorders that prove not to be treatable with adult stem cells, impending human pluripotent stem cell research risk unnecessary delay for millions of patients

who may die or endure needless suffering while the effectiveness of adult stem cells is evaluated.

Those most affected by the Bush administration's cruel restrictions on this lifesaving research know it is wrong. Over 140 organizations representing patients and health professionals, including Vanderbilt University Medical Center, wrote to President Bush, urging him to end these unwarranted restrictions. The organizations signing that letter represent patients afflicted with cancer, diabetes, arthritis, and many other serious illnesses.

Their letter was written on the third sad anniversary of the announcement of the President's failed policy. It notes the grim statistics, that in the 3 years since that announcement, ''more than 4 million Americans have died from diseases that embryonic stem cells have the potential to treat.''

Even the Bush administration has admitted that adult stem cells cannot match the potential of embryonic stem cells. The conclusion of an NIH report in June of 2001 couldn't be clearer:

> Stem cells in adult tissues do not appear to have the same capacity to differentiate as do embryonic stem cells.

The fundamental fact is that the Bush administration's first action on stem-cell research was to block the sensible policy that President Clinton had instituted to allow NIH to fund stem-cell research with strict ethical guidelines. As I noted earlier, President Clinton was the first President to allow NIH to fund embryonic stem-cell research, not President George Bush. His sensible policy was never implemented because the Bush administration blocked it.

If George Bush had not reversed President Clinton's sensible and well-reasoned policy, National Institutes of Health funded scientists would today be able to conduct research on stem cells uncontaminated with mouse cells. Because of George Bush's restrictions, they cannot.

If George Bush had not reversed the Clinton policy, National Institutes of Health funded scientists today would be able to search for breakthrough new cures by researching stem cells from patients with genetic disorders. Because of George Bush's restrictions, they cannot.

If George Bush had not reversed the Clinton policy, National Institutes of Health researchers would be free today to research cell lines that could actually be used in patients. Because of George Bush's restrictions, they cannot.

It is time to lift these restrictions. Millions of patients and their families hope that George Bush will lift those restrictions. But everyone in this Chamber knows he will not. To restore hope and renew the promise of medical progress, we need a change in November. We need a President who will not let a blind and stubborn ideology stand in the way of cures for diabetes, hope for cancer, relief for those suffering from many other disorders. America's patients need a change. They need JOHN KERRY.

Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 12 minutes.

THE STATE OF THE ECONOMY

Mr. KENNEDY. Mr. President, I see a number of my colleagues here. I will be brief. But I want to address the subject matter which was so eloquently addressed by our friend and ranking member on the Joint Economic Committee this past week in the hearings that were held about the state of our economy. I see him on the floor. I want to make some opening comments and hope he will help me to understand this issue better.

I have in my hand President Bush's statement that he made in Minnesota 2 days ago. President Bush, in Minnesota 2 days ago, said:

> Our economy has been growing at rates as fast as any in nearly 20 years.

I also have in my hand:

> I have proposed and delivered four rounds of tax relief. . . .

This is from the President's radio talk on Saturday. Two days ago he talked about the economy ''expanding,'' ''growing,'' ''the best in 20 years.'' Then on Saturday in his radio talk:

> I have proposed and delivered four rounds of tax relief and our economy is creating jobs again. We have added 1.9 million jobs in the past 13 months.

What he doesn't point out is the economy is working well for Wall Street but not for Main Street; that we are still short 1.6 million jobs. This will be the first President since Herbert Hoover who has presided over an economy where we have not produced the jobs.

In that report we had last week, we found out a great many of those jobs were temporary jobs. Of that number of 96,000 jobs, a third of those were temporary. As was pointed out in the Joint Economic Committee where the Senator from Maryland serves, it reminded us the real unemployment rate is 9.4 percent because so many people have given up looking for work. And the long-term unemployment rate is the highest for the longest in the history of keeping the information by the Department of Labor.

But I want to know if the senior Senator saw Monday's Washington Post. This is not a month ago. This isn't 6 months ago. Here it is, a front-page story:

> Permanent Job Proves an Elusive Dream

The story goes on about the rise of temporary workers.

The story goes on and talks about Phillip Hicks. He lost his job and could only find temporary work.

It continues. I will ask unanimous consent the entire article be printed in the RECORD.

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

[From the Washington Post, Oct. 11, 2004]

PERMANENT JOB PROVES AN ELUSIVE DREAM

(By Jonathan Weisman)

CYNTHIANA, KY.—Phillip Hicks had loaded his rusting pickup and was heading to work one afternoon last year when his tearful daughter called from a pay phone. She had been pulled over for speeding, she told her father, and worse, she was driving with a suspended license. The police had impounded her car and left her by the side of a dusty highway.

To most workers at the sprawling Toyota plant where Hicks works, the detour to pick up his daughter would be a headache, no doubt. To Hicks, 40, it was considerably more. He called his employer to say he would be late for the swing shift. But since Hicks is a temporary worker, his daughter's brush with the law became a permanent blemish on an already shaky employment record. Temps are allowed only three days off a year, and Hicks was coming up against that.

''They told me I had an attendance problem,'' he sighed wearily, his soft mountain accent revealing his roots in coal country to the east.

Hicks is among the ranks of what economists call the ''contingent'' workforce, the vast and growing pool of workers tenuously employed in jobs that once were stable enough to support a family. In a single generation, ''contingent employment arrangements'' have begun to transform the world of work, not only for temp workers, but also for those in traditional jobs who are competing with a tier of employees receiving lower pay and few, if any, benefits.

The rise of that workforce has become another factor undermining the type of middle-wage jobs, paying about the national average of $17 per hour and carrying health and retirement benefits, that have kept the nation's middle-class standard of living so widely available.

Hicks has spent four years as a temp worker building cars for Toyota Motor Corp., making manifolds and dashboards for Camrys, Avalons and Solaras sold all over the United States. He works alongside full-fledged Toyota employees who earn twice his salary, plus health and retirement benefits.

When Toyota announced it would be coming to Georgetown, Ky., in 1985, it promised to invest $800 million in the community and employ thousands, with thousands more jobs coming through its suppliers. By 1997, the plant exceeded all expectations, with 7,689 full-time workers, a payroll over $470 million, and a ripple effect creating more than 34,000 other jobs in the Bluegrass state.

But by 2000, Toyota was carefully controlling any additions to the workforce. When Hicks left his family in Knott County, Ky., to seek work at the plant 140 miles away, the only door left open was through a temporary agency, Manpower Inc. At $12.60 an hour, the job would not even let him afford the $199-a-week health insurance premium for his family of five. But Hicks said Manpower assured him that after a year—two at the outside—he would be on Toyota's payroll, earning $24.20 an hour, with health insurance, a dental plan, retirement benefits, incentive pay, the works.

''I could stand on my head for a year or two for a $20-an-hour job with benefits,'' he shrugged.

The increasing use of temps ''is part of the diminished and inferior wages and fringe benefits you see in all the new jobs that are becoming available,'' said William B. Gould IV, a labor law professor at Stanford University and former chairman of the National Labor Relations Board.

The government does not have up-to-date figures for the size of the entire contingent

workforce, which includes temps, independent contractors, on-call workers and contract company workers. In 2001, the Labor Department classified 16.2 million people—as much as 12.1 percent of the labor force—as contingent workers.

It does track one slice of that workforce: temporary workers. Since January 2002, the Nation added 369,000 temp positions, about half of the private-sector jobs created during that stretch. Temporary jobs accounted for one-third of the 96,000 jobs added to the economy in September. In 1982, there were 417,000 workers classified as temporary help. Today, there are more than 2.5 million, according to Labor Department data.

That is about equal to the number of manufacturing jobs lost in the past decade. Barrie Peterson, associate director of Seton Hall University's Institute on Work in South Orange, NJ, said that as many as half of those lost manufacturing positions may have been converted to temporary employment.

The change can be abrupt. At A&E Service Co., a small auto-parts assembler in Chicago, employees were told on July 15 that the firm ''will no longer hold general labor employees on its payroll. All general labor employees that choose to work at A&E Service Company, LLC must be employed by Elite Staffing effective immediately.'' On the announcement, workers were asked to check a box accepting or declining the new temporary employment, then sign and date the form.

Temps no longer fit the stereotype of the secretary filling in for a day or two. Jobs categorized as precision production, repair, craftsmanship, operations, fabrications and labor now account for 30.7 percent of all temp jobs, nudging out clerical and administrative support, which represent 29.5 percent of the temporary army.

Peterson calls it ''the perma-temping shell game,'' part of a broader effort by employers to convert sectors of their workforce to temps.

Satisfaction with the arrangement varies. About 83 percent of independent contractors in the Labor Department survey said they were satisfied. By contrast, about 44 percent of temps and 52 percent of contingent workers said they were not satisfied.

The impact of the temp trend on the American middle class can hardly be overstated. As the Federal Reserve Bank of Chicago noted in a paper last year, temporary workers ''receive much lower wages than permanent workers, although they frequently perform the same tasks as permanent staff members.'' An analysis by Harvard University economist Lawrence F. Katz and Princeton University economist Alan B. Krueger found that states with the highest concentration of temps experienced the lowest wage growth of the 1990s.

Toyota executives say they use temporary workers as a buffer, to insulate their full-time staff from the ups and downs of consumer demand. Since it opened in 1988, through two recessions, the Georgetown plant has never laid off an employee, said Daniel Sieger, manager of media relations for Toyota Motor Manufacturing in North America.

Even without layoffs, however, the plant's full-time staff has declined by 706 positions from the 7,787 employees it had in 2000, according to Toyota. Over that time, the temp workforce dipped from 409 in 2000 to 301 in 2002, then rose to 425 late this summer.

Toyota managers say they will try to hire all of their long-term temporaries by the end of the year or in early 2005, after they see how many Toyota workers accept an early retirement package. Forty-seven temps were hired in late September. The management move came after The Washington Post spent a week in Kentucky examining the temporary employment issue at the Georgetown plant. Before September's hires, it had been two years since the plant hired a full-time ''team member,'' Toyota managers said, a period during which the plant shed 240 full-time positions. Temporary employment during that time rose by 124.

''Certainly the long-term temporary issue is one that we regret,'' said Pete Gritton, the plant's vice president of administration and human relations. ''We never intended to have those people in here for four years or whatever as temporary.''

Temporary employment is an increasingly important issue for unions. The expansive labor contract reached between the United Auto Workers and Ford Motor Co. in September 2003 includes six pages of rules governing the use of temps. Under the agreement, Ford can bring on a temporary worker for a maximum of 89 days, after which the worker must be hired or dismissed. Most temps can only work two days a week, as well as ''premium'' days such as holidays.

Just 62 miles west of the Toyota plant, the UAW made a stand at Ford's Kentucky Truck Plant, refusing even to countenance 89-day temps.

''It's a big, big deal,'' said Mike Stewart, the UAW's building chairman at the plant in Louisville. ''Any time you get this kind of [compensation] divide, it just means less people making less money who can't afford your product. We will always keep temps to a minimum.''

The use of temporary workers appears to be most pervasive in plants owned by foreign companies, which tend to locate in states where laws make union organizing difficult, said Susan N. Houseman, a researcher at the independent W.E. Upjohn Institute for Employment Research in Kalamazoo, MI. One Japanese auto parts plant estimated that a 5 percentage point reduction in the share of temps in the workforce would increase total labor costs by $1 million over a year, an Upjohn study found.

At BMW's auto plant near Greenville, SC, about 175 temporary workers supplement a production workforce of 3,500, keeping the assembly line churning out Z–4 roadsters and X–5 sport utility vehicles for the U.S. and global market through lunch hour and break times, said Robert M. Hitt, a spokesman for BMW Manufacturing.

At Faurecia S.A., a BMW supplier in nearby Fountain Inn, SC, about a third of the workers making door panels, consoles and dashboards for the Z–4 are temps, said Campbell Manning of Palmetto Staffing Group Inc., the temporary employment agency that staffs the French auto parts supplier.

''They don't hire permanent,'' she said. ''After 90 working days, they used to roll onto the payroll. Now they just keep them as long-term temps.''

Palmetto Staffing charges Faurecia a flat $12–an-hour for each of its temps. If Faurecia hired its own permanent workers, expenses for workers compensation insurance, unemployment insurance and other demands would add $4 to $5 onto a $9–an-hour wage. Benefits would add more.

Even the temps cannot argue with the logic of hiring a lower-cost workforce. ''I don't really blame Toyota,'' said Roy Biddle, who went to work at the Georgetown plant at the same time Phil Hicks did, nearly four years ago, with similar assurances that he would land a full-time job after a year. ''The law's the law, and they're just doing what they can do under the law.''

To temper expectations, Toyota last year implemented a new policy capping temporary employment at two years. After that period, workers must leave, but can reapply in six months. If hired again, a worker starts at the entry wage of $12.60 an hour, compared with more than $14 per hour if they have been there for a few years.

About 160 long-term temporaries, like Biddle and Hicks, were grandfathered in and allowed to stay indefinitely.

Nancy Johnson, director of the Center for Labor Education and Research at the University of Kentucky, said that because of the new policy, temps now cycle from one plant to another, working at Toyota, then at nearby E.D. Bullard Co., making fire helmets, then perhaps at an auto parts supplier before heading back to Toyota.

At the Kentucky State Cabinet for Health and Family Services' community office in Georgetown, social workers say more Toyota temps are applying for state aid to cover food costs and medical bills.

''It's the traditional Japanese model that people talked about in the '80s,'' Johnson said. ''Toyota never lays people off, sure, but the temps are absorbing the financial swings of all these companies, and they're doing it at a price.''

Rick Hesterberg, a plant spokesman, noted that $12 to $14 an hour in central Kentucky compares favorably to wages even for some permanent jobs. ''These people still make good money,'' he said of the temps. ''It's nothing to snuff your nose at, at least in this part of the country.''

But many Toyota temps say their problems go beyond money. Indeed, life seems always on the edge of disaster, where even rewards—the small gift bag of cookie cutters or the ''Star Performer'' T-shirts that are given out to temps—seem more like petty humiliations. In February, a Toyota temp posted an anonymous ''discussion'' paper in the assembly-line men's rooms, pleading ''the 'E' word, 'E' for exploitation.''

''There are temps at [Toyota] who have been here for 3 years, some approaching 4 years, many waiting for the permanent job offer,'' the essay reads. Toyota ''is exploiting their patience, their economic status, their work ethic, their work contribution, their reliability, their health, their safety.''

Chris, a graduate of Western Kentucky University, once interned at Toyota during college, doing computer-aided design and drafting. He spoke on condition that his last name would not be used. Even with a degree and an internship on his resume, he, too, was steered to Manpower as the only door into Toyota. But unlike the other temps, he figured his temporary stint would quickly lead not just to the factory floor, but to the white-collar suites.

Now, after four years, he frets that his wife wants a second child but he's not sure how they'll pay for the insurance.

''These people are making extreme sacrifices, working second shift, no benefits, low pay,'' fumed Matt Roberts, 31, a full-time Toyota worker since 1997. ''It's a disgrace to the American dream. That's what it is.''

For years, the United Auto Workers has tried to unionize the Toyota plant, to no avail. Recently, the use of temps has become a major issue. For full-time workers, the temps present a quandary. On the one hand, the full-time workers may see the temps as Toyota does, a buffer protecting their jobs. The more low-paid workers there are at the plant, the more profitable the company will be, and the less likely to resort to layoffs, suggested David Cole, director of the Center for Automotive Research in Ann Arbor, Mich. A union might threaten that buffer by demanding that temps be brought on full-time or dismissed.

''The temps may help keep the union out,'' Cole said. ''It's in the selfish, vested interest of the full-time workers to keep more temps.''

But some Toyota workers do not see it that way. Several full-time employees said

the growing presence of temps at the plant is holding back their wage gains, while limiting their movement in the plant. Some employees say they have been stuck working nights because any open day-shift positions are quickly filled by temps.

''If you break down, they've got a new guy waiting at the door,'' said Roberts, who with his wife, another Toyota worker, clears a six-figure income. ''You're creating a tug of war. There's no protection for either side.''

In Georgetown, the divisions can show up in strange, some say demoralizing, ways.

Toyota is famous for the ''kaizen''—continuous improvement—checks that it pays to workers who come up with suggestions that save money. Earlier this year, Hicks and Chris helped devise a change that cut two jobs from their small quadrant of the assembly line. The change meant more work for everyone, but it was more efficient. Toyota rewarded the idea by sending out $500 checks to every member of the team, every full-time member, that is.

The two temps who came up with the suggestion got nothing. Their group leader did feel bad. He gave each of them a $25 gift certificate to the Toyota company store.

Then a full-time worker slipped them both $50.

''You guys got us this money,'' Chris recalled him saying. ''Sorry I can't give you more.''

Mr. KENNEDY. The article does track one slice of the workforce: temporary workers. Since January 2002, the nation has added 369,000 temporary positions, about half of the private-sector jobs created during that stretch.

This report says half of all the private sector jobs created under this Administration since January 2002 are temporary positions. These are jobs without benefits. You talk about health insurance or retirement? Those are virtually nonexistent.

This is what is happening in this country. It is amazing to me to hear the President talk about how the economy is growing and crow about the increased numbers of jobs that we had—96,000 this last month, which is not even enough to keep up with the growth of the population. And then we find a third of those jobs are Government jobs, a third are temporary jobs, and the other third are not paying very much.

I want to also mention that, as difficult as this is, those are figures that point out what happens to real people in their lives. But whatever happens to these individuals I have just mentioned pales in comparison to the kind of pain minorities and women are feeling; women, whose real income has declined, and minorities—Hispanics, African Americans—whose unemployment has increased dramatically.

I see the Senator from Maryland on his feet now. I am interested in his reaction to that hearing and to those figures.

Before I run out of time, I would also like him to address the subject of the foreign purchase of over half of the U.S. debt. Nearly $2 trillion of the national debt is now owned by foreign holders. Recent figures show China and Japan owning $1.3 trillion in U.S. Treasuries. I am concerned these foreign nations are basically buying up America. We know who has the whip in hand when you control the resources. One morning we will wake up and foreign countries will own America. If they control our economy, then they control our destiny. The American economy and American destiny ought to be in Americans hands.

Mr. SARBANES. Will the Senator yield on that last point?

Mr. KENNEDY. I am glad to.

Mr. SARBANES. The fact of the matter is, the tax cuts for the very wealthy, which is the centerpiece of the Bush economic plan, are being financed by borrowing overseas, primarily from China and Japan. That is what it comes down to. We do these excessive tax cuts, we run a deficit, and we have to finance the deficit. Where do they find the money to finance the deficit? They sell U.S. Government paper overseas, primarily to Japan and China. So we are borrowing money from overseas in order to finance these tax cuts.

It is bad enough to borrow internally, from our own people, in order to do this. But to go overseas and do it, as the Senator points out, and then give them this claim on American production on out into the future as far as one can see is absolutely irresponsible.

The Senator from Massachusetts made a very important point.

The President and his associates are busy out in the countryside trying to put the spin on the jobs figures. The fact is, the economy picked up 96,000 jobs last month. That is not enough to keep pace with the growth in population. This is the first administration since Herbert Hoover not to produce a net gain of jobs in the course of the administration. The Bush administration is down 800,000 jobs, a total of 1.6 million private sector jobs, and 2.7 million manufacturing jobs.

The last time you have an administration which failed to have a net gain in jobs in the course of its 4 years was 75 years ago in the administration of Herbert Hoover. This is a dismal job performance record. Yet the President is going around the country telling people we have turned the corner. The trouble is every time you go around the corner we are going in the wrong direction. That is the problem with the President's policies. He may have turned the corner, but the corner is taking us in the wrong direction.

Second, as the Senator from Massachusetts pointed out, if you factor into the unemployment rate the people who have dropped out of seeking a job because they are so discouraged by the economic conditions they encounter, and people are working part time for economic reasons—namely, they want to work full time but they can't find a full time job, so they are working part time—if you include that in the unemployment figure as well, which is the most comprehensive measure of unemployment, the unemployment figure is 9.4 percent, coming up to 10 percent unemployed.

The final point I want to make is that unemployment benefits usually—and it is a very important point because I see many colleagues on the floor who have joined with the Senator from Massachusetts and myself to try to extend unemployment insurance benefits, and the Senator from Washington was very much involved in that effort and we welcome so strongly her leadership in it—usually are for 26 weeks. When we hit an economic downturn, we extend it because the job market doesn't pick up quickly enough to get people back to work. We usually extend it out to 39 weeks. The administration has resisted efforts to extend the payment period for unemployment insurance. We now have a record number of long-term unemployed.

This is the record even before the Bush administration of the long-term unemployed. It ran along here, and now it has shot up to almost 22 percent of those unemployed who have been long-term unemployed.

Mr. KENNEDY. Mr. President, in this article, besides the administration being against the increase in the minimum wage, they are against unemployment compensation and against overtime. In this report in 1982, there were 417,000 workers classified temporary. Today, there are 2.5 million. This is about equal to the number of manufacturing jobs lost in the past decade.

These are the statements that we have about how good the economy is.

Mr. SARBANES. The Senator is absolutely right. We are confronting a very serious economic situation for our workers. There is real anxiety—indeed even fear—in working America about what is going to happen to people in terms of their employment and how they support their families. But we are not producing jobs fast enough to put people back to work. Yet the administration won't support extending payments for unemployment insurance.

How are these people supposed to support their families? These are working people. By definition, you cannot draw unemployment insurance benefits unless you have a work record. You must have been working and have built up a working record in order to qualify. We are talking about working Americans. How do they support their families?

The President talks about 95,000 jobs as though it is some success. It is not a success. This is the only President in 75 years in that entire period of time who has not had a net gain of jobs during his administration.

Mr. KENNEDY. I thank the Senator. I see my time has expired. I thank my friend from Maryland for his excellent observations.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 10 minutes.

CHRISTOPHER REEVE

Mr. HARKIN. Mr. President, like millions of other Americans, I was

shocked and saddened to learn last evening and to learn more this morning of the death of Christopher Reeve. In Hollywood life, he played Superman. But in real life, Christopher Reeve was a super person, a truly wonderful individual who embodied the indomitable human spirit in a way that won the respect and admiration of people across the globe.

Christopher Reeve was a classic example of a person with a disability who is remembered most of all for his ability, not his disability—the abilities that he mobilized to become an extraordinarily effective advocate for stem cell research.

I thank the Senator from Massachusetts for his eloquent and straightforward presentation of the arguments on behalf of embryonic stem cell research.

But I want to commend the memory of Christopher Reeve. He marshaled forces, he traveled all over this country at great expense, and at great cost to himself personally in terms of his own health, to marshal the forces necessary to promote embryonic stem cell research.

He spoke with passion and intelligence and conviction. Christopher Reeve offered hope—not a false or idle hope. He offered hope grounded in science and discovery, hope grounded in the promise in possibilities of embryonic stem cell research. Forty-two Nobel laureates—I think maybe many of them because Christopher Reeve called them on the phone and visited—came out in strong support of embryonic stem cell research.

Just yesterday there was a march here in Washington by families and survivors of those who had ALS, Lou Gehrig's Disease. One of those marchers was a staff person of mine whose father just passed away from ALS. She and her mother were both in that march yesterday.

Christopher Reeve's argument for stem cell research was compelling. It was beyond personal. Yes, he did speak once about his own personal spinal cord injury and stem cell research at Ohio State University in 2003 at a commencement address.

He said:

> I come to know people of all ages and from all walks of life that I would otherwise never have even met. For all our differences, what we had in common was our disability and the desire to find a reason to hope. I was inspired by so many and gradually discovered that I had been given a job that would create urgency and a new direction in my life. I could do something to help.

Christopher Reeve really did do a lot to help.

Senator SPECTER as chairman and I as cochair of the Appropriations Subcommittee on Labor, Health and Human Services held the first hearing on December 2, 1998, after Dr. Thompson of Wisconsin and Dr. Gerhart of Johns Hopkins isolated the first stem cells. I am proud that our subcommittee had 15 hearings on this issue. At more than one of those hearings it was determined that we did have the authority to do stem cell research from embryos. That was determined. That was determined before August of 2001.

I also point out that Christopher Reeve very eloquently testified at one of those early hearings on the necessity of embryonic stem cell research. We decided that the Government did have the authority. It is the President's Executive order of August 9, 2001, that limited what we could do.

When the President says that he is the first President to authorize stem cell research, that is not so, as Senator KENNEDY pointed out. He is the first President to limit, severely restrict, what we could do in stem cell research. The President said all the stem cells that were derived prior to 8 p.m. on August 9, 2001, could be used. Anything after that could not be used.

I remember watching that address. I was in my home State of Iowa. I thought to myself, why 8 p.m.? Why not 8:05? How about 8:10? In other words, if someone derives a stem cell at 7:59, it is okay, but at 8:01, it is not. What kind of arbitrary restriction is this? Totally arbitrary.

Because of that, he said there would be 60 stem cell lines—and we know there are only 22, and as the Senator from Massachusetts said every single one of those is contaminated because they used mouse cells on which to grow. So their use in human treatments is highly unlikely, at best.

The fact is, embryonic stem cell research offers enormous potential to ease human suffering. That is why this person, Christopher Reeve, fought so hard. The promise of stem cell research gave Chris Reeve hope, just as it gives hope for those suffering from ALS, Parkinson's disease, and diabetes, and all of their families. It is giving my nephew, Kelly McQuaid, hope. He was injured in the military. He is now quadriplegic and has been for over 20 years. He has hope that this stem cell research will allow him to again walk one day, just as Chris Reeve hoped it would for him.

We know stem cells have worked in rats. It has been proven that rats with spinal cords that have been severed and reconnected with stem cells walk again. That has been done in rats. As I pointed out, we humans are 99.5 percent rats—I don't mean just us politicians, I am saying genomically, structurally, we are about 99 percent the same cells. If stem cells can get rats walking again, think of the hope it has for humans. Yet this President says no.

There are those who say we cannot destroy these embryos because it is life. This is something I have done before in my committee, and I did it once with Chris Reeve there. He liked it, so I will do it again in his memory. I have a pen and a blank piece of paper. I hold this up and I ask if anyone can see what I put on that piece of paper. What I put on that piece of paper is a dot, a little dot. That is the size of the embryos we are taking the stem cells from—a dot you can barely see on a piece of paper.

People say that is life. Of course it is life. Every cell has life. All my skin cells have life. My hair cells have life. Sperm has life. Eggs have life. But they say we cannot destroy these for stem cell research. They equate that somehow with this human being right here. They equate this little dot that you can barely see with someone like Chris Reeve. This is what we are taking the stem cells from, that little dot.

A lot of people think when we talk about embryonic stem cell research that somehow we are destroying fetuses. They get this confused. So I point out it is as big as a dot on a piece of paper. We will equate that with this human or that dot with my nephew, Kelly McQuaid? This is the promise of stem cell research.

We already have over 400,000 of these little dots that you can barely see frozen in liquid nitrogen. They are left over from in vitro fertilization. Guess what happens, folks. They are being destroyed. The dots are in test tubes, frozen in liquid nitrogen. Every so often when the donors do not want them any longer—they had their children or they reached the age they do not want to have children—they can call up the in vitro clinic and say, We do not want those saved any longer, and the test tube is cleaned out and is washed down the sink. It is either that or use them for stem cell research.

That is why I wanted to pay homage to Chris Reeve's memory today. He was a great friend, a personal friend. I remember him coming to Iowa. My sympathies to Dana, his wonderful wife, and their family. But rest assured, we will prevail.

Mr. JEFFORDS. Mr. President, I come before the Senate today with a heavy heart to pay tribute to Christopher Reeve.

I was lucky to be able to call Christopher Reeve a friend.

His passion for life and for improving the lives of all Americans serves an inspiration to all of us.

He may have played the character of Superman in the movies, but he lived the role of a superman through his life.

I consider myself quite fortunate that our paths crossed on many occasions, in Vermont, at his home in New York, and in the halls of Congress.

Chris was an outspoken advocate for the arts.

As the co-founder of the Congressional Arts Caucus and, for several years, the Chairman of the Senate Committee with jurisdiction over the National Endowment for the Arts (NEA), Chris and I shared the belief that Federal support for the arts was critical.

At a time when the NEA was under attack in 1995, I asked Chris to testify before the Senate Labor and Human Resources Committee on the importance of the agency.

His testimony brought attention to the issue, and highlighted the role that

arts and education play in the lives of children.

To this day, I believe that his testimony and advocacy helped preserve the agency through very difficult times.

Later, I turned to Chris again for help, this time on the important issue of lifetime caps on health insurance policies.

In 1996, as the Congress was writing new laws governing the portability and availability of health care coverage, Chris helped me gather support for a proposal to raise the lifetime caps of health insurance policies.

Chris was an outspoken advocate in support of that proposal, and shared his own personal story concerning health insurance to raise awareness for the lifetime cap issue.

His courage and leadership brought that issue to the forefront of the Congressional debate.

His dedication to stem cell research was renowned.

His testimony before the Congress and advocacy for the issue—once again—put a human face on the possibilities that could emerge from stem cell research for those with spinal cord injuries and other diseases and afflictions.

Chris' commitment to bettering the lives of individuals with disabilities never ended.

In 2000, Chris traveled to Burlington, VT, at my request to speak before a disability conference.

It was his first visit back to Vermont since his accident.

He called the disability movement the last great civil rights movement, saying the primary obstacle for the disabled is other people's fear.

Chris said:

> Changing the public's perception of people with disabilities takes time. It's about them getting over their fear. Imagining that it could be them.
>
> And once they know that, once they can really sympathize, then you get change.
>
> And then America lives up to its full potential.
>
> And I think we're on that path.

Thanks to Christopher Reeve countless Americans will live to their full potential.

We will continue to work on his behalf on the issues he was so dedicated to.

I send my deepest condolences to Chris' wife, Dana, and their entire family.

They cared for Christopher with a love and kindness that was inspirational.

Dana herself was an inspiration to all of us. She understood the devotion and greatness of Chris. She helped Chris live out his desire to help the disabled.

I hope they are comforted with his memory, and the knowledge that their loss is shared by so many across this Nation.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from California is now recognized for 10 minutes.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Iowa for his very eloquent presentation. I agree with him 100 percent. I also thank the Senator from Massachusetts for his presentation.

As the senior Senator from California, a lifelong Californian, I will make a few remarks about Chris Reeve.

I remember when I saw Chris Reeve in ''Superman.'' He was 25 years old. He was amazing. We now learn he did some of his own stunts. And then what followed was the ''5th of July,'' and I remember ''Somewhere in Time.'' We saw this tall, handsome actor, seemingly invulnerable.

I remember the film footage when he went over that jump on a horse. We learned that he had severed a vertebra high in his neck which canceled out all speech and rendered him quadriplegic for the rest of his life.

As many know, it is rare that an individual survives more than 2 years with this form of injury. Yet he survived for 9 years. I remember listening to a CNN interview with Paula Zahn over stem cells. He said: When somebody lies still and doesn't move anything for a matter of days, cannot even scratch their nose, let them talk to me about stem cell research.

In fact, this is a catastrophic injury presenting him with a catastrophic problem. So many people suffer from many of these injuries and from catastrophic disease, all of which may well be helped if we go eagerly, enthusiastically, and scientifically into stem cell research. That is the challenge. Parkinson, diabetes, Alzheimer's, spinal cord injuries all can be helped.

Yet Christopher Reeve, who could not move, made amazing progress—not a recovery but progress—and would appear here before hearings and hold press conferences and urge us to move forward with a stem cell bill.

I had the pleasure of introducing the first stem cell bill in this Senate. There are five Members—the Senator from Utah, Mr. HATCH; the Senator from Massachusetts, Mr. KENNEDY; the Senator from Pennsylvania, Mr. SPECTER; the Senator from Iowa, Mr. HARKIN—who are cosponsors of the major stem cell bill. We will be back. We will reintroduce it as one of our first bills in January in this new session. I will be asking my colleagues to rename this bill the Christopher Reeve National Stem Cell Act.

I want all of America, through this bill, to know Chris Reeve's last 9 years on Earth were not, in fact, in vain, that we will produce a bill that will, in fact, put America on the scientific horizons of research for catastrophic and disabling diseases and injuries. If we do not, I believe other States will follow with what California is doing.

California has on the ballot a proposition. It is known as proposition 71. It would produce $3 billion in bond funds to allow California to plunge ahead to produce stem cell research. Now, other States will follow if we do not move with a national bill. So I hope we will.

The PRESIDING OFFICER. Under the previous order, the Senator from Illinois is recognized for up to 20 minutes.

Mr. DURBIN. Mr. President, I would like to change that by unanimous consent to 15 minutes and ask if the Chair would notify me when I have 2 minutes remaining.

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

Mr. DURBIN. Mr. President, I thank the Senator from California for what she said. This tax bill came about because we got into a fight with our trading partners over export subsidies. At the end of the fight, they won and we lost. An export subsidy that we had in the United States had to be taken off the books. So what was a minor facelift when it came to an export subsidy turned out, after our friends in the House and Senate got their hands on it, to be an extreme makeover of the Tax Code. Unfortunately, the American people, who could not afford the powerful lobbyists involved in writing this, ended up as the people with the sad faces.

So when we take a close look at what this bill did, what was supposed to be a quick and minor fix of the Tax Code blossomed into a huge giveaway of tax benefits and made some policy changes we are going to regret.

I have been fighting the tobacco companies as long as I have been in Congress but 15 years ago passed the law which banned smoking on airplanes. The passage of that law led to some very important things happening in the U.S. Government and across the board. But I mistakenly believed that the trend was on our side, that those of us who wanted to protect children from becoming addicted to tobacco really had the wind at our backs.

Well, we lost it in this conference committee because we put in the conference report a provision which the major tobacco company, Philip Morris/Altria, agreed on which said if we are going to buy out tobacco growers, then we are going to put FDA regulation in place so we can protect children from being sold tobacco products that lead to an addiction that can lead to disease or death.

It was a good, balanced bill, a bipartisan bill. Senator DEWINE, a Republican of Ohio, and Senator KENNEDY, Democrat of Massachusetts, put together this FDA regulation. We sent it to conference and those conferees who put together this monstrous bill ripped it out.

Instead, they said, we are going to give billions of dollars to buy out tobacco growers but not one penny to protect children from the harm of tobacco products.

I will return next year, God willing, to renew this battle with my colleagues. We cannot give up on our children as this bill did. It is not the only thing wrong with the bill. It is the one that touches me personally and one about which I feel strongly.

Mr. SARBANES. Will the Senator yield?

Mr. DURBIN. I am happy to yield.

Mr. SARBANES. The bill that was passed by the Senate contained within it the provision that provided authority to the FDA to protect children; is that correct?

Mr. DURBIN. That is correct.

Mr. SARBANES. And that provision was then taken out in the conference with the House Members, stripped out of the bill; is that right?

Mr. DURBIN. The Senator from Maryland is correct. What they took out of the bill was the authority of the Food and Drug Administration to list the ingredients on a tobacco package, to put on a warning label that really means something, as opposed to the meaningless warning labels that have been on for 30 or 40 years, and to establish standards and rules for selling tobacco products so children won't become addicted.

I have never met a parent who has said to me: I am so happy. I just learned my teenage daughter has started smoking.

I have never heard that said. There isn't a single one of us who has reared a child who ever wanted to hear they were going to take up smoking or cigarette tobacco. This bill established protections. Those protections were removed. Those tobacco lobbyists who have a big grin on their faces today, because we passed this bill by a big rollcall, should understand their children are at risk, too. The children of families across America are at risk as well.

Mr. DURBIN. Let me say a word, too, about Christopher Reeve. I woke up this morning in Chicago before flying here and heard the news, as did most Americans, about the death of Christopher Reeve at the age of 52. I saw him in the movies—we all did—''Superman'' and others. He was quite a handsome young actor who attracted a lot of attention at the height of his career. Then about 9 years ago he was involved in an accident which left him a quadriplegic.

I remember the photos of Chris Reeve after this happened. There were photos of a man in a wheelchair on a ventilator who looked as if he was just hanging on to life by a thread. He hung on for 9 years, and he didn't just survive, he used his life and used it heroically.

Let me also say I thought so many times about his wife Dana and their family. Those of us who are married said we would stand by our mate for better or for worse, richer or poorer, in sickness and in health. You never quite know what that vow means until you see someone like Dana, the wife of Christopher Reeve, who stood with him, helped him every minute of every day so he could survive.

And he didn't just survive. He fought. What did he fight for? He fought for medical research so people just like him and others who would be victimized like him might have a fighting chance in life. He came here to Capitol Hill and testified, held news conferences, traveled around the United States with the message.

Why is it important that we not just eulogize this brave man and the 9 years of his life where he showed such courage? Because the issue he was fighting for is an issue we will all get to vote for on November 2.

Christopher Reeve and many like him, such as Michael J. Fox, understand that embryonic stem cell research gives them hope, a chance to overcome quadriplegia, a chance to overcome Parkinson's disease, a chance for the millions of families who see their beautiful young son or daughter with juvenile diabetes, just a chance that the research will open the door to find a cure, really breakthrough scientific research involving tiny stem cells that you can only see under a microscope.

Why is this important? Because this administration, the Bush administration, has taken the position that the Federal Government must close the door to embryonic stem cell research and only limit it to a handful of these stem cell lines that were existing on August 2001 when President Bush announced he had in his own mind reached a compromise on this issue. It may have been a political compromise to President Bush, but it compromises the future for millions of Americans.

Some people argue it is a partisan issue: DURBIN, you're a Democrat criticizing a Republican President.

Listen closely: No one has ever suggested that Nancy Reagan is not a good Republican, and she stood up to fight for embryonic stem cell research. And ORRIN HATCH, a Republican Senator from Utah, has stood up to do the same, and ARLEN SPECTER, another Republican, has stood up to do the same. This is not a partisan issue.

The position we take on this issue is to take the politics out of science. We have an opportunity for Christopher Reeve and people such as him to give them hope and a chance that medical research is going to open doors and make lives better.

Some want this to be a debate on religion. There are some, by religious belief, who do not endorse embryonic stem cell research. We better take care if that is going to be the standard. We could be walking into a very dangerous area.

There are some, by religious belief, who don't believe in blood transfusions. So should we say at this point blood transfusions are immoral for all Americans because one religion or another does not agree they are necessary to prolong life?

There are some, by religious belief, who believe medical doctors should not be turned to but the power of prayer should cure your illness. Should we take that as a moral position for America and say that we cannot encourage medicine in America? I think not. So why in this area, when it comes to medical research, are we going to close the doors that the Bush administration has to the hopes for Christopher Reeve and many like him, and for millions across America?

In just a few days, there will be a debate between President Bush and Senator JOHN KERRY—the last one—in Arizona, about the economy. I hope there is an opportunity for JOHN KERRY to point out these facts:

Forty-seven States under the Bush administration have had a loss of manufacturing jobs. I am sure this chart is hard to see on television. In Illinois we lost 135,800 manufacturing jobs in the last 4 years; almost 40,000 in Missouri; 23,000 plus in Iowa; 52,500 in Wisconsin; 152,000 in Pennsylvania; 164,000 manufacturing jobs lost under the Bush administration in Ohio; 10,000 in West Virginia. The list goes on and on for 47 States. These are the jobs we have lost.

Trust me, when these jobs are lost, they are not replaced with jobs that pay as much or that offer the same kind of benefits. These families are going to have a tough time getting back to where they were. Why has this happened? The Bush administration's economic policies have failed. Tax breaks for the wealthiest people in America have not given us the kind of economic boost that the President promised.

Look at what has happened in the Bush economy when it comes to American families' household income. It is down over $1,500 since the President took office. We have lost ground. We have lost ground for families who get up and work hard every day to try to make ends meet.

Take a look at what happened with unemployment figures. The Senator from Maryland got up and told us we have just set a record of 24 straight months of long-term unemployment at record levels. We have never had that bad a period of time or that bad a stretch in modern economic history in America. It means you have been unemployed for more than 6 months. Look at the numbers that they have grown under the Bush administration, where out-of-work Americans are running out of unemployment benefits.

This President insists that he is not going to rest until every American has a job. This President is not going to get much rest because there are a lot of Americans who have lost jobs. Over 800,000 net jobs were lost under President Bush's administration, which is the lowest job creation number by any President of any political party in over 70 years. And this President is offering us 4 more years? I have to ask, as Senator KERRY did, can America take 4 more years of this?

This administration's approach to the economic problems in America is not taking care of business. Look what is happening to the workers who are working harder. Productivity is up 15 times between 2001 and 2004. Yet wages are stagnant and falling. The harder our people work in America, the less

they are paid. That is the American dream? Perhaps it is to President Bush but not to the families across America.

Meanwhile, how are corporate profits doing in the recession, the struggling economy? Very well, thank you. They are up 65 percent under the Bush administration, while workers' wages are going down. The rich are getting richer, the poor are getting poorer, and the middle-income folks are feeling the squeeze. That, unfortunately, is the reality of their tax policy.

Mr. SARBANES. Will the Senator yield on that point?

Mr. DURBIN. Yes.

Mr. SARBANES. It is unparalleled in coming out of a recession that so much of the growth is going to profits and so little of the growth is going to wages. It is a stark contrast with what occurred as we tried to move out of previous recessions in the entire post-World War II period.

The point the Senator makes is extremely important. Productivity is up. The workers are producing, but they are not getting a return in their wages. The benefits are going heavily into corporate profits. The Senator is absolutely correct. And it is a marked departure with previous performance, where there was a much more equitable sharing of the economic benefits of the growth that was taking place, and the wage earner was doing better than under the circumstances we face today.

Mr. DURBIN. I thank the Senator from Maryland.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. There is 1½ minutes remaining.

Mr. DURBIN. In closing, the Senator from Maryland will speak when I finish and talk about the economic statistics, facts, and figures. That is the one thing we believe on this side of the aisle.

If this election is to be decided by facts and evidence, the American people will vote for a new vision of America, a stronger economy at home, and more respect for America around the world. But if we are going to let this campaign disintegrate in the last 3 weeks into sloganeering and name-calling, who knows what the outcome will be. We trust the facts and the evidence. This administration has failed to move this economy forward for working families. It has pushed a tax policy that not only doesn't help them, in many instances it penalizes them.

Look at what families are up against under the Bush administration. The cost of medical care and health insurance, up 59 percent; gasoline is up 38 percent; college tuition is up 38 percent; housing costs are up 27 percent. Even the cost of a bottle of milk is up 13 percent. When this President says in Arizona in the next debate that America is better off under his administration, he isn't feeling the pain families feel every single day when they try to make ends meet.

Mr. President, this election is going to be a historic turning point for America. We are either going to move toward 4 more years of the Bush administration, with economic policies that have taken a toll on the hardest working people in the world, or we are going to move forward with a new vision to help families have a better life for themselves and their children.

We are going to decide, when it comes to foreign policy, if we are going to continue to squander the reputation and good name that America has built up over many decades or whether we are going to move to a new level of respect for America around the world. The choice is in the hands of the voters on November 2.

I yield the floor.

I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from Maryland is now recognized for up to 20 minutes under the previous consent order.

UNEMPLOYMENT FIGURES

Mr. SARBANES. Madam President, on Friday the Bureau of Labor Statistics came out with the latest unemployment figures. I commend the Bureau of Labor Statistics. They are professionals. They bring us the figures. They do not try to put a spin on them. They just lay out the facts. That is a kind of unusual thing in our public discourse nowadays, I have to say. We do not seem to pay much attention to the facts anymore. It is all spin—spin, spin, spin, spin, deception, misstatement, so forth and so on. But there are still professionals in various parts of our Government, and I simply at the outset commend them for sticking to the facts. Members of the Joint Economic Committee tried to draw the Commissioner and her associates into the spin efforts, and she resisted, as she should.

I wish to talk this afternoon briefly about some of the figures and the facts, and I will try to lay them out as best I can.

We produced last month 96,000 jobs—I say a mere 96,000 jobs because we need to produce about 140,000 jobs per month simply to stay abreast of the growth in population. So if we are producing fewer jobs than that, we are obviously slipping backward.

This performance of this administration should be a matter of very deep concern for people in the country. Back at the beginning of the year, the administration did have a couple of months of good, solid production, and I want to put that right up front because, as I said, I want to stay with the facts. But what has happened is over the course of the year, their job production has fallen very sharply, as this chart shows. We are now down to just below 100,000 jobs produced in the last month of this Bush administration.

The cumulative record of this administration over the course of the time it has been here has been a loss of 1.6 million private sector jobs. Private sector jobs are down 1.6 million. In total jobs, because we have had some uptick in Government jobs, the administration is down 825,000 jobs over the course of its tenure. It is down 825,000 total jobs, 1.6 million private sector jobs, and 2.7 million jobs lost in manufacturing employment. Manufacturing employment is down 2,700,000 jobs.

This job performance—or more accurately put, lack of performance—is the worst in 75 years. We have to go all the way back to the administration of President Hoover to find another administration which lost jobs in the course of its tenure; in other words, failed to produce a net gain of jobs. Some administrations in the interim have done very well, others fairly well, others not so well. All have had a net gain in jobs except for this administration.

The unemployment rate which was reported on Friday as 5.4 percent does not tell the full story of the depth and breadth of unemployment which exists in the country. If we count in amongst the unemployed—and the Bureau of Labor Statistics keeps this index—if you count in people who have dropped out of looking for a job because they are so discouraged by how poor the labor market is and a very substantial number of people who are working part time for economic reasons—in other words, they want to work full time, but they cannot find a full-time job, so obviously in order to try to support their family, they take a part-time job, but they are seeking a full-time job—if you factor in that underemployment, and if you factor in the people who dropped out of the workforce in terms of seeking employment, we end up with an unemployment rate of 9.4 percent—9.4 percent. That is what we are confronting. And that rate, of course, is a consequence of failing to have a net gain in jobs over the course of this administration.

I was fascinated to watch the spin artists go out and try to spin this 96,000 figure into some big success. Quite to the contrary. It shows a serious shortfall in economic performance. And the thing that makes it an even deeper concern is the fact that the administration's performance over the course of this year in producing jobs has seriously weakened. In other words, if we go back to the beginning of this year, job creation has dropped markedly.

Some of the spin is to sort of say 9/11 did it all. They attribute it all to 9/11, but obviously this chart indicates to the contrary because we had some fair job production here, and then it has fallen. The cumulative impact of having that happen is, in fact, now to have an administration which does not have a positive job creation performance over the course of its tenure.

Now, we all know that everyone gets up on the Senate floor and they make long speeches about the best social program is a job. I agree with that. I doubt that there is anyone in this body who would disagree that the best social program is a job, but the jobs are not being produced.

As I said, we can go back through our history to every previous administration, Democratic and Republican alike, until we get back to Herbert Hoover, who had a net positive creation of jobs in the course of his tenure. This administration has failed to do that.

There are now 825,000 jobs less than when this administration came into office. There are 1.6 million jobs less in the private sector. There are 2.7 million jobs less in manufacturing, which, of course, has been the hardest hit of all, and which I think this administration has badly neglected in terms of a whole range of policies. But 2.7 million jobs less in manufacturing, 1.6 million jobs less in the private sector, 825,000 jobs less total, because there has been some increase in jobs in the public sector.

This is the performance of this administration. As I said, if one factors in all of the components of unemployment, including those that have part-time work but want full-time work, those who dropped out of the labor force because they are so discouraged by the job market, we have an unemployment rate of 9.4 percent.

There is one other point I want to make, which I think is highly relevant, and it also, of course, affects efforts in this Congress to deal with the unemployment insurance benefits question. We define long-term unemployed as people out of work for more than 26 weeks—in other words, more than 6 months. The unemployment insurance benefit program is geared to pay 26 weeks of benefits. The assumption is to help people through a difficult period to support their families.

I hasten to point out that one cannot draw unemployment benefits unless they have a work record. In other words, one must have worked and had a work record in order to qualify to draw these benefits.

In previous recessions, when the economy has not strengthened and jobs have not picked up, we have extended the period of time to pay unemployment benefits because how can someone be told, after 6 months, well, they should have found a job and gone back to work, when the job market has not picked up and there is no job to be found and they find themselves in the difficult situation, how are they going to provide for their family if the benefits are cut off and the benefits, of course, pay only a fraction of what they earn, and there is no job to be found?

So now, we have extended the benefits as a consequence. We have done that in this recession, but much less than previously. The administration has not been supportive of further extension, even though the number of long-term unemployed, amongst all the unemployed—in other words, people out of work for more than 6 months, has almost tripled. It has gone from 680,000 long-term unemployed when George Bush took office as President in January of 2001—in other words, we have really brought that figure way down because of the high job production that had occurred in the Clinton administration. It is now up to 1,750,000 long-term unemployed.

As a consequence, the percentage of the unemployed who are long-term employed, in other words, a consequence of this incredible growth in the long-term unemployed from 680,000 to 1,750,000, is almost triple. The percentage of workers unemployed who are long-term unemployed has jumped from about 10 percent to over 20 percent. It is now almost at 22 percent.

In this period, these high figures above 20 percent of the long-term unemployed, this percentage of unemployed workers, this rapid runup and then this continuing high figure, is a record. It has been above 20 percent for 24 continuous months, which is dramatic evidence of the failure of the economic policies of this administration.

These figures reflect real human hurt. These are men and women who had jobs, who worked, who lost their jobs, and cannot find another job. As a consequence, when their benefits run out and the administration and the Congress fail to extend their benefits, they find themselves in an incredibly difficult situation. How are they then to support their family?

We have made repeated efforts on the floor to extend the unemployment insurance. They have been blocked by the other side. The administration has not been supportive of this effort. So we have one and three-quarter million people long-term unemployed no longer eligible for benefits, not able to find work in a job market last month, where they produced 96,000 jobs. That is not even close to keeping abreast of the growth in population, let alone putting people back to work. In my judgment, there is no way that these economic figures can be spun to represent some economic success which is, of course, what the President has gone across the country to try to do.

In fact, he keeps going into States and saying we have turned the corner. I think when one looks around the corner that we have supposedly turned, one finds we are moving in the wrong direction. This is not the right direction to be moving with respect to the long-term unemployed. Who would want to turn a corner and find that the long-term unemployed is rising from about 10 percent of those unemployed to over 20 percent of those unemployed? This steady diet of over 20 percent for 24 months is unparalleled. Who would want to turn the corner and find that the monthly job creation was on this downward trajectory?

The President says we have turned the corner, and I say to myself, well, let us look at what we see when we turn the corner. What we see when we turn the corner is this decline in job creation.

We see, when we take a look in context—in other words, when we look over the period—that this administration has not created a net gain in jobs. It is no wonder that working people all across America are concerned and anxious, not only those who have lost their jobs, but those who fear they are going to lose their jobs, or those who maybe found another job but found themselves in this situation, that the jobs gained on average pay $20,000 less than the jobs lost. In other words, you have long-term unemployed who cannot find a job, you have people very apprehensive about their job situation because the number of jobs produced month by month is on a declining line, and then you have those who manage to find a job only to find it is at pay levels far less than they were previously receiving. The consequence of this is to put an enormous squeezing pressure on working and middle-income people in this country.

The costs of everything are up, wages are almost level, and all across the country working families are sitting down at their kitchen tables, trying to figure out how they are going to pay their bills.

I said earlier, when we were having this discussion, that in this economic cycle a far greater percentage of the benefits are going to corporate profits than are going to wages. When you look at the figures, it is absolutely startling the contrast with what we experienced at this point in previous economic cycles. So there is a tremendous skewing of whatever benefits there are from growth to profits and away from working people. This, I submit, ought to be a matter of deep concern all across the country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

THE AMERICAN ECONOMY

Mr. CORNYN. Mr. President, I have sat here for the last 2 hours 15 minutes and listened to a number of speeches by my colleagues on the other side of the aisle. I can only conclude that they are invoking the memory of Mark Twain, who said: ''I am not one of those who when expressing opinions confines myself to the facts.''

What I mean is I find it curious that speaker after speaker has criticized the Bush administration, and indeed, the majority in this Congress, for our progrowth economic policies when, in fact, the results of those policies worked to the betterment of the American people and create hope and opportunity and not despair and hand wringing. The only thing I believe contributes to despair and hand wringing and increased anxiety among the American people, and indeed the voters who are going to vote on November 2, are speeches made by supporters of the Democratic nominee on this floor and elsewhere, talking gloom and doom and despair as if America was no longer the last best hope on the planet.

First, I wish to talk about the bill that was passed a couple of hours ago, the FSC/ETI bill, more appropriately

named the JOBS bill. I was proud to be 1 of the 69 Senators who voted in support of that bill, for a number of reasons. First, we were able to eliminate a 12-percent penalty against exported goods made by American companies exported to the European Union. That is something that was long overdue. We really would not have had to wait this long to do that but for some obstruction on the other side of the aisle.

The second reason I am proud to have voted for this bill is because it ends the discrimination against those States such as mine, Texas, which have no income tax. In Texas, we tend to adhere to the idea that government should not be a burden any bigger than absolutely necessary upon the people who earn the money, so they can save it, they can invest it, and small businesses can create jobs. So we do not have an income tax. We have a sales tax.

But for many years now, Federal laws discriminated against States such as Texas and I believe Washington—I see the Senator from Washington on the floor. I believe her State was also affected by this change. Now taxpayers in Texas can deduct the sales tax they pay from their Federal income tax. I am very pleased that 69 Members of the Senate today saw fit to end that unjustified discrimination.

The reduction in the corporate tax rate for manufacturers that was accomplished by the passage of this bill earlier today has effectively reduced the corporate tax rate for these manufacturers by 3 percent. In other words, the corporate tax rate in the United States, which is 35 percent across the board, has now been reduced 3 percent for this class of taxpayers—manufacturers. This will, no doubt, provide an opportunity for manufacturing concerns to increase their competitiveness in a global economy where they have to compete with much lower wage-paying countries, such as China and elsewhere.

It is curious, though, to me, that America still has one of the highest corporate tax rates in the world. Indeed, the University of Michigan, in a study from the Office of Tax Policy Research, says that in 2002, the last year for which figures were ready available, the average corporate tax rate for countries all across the world was 29 percent across the board—29 percent. America's is 35 percent, except for now when this bill becomes law, it will be reduced for a certain class of taxpayers in the manufacturing business.

This chart shows that, for example, the Slovak Republic has a 25-percent corporate tax rate. Indeed, this past year I was privileged to travel from Bratislava, with other Members of the Senate, to represent the United States at a meeting of the Presidents of the new members of NATO, including the Slovak Republic. We learned from the Ambassador that, indeed because of the low corporate tax rates, that small country had been able to attract three major car manufacturers to the country, creating thousands of jobs, primarily because of the low corporate tax rate and because of the population that is eager and willing to work.

The fact is, our policies do impact our competitiveness in the global economy, and have a direct impact on the quality of life and the prosperity of the American people, something I am afraid is too often ignored.

I am so glad to see some of my colleagues from the other side of the aisle who rail against reduction in taxes for individual taxpayers agreed—all of us combined—by a vote of 69 to 17 that lower taxes promote economic growth and promote greater job creation. That is exactly why I believe we were wise to pass this bill in the Senate today. Unfortunately, what we hear too often when talking about issues such as economics and job creation is a lot of cynicism. I heard someone on the floor today talking about elite corporate interests will benefit when tax rates are lowered, or I think there was a reference made by the Democratic nominee for President about Benedict Arnold corporations are traitors, in effect, of America by taking jobs out of America into other countries. I want to talk about that more in a minute. But what these amount to is a philosophy of claim to love the worker but hate the employer. In other words, speaker after speaker today claimed that the policies of this administration were hurtful to the worker at the same time they claimed that the only ones who benefitted were the big corporations.

The fact is you cannot claim to love the worker and hate the employer who provides the worker their job. That is why I believe we need more progrowth policies. I think we need to look at our tax policies across the board.

We need to look at our civil justice system which imposes a tort tax on every consumer in this country and which stymies innovation and business growth and thus job growth.

We need to look at our regulatory policies which make it difficult for America to compete. And, yes, we need to look at policies which will provide greater opportunities for innovation not by the Federal Government but by the men and women, the risk takers, the investors and people who create jobs all across this great land—indeed, all across the world.

What I have heard earlier today with regard to condemnation of elite corporate interests and the like also reminds me of some of the debate we heard earlier about outsourcing. It is my view that a lot of the debate on outsourcing is largely based on the same sort of fearmongering and anxiety and hammering we have heard generally today in attacks against this administration and its economic policies, not on the facts. The facts are that markets are rational.

In other words, if a company can open a business here in the United States or increase the size of its business, but because of a higher tax burden and more litigation risk environment, more regulation and the like, they are going to take a look at places such as India, China, and Mexico, and other places that do not have a lot of those same regulatory and legal burdens and tax burdens.

One reason why America continues to prosper is because, of course, we have what many places in the world do not have; that is, stability in the rule of law that promotes security of investment. So we can continue to attract foreign dollars in this country.

For example, the Congressional Research Service has produced a document entitled ''Outsourcing and Insourcing Jobs in the United States Economy, An Overview of Evidence Based on Foreign Investment Data.''

This research document reveals that by 2003 U.S. firms accumulated $1.5 trillion worth of direct investment abroad compared to the $1.4 trillion foreign investors spent to require or establish businesses in the United States. For 2003 alone, foreign direct investment in the United States was about $82 billion, whereas U.S. direct investment abroad rose to about $155 billion in 2003.

As I said, markets tend to be rational. People, unlike the Federal Government, have to look at the bottom line and make sure that they don't operate in the red and thus go bankrupt and risk going out of existence. They have to be rational. They cannot make the kinds of emotional decisions that are made too often in the political realm.

But it is no wonder because of the regulatory environment, the tax, the high taxes in this country, because of the legal system which unfortunately rewards a few at the expense of the many, that we are finding more jobs going overseas. And there is something we can do about it. The fact is we in this Congress are well situated to enact progrowth policies which will decrease the likelihood that companies will go overseas or outsource jobs to other countries and other locations around the globe. But we are not doing the things we need to do to promote growth right here at home and ensure greater employment opportunities for the American people.

For example, we know that one of the biggest drags on the economy and on job creation is expensive oil imports. We know a barrel of oil is currently selling on the spot market in excess of $50 a barrel. We had an opportunity—and unfortunately we didn't avail ourselves of that opportunity—to pass an energy bill which I think would have created more domestic production here in America, and we would have had a greater supply, and thus bring the price down. But we didn't do it.

We have high natural gas costs because we simply have put too much of the domestic supply out of our reach by moratoria and other policies which said we may have the gas but we are simply not going to explore and drill for it. It should be no surprise that the cost of natural gas is at historic highs.

It is no surprise that gasoline is so expensive when regulations have resulted in no new refineries being created in the United States since about the early 1970s. The fact is most of the refiners are operating at maximum capacity.

One reason for oil and gas being expensive is because emerging economies such as China and India and others are consuming more and more energy and thus driving up the price.

We had a chance to do something about that by passing an energy bill this year, and we simply have been unable to do that because of objections on the other side of the aisle.

We also know one reason companies don't come to America or don't expand jobs here in America relative to other countries is because of our legal system. Unfortunately, we have a mentality in this country that says frivolous lawsuits are simply the order of the day. We know that the costs of those lawsuits are passed on ultimately to the consumers who pay in effect a tort tax. We also know that it affects access to health care which is another cost that businesses incur when they do business in the United States as opposed to other countries.

We had a chance to pass medical liability reform to improve access to OB–GYN doctors, emergency room doctors, and the like. We had a chance to reduce the paperwork that adds about a quarter of the cost to the health care expenses incurred by Americans and by American businesses when they provide health care coverage to their employees. Unfortunately, these policies resulted in a large number of people simply going without health insurance because of the cost.

If no one believes what I have said to this point about low taxes being progrowth and being in the best interests of the American people, and people who want to work, I think all we would have to do is look at what happened after we passed the historic tax relief and growth package in 2003. We know in June 2003 unemployment rates in this country were at 6.3 percent. Today, they are 5.4 percent, a .9-percentage point difference lower.

We remember hearing day after day discussions about the jobless recovery. The fact is, since August 2003, as a direct result of the progrowth economic policies of this administration and the leadership of this Congress, according to the payroll survey, 1.9 million new jobs have been created in the United States.

I heard one of the distinguished Senators refer earlier to ''we'' produced new jobs. I am sure they did not mean to suggest that the Federal Government produced the jobs because we know the Federal Government does not produce jobs. More often than not, it is the burdens imposed by the Government on employers that kill new jobs. The fact is, if you look at the household survey—of course, we will get into the difference between the payroll survey and the household survey—more and more Americans are no longer working in a traditional employer-employee relationship. Indeed, they are pursuing their own dream by starting their own business. According to the household survey, 2.2 million new jobs have been produced since August of 2003.

We are seeing a restructuring of the economy not only in the United States but globally. Obviously, we know there is going to be some human pain associated with that. None of us likes, regardless of whether we are Republicans or Democrats or Independent, when anyone wants to work and they cannot find a job. Our goal should be to keep our eye on opportunities for everyone to live up to their potential, to get a job, to provide for their family.

Unfortunately, the antigrowth policies pursued by many of our friends on the other side of the aisle in terms of bigger government, greater taxation, more regulation, runaway litigation, have exactly the opposite effect. They limit opportunity; they limit jobs; they limit investment.

I have heard the President criticized time and time again today and elsewhere for his economic policies. But I remind my colleagues when this President came into office, we were in a recession. Not only that, a short time after he came into office, we had the terrible events of September 11. Osama bin Laden himself said his goal was to establish about $1 trillion of cost to the American economy. Indeed, we know that much of the economy suffered a body blow as a result of that tragedy over and above the human loss of life that we suffered on that terrible day.

Then we also know that the birds came home to roost, so to speak, on corporate scandals, some of which are still being prosecuted, that caused a tremendous loss of public confidence in our markets and in businesses, resulting again in further economic distress.

The truth is, during this administration the American economy and the American people have had many challenges. One of those challenges has been the attacks not only on us as human beings but on our economy and on the economy's ability to generate new jobs.

Despite all the hand wringing, despite the naysaying, despite those who would claim there is no hope unless we get a new President on November 2, the fact is there is tremendous reason for hope and, indeed, tremendous reason to believe that it is the policies of this administration and the leadership in this body as well as the House of Representatives that have caused, have created the conditions whereby the risk takers, the investors, those who create jobs, do so, and they have done so at remarkable levels.

I used to be very skeptical of the speeches I have heard of the Senator from North Carolina, the Democratic Party's nominee for Vice President, who talks about two Americas. Indeed, sometimes in listening to the debate in the Senate today and elsewhere, maybe he is right—but not quite in the way he says. There is one America that is hopeful, that seeks opportunity and believes that everyone, no matter who they are, where they come from, or how they pronounce their last name, is entitled to pursue their dream, the American dream. On the other side, there must be another point of view, another America, so to speak, for those who believe they should pursue their political objectives by fearmongering, by hand wringing, and increasing the anxiety of the American people when it comes to their job security by making fallacious claims about how good the economy really is and the policies that have produced tremendous growth in the economy and tremendous opportunity for people who have previously been out of work.

Ultimately, we have to do two things: Continue to do what we have done with regard to people who are out of work and provide temporary benefits until they can get back on their feet and get back in the workforce—not a permanent subsidy for not working but provide help for those who are truly looking for work, and then we need to continue to provide educational opportunity to every American.

We need to change our frame of mine when we think about education. When I was growing up, I somehow got this idea that I would go to school and graduate from high school and then I would go to college and I would ''finish'' my education. The truth is, that is not what happened. The truth is, it cannot happen in today's economy and in today's competitive work environment. The truth is, we need to change our frame of mind and commit ourselves to life-long learning. That is one reason I appreciate the President's emphasis on community colleges, which in many areas of the country are working in conjunction with the private sector to learn what sort of skills need to be taught to a workforce in order to get the good high-paying jobs that exist. Indeed, community colleges are working closely with the private sector to do just that in places such as the State of Texas and elsewhere.

We need to recommit ourselves to education because the one area that America has always surpassed its competition anywhere in the world has been in the area of innovation. It is our brain power, our spirit, our freedom and opportunity that have made us the envy of the rest of the world.

I cringe when I hear my colleagues on the other side of the aisle, or when I hear on the political stump about hope being lost, about those people not having opportunities anymore, about the American dream leading to a nightmare, because the facts, No. 1, contradict that; and, No. 2, the only way that America can be defeated in a global competition is if we defeat ourselves and give up.

It was Professor Harold Laswell who called politics a fight over who gets

what, when, and how. If all we are going to talk about in the Senate and in Washington, DC, it is about who gets what, when, and how, we will be defeating ourselves. Indeed, we need to continue to enact progrowth policies that will provide opportunity for everyone in this country. If we ever lose sight of our vision as America being the last best hope of freedom-loving people around the world, we will have hurt ourselves and hurt the American people at the same time.

Finally, those in this Senate who complain so mightily about lower taxes for individual taxpayers and use class warfare to talk about the rich not paying their fair share, these are the same people in many instances who voted for this tax cut for corporations that manufacture goods.

I think their vote today was right. I think their rhetoric, when they talk about the President's policies and tax relief being wrong, is wrong, because it is higher taxes, more regulation, out-of-control litigation, and a burdensome regulatory environment that are hurting America's ability to compete in the global economy and are hurting the opportunity for American employers, including small businesses, to create those new jobs.

Indeed, I think any fair observer would conclude that it is the policies of this administration and this Congress that have created greater opportunity. I do not believe we should give in to the hand wringing, to the anxiety-provoking rhetoric, or, indeed, the fearmongering that happens way too often in our political discourse because the facts point to the fact America is still and—as long as we retain our commitment to progrowth policies—will continue to be the last best hope of the world.

Madam President, I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Washington has 8 minutes.

Ms. CANTWELL. Madam President, I rise today to address the legislation we passed earlier, but I say to the Senator from Texas, it has been a pleasure working with him and the senior Senator from Texas on issues that we are going to talk about, the sales tax deduction for individual States.

But I also say that I know this side of the aisle very much believes in pro job-creation activities. As somebody who has been in the private sector and seen the job creation that can happen in the private sector, no, I do not believe Government creates jobs, but I do believe Government has an investment strategy, that we are a partner with the private sector; and a good investment strategy then allows for capital to flow to people who need it most.

I guess I would say that this bill is not the perfect solution, and not what 51 Members on this side of the aisle would have drafted, as there are certainly things that have been overlooked. I think we have heard about them, including Senator LANDRIEU's language about a $15,000 tax credit to employers that would help them maintain their employees who have been called up by the National Guard and Reserve on their payrolls.

As the Senator from Maryland has articulated, another item is the unemployment benefits that would have worked to benefit many Americans while they can't find jobs, because jobs the job growth we have been promised has not happened. Unemployment benefits are, therefore, something to help keep economic stimulus in our communities.

Another is the fact that when we talk about community colleges and job creation, we really are not keeping pace with the training and retraining dollars from the previous years' budgets to actually help make this transition.

I would just point out that while we are having this discussion today about where we go further with the policy, it is a fact that this side of the aisle definitely believes in investing in the human infrastructure, not just in the corporate side of the equation but in individuals, for unemployment, for job training, for our National Guard, for people who need the help and support to continue to do their jobs.

But let me address, if I may, the key issue I wanted to talk about; which is, the issue of tax fairness. It is ironic. My colleague talked about this side of the aisle and tax fairness, the two issues about which I am going to talk.

The first one was actually implemented under a Republican administration and a Republican Senate. That was in 1986, not allowing the State of Washington and six other States in the Union to be able to deduct their state and local sales taxes in lieu of state and local income taxes from their Federal income tax.

Now, since I have been in the Senate, since 2001, I have worked to make the deduction of state and local sales taxes from their federal tax liability permanent for my constituents. When I entered the Senate, I first worked with the Senator from Tennessee, Mr. Thompson, who had introduced legislation, and then later with Senator KAY BAILEY HUTCHISON from Texas with whom together we have introduced legislation in the 108th Congress to reinstitute the state sales tax deduction. Washington and Texas have known a long time that we needed to restore tax fairness to the people of these States. And while we have passed, this afternoon, legislation that restores that fairness temporarily for the next 2 years, we need to continue to work to make it a permanent resolution for people in those States.

Restoring that sales tax deduction will help strengthen our economy. What people do not realize is that when the 16th amendment to our U.S. Constitution was ratified, in 1913, it said you could make the way for a Federal income tax, and Congress allowed taxpayers to deduct State and local taxes so that income would not be taxed twice. That was what the exemption was about.

So why, in 1986, after 74 years of a precedent, was this tax equity abruptly ended? As I said, I am just pointing out to my colleague, it was actually done by a Republican Senate, a Republican administration. I am saying that only because we need to move forward in correcting these policies, as the previous speaker said, and work together on commonality.

The taxpayers from the States that were given this raw deal—I believe because it was a budgetary squeeze, not based on, I think, really valid principles—it was a great impact to States such as mine, which has just over 60 percent of our State revenue coming from sales tax—about 61-point-three percent. So for us, that is a huge impact. When you are asking constituents not to be taxed twice by what they paid to the State and what they pay to the Federal Government, not being able to deduct that was an inequity in our tax laws. We know that for Washington State this could mean as much as $421 million that would be saved by taxpayers. I am sure the number is higher in many other States around the country.

But it also means job creation. The Economic and Revenue Forecast Council in our State says that it would create as much as 2,000 to 3,000 jobs, and it would be about a 50-cent stimulus for every $1 spent in Washington State. So for an economy that has been hard hit by this recession and continues to have one of the highest unemployment rates in the nation, this is the kind of tax policy we think helps us grow our economy and create jobs.

But the bottom line is that after this period of time, after 18 years, Washington State is finally—instead of getting a raw deal—going to get a fair deal, in the fact that residents are going to be able to deduct their sales tax from their Federal income tax obligation. So I think that is the kind of job-creation stimulus and fairness we need to be focusing on as we look at these tough choices.

Another issue that is bringing tax fairness to our State and to many other rural parts of our country is an issue that Senator CRAIG THOMAS and I worked on, the National Health Service Corps Loan Repayment Program. That also was passed this afternoon as part of this legislation.

What this bill did was to focus on the fact we are trying to get and continue to push rural health care needs.

We have a deficit in some parts of our country in getting doctors into rural communities. We have had a great program on the books for a number of years. I am proud that a previous Senator from our State, Warren Magnuson, actually created the National Health Service Corps Program. What it did was, it said to physicians, if you will go practice in rural communities, we will either give you a scholarship for doing that or we will give you loan repayment assistance.

Well, I can tell you, in talking to physicians throughout my State, the cost of repaying those loans can start off a career in hundreds of thousands of dollars of debt. Somewhere along the process we ended up taxing the National Health Service Corps scholarship and loan money to these physicians, as the IRS saw the payments as taxable income. In fact, later Congress realized: Well, that was not such a great idea of taxing, so we will give more money to the National Health Service Corps to pay for those taxes and then tax that money on top of it. We ended up paying 40 percent of the program in taxes instead of creating the opportunity for those physicians. So this program will help get about 67 percent more physicians into rural health care in America.

The last thing I would like to say is that as we continue to move through the rest of how we finish up this year, we want to continue to give an opportunity to make sure the National Guard and Reserve men and women in our country are well taken care of. I am proud the Senate passed back to the House a bill that also included Senator LANDRIEU's language about helping the National Guard.

Washington State is a State that is greatly impacted, and we certainly need to help and support taking care of our National Guard.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

THE ECONOMY

Mr. SESSIONS. Madam President, I want to share a few thoughts about the status of the economy. As we finish up this session, everybody has a lot of different views, and we are in a political season. I think it is good to talk about it and discuss the issue and see what the facts are, and let the American people make up their own mind about what the circumstances are that face our country.

One thing that I think is important for all of us to remember is that without economic growth we will not create jobs.

When we are in an economic situation in which we do not have growth, then we are not going to have jobs created. We may not lose those jobs immediately, but as growth lags, the number of jobs will fall as well. As growth goes up, jobs will be created. Jobs, as the economists say, tend to lag behind growth, but they follow growth. When economic growth is declining, the number of available jobs will decline. When economic growth is going up, the number of available jobs also will be going up.

Growth in the American economy is affected by many different things. The economy can be affected by world events, or by the strength of the economy in other nations. Generally, we are not threatened by strong economies in other parts of the world. Our economy does better when other economies are doing well, and when other economies are doing poorly, our economy tends to be dragged down.

The American economy is also impacted by business factors, by psychological factors, and by governmental factors that impact jobs and growth. If the President could snap his fingers and make everything happen right, we would never have any problems. But we know the President cannot do such a thing. We know we need to be careful about placing blame and credit.

I would like to show this chart. These are the years beginning in 1995 going into 2003. We had good years through the 1990s.

The chart shows these undisputed facts. Former President Bush suffered an economic slowdown in the second year or so of his administration and it resulted in the phrase: It's the economy, stupid. But the truth is, the nation's economy began to rebound significantly before former President Bush's term was finished. In fact, during his last year in office, he got little or no credit for the rebounding economy because he had been tagged by his political opponents for causing an economic slowdown earlier. The fact is that this characterization was inaccurate, and that there was pretty solid economic growth during this time.

President Clinton, I submit, inherited a growing economy from former President Bush. That is just a matter of fact. And it grew well through the 1990s. We had low quarters and good quarters, but overall the economy showed strength during this period.

In President Clinton's last year in office, however, things began to sour. By the time he had left office, the Nasdaq, the high tech stock market, had lost one half of its value. During the third quarter, of President Clinton's last year in office, the economy experienced negative growth, though there was growth in the fourth quarter of his last year in office.

But the first quarter that President Bush inherited, in which the dynamics in the economy were already set, and upon which he cannot be fairly said to have influenced, the economy suffered further negative growth. The second quarter that President Bush inherited also experienced negative growth. The third quarter was 9/11, with its negative impact on the economy. That is what President Bush faced when he took office. Yes, we had some great years in the 1990s, but he inherited an economy that was in trouble, and I submit that fact is not disputable.

He had to make some choices. Are we going to take the liberal idea, the big Government, the tax-and-spend idea that we were going to get out of an economic slowdown, a recession, by increasing taxes and by increasing the size of Government, or are we going to place our faith and hope in the ingenuity, the creativity, the work capability, of the American people?

President Bush placed his faith in the American people. He fought for, and we battled on the floor of this Congress and passed, a substantial tax cut that was designed to revive the economy, which was in trouble and was costing people jobs, making people worried. The stock market had gone down. It was a nervous time for all of us. We remember that.

President Bush led. And look what happened. As the chart shows, in the wake of his actions the economy starts coming back. When we had the second tax cut that took place in 2003, in June, the middle of the year 2003—and this chart only goes through 2003—we ended up with 8 percent growth during the third quarter of that year. Eight percent growth in that quarter is the highest growth rate we have seen in 20 years. The fourth quarter was also about 4 percent. The first quarter of this year was 4.5 percent growth. The next quarter was 3 percent growth. So we have been blessed to see that this recession is one of the shortest recessions in history. It is something for which we ought to be thankful.

Mr. SARBANES. Will the Senator yield for a question?

Mr. SESSIONS. I am pleased to try to answer a question. I know how knowledgeable the Senator is in these areas.

Mr. SARBANES. If the Senator's chart continued out into this year—I take it the chart stops in 2003?

Mr. SESSIONS. I found that in my office a few moments ago. The first quarter was 4.5 percent.

Mr. SARBANES. If it continued out into this year, it would show a descending line, would it not?

Mr. SESSIONS. It would show the first three quarters of this year would average higher than the last 20 years of growth in America.

Mr. SARBANES. I want to focus on——

Mr. SESSIONS. It would show a decline from probably 4.5 percent to 3 percent growth.

Mr. SARBANES. That is all I wanted to hear.

Mr. SESSIONS. You are not going to stay up there at 4.5 forever. But I think the numbers look pretty good. And we did it by investing and putting our faith in the private sector to create jobs and growth. It is pretty exciting.

We don't know how the economy will go. President Bush, as I said, is not a magician. He can't make things happen by waving a magic wand. Any of us who have been around here long enough know that. You get blame and you get credit. Sometimes it is not the President's fault, sometimes it may be the Congress's fault. Sometimes it may be factors beyond any of our control, historic factors.

Because we have had substantial productivity increases, which means we can produce more widgets for less investment and often fewer workers, that has made us competitive and helped our economy, but it has also placed stresses on job production. We have had particularly noticeable productivity increases in manufacturing. As a

matter of fact, the whole world is seeing a decline in manufacturing jobs because plants can produce more products with fewer people at less cost.

Since August of 2003, we have had 1.9 million new jobs created. But significantly, in the year 2004, we have had 97,000 new manufacturing jobs created.

That is good. That is something we ought to be pleased about. Let me note that the unemployment rate has fallen to 5.4 percent. It was 6.3 percent last June. It is now 5.4 percent, which is lower than the average unemployment rate for the 1970s, 1980s, or the 1990s.

The gross domestic product—the net production of goods and services in America—has grown for 11 straight quarters. So we have gotten out of this negative growth pattern left to President Bush by former President Clinton, and we have had 11 straight quarters of growth.

I think a factor in that was the President's leadership, for which I am very grateful. Some have said that job growth has failed to keep up with population growth. But that is not true. As the Joint Economic Committee, of which I am a member, reported: Since the unemployment rate peaked at 6.3 percent last June, total employment has increased by 2.2 million. The labor force has increased by 949,000.

That means there are 949,000 more workers. Unemployment has fallen by 1.2 million. Due to the large increase in employment and the large decrease in unemployment, unemployment has fallen significantly despite population growth.

I think Senator CORNYN is correct in saying that there exists in our country today a larger than normal number of people who are working out of their homes, working as independent contractors, as consultants, as truck drivers, and other things, who don't show up on a classic payroll. The statistics from the household survey that pick up that form of employment have been looking much better than the payroll survey for some time. The payroll survey is a valuable survey, but the household survey is valuable, too. The emphasis in complaining about President Bush's leadership does ignore, consistently, and without variation, the more positive numbers that show up in the household survey.

I think President Bush and this Congress have dealt with a very difficult problem—this economic slowdown. We did it in a way that is consistent with America's heritage and American values. As Americans, we are not a people who embrace a socialist, state-run economy. We are a vital, vibrant, innovative, creative people, and this allows our economy, because we have no governmental domination of it, to flourish and reach its highest possible ideals.

That is why the Europeans, in my view, are not doing as well. Germany and France have double-digit unemployment of 10, 11, 12 percent, because they have a state-run, state-dominated, regulated, bureaucratic government with high taxes. It has made it difficult for them to be competitive in the world marketplace. Why would we ever want to emulate that? Why would we ever want to go to the socialist European ideal? Why would we not want to affirm the direction that President Bush is leading us?

I think Congress is working in order to follow the American ideal of freedom and independence, low taxes, and limited regulations.

HOME OWNERSHIP OPPORTUNITIES FOR NATIVE AMERICANS ACT OF 2004

Mr. SESSIONS. Madam President, I ask unanimous consent that the Committee on Indian Affairs be discharged from further consideration of S. 2571, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2571) to clarify the loan guarantee authority under title VI of the Native American Housing Assistance and Self-Determination Act of 1996.

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. Madam President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to this measure be printed in the RECORD.

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

The bill (S. 2571) was read the third time and passed, as follows:

S. 2571

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 ''Homeownership Opportunities for Native Americans Act of 2004''.

SEC. 2. FEDERAL GUARANTEES FOR FINANCING FOR TRIBAL HOUSING ACTIVITIES.

Section 601 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4191) is amended by adding at the end the following:

''(d) LIMITATION ON PERCENTAGE.—A guarantee made under this title shall guarantee repayment of 95 percent of the unpaid principal and interest due on the notes or other obligations guaranteed.''.

HOME OWNERSHIP OPPORTUNITIES FOR NATIVE AMERICANS ACT OF 2004

Mr. SESSIONS. Madam President, I ask unanimous consent that the Committee on Indian Affairs be discharged from further consideration of H.R. 4471, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4471) to clarify the loan guarantee authority under title VI of the Native American Housing Assistance and Self-Determination Act of 1996.

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. Madam President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to this measure be printed in the RECORD.

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

The bill (H.R. 4471) was read the third time, and passed.

UNACCOMPANIED ALIEN CHILD PROTECTION ACT OF 2004

Mr. SESSIONS. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 541, S. 1129.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1129) to provide for the protection of unaccompanied alien children, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 1129

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

[SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[(a) SHORT TITLE.—This Act may be cited as the ''Unaccompanied Alien Child Protection Act of 2003''.

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

[Sec. 1. Short title; table of contents.
[Sec. 2. Definitions.
[TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION
[Sec. 101. Procedures when encountering unaccompanied alien children.
[Sec. 102. Family reunification for unaccompanied alien children with relatives in the United States.
[Sec. 103. Appropriate conditions for detention of unaccompanied alien children.
[Sec. 104. Repatriated unaccompanied alien children.
[Sec. 105. Establishing the age of an unaccompanied alien child.
[Sec. 106. Effective date.
[TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL
[Sec. 201. Guardians ad litem.
[Sec. 202. Counsel.
[Sec. 203. Effective date; applicability.
[TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN
[Sec. 301. Special immigrant juvenile visa.
[Sec. 302. Training for officials and certain private parties who come into contact with unaccompanied alien children.

[Sec. 303. Report.
[Sec. 304. Effective date.
[TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS
[Sec. 401. Guidelines for children's asylum claims.
[Sec. 402. Unaccompanied refugee children.
[Sec. 403. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances.
[TITLE V—AUTHORIZATION OF APPROPRIATIONS
[Sec. 501. Authorization of appropriations.
[TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002
[Sec. 601. Additional responsibilities and powers of the Office of Refugee Resettlement with respect to unaccompanied alien children.
[Sec. 602. Technical corrections.
[Sec. 603. Effective date.

[SEC. 2. DEFINITIONS.

[(a) IN GENERAL.—In this Act:

[(1) COMPETENT.—The term ''competent'', in reference to counsel, means an attorney who complies with the duties set forth in this Act and—

[(A) is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia;

[(B) is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting the attorney in the practice of law; and

[(C) is properly qualified to handle matters involving unaccompanied immigrant children or is working under the auspices of a qualified nonprofit organization that is experienced in handling such matters.

[(2) DIRECTOR.—The term ''Director'' means the Director of the Office.

[(3) DIRECTORATE.—The term ''Directorate'' means the Directorate of Border and Transportation Security established by section 401 of the Homeland Security Act of 2002 (6 U.S.C. 201).

[(4) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act (8 U.S.C. 1521).

[(5) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

[(6) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' has the same meaning as is given the term in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)).

[(7) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children, as certified by the Director of the Office of Refugee Resettlement.

[(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

[''(51) The term 'unaccompanied alien child' means a child who—

[''(A) has no lawful immigration status in the United States;

[''(B) has not attained the age of 18; and

[''(C) with respect to whom—

[''(i) there is no parent or legal guardian in the United States; or

[''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

[''(52) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

[''(A) have not attained the age of 18; and

[''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

[TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

[SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

[(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

[(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the officer shall—

[(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

[(B) return such child to the child's country of nationality or country of last habitual residence.

[(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

[(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), unless a determination is made on a case-by-case basis that—

[(i) such child is a national or habitual resident of a country described in subparagraph (A);

[(ii) such child has a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

[(iii) the return of such child to the child's country of nationality or country of last habitual residence would endanger the life or safety of such child; or

[(iv) the child cannot make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

[(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right in the child's native language.

[(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

[(b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

[(1) ESTABLISHMENT OF JURISDICTION.—

[(A) IN GENERAL.—Except as otherwise provided under subparagraphs (B) and (C) and subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

[(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of any unaccompanied alien child who—

[(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), while such charges are pending; or

[(ii) has been convicted of any such felony.

[(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence, based on an individualized determination, that such child could personally endanger the national security of the United States.

[(D) TRAFFICKING VICTIMS.—For purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) and this Act, an unaccompanied alien child who is eligible for services authorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386), shall be considered to be in the custody of the Office.

[(2) NOTIFICATION.—

[(A) IN GENERAL.—The Secretary shall promptly notify the Office upon—

[(i) the apprehension of an unaccompanied alien child;

[(ii) the discovery that an alien in the custody of the Directorate is an unaccompanied alien child;

[(iii) any claim by an alien in the custody of the Directorate that such alien is under the age of 18; or

[(iv) any suspicion that an alien in the custody of the Directorate who has claimed to be over the age of 18 is actually under the age of 18.

[(B) SPECIAL RULE.—In the case of an alien described in clause (iii) or (iv) of subparagraph (A), the Director shall make an age determination in accordance with section 105 and take whatever other steps are necessary to determine whether or not such alien is eligible for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

[(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

[(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

[(i) in the case of a child not described in subparagraph (B) or (C) of paragraph (1), not later than 72 hours after the apprehension of such child; or

[(ii) in the case of a child whose custody and care has been retained or assumed by the Directorate pursuant to subparagraph (B) or (C) of paragraph (1), immediately following a determination that the child no longer meets the description set forth in such subparagraphs.

[(B) TRANSFER TO THE DIRECTORATE.—Upon determining that a child in the custody of the Office is described in subparagraph (B) or (C) of paragraph (1), the Director shall promptly make arrangements to transfer the care and custody of such child to the Directorate.

[(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about the age of such alien would affect the alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a determination of whether or not such alien meets the age requirements for treatment under this Act shall be made by the Director in accordance with section 105.

[SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

[(a) PLACEMENT AUTHORITY.—

[(1) ORDER OF PREFERENCE.—Subject to the discretion of the Director under paragraph (4) and section 103(a)(2), an unaccompanied alien child in the custody of the Office shall be promptly placed with 1 of the following individuals or entities in the following order of preference:

[(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

[(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

[(C) An adult relative.

[(D) An entity designated by the parent or legal guardian that is capable and willing to care for the well-being of the child.

[(E) A State-licensed juvenile shelter, group home, or foster care program willing to accept physical custody of the child.

[(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the qualification of the adult or entity shall be decided by the Office.

[(2) SUITABILITY ASSESSMENT.—Notwithstanding paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid suitability assessment conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such an assessment, or by an appropriate voluntary agency contracted with the Office to conduct such assessments has found that the person or entity is capable of providing for the child's physical and mental well-being.

[(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

[(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

[(B) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

[(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Program of Action, and the Declaration of the Rights of the Child; or

[(ii) limit any right or remedy under such international agreement.

[(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

[(A) POLICIES AND PROGRAMS.—

[(i) IN GENERAL.—The Director shall establish policies and programs to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

[(ii) WITNESS PROTECTION PROGRAMS INCLUDED.—The programs established pursuant to clause (i) may include witness protection programs.

[(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects any individual of being involved in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

[(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects an attorney of being involved in any activity described in subparagraph (A) shall report the individual to the State bar association of which the attorney is a member, or to other appropriate disciplinary authorities, for appropriate disciplinary action that may include private or public admonition or censure, suspension, or disbarment of the attorney from the practice of law.

[(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director may make grants to, and enter into contracts with, voluntary agencies to carry out section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or to carry out this section.

[(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director may reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

[(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person described in subsection (a) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

[SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

[(a) STANDARDS FOR PLACEMENT.—

[(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

[(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

[(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 102(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

[(4) CONDITIONS OF DETENTION.—

[(A) IN GENERAL.—The Director shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

[(i) educational services appropriate to the child;

[(ii) medical care;

[(iii) mental health care, including treatment of trauma, physical and sexual violence, or abuse;

[(iv) access to telephones;

[(v) access to legal services;

[(vi) access to interpreters;

[(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

[(viii) recreational programs and activities;

[(ix) spiritual and religious needs; and

[(x) dietary needs.

[(B) NOTIFICATION OF CHILDREN.—Regulations promulgated in accordance with subparagraph (A) shall provide that all children are notified orally and in writing of such standards in the child's native language.

[(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

[(1) shackling, handcuffing, or other restraints on children;

[(2) solitary confinement; or

[(3) pat or strip searches.

[(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

[SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

[(a) COUNTRY CONDITIONS.—

[(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party, and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

[(2) ASSESSMENT OF CONDITIONS.—

[(A) IN GENERAL.—The Secretary of State shall include each year in the State Department Country Report on Human Rights, an assessment of the degree to which each country protects children from smugglers and traffickers.

[(B) FACTORS FOR ASSESSMENT.—The Office shall consult the State Department Country Report on Human Rights and the Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

[(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—

[(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate on efforts to repatriate unaccompanied alien children.

[(2) CONTENTS.—The report submitted under paragraph (1) shall include, at a minimum, the following information:

[(A) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

[(B) A description of the type of immigration relief sought and denied to such children.

[(C) A statement of the nationalities, ages, and gender of such children.

[(D) A description of the procedures used to effect the removal of such children from the United States.

[(E) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

[(F) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

[SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

[(a) IN GENERAL.—The Director shall develop procedures to determine the age of an alien in the custody of the Department of Homeland Security or the Office, when the age of the alien is at issue. Such procedures shall permit the presentation of multiple forms of evidence, including testimony of the child, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge.

[(b) PROHIBITION ON SOLE MEANS OF DETERMINING AGE.—Neither radiographs nor the attestation of an alien shall be used as the sole means of determining age for the purposes of determining an alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

[(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to place the burden of proof in determining the age of an alien on the government.

[SEC. 106. EFFECTIVE DATE.

[This title shall take effect 90 days after the date of enactment of this Act.

[TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

[SEC. 201. GUARDIANS AD LITEM.

[(a) ESTABLISHMENT OF GUARDIAN AD LITEM PROGRAM.—

[(1) APPOINTMENT.—The Director may, in the Director's discretion, appoint a guardian ad litem who meets the qualifications described in paragraph (2) for such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

[(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

[(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

[(i) is a child welfare professional or other individual who has received training in child welfare matters; and

[(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

[(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Directorate, the Office, or the Executive Office for Immigration Review.

[(3) DUTIES.—The guardian ad litem shall—

[(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

[(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

[(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

[(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

[(E) take reasonable steps to ensure that the best interests of the child are promoted while the child participates in, or is subject to, proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

[(F) take reasonable steps to ensure that the child understands the nature of the legal proceedings or matters and determinations made by the court, and ensure that all information is conveyed in an age-appropriate manner; and

[(G) report factual findings relating to—

[(i) information gathered pursuant to subparagraph (B);

[(ii) the care and placement of the child during the pendency of the proceedings or matters; and

[(iii) any other information gathered pursuant to subparagraph (D).

[(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

[(A) those duties are completed;

[(B) the child departs the United States;

[(C) the child is granted permanent resident status in the United States;

[(D) the child attains the age of 18; or

[(E) the child is placed in the custody of a parent or legal guardian;

whichever occurs first.

[(5) POWERS.—The guardian ad litem—

[(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

[(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

[(C) may seek independent evaluations of the child;

[(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

[(E) shall be permitted to consult with the child during any hearing or interview involving such child; and

[(F) shall be provided at least 24 hours advance notice of a transfer of that child to a different placement, absent compelling and unusual circumstances warranting the transfer of such child prior to notification.

[(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the—

[(1) circumstances and conditions that unaccompanied alien children face; and

[(2) various immigration benefits for which such alien child might be eligible.

[(c) PILOT PROGRAM.—

[(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director shall establish and begin to carry out a pilot program to test the implementation of subsection (a).

[(2) PURPOSE.—The purpose of the pilot program established pursuant to paragraph (1) is to—

[(A) study and assess the benefits of providing guardians ad litem to assist unaccompanied alien children involved in immigration proceedings or matters;

[(B) assess the most efficient and cost-effective means of implementing the guardian ad litem provisions in this section; and

[(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

[(3) SCOPE OF PROGRAM.—

[(A) SELECTION OF SITE.—The Director shall select 3 sites in which to operate the pilot program established pursuant to paragraph (1).

[(B) NUMBER OF CHILDREN.—To the greatest extent possible, each site selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

[(4) REPORT TO CONGRESS.—Not later than 1 year after the date on which the first pilot program is established pursuant to paragraph (1), the Director shall report to the Committees on the Judiciary of the Senate and the House of Representatives on subparagraphs (A) through (C) of paragraph (2).

[SEC. 202. COUNSEL.

[(a) ACCESS TO COUNSEL.—

[(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office, or in the custody of the Directorate, who are not described in section 101(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

[(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of competent pro bono counsel who agree to provide representation to such children without charge.

[(3) GOVERNMENT-FUNDED LEGAL REPRESENTATION AS A LAST RESORT.—

[(A) APPOINTMENT OF COMPETENT COUNSEL.—Notwithstanding section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) or any other provision of law, if no competent counsel is available to represent an unaccompanied alien child without charge, the Director shall appoint competent counsel for such child at the expense of the Government.

[(B) LIMITATION ON ATTORNEY FEES.—Counsel appointed under subparagraph (A) shall not be compensated at a rate in excess of the rate provided under section 3006A of title 18, United States Code.

[(C) AVAILABILITY OF FUNDING.—In carrying out this paragraph, the Director may make use of funds derived from any source designated by the Secretary of Health and Human Services from discretionary funds available to the Department of Health and Human Services.

[(D) ASSUMPTION OF THE COST OF GOVERNMENT-PAID COUNSEL.—In the case of a child for whom counsel is appointed under subparagraph (A) who is subsequently placed in the physical custody of a parent or legal guardian, such parent or legal guardian may elect to retain the same counsel to continue representation of the child, at no expense to the Government, beginning on the date that the parent or legal guardian assumes physical custody of the child.

[(4) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

[(5) CONTRACTING AND GRANT MAKING AUTHORITY.—

[(A) IN GENERAL.—Subject to the availability of appropriations, the Director shall enter into contracts with or make grants to national nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection. National nonprofit agencies may enter into subcontracts with or make grants to private voluntary agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

[(B) INELIGIBILITY FOR GRANTS AND CONTRACTS.—In making grants and entering into contracts with agencies in accordance with subparagraph (A), the Director shall ensure that no such agency receiving funds under this subsection is a grantee or contractee for more than 1 of the following services:

[(i) Services provided under section 102.

[(ii) Services provided under section 201.

[(iii) Services provided under paragraph (2).

[(iv) Services provided under paragraph (3).

[(6) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

[(A) DEVELOPMENT OF GUIDELINES.—The Executive Office for Immigration Review, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

[(B) PURPOSE OF GUIDELINES.—The guidelines developed in accordance with subparagraph (A) shall be designed to help protect a child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

[(C) IMPLEMENTATION.—The Executive Office for Immigration Review shall adopt the guidelines developed in accordance with subparagraph (A) and submit them for adoption by national, State, and local bar associations.

[(b) DUTIES.—Counsel shall—

[(1) represent the unaccompanied alien child in all proceedings and matters relating

to the immigration status of the child or other actions involving the Directorate;

[(2) appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Directorate; and

[(3) owe the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

[(c) ACCESS TO CHILD.—

[(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

[(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

[(d) TERMINATION OF APPOINTMENT.—Counsel appointed under subsection (a)(3) shall carry out the duties described in subsection (b) until—

[(1) those duties are completed;

[(2) the child departs the United States;

[(3) the child is granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3));

[(4) the child is granted protection under the Convention Against Torture;

[(5) the child is granted asylum in the United States under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158);

[(6) the child is granted permanent resident status in the United States; or

[(7) the child attains 18 years of age;

whichever occurs first.

[(e) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

[(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

[(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

[(f) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

[SEC. 203. EFFECTIVE DATE; APPLICABILITY.

[(a) EFFECTIVE DATE.—This title shall take effect 180 days after the date of enactment of this Act.

[(b) APPLICABILITY.—The provisions of this title shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this title.

[TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

[SEC. 301. SPECIAL IMMIGRANT JUVENILE VISA.

[(a) J VISA.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

[''(J) an immigrant under the age of 21 on the date of application who is present in the United States—

[''(i) who by a court order, which shall be binding on the Secretary of Homeland Security for purposes of adjudications under this subparagraph, was declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State or juvenile court located in the United States, due to abuse, neglect, or abandonment, or a similar basis found under State law;

[''(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

[''(iii) with respect to a child in Federal custody, for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Director of the Bureau of Citizenship and Immigration Services that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

[(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)) is amended—

[(1) by amending subparagraph (A) to read as follows:

[''(A) paragraphs (1), (4), (5), (6), and (7)(A) of section 212(a) shall not apply;'';

[(2) in subparagraph (B), by striking the period and inserting ''; and''; and

[(3) by adding at the end the following:

[''(C) the Secretary of Homeland Security may waive subparagraphs (A) and (B) of paragraph (2) of section 212(a) in the case of an offense which arose as a consequence of the child being unaccompanied.''.

[(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), shall be eligible for all funds made available under section 412(d) of that Act (8 U.S.C. 1522(d)) until such time as the child attains the age designated in section 412(d)(2)(B) of that Act (8 U.S.C. 1522(d)(2)(B)), or until the child is placed in a permanent adoptive home, whichever occurs first.

[SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

[(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into education, training, or orientation modules or formats that are currently used by these professionals.

[(b) TRAINING OF DIRECTORATE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Directorate who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States borders or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 101(a)(2).

[SEC. 303. REPORT.

[Not later than January 31, 2004, and annually thereafter, the Secretary of Health and Human Services shall submit a report for the previous fiscal year to the Committees on the Judiciary of the House of Representatives and the Senate that contains—

[(1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);

[(2) data regarding the care and placement of children in accordance with this Act;

[(3) data regarding the provision of guardian ad litem and counsel services in accordance with this Act; and

[(4) any other information that the Director or the Secretary of Health and Human Services determines to be appropriate.

[SEC. 304. EFFECTIVE DATE.

[The amendment made by section 301 shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.

[TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

[SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

[(a) SENSE OF CONGRESS.—Congress commends the Immigration and Naturalization Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the implementation of such guidelines by the Immigration and Naturalization Service (and its successor entities) in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

[(b) TRAINING.—The Secretary shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

[SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.

[(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is amended—

[(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

[(2) by inserting after paragraph (2) the following:

[''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region, which shall include an assessment of—

[''(A) the number of unaccompanied refugee children, by region;

[''(B) the capacity of the Department of State to identify such refugees;

[''(C) the capacity of the international community to care for and protect such refugees;

[''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

[''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

[''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

[(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(f)(2)) is amended by—

[(1) striking ''and'' after ''countries,''; and

[(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

[SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.

[(a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any unaccompanied alien child apprehended by the Directorate, except for an unaccompanied alien child subject to exceptions under paragraph (1)(A) or (2) of section (101)(a) of this Act, shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

[(b) EXCEPTION FROM TIME LIMIT FOR FILING ASYLUM APPLICATION.—Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following:

[''(E) APPLICABILITY.—Subparagraphs (A) and (B) shall not apply to an unaccompanied child as defined in section 101(a)(51).''.

[TITLE V—AUTHORIZATION OF APPROPRIATIONS

[SEC. 501. AUTHORIZATION OF APPROPRIATIONS.

[(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out—

[(1) section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279); and

[(2) this Act.

[(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

[TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

[SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

[(a) ADDITIONAL RESPONSIBILITIES OF THE DIRECTOR.—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) is amended—

[(1) in subparagraph (K), by striking ''and'' at the end;

[(2) in subparagraph (L), by striking the period at the end and inserting '', including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements; and''; and

[(3) by adding at the end the following:

[''(M) ensuring minimum standards of care for all unaccompanied alien children—

[''(i) for whom detention is necessary; and

[''(ii) who reside in settings that are alternative to detention.''.

[(b) ADDITIONAL POWERS OF THE DIRECTOR.—Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)) is amended by adding at the end the following:

[''(4) POWERS.—In carrying out the duties under paragraph (3), the Director shall have the power to—

[''(A) contract with service providers to perform the services described in sections 102, 103, 201, and 202 of the Unaccompanied Alien Child Protection Act of 2003; and

[''(B) compel compliance with the terms and conditions set forth in section 103 of the Unaccompanied Alien Child Protection Act of 2003, including the power to—

[''(i) declare providers to be in breach and seek damages for noncompliance;

[''(ii) terminate the contracts of providers that are not in compliance with such conditions; and

[''(iii) reassign any unaccompanied alien child to a similar facility that is in compliance with such section.''.

[(c) CLARIFICATION OF DIRECTOR'S AUTHORITY TO HIRE PERSONNEL.—Section 462(f)(3) of the Homeland Security Act of 2002 (6 U.S.C. 279(f)(3)) is amended—

[(1) by striking ''(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel'' and inserting the following:

[''(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—

[''(A) IN GENERAL.—Except as provided in subparagraph (B), the personnel''; and

[(2) by inserting at the end the following:

[''(B) EXCEPTION.—The Director may hire and fix the level of compensation of an adequate number of personnel to carry out the duties of the Office. Notwithstanding the provisions of subparagraph (A), the Director may elect not to receive the transfer of any personnel of the Department of Justice employed in connection with the functions transferred by this section or, at the Director's discretion, to assign different duties to such personnel.''.

[SEC. 602. TECHNICAL CORRECTIONS.

[Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)), as amended by section 601, is amended—

[(1) in paragraph (3), by striking ''paragraph (1)(G)'' and inserting ''paragraph (1)''; and

[(2) by adding at the end the following:

[''(5) STATUTORY CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for unaccompanied alien children who are released to a qualified sponsor.''.

[SEC. 603. EFFECTIVE DATE.

[The amendments made by this title shall take effect as if enacted as part of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.).]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Unaccompanied Alien Child Protection Act of 2004''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

Sec. 101. Procedures when encountering unaccompanied alien children.
Sec. 102. Family reunification for unaccompanied alien children with relatives in the United States.
Sec. 103. Appropriate conditions for detention of unaccompanied alien children.
Sec. 104. Repatriated unaccompanied alien children.
Sec. 105. Establishing the age of an unaccompanied alien child.
Sec. 106. Effective date.

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

Sec. 201. Guardians ad litem.
Sec. 202. Counsel.
Sec. 203. Effective date; applicability.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

Sec. 301. Special immigrant juvenile visa.
Sec. 302. Training for officials and certain private parties who come into contact with unaccompanied alien children.
Sec. 303. Report.
Sec. 304. Effective date.

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

Sec. 401. Guidelines for children's asylum claims.
Sec. 402. Unaccompanied refugee children.
Sec. 403. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

Sec. 501. Authorization of appropriations.

TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

Sec. 601. Additional responsibilities and powers of the Office of Refugee Resettlement with respect to unaccompanied alien children.
Sec. 602. Technical corrections.
Sec. 603. Effective date.

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act:

(1) COMPETENT.—The term ''competent'', in reference to counsel, means an attorney who complies with the duties set forth in this Act and—

(A) is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia;

(B) is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting the attorney in the practice of law; and

(C) is properly qualified to handle matters involving unaccompanied immigrant children or is working under the auspices of a qualified nonprofit organization that is experienced in handling such matters.

(2) DIRECTOR.—The term ''Director'' means the Director of the Office.

(3) DIRECTORATE.—The term ''Directorate'' means the Directorate of Border and Transportation Security established by section 401 of the Homeland Security Act of 2002 (6 U.S.C. 201).

(4) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act (8 U.S.C. 1521).

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

(6) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' has the same meaning as is given the term in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)).

(7) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children, as certified by the Director of the Office of Refugee Resettlement.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

''(51) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

''(52) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

(c) RULE OF CONSTRUCTION.—A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco

parentis, shall not be considered a legal guardian for purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

(B) return such child to the child's country of nationality or country of last habitual residence.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), if a determination is made on a case-by-case basis that—

(i) such child is a national or habitual resident of a country described in subparagraph (A);

(ii) such child does not have a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(iii) the return of such child to the child's country of nationality or country of last habitual residence would not endanger the life or safety of such child; and

(iv) the child is able to make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right in the child's native language.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subparagraphs (B) and (C) and subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence, based on an individualized determination, that such child could personally endanger the national security of the United States.

(D) TRAFFICKING VICTIMS.—For purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) and this Act, an unaccompanied alien child who is eligible for services authorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386), shall be considered to be in the custody of the Office.

(2) NOTIFICATION.—

(A) IN GENERAL.—The Secretary shall promptly notify the Office upon—

(i) the apprehension of an unaccompanied alien child;

(ii) the discovery that an alien in the custody of the Directorate is an unaccompanied alien child;

(iii) any claim by an alien in the custody of the Directorate that such alien is under the age of 18; or

(iv) any suspicion that an alien in the custody of the Directorate who has claimed to be over the age of 18 is actually under the age of 18.

(B) SPECIAL RULE.—In the case of an alien described in clause (iii) or (iv) of subparagraph (A), the Director shall make an age determination in accordance with section 105 and take whatever other steps are necessary to determine whether or not such alien is eligible for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in subparagraph (B) or (C) of paragraph (1), not later than 72 hours after a determination is made that such child is an unaccompanied alien child;

(ii) in the case of a child whose custody and care has been retained or assumed by the Directorate pursuant to subparagraph (B) or (C) of paragraph (1), immediately following a determination that the child no longer meets the description set forth in such subparagraphs; or

(iii) in the case of a child who was previously released to an individual described in subparagraph (A) or (B) of section 102(a)(1), upon a determination that such individual is no longer able to care for the child.

(B) TRANSFER TO THE DIRECTORATE.—Upon determining that a child in the custody of the Office is described in subparagraph (B) or (C) of paragraph (1), the Director shall transfer the care and custody of such child to the Directorate.

(C) PROMPTNESS OF TRANSFER.—In the event of a need to transfer a child under this paragraph, the sending office shall make prompt arrangements to transfer such child and the receiving office shall make prompt arrangements to receive such child.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about the age of such alien would affect the alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a determination of whether or not such alien meets such age requirements shall be made by the Director in accordance with section 105.

SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the discretion of the Director under section 462(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(2)) and under paragraph (4) of this subsection and section 103(a)(2) of this Act, an unaccompanied alien child in the custody of the Office shall be promptly placed with 1 of the following individuals or entities in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An entity designated by the parent or legal guardian that is capable and willing to care for the well-being of the child.

(E) A State-licensed juvenile shelter, group home, or foster care program willing to accept physical custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the Office shall decide who is a qualified adult or entity and promulgate regulations in accordance with such decision.

(2) SUITABILITY ASSESSMENT.—Notwithstanding paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid suitability assessment conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such an assessment, or by an appropriate voluntary agency contracted with the Office to conduct such assessments has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Program of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

(A) POLICIES AND PROGRAMS.—

(i) IN GENERAL.—The Director shall establish policies and programs to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(ii) WITNESS PROTECTION PROGRAMS INCLUDED.—The programs established pursuant to clause (i) may include witness protection programs.

(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects any individual of being involved in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects an attorney of being involved in any activity described in subparagraph (A) shall report the individual to the State bar association of which the attorney is a member, or to other appropriate disciplinary authorities, for appropriate disciplinary action that may include private or public admonition

or censure, suspension, or disbarment of the attorney from the practice of law.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director may make grants to, and enter into contracts with, voluntary agencies to carry out section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or to carry out this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director may reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person described in subparagraphs (A), (B), and (C) of subsection (a)(1) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

(c) REQUIRED DISCLOSURE.—The Secretary of Health and Human Services or the Secretary of Homeland Security shall provide the information furnished under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(d) PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 102(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director and the Secretary of Homeland Security shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma, physical and sexual violence, or abuse;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Regulations promulgated in accordance with subparagraph (A) shall provide that all children are notified orally and in writing of such standards in the child's native language.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party, and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—The Secretary of State shall include each year in the State Department Country Report on Human Rights, an assessment of the degree to which each country protects children from smugglers and traffickers.

(B) FACTORS FOR ASSESSMENT.—The Office shall consult the State Department Country Report on Human Rights and the Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Director shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate on efforts to repatriate unaccompanied alien children.

(2) CONTENTS.—The report submitted under paragraph (1) shall include, at a minimum, the following information:

(A) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(B) A description of the type of immigration relief sought and denied to such children.

(C) A statement of the nationalities, ages, and gender of such children.

(D) A description of the procedures used to effect the removal of such children from the United States.

(E) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(F) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

(a) IN GENERAL.—The Director shall develop procedures to make a prompt determination of the age of an alien in the custody of the Department of Homeland Security or the Office, when the age of the alien is at issue. Such procedures shall permit the presentation of multiple forms of evidence, including testimony of the child, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. The Secretary of Homeland Security shall permit the Office to have reasonable access to aliens in the custody of the Secretary so as to ensure a prompt determination of the age of such alien.

(b) PROHIBITION ON SOLE MEANS OF DETERMINING AGE.—Neither radiographs nor the attestation of an alien shall be used as the sole means of determining age for the purposes of determining an alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to place the burden of proof in determining the age of an alien on the government.

SEC. 106. EFFECTIVE DATE.

This title shall take effect 90 days after the date of enactment of this Act.

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

SEC. 201. GUARDIANS AD LITEM.

(a) ESTABLISHMENT OF GUARDIAN AD LITEM PROGRAM.—

(1) APPOINTMENT.—The Director may, in the Director's discretion, appoint a guardian ad litem who meets the qualifications described in paragraph (2) for such child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Directorate, the Office, or the Executive Office for Immigration Review.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that the best interests of the child are promoted while the child participates in, or is subject to, proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(F) take reasonable steps to ensure that the child understands the nature of the legal proceedings or matters and determinations made by the court, and ensure that all information is conveyed in an age-appropriate manner; and

(G) report factual findings relating to—

(i) information gathered pursuant to subparagraph (B);

(ii) the care and placement of the child during the pendency of the proceedings or matters; and

(iii) any other information gathered pursuant to subparagraph (D).

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed;

(B) the child departs the United States;

(C) the child is granted permanent resident status in the United States;

(D) the child attains the age of 18; or

(E) the child is placed in the custody of a parent or legal guardian;

whichever occurs first.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

(E) shall be permitted to consult with the child during any hearing or interview involving such child; and

(F) shall be provided at least 24 hours advance notice of a transfer of that child to a different placement, absent compelling and unusual circumstances warranting the transfer of such child prior to notification.

(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the—

(1) circumstances and conditions that unaccompanied alien children face; and

(2) various immigration benefits for which such alien child might be eligible.

(c) PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director shall establish and begin to carry out a pilot program to test the implementation of subsection (a).

(2) PURPOSE.—The purpose of the pilot program established pursuant to paragraph (1) is to—

(A) study and assess the benefits of providing guardians ad litem to assist unaccompanied alien children involved in immigration proceedings or matters;

(B) assess the most efficient and cost-effective means of implementing the guardian ad litem provisions in this section; and

(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

(3) SCOPE OF PROGRAM.—

(A) SELECTION OF SITE.—The Director shall select 3 sites in which to operate the pilot program established pursuant to paragraph (1).

(B) NUMBER OF CHILDREN.—To the greatest extent possible, each site selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

(4) REPORT TO CONGRESS.—Not later than 1 year after the date on which the first pilot program is established pursuant to paragraph (1), the Director shall report to the Committees on the Judiciary of the Senate and the House of Representatives on subparagraphs (A) through (C) of paragraph (2).

SEC. 202. COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office, or in the custody of the Directorate, who are not described in section 101(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of competent pro bono counsel who agree to provide representation to such children without charge. To the maximum extent practicable, the Director shall ensure that placements made under subparagraphs (D), (E), and (F) of section 102(a)(1) are in cities where there is a demonstrated capacity for competent pro bono representation.

(3) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(4) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—The Director shall enter into contracts with or make grants to nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out the responsibilities of this Act, including but not limited to such activities as providing legal orientation, screening cases for referral, recruiting, training, and overseeing pro bono attorneys. Nonprofit agencies may enter into subcontracts with or make grants to private voluntary agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) CONSIDERATIONS REGARDING GRANTS AND CONTRACTS.—In making grants and entering into contracts with agencies in accordance with subparagraph (A), the Director shall take into consideration whether the agencies in question are capable of properly administering the services covered by such grants or contracts without an undue conflict of interest.

(5) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

(A) DEVELOPMENT OF GUIDELINES.—The Executive Office for Immigration Review, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(B) PURPOSE OF GUIDELINES.—The guidelines developed in accordance with subparagraph (A) shall be designed to help protect a child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(C) IMPLEMENTATION.—The Executive Office for Immigration Review shall adopt the guidelines developed in accordance with subparagraph (A) and submit them for adoption by national, State, and local bar associations.

(b) DUTIES.—Counsel shall—

(1) represent the unaccompanied alien child in all proceedings and matters relating to the immigration status of the child or other actions involving the Directorate;

(2) appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Directorate; and

(3) owe the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

(c) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(d) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(e) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 203. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This title shall take effect 180 days after the date of enactment of this Act.

(b) APPLICABILITY.—The provisions of this title shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this title.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

SEC. 301. SPECIAL IMMIGRANT JUVENILE VISA.

(a) J VISA.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant under the age of 21 on the date of application who is present in the United States—

''(i) who by a court order, which shall be binding on the Secretary of Homeland Security for purposes of adjudications under this subparagraph, was declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State or juvenile court located in the United States, due to abuse, neglect, or abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) with respect to a child in Federal custody, for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Director of the Bureau of Citizenship and Immigration Services that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)) is amended—

(1) by amending subparagraph (A) to read as follows:

''(A) paragraphs (4), (5)(A), (6)(A), and (7) of section 212(a) shall not apply;'';

(2) in subparagraph (B), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(C) the Secretary of Homeland Security may waive section 212(a)(2)(D) in the case of an offense which arose as a consequence of the child being unaccompanied.''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), as amended by subsection (a), shall be eligible for all funds made available under section 412(d) of that Act (8 U.S.C. 1522(d)) until such time as the child attains the age designated in section 412(d)(2)(B) of that Act (8 U.S.C. 1522(d)(2)(B)), or until the child is placed in a permanent adoptive home, whichever occurs first.

SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF DIRECTORATE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Directorate who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States borders or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 101(a)(2).

SEC. 303. REPORT.

Not later than 1 year after the date of enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall submit a report for the previous fiscal year to the Committees on the Judiciary of the House of Representatives and the Senate that contains—

(1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);

(2) data regarding the care and placement of children in accordance with this Act;

(3) data regarding the provision of guardian ad litem and counsel services in accordance with this Act; and

(4) any other information that the Director or the Secretary of Health and Human Services determines to be appropriate.

SEC. 304. EFFECTIVE DATE.

The amendment made by section 301 shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Immigration and Naturalization Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the implementation of such guidelines by the Immigration and Naturalization Service (and its successor entities) in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following:

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region, which shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.

(a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any unaccompanied alien child apprehended by the Directorate, except for an unaccompanied alien child subject to exceptions under paragraph (1)(A) or (2) of section (101)(a) of this Act, shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(b) EXCEPTION FROM TIME LIMIT FOR FILING ASYLUM APPLICATION.—Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following:

''(E) APPLICABILITY.—Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child as defined in section 101(a)(51).''.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

SEC. 501. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security, the Department of Justice, and the Department of Health and Human Services, such sums as may be necessary to carry out—

(1) section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279); and

(2) this Act.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) ADDITIONAL RESPONSIBILITIES OF THE DIRECTOR.—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) is amended—

(1) in subparagraph (K), by striking ''and'' at the end;

(2) in subparagraph (L), by striking the period at the end and inserting '', including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements; and''; and

(3) by adding at the end the following:

''(M) ensuring minimum standards of care for all unaccompanied alien children—

''(i) for whom detention is necessary; and

''(ii) who reside in settings that are alternative to detention.''.

(b) ADDITIONAL POWERS OF THE DIRECTOR.—Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)) is amended by adding at the end the following:

''(4) POWERS.—In carrying out the duties under paragraph (3), the Director shall have the power to—

''(A) contract with service providers to perform the services described in sections 102, 103, 201, and 202 of the Unaccompanied Alien Child Protection Act of 2004; and

''(B) compel compliance with the terms and conditions set forth in section 103 of the Unaccompanied Alien Child Protection Act of 2004, including the power to—

''(i) declare providers to be in breach and seek damages for noncompliance;

''(ii) terminate the contracts of providers that are not in compliance with such conditions; and

''(iii) reassign any unaccompanied alien child to a similar facility that is in compliance with such section.''.

SEC. 602. TECHNICAL CORRECTIONS.

Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)), as amended by section 601, is amended—

(1) in paragraph (3), by striking ''paragraph (1)(G)'' and inserting ''paragraph (1)''; and

(2) by adding at the end the following:

''(5) STATUTORY CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for unaccompanied alien children who are released to a qualified sponsor.''.

SEC. 603. EFFECTIVE DATE.

The amendments made by this title shall take effect as if enacted as part of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.).

Mr. SESSIONS. Madam President, I ask unanimous consent that the Feinstein substitute amendment at the desk be agreed to, the committee-reported substitute amendment, as amended, be agreed to, the bill, as amended, be read the third time and passed, the motions to reconsider be laid upon the table, and that any statements related to the bill be printed in the RECORD.

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

The amendment (No. 4058) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 1129), as amended, was read the third time, and passed.

CONTROLLED SUBSTANCE ACT AMENDMENT

Mr. SESSIONS. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2976, which was introduced earlier today by Senators HATCH and LEVIN.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2976) to amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments.

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. Madam President, I ask unanimous consent that the bill be read the third time and passed, that the motion to reconsider be laid upon the table, and that any statements regarding this matter be printed in the RECORD.

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

The bill (S. 2976) was read the third time and passed, as follows:

S. 2976

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

SECTION 1. MAINTENANCE OR DETOXIFICATION TREATMENT WITH CERTAIN NARCOTIC DRUGS; ELIMINATION OF 30-PATIENT LIMIT FOR GROUP PRACTICES.

(a) IN GENERAL.—Section 303(g)(2)(B) of the Controlled Substance Act (21 U.S.C. 823(g)(2)(B)) is amended by striking clause (iv).

(b) CONFORMING AMENDMENT.—Section 303(g)(2)(B) of the Controlled Substance Act (21 U.S.C. 823(g)(2)(B)) is amended in clause (iii) by striking ''In any case'' and all that follows through ''the total'' and inserting ''The total''.

(c) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

MENTALLY ILL OFFENDER TREATMENT AND CRIME REDUCTION ACT OF 2004

Mr. SESSIONS. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 1194) to foster local collaborations which will ensure that resources are effectively used within the criminal and juvenile justice systems.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

S. 1194

Resolved, That the bill from the Senate (S. 1194) entitled ''An Act to foster local collaborations which will ensure that resources are effectively and efficiently used within the criminal and juvenile justice systems'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Mentally Ill Offender Treatment and Crime Reduction Act of 2004''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) According to the Bureau of Justice Statistics, over 16 percent of adults incarcerated in United States jails and prisons have a mental illness.

(2) According to the Office of Juvenile Justice and Delinquency Prevention, approximately 20 percent of youth in the juvenile justice system have serious mental health problems, and a significant number have co-occurring mental health and substance abuse disorders.

(3) According to the National Alliance for the Mentally Ill, up to 40 percent of adults who suffer from a serious mental illness will come into contact with the American criminal justice system at some point in their lives.

(4) According to the Office of Juvenile Justice and Delinquency Prevention, over 150,000 juveniles who come into contact with the juvenile justice system each year meet the diagnostic criteria for at least 1 mental or emotional disorder.

(5) A significant proportion of adults with a serious mental illness who are involved with the criminal justice system are homeless or at imminent risk of homelessness, and many of these individuals are arrested and jailed for minor, nonviolent offenses.

(6) The majority of individuals with a mental illness or emotional disorder who are involved in the criminal or juvenile justice systems are responsive to medical and psychological interventions that integrate treatment, rehabilitation, and support services.

(7) Collaborative programs between mental health, substance abuse, and criminal or juvenile justice systems that ensure the provision of services for those with mental illness or co-occurring mental illness and substance abuse disorders can reduce the number of such individuals in adult and juvenile corrections facilities, while providing improved public safety.

SEC. 3. PURPOSE.

The purpose of this Act is to increase public safety by facilitating collaboration among the criminal justice, juvenile justice, mental health treatment, and substance abuse systems. Such collaboration is needed to—

(1) protect public safety by intervening with adult and juvenile offenders with mental illness or co-occurring mental illness and substance abuse disorders;

(2) provide courts, including existing and new mental health courts, with appropriate mental health and substance abuse treatment options;

(3) maximize the use of alternatives to prosecution through graduated sanctions in appropriate cases involving nonviolent offenders with mental illness;

(4) promote adequate training for criminal justice system personnel about mental illness and substance abuse disorders and the appropriate responses to people with such illnesses;

(5) promote adequate training for mental health and substance abuse treatment personnel about criminal offenders with mental illness or co-occurring substance abuse disorders and the appropriate response to such offenders in the criminal justice system;

(6) promote communication among adult or juvenile justice personnel, mental health and co-occurring mental illness and substance abuse disorders treatment personnel, nonviolent offenders with mental illness or co-occurring mental illness and substance abuse disorders, and support services such as housing, job placement, community, faith-based, and crime victims organizations; and

(7) promote communication, collaboration, and intergovernmental partnerships among municipal, county, and State elected officials with respect to mentally ill offenders.

SEC. 4. DEPARTMENT OF JUSTICE MENTAL HEALTH AND CRIMINAL JUSTICE COLLABORATION PROGRAM.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

"PART HH—ADULT AND JUVENILE COLLABORATION PROGRAM GRANTS

"SEC. 2991. ADULT AND JUVENILE COLLABORATION PROGRAMS.

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) APPLICANT.—The term 'applicant' means States, units of local government, Indian tribes, and tribal organizations that apply for a grant under this section.

''(2) COLLABORATION PROGRAM.—The term 'collaboration program' means a program to promote public safety by ensuring access to adequate mental health and other treatment services for mentally ill adults or juveniles that is overseen cooperatively by—

''(A) a criminal or juvenile justice agency or a mental health court; and

''(B) a mental health agency.

''(3) CRIMINAL OR JUVENILE JUSTICE AGENCY.—The term 'criminal or juvenile justice agency' means an agency of a State or local government or its contracted agency that is responsible for detection, arrest, enforcement, prosecution, defense, adjudication, incarceration, probation, or parole relating to the violation of the criminal laws of that State or local government.

''(4) DIVERSION AND ALTERNATIVE PROSECUTION AND SENTENCING.—

''(A) IN GENERAL.—The terms 'diversion' and 'alternative prosecution and sentencing' mean the appropriate use of effective mental health treatment alternatives to juvenile justice or criminal justice system institutional placements for preliminarily qualified offenders.

''(B) APPROPRIATE USE.—In this paragraph, the term 'appropriate use' includes the discretion of the judge or supervising authority, the leveraging of graduated sanctions to encourage compliance with treatment, and law enforcement diversion, including crisis intervention teams.

''(C) GRADUATED SANCTIONS.—In this paragraph, the term 'graduated sanctions' means an accountability-based graduated series of sanctions (including incentives, treatments, and services) applicable to mentally ill offenders within both the juvenile and adult justice system to hold individuals accountable for their actions and to protect communities by providing appropriate sanctions for inducing law-abiding behavior and preventing subsequent involvement in the criminal justice system.

''(5) MENTAL HEALTH AGENCY.—The term 'mental health agency' means an agency of a State or local government or its contracted agency that is responsible for mental health services or co-occurring mental health and substance abuse services.

''(6) MENTAL HEALTH COURT.—The term 'mental health court' means a judicial program that meets the requirements of part V of this title.

''(7) MENTAL ILLNESS.—The term 'mental illness' means a diagnosable mental, behavioral, or emotional disorder—

''(A) of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; and

''(B)(i) that, in the case of an adult, has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities; or

''(ii) that, in the case of a juvenile, has resulted in functional impairment that substantially interferes with or limits the juvenile's role or functioning in family, school, or community activities.

''(8) NONVIOLENT OFFENSE.—The term 'nonviolent offense' means an offense that does not have as an element the use, attempted use, or threatened use of physical force against the person or property of another or is not a felony that by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

''(9) PRELIMINARILY QUALIFIED OFFENDER.—The term 'preliminarily qualified offender' means an adult or juvenile accused of a nonviolent offense who—

''(A)(i) previously or currently has been diagnosed by a qualified mental health professional as having a mental illness or co-occurring mental illness and substance abuse disorders; or

''(ii) manifests obvious signs of mental illness or co-occurring mental illness and substance abuse disorders during arrest or confinement or before any court; and

''(B) has faced, is facing, or could face criminal charges for a misdemeanor or nonviolent offense and is deemed eligible by a diversion process, designated pretrial screening process, or by a magistrate or judge, on the ground that the commission of the offense is the product of the person's mental illness.

''(10) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

''(11) UNIT OF LOCAL GOVERNMENT.—The term 'unit of local government' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, including a State court, local court, or a governmental agency located within a city, county, township, town, borough, parish, or village.

''(b) PLANNING AND IMPLEMENTATION GRANTS.—

''(1) IN GENERAL.—The Attorney General, in consultation with the Secretary, may award nonrenewable grants to eligible applicants to prepare a comprehensive plan for and implement an adult or juvenile collaboration program, which targets preliminarily qualified offenders in order to promote public safety and public health.

''(2) PURPOSES.—Grants awarded under this section shall be used to create or expand—

''(A) mental health courts or other court-based programs for preliminarily qualified offenders;

''(B) programs that offer specialized training to the officers and employees of a criminal or juvenile justice agency and mental health personnel serving those with co-occurring mental illness and substance abuse problems in procedures for identifying the symptoms of preliminarily qualified offenders in order to respond appropriately to individuals with such illnesses;

''(C) programs that support cooperative efforts by criminal and juvenile justice agencies and mental health agencies to promote public safety by offering mental health treatment services and, where appropriate, substance abuse treatment services for—

''(i) preliminarily qualified offenders with mental illness or co-occurring mental illness and substance abuse disorders; or

''(ii) adult offenders with mental illness during periods of incarceration, while under the supervision of a criminal justice agency, or following release from correctional facilities; and

''(D) programs that support intergovernmental cooperation between State and local governments with respect to the mentally ill offender.

''(3) APPLICATIONS.—

''(A) IN GENERAL.—To receive a planning grant or an implementation grant, the joint applicants shall prepare and submit a single application to the Attorney General at such time, in such manner, and containing such information as the Attorney General and the Secretary shall reasonably require. An application under part V of this title may be made in conjunction with an application under this section.

''(B) COMBINED PLANNING AND IMPLEMENTATION GRANT APPLICATION.—The Attorney General and the Secretary shall develop a procedure under which applicants may apply at the same time and in a single application for a planning grant and an implementation grant, with receipt of the implementation grant conditioned on successful completion of the activities funded by the planning grant.

''(4) PLANNING GRANTS.—

''(A) APPLICATION.—The joint applicants may apply to the Attorney General for a nonrenewable planning grant to develop a collaboration program.

''(B) CONTENTS.—The Attorney General and the Secretary may not approve a planning grant unless the application for the grant includes or provides, at a minimum, for a budget and a budget justification, a description of the outcome measures that will be used to measure the effectiveness of the program in promoting public safety and public health, the activities proposed (including the provision of substance abuse treatment services, where appropriate) and a schedule for completion of such activities, and the personnel necessary to complete such activities.

''(C) PERIOD OF GRANT.—A planning grant shall be effective for a period of 1 year, beginning on the first day of the month in which the planning grant is made. Applicants may not receive more than 1 such planning grant.

''(D) AMOUNT.—The amount of a planning grant may not exceed $75,000, except that the Attorney General may, for good cause, approve a grant in a higher amount.

''(E) COLLABORATION SET ASIDE.—Up to 5 percent of all planning funds shall be used to foster collaboration between State and local governments in furtherance of the purposes set forth in the Mentally Ill Offender Treatment and Crime Reduction Act of 2004.

''(5) IMPLEMENTATION GRANTS.—

''(A) APPLICATION.—Joint applicants that have prepared a planning grant application may apply to the Attorney General for approval of a nonrenewable implementation grant to develop a collaboration program.

''(B) COLLABORATION.—To receive an implementation grant, the joint applicants shall—

''(i) document that at least 1 criminal or juvenile justice agency (which can include a mental health court) and 1 mental health agency will participate in the administration of the collaboration program;

''(ii) describe the responsibilities of each participating agency, including how each agency will use grant resources to provide supervision of offenders and jointly ensure that the provision of mental health treatment services and substance abuse services for individuals with co-occurring mental health and substance abuse disorders are coordinated, which may range from consultation or collaboration to integration in a single setting or treatment model;

''(iii) in the case of an application from a unit of local government, document that a State mental health authority has provided comment and review; and

''(iv) involve, to the extent practicable, in developing the grant application—

''(I) preliminarily qualified offenders;

''(II) the families and advocates of such individuals under subclause (I); and

''(III) advocates for victims of crime.

''(C) CONTENT.—To be eligible for an implementation grant, joint applicants shall comply with the following:

''(i) DEFINITION OF TARGET POPULATION.—Applicants for an implementation grant shall—

''(I) describe the population with mental illness or co-occurring mental illness and substance abuse disorders that is targeted for the collaboration program; and

''(II) develop guidelines that can be used by personnel of an adult or juvenile justice agency to identify preliminarily qualified offenders.

''(ii) SERVICES.—Applicants for an implementation grant shall—

''(I) ensure that preliminarily qualified offenders who are to receive treatment services under the collaboration program will first receive individualized, validated, needs-based assessments to determine, plan, and coordinate the most appropriate services for such individuals;

''(II) specify plans for making mental health, or mental health and substance abuse, treatment services available and accessible to preliminarily qualified offenders at the time of their release from the criminal justice system, including outside of normal business hours;

''(III) ensure that there are substance abuse personnel available to respond appropriately to the treatment needs of preliminarily qualified offenders;

''(IV) determine eligibility for Federal benefits;

''(V) ensure that preliminarily qualified offenders served by the collaboration program will have adequate supervision and access to effective and appropriate community-based mental health services, including, in the case of individuals with co-occurring mental health and substance abuse disorders, coordinated services, which may range from consultation or collaboration to integration in a single setting treatment model;

''(VI) make available, to the extent practicable, other support services that will ensure the preliminarily qualified offender's successful reintegration into the community (such as housing, education, job placement, mentoring, and health care and benefits, as well as the services of faith-based and community organizations for mentally ill individuals served by the collaboration program); and

''(VII) include strategies, to the extent practicable, to address developmental and learning disabilities and problems arising from a documented history of physical or sexual abuse.

''(D) HOUSING AND JOB PLACEMENT.—Recipients of an implementation grant may use grant funds to assist mentally ill offenders compliant with the program in seeking housing or employment assistance.

''(E) POLICIES AND PROCEDURES.—Applicants for an implementation grant shall strive to ensure prompt access to defense counsel by criminal defendants with mental illness who are facing charges that would trigger a constitutional right to counsel.

''(F) FINANCIAL.—Applicants for an implementation grant shall—

''(i) explain the applicant's inability to fund the collaboration program adequately without Federal assistance;

''(ii) specify how the Federal support provided will be used to supplement, and not supplant, State, local, Indian tribe, or tribal organization sources of funding that would otherwise be available, including billing third-party resources for services already covered under programs (such as Medicaid, Medicare, and the State Children's Insurance Program); and

''(iii) outline plans for obtaining necessary support and continuing the proposed collaboration program following the conclusion of Federal support.

''(G) OUTCOMES.—Applicants for an implementation grant shall—

''(i) identify methodology and outcome measures, as required by the Attorney General and the Secretary, to be used in evaluating the effectiveness of the collaboration program;

''(ii) ensure mechanisms are in place to capture data, consistent with the methodology and outcome measures under clause (i); and

''(iii) submit specific agreements from affected agencies to provide the data needed by the Attorney General and the Secretary to accomplish the evaluation under clause (i).

''(H) STATE PLANS.—Applicants for an implementation grant shall describe how the adult or juvenile collaboration program relates to existing State criminal or juvenile justice and mental health plans and programs.

''(I) USE OF FUNDS.—Applicants that receive an implementation grant may use funds for 1 or more of the following purposes:

''(i) MENTAL HEALTH COURTS AND DIVERSION/ALTERNATIVE PROSECUTION AND SENTENCING PROGRAMS.—Funds may be used to create or expand existing mental health courts that meet program requirements established by the Attorney General under part V of this title, other court-based programs, or diversion and alternative prosecution and sentencing programs (including crisis intervention teams and treatment accountability services for communities) that meet requirements established by the Attorney General and the Secretary.

''(ii) TRAINING.—Funds may be used to create or expand programs, such as crisis intervention training, which offer specialized training to—

''(I) criminal justice system personnel to identify and respond appropriately to the unique needs of preliminarily qualified offenders; or

''(II) mental health system personnel to respond appropriately to the treatment needs of preliminarily qualified offenders.

''(iii) SERVICE DELIVERY.—Funds may be used to create or expand programs that promote public safety by providing the services described in subparagraph (C)(ii) to preliminarily qualified offenders.

''(iv) IN-JAIL AND TRANSITIONAL SERVICES.—Funds may be used to promote and provide mental health treatment and transitional services for those incarcerated or for transitional re-entry programs for those released from any penal or correctional institution.

''(J) GEOGRAPHIC DISTRIBUTION OF GRANTS.—The Attorney General, in consultation with the Secretary, shall ensure that planning and implementation grants are equitably distributed among the geographical regions of the United States and between urban and rural populations.

''(c) PRIORITY.—The Attorney General, in awarding funds under this section, shall give priority to applications that—

''(1) demonstrate the strongest commitment to ensuring that such funds are used to promote both public health and public safety;

''(2) demonstrate the active participation of each co-applicant in the administration of the collaboration program;

''(3) document, in the case of an application for a grant to be used in whole or in part to fund treatment services for adults or juveniles during periods of incarceration or detention, that treatment programs will be available to provide transition and re-entry services for such individuals; and

''(4) have the support of both the Attorney General and the Secretary.

''(d) MATCHING REQUIREMENTS.—

''(1) FEDERAL SHARE.—The Federal share of the cost of a collaboration program carried out by a State, unit of local government, Indian tribe, or tribal organization under this section shall not exceed—

''(A) 80 percent of the total cost of the program during the first 2 years of the grant;

''(B) 60 percent of the total cost of the program in year 3; and

''(C) 25 percent of the total cost of the program in years 4 and 5.

''(2) NON-FEDERAL SHARE.—The non-Federal share of payments made under this section may be made in cash or in-kind fairly evaluated, including planned equipment or services.

''(e) FEDERAL USE OF FUNDS.—The Attorney General, in consultation with the Secretary, in administering grants under this section, may use up to 3 percent of funds appropriated to—

''(1) research the use of alternatives to prosecution through pretrial diversion in appropriate cases involving individuals with mental illness;

''(2) offer specialized training to personnel of criminal and juvenile justice agencies in appropriate diversion techniques;

''(3) provide technical assistance to local governments, mental health courts, and diversion programs, including technical assistance relating to program evaluation;

''(4) help localities build public understanding and support for community reintegration of individuals with mental illness;

''(5) develop a uniform program evaluation process; and

''(6) conduct a national evaluation of the collaboration program that will include an assessment of its cost-effectiveness.

''(f) INTERAGENCY TASK FORCE.—

''(1) IN GENERAL.—The Attorney General and the Secretary shall establish an interagency task force with the Secretaries of Housing and Urban Development, Labor, Education, and Veterans Affairs and the Commissioner of Social Security, or their designees.

''(2) RESPONSIBILITIES.—The task force established under paragraph (1) shall—

''(A) identify policies within their departments that hinder or facilitate local collaborative initiatives for preliminarily qualified offenders; and

''(B) submit, not later than 2 years after the date of enactment of this section, a report to Congress containing recommendations for improved interdepartmental collaboration regarding the provision of services to preliminarily qualified offenders.

''(g) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a planning or implementation grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for planning or implementation grants pursuant to this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Justice to carry out this section—

''(1) $50,000,000 for fiscal year 2005; and

''(2) such sums as may be necessary for fiscal years 2006 through 2009.''.

(b) LIST OF ''BEST PRACTICES''.—The Attorney General, in consultation with the Secretary of Health and Human Services, shall develop a list of ''best practices'' for appropriate diversion from incarceration of adult and juvenile offenders.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. LEAHY. Madam President, the Mentally Ill Offender Treatment and Crime Reduction Act is a good bipartisan bill that will help State and local governments deal effectively with a serious law enforcement and mental health problem—the extent to which mentally ill individuals commit crimes and recidivate without ever receiving appropriate attention from the mental health, law enforcement, or corrections systems. The bill passed the Senate unanimously last year, and passed the House of Representatives in slightly revised form earlier today, by voice vote.

I have enjoyed working on this bill with Senator DEWINE, who has shown commitment and leadership on this issue. I am also pleased that Senators CANTWELL, DOMENICI, DURBIN, GRASSLEY and HATCH have joined Senator DEWINE and I as cosponsors of this bill. And I very much appreciate the support of House Judiciary Committee Chairman SENSENBRENNER and Ranking Member CONYERS, as well as Crime Subcommittee Chairman HOWARD COBLE and Ranking Member BOBBY SCOTT, and Congressman WILLIAM DELAHUNT.

Human Rights Watch released a report last year discussing the fact ''that jails and prisons have become the Nation's default mental health system.'' The first recommendation in the report was for Congress to enact this bill. Tonight we will follow that recommendation and send this bill to the President.

All too often, people with mental illness rotate repeatedly between the criminal justice system and the streets of our communities, committing a serious of minor offenses. The ever scarcer time of our law enforcement officers is being occupied by these offenders, who divert them from more urgent responsibilities. Meanwhile, offenders find themselves in prisons or jails, where little or no appropriate medical care is available for them. This bill will give State and local governments the tools to break this cycle, for the good of law enforcement, corrections officers, the public safety, and mentally ill offenders themselves.

When I was chairman of the Judiciary Committee, I held a hearing on the criminal justice system and mentally ill offenders. At that hearing, we heard from State mental health officials, law enforcement officers, corrections officials, and the representative of counties around our Nation. All of our witnesses agreed that people with untreated mental illness are more likely to commit crimes, and that our state mental health systems, prisons and jails do not have the resources they need to treat the mentally ill, and prevent crime and recidivism. We know that more than 16 percent of adults incarcerated in U.S. jails and prisons have a mental illness, that about 20 percent of youth in the juvenile justice system have serious mental health problems, and that up to 40 percent of adults who suffer from a serious mental illness will come into contact with the American criminal justice system at some point in their lives. We know these things, but we have not done enough about them at the Federal level, and our State and local officials need our help.

The bill does not mandate a ''one size fits all'' approach to addressing this issue. Rather, it allows grantees to use the funding authorized under the bill for mental health courts or other court-based programs, for training for criminal justice and mental health system personnel, and for better mental health treatment in our communities and within the corrective system. Although the House did reduce the funding authorized by the bill from $100 million to $50 million, that amount will still be enough to make a real start at addressing this problem. This is an area where government spending can not only do good but can also save money in the long run—a dollar spent today to get mentally ill offenders effective medical care can save many dollars in law enforcement costs in the long run.

This bill has brought law enforcement officers and mental health professionals together, as we have seen at both of the hearings the Judiciary Committee held on this issue. I hope that it will provide much-needed support to our communities and make a difference for both law enforcement officers and the mentally ill.•

Mr. SESSIONS. Madam President, I ask unanimous consent that the Senate concur in the House amendment, that the motion to reconsider be laid upon the table, and that any statement relating to the bill be printed in the RECORD.

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

FEDERAL WORKFORCE FLEXIBILITY ACT OF 2004

Mr. SESSIONS. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 129) to provide for reform relating to Federal employment, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

S. 129

Resolved, That the bill from the Senate (S. 129) entitled ''An Act to provide for reform relating to Federal employment, and for other purposes'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Workforce Flexibility Act of 2004''.

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

Sec. 1. Short title; table of contents.

TITLE I—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

Sec. 101. Recruitment, relocation, and retention bonuses.

Sec. 102. Streamlined critical pay authority.

TITLE II—REFORMS RELATING TO FEDERAL EMPLOYEE CAREER DEVELOPMENT AND BENEFITS

Sec. 201. Agency training.

Sec. 202. Annual leave enhancements.

Sec. 203. Compensatory time off for travel.

TITLE III—PROVISIONS RELATING TO PAY ADMINISTRATION

Sec. 301. Corrections relating to pay administration.

Sec. 302. Technical corrections.

TITLE I—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

SEC. 101. RECRUITMENT, RELOCATION, AND RETENTION BONUSES.

(a) BONUSES.—

(1) IN GENERAL.—Chapter 57 of title 5, United States Code, is amended by striking sections 5753 and 5754 and inserting the following:

''§ 5753. Recruitment and relocation bonuses

''(a)(1) This section may be applied to—

''(A) employees covered by the General Schedule pay system established under subchapter III of chapter 53; and

''(B) employees in a category approved by the Office of Personnel Management at the request of the head of an Executive agency.

''(2) A bonus may not be paid under this section to an individual who is appointed to or who holds—

''(A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

''(B) a position in the Senior Executive Service as a noncareer appointee (as such term is defined under section 3132(a)); or

''(C) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.

''(3) In this section, the term 'employee' has the meaning given that term in section 2105, except that such term also includes an employee described in subsection (c) of that section.

''(b) The Office of Personnel Management may authorize the head of an agency to pay a bonus under this section to an individual only if—

''(1) the position to which such individual is appointed (as described in paragraph (2)(A)) or to which such individual moves or must relocate (as described in paragraph (2)(B)) is likely to be difficult to fill in the absence of such a bonus; and

''(2) the individual—

''(A) is newly appointed as an employee of the Federal Government; or

''(B)(i) is currently employed by the Federal Government; and

''(ii)(I) moves to a new position in the same geographic area under circumstances described in regulations of the Office; or

''(II) must relocate to accept a position in a different geographic area.

''(c)(1) Payment of a bonus under this section shall be contingent upon the employee entering into a written service agreement to complete a period of employment with the agency, not longer than 4 years. The Office may, by regulation, prescribe a minimum service period for purposes of this section.

''(2)(A) The agreement shall include—

''(i) the commencement and termination dates of the required service period (or provisions for the determination thereof);

''(ii) the amount of the bonus;

''(iii) the method of payment; and

''(iv) other terms and conditions under which the bonus is payable, subject to the requirements of this section and regulations of the Office.

''(B) The terms and conditions for paying a bonus, as specified in the service agreement, shall include—

''(i) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

''(ii) the effect of the termination.

''(C) The required service period shall commence upon the commencement of service with the agency or movement to a new position or geographic area, as applicable, unless the service agreement provides for a later commencement date in circumstances and to the extent allowable under regulations of the Office, such as when there is an initial period of formal basic training.

''(d)(1) Except as provided in subsection (e), a bonus under this section shall not exceed 25 percent of the annual rate of basic pay of the employee at the beginning of the service period multiplied by the number of years (including a fractional part of a year, as determined under regulations of the Office) in the required service period of the employee involved.

''(2) A bonus under this section may be paid as an initial lump sum, in installments, as a final lump sum upon the completion of the full period of service required by the agreement, or in a combination of these forms of payment.

''(3) A bonus under this section is not part of the basic pay of an employee for any purpose.

''(4) Under regulations of the Office, a recruitment bonus under this section may be paid to an eligible individual before that individual enters on duty.

''(e) The Office may authorize the head of an agency to waive the limitation under subsection (d)(1) based on a critical agency need, subject to regulations prescribed by the Office. Under such a waiver, the maximum bonus allowable shall—

''(1) be equal to the maximum that would be determined if subsection (d)(1) were applied by substituting '50' for '25'; but

''(2) in no event exceed 100 percent of the annual rate of basic pay of the employee at the beginning of the service period.

Nothing in this subsection shall be considered to permit the waiver of any requirement under subsection (c).

''(f) The Office shall require that an agency establish a plan for the payment of recruitment bonuses before paying any such bonuses, and a plan for the payment of relocation bonuses before paying any such bonuses, subject to regulations prescribed by the Office.

''(g) The Office may prescribe regulations to carry out this section, including regulations relating to the repayment of a bonus under this section in appropriate circumstances when the agreed-upon service period has not been completed.

''§ 5754. Retention bonuses

''(a)(1) This section may be applied to—

''(A) employees covered by the General Schedule pay system established under subchapter III of chapter 53; and

''(B) employees in a category approved by the Office of Personnel Management at the request of the head of an Executive agency.

''(2) A bonus may not be paid under this section to an individual who is appointed to or who holds—

''(A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

''(B) a position in the Senior Executive Service as a noncareer appointee (as such term is defined under section 3132(a)); or

''(C) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.

''(3) In this section, the term 'employee' has the meaning given that term in section 2105, except that such term also includes an employee described in subsection (c) of that section.

''(b) The Office of Personnel Management may authorize the head of an agency to pay a retention bonus to an employee if—

''(1) the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee; and

''(2) the agency determines that, in the absence of a retention bonus, the employee would be likely to leave—

''(A) the Federal service; or

''(B) for a different position in the Federal service under conditions described in regulations of the Office.

''(c) The Office may authorize the head of an agency to pay retention bonuses to a group of employees in 1 or more categories of positions in 1 or more geographic areas, subject to the requirements of subsection (b)(1) and regulations prescribed by the Office, if there is a high risk that a significant portion of employees in the group would be likely to leave in the absence of retention bonuses.

''(d)(1) Payment of a retention bonus is contingent upon the employee entering into a written service agreement with the agency to complete a period of employment with the agency.

''(2)(A) The agreement shall include—

''(i) the length of the required service period;

''(ii) the amount of the bonus;

''(iii) the method of payment; and

''(iv) other terms and conditions under which the bonus is payable, subject to the requirements of this section and regulations of the Office.

''(B) The terms and conditions for paying a bonus, as specified in the service agreement, shall include—

''(i) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

''(ii) the effect of the termination.

''(3)(A) Notwithstanding paragraph (1), a written service agreement is not required if the agency pays a retention bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee with no portion of the bonus deferred.

''(B) If an agency pays a retention bonus in accordance with subparagraph (A) and makes a determination to terminate the payments, the agency shall provide written notice to the employee of that determination. Except as provided in regulations of the Office, the employee shall continue to be paid the retention bonus through the end of the pay period in which such written notice is provided.

''(4) A retention bonus for an employee may not be based on any period of such service which is the basis for a recruitment or relocation bonus under section 5753.

''(e)(1) Except as provided in subsection (f), a retention bonus, which shall be stated as a percentage of the employee's basic pay for the service period associated with the bonus, may not exceed—

''(A) 25 percent of the employee's basic pay if paid under subsection (b); or

''(B) 10 percent of an employee's basic pay if paid under subsection (c).

''(2)(A) A retention bonus may be paid to an employee in installments after completion of

specified periods of service or in a single lump sum at the end of the full period of service required by the agreement.

''(B) An installment payment is derived by multiplying the amount of basic pay earned in the installment period by a percentage not to exceed the bonus percentage rate established for the employee.

''(C) If the installment payment percentage established for the employee is less than the bonus percentage rate established for the employee, the accrued but unpaid portion of the bonus is payable as part of the final installment payment to the employee after completion of the full service period under the terms of the service agreement.

''(D) For purposes of this paragraph, the bonus percentage rate established for an employee means the bonus percentage rate established for such employee in accordance with paragraph (1) or subsection (f), as the case may be.

''(3) A retention bonus is not part of the basic pay of an employee for any purpose.

''(f) Upon the request of the head of an agency, the Office may waive the limit established under subsection (e)(1) and permit the agency head to pay an otherwise eligible employee or category of employees retention bonuses of up to 50 percent of basic pay, based on a critical agency need.

''(g) The Office shall require that, before paying any bonuses under this section, an agency shall establish a plan for the payment of any such bonuses, subject to regulations prescribed by the Office.

''(h) The Office may prescribe regulations to carry out this section.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 57 of title 5, United States Code, is amended by striking the item relating to section 5754 and inserting the following:

''5754. Retention bonuses.''.

(3) SENSE OF CONGRESS.—It is the sense of the Congress that the Director of the Office of Personnel Management—

(A) should, each time a bonus is paid under the amendment made by paragraph (1) to recruit or relocate a Federal employee from one Government agency to another within the same geographic area or to retain a Federal employee who might otherwise leave one Government agency for another within the same geographic area, be notified of that payment within 60 days after the date on which such bonus is paid; and

(B) should monitor the payment of such bonuses (in the circumstances described in subparagraph (A)) to ensure that they are an effective use of the Federal Government's funds and have not adversely affected the ability of those Government agencies that lost employees to other Government agencies (in such circumstances) to carry out their mission.

(b) RELOCATION PAYMENTS.—Section 407 of the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. 5305 note; 104 Stat. 1467) is repealed.

(c) REPORTS.—

(1) RECRUITMENT AND RELOCATION BONUSES.—

(A) IN GENERAL.—The Office of Personnel Management shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives annually, for each of the first 5 years during which section 5753 of title 5, United States Code (as amended by subsection (a)(1)) is in effect, a report on the operation of such section.

(B) CONTENTS.—Each report submitted under this paragraph shall include, with respect to the period covered by such report, a description of how the authority to pay bonuses under the section of title 5, United States Code, referred to in subparagraph (A) was used by the respective agencies, including, with respect to each such agency and each type of bonus under such section—

(i) the number and dollar-amount of bonuses paid—

(I) to individuals holding positions within each pay grade, pay level, or other pay classification; and

(II) if applicable, to individuals who moved between positions that were in different agencies but the same geographic area (including the names of the agencies involved); and

(ii) a determination of the extent to which such bonuses furthered the purposes of such section.

(2) RETENTION BONUSES.—

(A) IN GENERAL.—The Office of Personnel Management shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives annually, for each of the first 5 years during which section 5754 of title 5, United States Code (as amended by subsection (a)(1)) is in effect, a report on the operation of such section.

(B) CONTENTS.—Each report submitted under this paragraph shall include, with respect to the period covered by such report, a description of how the authority to pay bonuses under the section of title 5, United States Code, referred to in subparagraph (A) was used by the respective agencies, including, with respect to each such agency—

(i) the number and dollar-amount of bonuses paid—

(I) to individuals holding positions within each pay grade, pay level, or other pay classification; and

(II) if applicable, to prevent individuals from moving between positions that were in different agencies but the same geographic area (including the names of the agencies involved); and

(ii) a determination of the extent to which such bonuses furthered the purposes of such section.

(d) EFFECTIVE DATE AND APPLICATION.—

(1) EFFECTIVE DATE.—Except as provided under paragraphs (2) and (3), this section shall take effect on the first day of the first applicable pay period beginning on or after the 180th day after the date of the enactment of this Act.

(2) APPLICATION TO AGREEMENTS.—A recruitment or relocation bonus service agreement that was authorized under section 5753 of title 5, United States Code, before the effective date under paragraph (1) shall continue, until its expiration, to be subject to such section as in effect on the day before such effective date.

(3) APPLICATION TO ALLOWANCES.—Payment of a retention allowance that was authorized under section 5754 of title 5, United States Code, before the effective date under paragraph (1) shall continue, subject to such section as in effect on the day before such effective date, until the retention allowance is reauthorized or terminated (but no longer than 1 year after such effective date).

SEC. 102. STREAMLINED CRITICAL PAY AUTHORITY.

Section 5377 of title 5, United States Code, is amended—

(1) by striking ''Office of Personnel Management'' each place it appears and inserting ''Office of Management and Budget'';

(2) by striking ''Office of Management and Budget'' each place it appears and inserting ''Office of Personnel Management'';

(3) in subsection (g), by striking ''prescribing regulations under this section or''; and

(4) in subsection (h), by striking ''Committee on Post Office and Civil Service'' and inserting ''Committee on Government Reform''.

TITLE II—REFORMS RELATING TO FEDERAL EMPLOYEE CAREER DEVELOPMENT AND BENEFITS

SEC. 201. AGENCY TRAINING.

(a) TRAINING TO ACCOMPLISH PERFORMANCE PLANS AND STRATEGIC GOALS.—Section 4103 of title 5, United States Code, is amended by adding at the end the following:

''(c) The head of each agency shall, on a regular basis—

''(1) evaluate each program or plan established, operated, or maintained under subsection (a) with respect to accomplishing specific performance plans and strategic goals in performing the agency mission; and

''(2) modify such program or plan as needed to accomplish such plans and goals.''.

(b) SPECIFIC TRAINING PROGRAMS.—

(1) IN GENERAL.—Chapter 41 of title 5, United States Code, is amended by adding after section 4120 the following:

''§ 4121. Specific training programs

''In consultation with the Office of Personnel Management, the head of each agency shall establish—

''(1) a comprehensive management succession program to provide training to employees to develop managers for the agency; and

''(2) a program to provide training to managers on actions, options, and strategies a manager may use in—

''(A) relating to employees with unacceptable performance;

''(B) mentoring employees and improving employee performance and productivity; and

''(C) conducting employee performance appraisals.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by adding at the end the following:

''4121. Specific training programs.''.

SEC. 202. ANNUAL LEAVE ENHANCEMENTS.

(a) CREDITABILITY OF PRIOR NONGOVERNMENTAL SERVICE FOR PURPOSES OF DETERMINING RATE OF LEAVE ACCRUAL.—

(1) IN GENERAL.—Section 6303 of title 5, United States Code, is amended by adding at the end the following:

''(e)(1) Not later than 180 days after the date of the enactment of this subsection, the Office of Personnel Management shall prescribe regulations under which, for purposes of determining years of service under subsection (a), credit shall, in the case of a newly appointed employee, be given for any prior service of such employee that would not otherwise be creditable for such purposes, if—

''(A) such service—

''(i) was performed in a position the duties of which directly relate to the duties of the position to which such employee is so appointed; and

''(ii) meets such other requirements as the Office may prescribe; and

''(B) in the judgment of the head of the appointing agency, the application of this subsection is necessary in order to achieve an important agency mission or performance goal.

''(2) Service described in paragraph (1)—

''(A) shall be creditable, for the purposes described in paragraph (1), as of the effective date of the employee's appointment; and

''(B) shall not thereafter cease to be so creditable, unless the employee fails to complete a full year of continuous service with the agency.

''(3) An employee shall not be eligible for the application of paragraph (1) on the basis of any appointment if, within 90 days before the effective date of such appointment, such employee has held any position in the civil service.''.

(2) CONFORMING AMENDMENT.—The second sentence of section 6303(a) of title 5, United States Code, is amended by striking the period and inserting '', and for all service which is creditable by virtue of subsection (e).''.

(b) OTHER ANNUAL LEAVE ENHANCEMENTS.—Section 6303 of title 5, United States Code, is amended by adding after subsection (e) (as added by subsection (a)) the following:

''(f) Notwithstanding any other provision of this section, the rate of accrual of annual leave under subsection (a) shall be 1 day for each full biweekly pay period in the case of any employee who holds a position which is subject to—

''(1) section 5376 or 5383; or

''(2) a pay system equivalent to either of the foregoing, as determined by the Office of Personnel Management.''.

(c) APPLICABILITY.—None of the amendments made by subsection (a) shall apply in the case of any employee holding a position pursuant to an appointment made before the effective date of the regulations implementing such amendments.

SEC. 203. COMPENSATORY TIME OFF FOR TRAVEL.

(a) IN GENERAL.—Subchapter V of chapter 55 of title 5, United States Code, is amended by adding at end the following:

''§ 5550b. Compensatory time off for travel

''(a) Notwithstanding section 5542(b)(2), each hour spent by an employee in travel status away from the official duty station of the employee, that is not otherwise compensable, shall be treated as an hour of work or employment for purposes of calculating compensatory time off.

''(b) An employee who has any hours treated as hours of work or employment for purposes of calculating compensatory time under subsection (a), shall not be entitled to payment for any such hours that are unused as compensatory time.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5550a the following:

''5550b. Compensatory time off for travel.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the earlier of—

(1) the effective date of any regulations prescribed to carry out such amendments; or

(2) the 90th day after the date of the enactment of this Act.

TITLE III—PROVISIONS RELATING TO PAY ADMINISTRATION

SEC. 301. CORRECTIONS RELATING TO PAY ADMINISTRATION.

(a) IN GENERAL.—Chapter 53 of title 5, United States Code, is amended—

(1) in section 5302, by striking paragraph (8) and inserting the following:

''(8) the term 'rates of pay under the General Schedule', 'rates of pay for the General Schedule', or 'scheduled rates of basic pay' means the rates of basic pay under the General Schedule as established by section 5332, excluding pay under section 5304 and any other additional pay of any kind; and'';

(2) in section 5305—

(A) by striking subsection (a) and inserting the following:

''(a)(1) Whenever the Office of Personnel Management finds that the Government's recruitment or retention efforts with respect to 1 or more occupations in 1 or more areas or locations are, or are likely to become, significantly handicapped due to any of the circumstances described in subsection (b), the Office may establish for the areas or locations involved, with respect to individuals in positions paid under any of the pay systems referred to in subsection (c), higher minimum rates of pay for 1 or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum rate of basic pay (excluding any locality-based comparability payment under section 5304 or similar provision of law) for the grade or level by more than 30 percent, and no rate may be established under this section in excess of the rate of basic pay payable for level IV of the Executive Schedule. In the case of individuals not subject to the provisions of this title governing appointment in the competitive service, the President may designate another agency to authorize special rates under this section.

''(2) The head of an agency may determine that a category of employees of the agency will not be covered by a special rate authorization established under this section. The head of an agency shall provide written notice to the Office of Personnel Management (or other agency designated by the President to authorize special rates under the last sentence of paragraph (1)) which identifies the specific category or categories of employees that will not be covered by special rates authorized under this section. If the head of an agency removes a category of employees from coverage under a special rate authorization after that authorization takes effect, the loss of coverage will take effect on the first day of the first pay period after the date of the notice.'';

(B) in subsection (b), by striking paragraph (4) and inserting the following:

''(4) any other circumstances which the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) considers appropriate.'';

(C) in subsection (d)—

(i) by striking ''President'' and inserting ''Office of Personnel Management''; and

(ii) by striking ''or by such agency as he may designate'' and inserting ''(or by such other agency as the President may designate under the last sentence of subsection (a)(1))'';

(D) in subsection (e), by striking ''basic pay'' and inserting ''pay'';

(E) by striking subsection (f) and inserting the following:

''(f) When a schedule of special rates established under this section is adjusted under subsection (d), a covered employee's special rate will be adjusted in accordance with conversion rules prescribed by the Office of Personnel Management (or by such other agency as the President may under the last sentence of subsection (a)(1) designate).'';

(F) in subsection (g)(1)—

(i) by striking ''basic pay'' and inserting ''pay''; and

(ii) by striking ''President (or his designated agency)'' and inserting ''Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate)'';

(G) by striking subsection (h) and inserting the following:

''(h) An employee shall not for any purpose be considered to be entitled to a rate of pay established under this section with respect to any period for which such employee is entitled to a higher rate of basic pay under any other provision of law. For purposes of this subsection, the term 'basic pay' includes any applicable locality-based comparability payment under section 5304 or similar provision of law.''; and

(H) by adding at the end the following:

''(i) If an employee who is receiving a rate of pay under this section becomes subject, by virtue of moving to a new official duty station, to a different pay schedule, such employee's new rate of pay shall be initially established under conversion rules prescribed by the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) in conformance with the following:

''(1) First, determine the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the rate range) before the move.

''(2) Then, if (in addition to the change in pay schedule) the move also involves any personnel action or other change requiring a rate adjustment under any other provision of law, rule, or regulation, apply the applicable rate adjustment provisions, treating the rate determined under paragraph (1) as if it were the rate last received by the employee before the rate adjustment.

''(j) A rate determined under a schedule of special rates established under this section shall be considered to be part of basic pay for purposes of subchapter III of chapter 83, chapter 84, chapter 87, subchapter V of chapter 55, and section 5941, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe.'';

(3) in section 5334—

(A) in subsection (b), by adding at the end the following:

''If an employee's rate after promotion or transfer is greater than the maximum rate of basic pay for the employee's grade, that rate shall be treated as a retained rate under section 5363. The Office of Personnel Management shall prescribe by regulation the circumstances under which and the extent to which special rates under section 5305 (or similar provision of law) or locality-adjusted rates under section 5304 (or similar provision of law) are considered to be basic pay in applying this subsection.''; and

(B) by adding at the end the following:

''(g) In the case of an employee who—

''(1) moves to a new official duty station, and

''(2) by virtue of such move, becomes subject to a different pay schedule,

any rate adjustment under the preceding provisions of this section, with respect to such employee in connection with such move, shall be made—

''(A) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the rate range) before the move, and

''(B) then, by applying the provisions of this section that would otherwise apply (if any), treating the rate determined under subparagraph (A) as if it were the rate last received by the employee before the rate adjustment.'';

(4) in section 5361—

(A) by amending paragraph (4) to read as follows:

''(4) 'rate of basic pay' means—

''(A) the rate of basic pay payable to an employee under law or regulations before any deductions or additions of any kind, but including—

''(i) any applicable locality-based comparability payment under section 5304 or similar provision of law;

''(ii) any applicable special pay under section 5305 or similar provision of law; and

''(iii) subject to such regulations as the Office of Personnel Management may prescribe, any applicable existing retained rate of pay established under section 5363 or similar provision of law; and

''(B) in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343;'';

(B) in paragraph (6), by striking ''and'' at the end;

(C) in paragraph (7), by striking the period and inserting''; and''; and

(D) by adding at the end the following:

''(8) 'retained rate' means the rate of basic pay to which an employee is entitled under section 5363(b)(2).'';

(5) in section 5363—

(A) in subsection (a), by striking the matter following paragraph (4) and inserting the following:

''is entitled to a rate of basic pay in accordance with regulations prescribed by the Office of Personnel Management in conformity with the provisions of this section.''; and

(B) by striking subsections (b) and (c) and inserting the following:

''(b)(1)(A) If, as a result of any event described in subsection (a), the employee's former rate of basic pay is less than or equal to the maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved, the employee is entitled to basic pay at the lowest rate of basic pay payable for such grade that equals or exceeds such former rate of basic pay.

''(B) This section shall cease to apply to an employee to whom subparagraph (A) applies once the appropriate rate of basic pay has been determined for such employee under this paragraph.

''(2)(A) If, as a result of any event described in subsection (a), the employee's former rate of

basic pay is greater than the maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved, the employee is entitled to basic pay at a rate equal to the lesser of—

''(i) the employee's former rate of basic pay; or

''(ii) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved,

as adjusted by subparagraph (B).

''(B) A rate to which an employee is entitled under this paragraph shall be increased at the time of any increase in the maximum rate of basic pay payable for the grade of the employee's position by 50 percent of the dollar amount of each such increase.

''(3) For purposes of this subsection, the term 'former rate of basic pay', as used with respect to an employee in connection with an event described in subsection (a), means the rate of basic pay last received by such employee before the occurrence of such event.

''(c)(1) Notwithstanding any other provision of this section, in the case of an employee who—

''(A) moves to a new official duty station, and

''(B) in conjunction with such move, becomes subject to both a different pay schedule and (disregarding this subsection) the preceding provisions of this section,

this section shall be applied—

''(i) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the pay range) before the move, and

''(ii) then, by applying the provisions of this section that would apply (if any), treating the rate determined under clause (i) as if it were the rate last received by the employee before the application of this section.

''(2) A reduction in an employee's rate of basic pay resulting from a determination under paragraph (1)(ii) is not a basis for an entitlement under this section.

''(3) The rate of basic pay for an employee who is receiving a retained rate at the time of moving to a new official duty station at which different pay schedules apply shall be subject to regulations prescribed by the Office of Personnel Management consistent with the purposes of this section.

''(d) A retained rate shall be considered part of basic pay for purposes of this subchapter and for purposes of subchapter III of chapter 83, chapters 84 and 87, subchapter V of chapter 55, section 5941, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe. The Office shall, for any purpose other than any of the purposes referred to in the preceding sentence, prescribe by regulation what constitutes basic pay for employees receiving a retained rate.

''(e) This section shall not apply, or shall cease to apply, to an employee who—

''(1) has a break in service of 1 workday or more;

''(2) is entitled, by operation of this subchapter, chapter 51 or 53, or any other provision of law, to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the retained rate to which the employee would otherwise be entitled; or

''(3) is demoted for personal cause or at the employee's request.''; and

(6) in section 5365(b), by inserting after ''provisions of this subchapter'' the following: ''(subject to any conditions or limitations the Office may establish)''.

(b) SPECIAL RATES FOR LAW ENFORCEMENT OFFICERS.—Section 403(c) of the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. 5305 note) is amended by striking all after ''provision of law)'' and inserting ''and shall be basic pay for all purposes. The rates shall be adjusted at the time of adjustments in the General Schedule to maintain the step linkage set forth in subsection (b)(2).''.

(c) REPEAL.—Section 4505a(a)(2) of title 5, United States Code, is amended—

(1) by striking ''(2)(A)'' and inserting ''(2)''; and

(2) by striking subparagraph (B).

(d) EFFECTIVE DATE; CONVERSION RULES.—

(1) EFFECTIVE DATE.—This section shall take effect on the first day of the first applicable pay period beginning on or after the 180th day after the date of the enactment of this Act.

(2) CONVERSION RULES.—

(A) INDIVIDUALS RECEIVING A RETAINED RATE OR A RATE GREATER THAN THE MAXIMUM RATE FOR THE GRADE.—Subject to any regulations the Office of Personnel Management may prescribe, an employee under a covered pay schedule who, on the day before the effective date of this section, is receiving a retained rate under section 5363 of title 5, United States Code, or is receiving under similar authority a rate of basic pay that is greater than the maximum rate of basic pay payable for the grade of the employee's position shall have that rate converted as of the effective date of this section, and the employee shall be considered to be receiving a retained rate under section 5363 of such title (as amended by this section). The newly applicable retained rate shall equal the formerly applicable retained rate as adjusted to include any applicable locality-based payment under section 5304 of title 5, United States Code, or similar provision of law.

(B) DEFINITION.—For purposes of this paragraph, the term ''covered pay schedule'' has the meaning given such term by section 5361 of title 5, United States Code.

SEC. 302. TECHNICAL CORRECTIONS.

(a)(1) Section 5304 of title 5, United States Code, as amended by section 1125 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136), is amended—

(A) in subsection (g)(2)(A), by striking ''(A)–(D)'' and inserting ''(A)–(C)''; and

(B) in subsection (h)(2)(B)(i), by striking ''or (vii)'' and inserting ''or (vi)''.

(2) The amendments made by this subsection shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

(b) Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Administrator of the Office of Electronic Government.''.

Mr. SESSIONS. Madam President, I ask unanimous consent that the Senate concur in the House amendment, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

2004 DISTRICT OF COLUMBIA OMNIBUS AUTHORIZATION ACT

Mr. SESSIONS. Madam President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of H.R. 3797 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3797) to authorize improvements in the operations of the government of the District of Columbia, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. Madam President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 3797) was read the third time and passed.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2005

Mr. SESSIONS. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 619, S. 2386, the intelligence authorization bill.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2386) to authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Intelligence and the Committee on Armed Services, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic]

S. 2386

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Intelligence Authorization Act for Fiscal Year 2005''.

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

Sec. 1. Short title; table of contents.

TITLE I—INTELLIGENCE ACTIVITIES

Sec. 101. Authorization of appropriations.
Sec. 102. Classified schedule of authorizations.
Sec. 103. Personnel ceiling adjustments.
Sec. 104. Intelligence Community Management Account.
Sec. 105. Incorporation of reporting requirements.
Sec. 106. Specific authorization of funds for intelligence or intelligence-related activities for which fiscal year 2004 appropriations exceed amounts authorized.
Sec. 107. Preparation and submittal of reports, reviews, studies, and plans relating to intelligence activities of Department of Defense and Department of Energy.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

Sec. 201. Authorization of appropriations.

TITLE III—GENERAL PROVISIONS

Sec. 301. Increase in employee compensation and benefits authorized by law.
Sec. 302. Restriction on conduct of intelligence activities.
Sec. 303. Modification of authority to obligate and expend certain funds for intelligence activities.

Sec. 304. Treatment as agent of a foreign power under the Foreign Intelligence Surveillance Act of 1978 of non-United States persons who engage in international terrorism without affiliation with international terrorist groups.
Sec. 305. Additional annual reporting requirements under the Foreign Intelligence Surveillance Act of 1978.
Sec. 306. Repeal of limitation on length of service as member of the Select Committee on Intelligence of the Senate.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

Sec. 401. Permanent extension of Central Intelligence Agency voluntary separation incentive program.
Sec. 402. Intelligence operations and cover enhancement authority.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

[Sec. 501. Repeal of sunset on authority to engage in commercial activities as security for intelligence collection activities.]
Sec. [502] *501*. Defense intelligence exemption from certain Privacy Act requirements.
Sec. [503] *502*. Use of funds for counterdrug and counterterrorism activities for Colombia.

TITLE I—INTELLIGENCE ACTIVITIES

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2005 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.
(2) The Department of Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of the Treasury.
(8) The Department of Energy.
(9) The Department of Justice.
(10) The Federal Bureau of Investigation.
(11) The National Reconnaissance Office.
(12) The National Geospatial-Intelligence Agency.
(13) The Coast Guard.
(14) The Department of Homeland Security.

SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 2005, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on the bill ____ of the One Hundred Eighth Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

SEC. 103. PERSONNEL CEILING ADJUSTMENTS.

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 2005 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel employed in excess of the number authorized under such section may not, for any element of the intelligence community, exceed 2 percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of Central Intelligence shall promptly notify the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives whenever the Director exercises the authority granted by this section.

SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Intelligence Community Management Account of the Director of Central Intelligence for fiscal year 2005 the sum of $342,995,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for advanced research and development shall remain available until September 30, 2006.

(b) AUTHORIZED PERSONNEL LEVELS.—The elements within the Intelligence Community Management Account of the Director of Central Intelligence are authorized 310 full-time personnel as of September 30, 2005. Personnel serving in such elements may be permanent employees of the Intelligence Community Management Account or personnel detailed from other elements of the United States Government.

(c) CLASSIFIED AUTHORIZATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are also authorized to be appropriated for the Intelligence Community Management Account for fiscal year 2005 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts for research and development shall remain available until September 30, 2006.

(2) AUTHORIZATION OF PERSONNEL.—In addition to the personnel authorized by subsection (b) for elements of the Intelligence Community Management Account as of September 30, 2005, there are also authorized such additional personnel for such elements as of that date as are specified in the classified Schedule of Authorizations.

(d) REIMBURSEMENT.—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year 2005 any officer or employee of the United States or a member of the Armed Forces who is detailed to the staff of the Intelligence Community Management Account from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

(e) NATIONAL DRUG INTELLIGENCE CENTER.—

(1) IN GENERAL.—Of the amount authorized to be appropriated in subsection (a), $34,911,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, testing, and evaluation purposes shall remain available until September 30, 2006, and funds provided for procurement purposes shall remain available until September 30, 2007.

(2) TRANSFER OF FUNDS.—The Director of Central Intelligence shall transfer to the Attorney General funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) LIMITATION.—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403–3(d)(1)).

(4) AUTHORITY.—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

SEC. 105. INCORPORATION OF REPORTING REQUIREMENTS.

(a) IN GENERAL.—Each requirement to submit a report to the congressional intelligence committees that is included in the joint explanatory statement to accompany the conference report on the bill ____ of the One Hundred Eighth Congress, or in the classified annex to this Act, is hereby incorporated into this Act, and is hereby made a requirement in law.

(b) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 106. SPECIFIC AUTHORIZATION OF FUNDS FOR INTELLIGENCE OR INTELLIGENCE-RELATED ACTIVITIES FOR WHICH FISCAL YEAR 2004 APPROPRIATIONS EXCEED AMOUNTS AUTHORIZED.

Funds appropriated for an intelligence or intelligence-related activity of the United States Government for fiscal year 2004 in excess of the amount specified for such activity in the classified Schedule of Authorizations prepared to accompany the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 117 Stat. 2599) shall be deemed to be specifically authorized by Congress for purposes of section 504(a)(3) of the National Security Act of 1947 (50 U.S.C. 414(a)(3)).

SEC. 107. PREPARATION AND SUBMITTAL OF REPORTS, REVIEWS, STUDIES, AND PLANS RELATING TO INTELLIGENCE ACTIVITIES OF DEPARTMENT OF DEFENSE AND DEPARTMENT OF ENERGY.

(a) CONSULTATION IN PREPARATION.—(1) The Director of Central Intelligence shall ensure that any report, review, study, or plan required to be prepared or conducted by a provision of this Act, including a provision of the classified Schedule of Authorizations referred to in section 102(a) or the classified annex to this Act, that involves the intelligence or intelligence-related activities of the Department of Defense or the Department of Energy is prepared or conducted in consultation with the Secretary of Defense or the Secretary of Energy, as appropriate.

(2) The Secretary of Defense or the Secretary of Energy may carry out any consultation required by this subsection through an official of the Department of Defense or the Department of Energy, as the case may be, designated by such Secretary for that purpose.

(b) SUBMITTAL.—Any report, review, study, or plan referred to in subsection (a) shall be submitted, in addition to any other committee of Congress specified for submittal in the provision concerned, to the following committees of Congress:

(1) The Committee on Armed Services, the Subcommittee on Defense of the Committee on Appropriations, and the Select Committee on Intelligence of the Senate.

(2) The Committee on Armed Services, and the Subcommittee on Defense of the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2005 the sum of $239,400,000.

TITLE III—GENERAL PROVISIONS

SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

SEC. 303. MODIFICATION OF AUTHORITY TO OBLIGATE AND EXPEND CERTAIN FUNDS FOR INTELLIGENCE ACTIVITIES.

Section 504(a)(3) of the National Security Act of 1947 (50 U.S.C. 414(a)(3)) is amended—

(1) in subparagraph (A), by inserting ''and'' at the end;

(2) by striking subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

SEC. 304. TREATMENT AS AGENT OF A FOREIGN POWER UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 OF NON-UNITED STATES PERSONS WHO ENGAGE IN INTERNATIONAL TERRORISM WITHOUT AFFILIATION WITH INTERNATIONAL TERRORIST GROUPS.

(a) IN GENERAL.—Section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)) is amended by adding at the end the following new subparagraph:

''(C) engages in international terrorism or activities in preparation therefor; or''.

(b) SUNSET.—The amendment made by subsection (a) shall be subject to the sunset provision in section 224 of the USA PATRIOT Act of 2001 (Public Law 107–56; 115 Stat. 295), including the exception provided in subsection (b) of such section 224.

SEC. 305. ADDITIONAL ANNUAL REPORTING REQUIREMENTS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) ADDITIONAL REPORTING REQUIREMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by redesignating title VI as title VII;

(2) by redesignating section 601 as section 701; and

(3) by inserting after title V the following new title VI:

''TITLE VI—REPORTING REQUIREMENT

''ANNUAL REPORT OF THE ATTORNEY GENERAL

''SEC. 601. (a) In addition to the reports required by sections 107, 108, 306, 406, and 502 in April each year, the Attorney General shall submit to the appropriate committees of Congress each year a report setting forth with respect to the one-year period ending on the date of such report—

''(1) the aggregate number of non-United States persons targeted for orders issued under this Act, including a break-down of those targeted for—

''(A) electronic surveillance under section 105;

''(B) physical searches under section 304;

''(C) pen registers under section 402; and

''(D) access to records under section 501;

''(2) the number of individuals covered by an order issued under this Act who were determined pursuant to activities authorized by this Act to have acted wholly alone in the activities covered by such order;

''(3) the number of times that the Attorney General has authorized that information obtained under this Act may be used in a criminal proceeding or any information derived therefrom may be used in a criminal proceeding; and

''(4) in a manner consistent with the protection of the national security of the United States—

''(A) the portions of the documents and applications filed with the courts established under section 103 that include significant construction or interpretation of the provisions of this Act, not including the facts of any particular matter, which may be redacted; and

''(B) the portions of the opinions and orders of the courts established under section 103 that include significant construction or interpretation of the provisions of this Act, not including the facts of any particular matter, which may be redacted.

''(b) The first report under this section shall be submitted not later than six months after the date of the enactment of this Intelligence Authorization Act for Fiscal Year 2005. Subsequent reports under this section shall be submitted annually thereafter.

''(c) In this section, the term 'appropriate committees of Congress' means—

''(1) the Select Committee on Intelligence and the Committee on the Judiciary of the Senate; and

''(2) the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.''.

(b) CLERICAL AMENDMENT.—The table of contents for that Act is amended by striking the items relating to title VI and inserting the following new items:

''TITLE VI—REPORTING REQUIREMENT

''Sec. 601. Annual report of the Attorney General.

''TITLE VII—EFFECTIVE DATE

''Sec. 701. Effective date.''.

SEC. 306. REPEAL OF LIMITATION ON LENGTH OF SERVICE AS MEMBER OF THE SELECT COMMITTEE ON INTELLIGENCE OF THE SENATE.

(a) REPEAL.—Section 2 of Senate Resolution 400 (94th Congress) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(b) RULES OF THE SENATE.—Subsection (a) is enacted—

(1) as an exercise of the rulemaking power of the Senate; and

(2) with full recognition of the constitutional right of the Senate to change the rules of the Senate at any time and to the same extent as in the case of any other rule of the Senate.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

SEC. 401. PERMANENT EXTENSION OF CENTRAL INTELLIGENCE AGENCY VOLUNTARY SEPARATION INCENTIVE PROGRAM.

(a) IN GENERAL.—Section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403–4 note) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

(b) TERMINATION OF FUNDS REMITTANCE REQUIREMENT.—(1) Section 2 of such Act is further amended by striking subsection (i).

(2) Section 4(a)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 8331 note) is amended by striking '', or section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (Public Law 103–36; 107 Stat. 104)''.

SEC. 402. INTELLIGENCE OPERATIONS AND COVER ENHANCEMENT AUTHORITY.

The Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) is amended by adding at the end the following:

''INTELLIGENCE OPERATIONS AND COVER ENHANCEMENT AUTHORITY

''SEC. 23. (a) DEFINITIONS.—In this section—

''(1) the term 'designated employee' means an employee designated by the Director under subsection (b); and

''(2) the term 'Federal retirement system' includes the Central Intelligence Agency Retirement and Disability System, and the Federal Employees Retirement System (including the Thrift Savings Plan).

''(b) IN GENERAL.—

''(1) AUTHORITY.—Notwithstanding any other provision of law, the Director may exercise the authorities under this section in order to—

''(A) protect from unauthorized disclosure—

''(i) intelligence operations;

''(ii) the identities of undercover intelligence officers;

''(iii) intelligence source and methods; or

''(iv) intelligence cover mechanisms; or

''(B) meet the special requirements of work related to collection of foreign intelligence or other authorized activities of the Agency.

''(2) DESIGNATION OF EMPLOYEES.—The Director may designate any employee of the Agency who is under nonofficial cover to be an employee to whom this section applies. Such designation may be made with respect to any or all authorities exercised under this section.

''(c) COMPENSATION.—The Director may pay a designated employee salary, allowances, and other benefits in an amount and in a manner consistent with the nonofficial cover of that employee, without regard to any limitation that is otherwise applicable to a Federal employee. A designated employee may accept, utilize, and, to the extent authorized by regulations prescribed under subsection (i), retain any salary, allowances, and other benefits provided under this section.

''(d) RETIREMENT BENEFITS.—

''(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee retirement system under which a designated employee (and the spouse, former spouses, and survivors of such designated employee) shall receive treatment in the same manner and to the same extent as the Federal retirement system that would otherwise apply to such employee (and the spouse, former spouses, and survivors of that employee). A designated employee may not participate in the retirement system established under this paragraph and another Federal retirement system at the same time.

''(2) CONVERSION TO OTHER FEDERAL RETIREMENT SYSTEM.—

''(A) IN GENERAL.—A designated employee participating in the retirement system established under paragraph (1) may convert to coverage under the Federal retirement system which would otherwise apply to that employee at any appropriate time determined by the Director (including at the time of separation of service by reason of retirement), if the Director determines that the employee's participation in the retirement system established under this subsection is no longer necessary to protect from unauthorized disclosure—

''(i) intelligence operations;

''(ii) the identities of undercover intelligence officers;

''(iii) intelligence sources and methods; or

''(iv) intelligence cover mechanisms.

''(B) CONVERSION TREATMENT.—Upon a conversion under this paragraph—

''(i) all periods of service under the retirement system established under this subsection shall be deemed periods of creditable service under the applicable Federal retirement system;

''(ii) the Director shall transmit an amount for deposit in any applicable fund of that Federal retirement system that—

''(I) is necessary to cover all employee and agency contributions including—

''(aa) interest as determined by the head of the agency administering the Federal retirement system into which the employee is converting; or

''(bb) in the case of an employee converting into the Federal Employee's Retirement System, interest as determined under section 8334(e) of title 5, United States Code; and

''(II) ensures that such conversion does not result in any unfunded liability to that fund; and

''(iii) in the case of a designated employee who participated in a retirement system established under paragraph (1) similar to subchapter III of chapter 84 of title 5, United States Code, and is converting to coverage under subchapter III of that chapter, the Director shall transmit all amounts of that designated employee in that similar retirement system (or similar part of that retirement system) to the Thrift Savings Fund.

''(C) TRANSMITTED AMOUNTS.—

''(i) IN GENERAL.—Amounts described under subparagraph (B)(ii) shall be paid from the fund or appropriation used to pay the designated employee.

''(ii) OFFSET.—The Director may use amounts contributed by the designated employee to a retirement system established under paragraph (1) to offset amounts paid under clause (i).

''(D) RECORDS.—The Director shall transmit all necessary records relating to a designated employee who converts to a Federal retirement system under this paragraph (including records relating to periods of service which are deemed to be periods of creditable service under subparagraph (B)) to the head of the agency administering that Federal retirement system.

''(e) HEALTH INSURANCE BENEFITS.—

''(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee health insurance program under which a designated employee (and the family of such designated employee) shall receive treatment in the same manner and to the same extent as provided under chapter 89 of title 5, United States Code. A designated employee may not participate in the health insurance program established under this paragraph and the program under chapter 89 of title 5, United States Code, at the same time.

''(2) CONVERSION TO FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM.—

''(A) IN GENERAL.—A designated employee participating in the health insurance program established under paragraph (1) may convert to coverage under the program under chapter 89 of title 5, United States Code, at any appropriate time determined by the Director (including at the time of separation of service by reason of retirement), if the Director determines that the employee's participation in the health insurance program established under this subsection is no longer necessary to protect from unauthorized disclosure—

''(i) intelligence operations;

''(ii) the identities of undercover intelligence officers;

''(iii) intelligence sources and methods; or

''(iv) intelligence cover mechanisms.

''(B) CONVERSION TREATMENT.—Upon a conversion under this paragraph—

''(i) the employee (and family, if applicable) shall be entitled to immediate enrollment and coverage under chapter 89 of title 5, United States Code;

''(ii) any requirement of prior enrollment in a health benefits plan under chapter 89 of that title for continuation of coverage purposes shall not apply;

''(iii) the employee shall be deemed to have had coverage under chapter 89 of that title from the first opportunity to enroll for purposes of continuing coverage as an annuitant; and

''(iv) the Director shall transmit an amount for deposit in the Employees Health Benefits Fund that is necessary to cover any costs of such conversion.

''(C) TRANSMITTED AMOUNTS.—Any amount described under subparagraph (B)(iv) shall be paid from the fund or appropriation used to pay the designated employee.

''(f) LIFE INSURANCE BENEFITS.—

''(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee life insurance program under which a designated employee (and the family of such designated employee) shall receive treatment in the same manner and to the same extent as provided under chapter 87 of title 5, United States Code. A designated employee may not participate in the life insurance program established under this paragraph and the program under chapter 87 of title 5, United States Code, at the same time.

''(2) CONVERSION TO FEDERAL EMPLOYEES GROUP LIFE INSURANCE PROGRAM.—

''(A) IN GENERAL.—A designated employee participating in the life insurance program established under paragraph (1) may convert to coverage under the program under chapter 87 of title 5, United States Code, at any appropriate time determined by the Director (including at the time of separation of service by reason of retirement), if the Director determines that the employee's participation in the life insurance program established under this subsection is no longer necessary to protect from unauthorized disclosure—

''(i) intelligence operations;

''(ii) the identities of undercover intelligence officers;

''(iii) intelligence sources and methods; or

''(iv) intelligence cover mechanisms.

''(B) CONVERSION TREATMENT.—Upon a conversion under this paragraph—

''(i) the employee (and family, if applicable) shall be entitled to immediate coverage under chapter 87 of title 5, United States Code;

''(ii) any requirement of prior enrollment in a life insurance program under chapter 87 of that title for continuation of coverage purposes shall not apply;

''(iii) the employee shall be deemed to have had coverage under chapter 87 of that title for the full period of service during which the employee would have been entitled to be insured for purposes of continuing coverage as an annuitant; and

''(iv) the Director shall transmit an amount for deposit in the Employees Life Insurance Fund that is necessary to cover any costs of such conversion.

''(C) TRANSMITTED AMOUNTS.—Any amount described under subparagraph (B)(iii) shall be paid from the fund or appropriation used to pay the designated employee.

''(g) EXEMPTION FROM CERTAIN REQUIREMENTS.—The Director may exempt a designated employee from mandatory compliance with any Federal regulation, rule, standardized administrative policy, process, or procedure that the Director determines—

''(1) would be inconsistent with the nonofficial cover of that employee; and

''(2) could expose that employee to detection as a Federal employee.

''(h) TAXATION AND SOCIAL SECURITY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a designated employee—

''(A) shall file a Federal or State tax return as if that employee is not a Federal employee and may claim and receive the benefit of any exclusion, deduction, tax credit, or other tax treatment that would otherwise apply if that employee was not a Federal employee, if the Director determines that taking any action under this paragraph is necessary to—

''(i) protect from unauthorized disclosure—

''(I) intelligence operations;

''(II) the identities of undercover intelligence officers;

''(III) intelligence source and methods; or

''(IV) intelligence cover mechanisms; and

''(ii) meet the special requirements of work related to collection of foreign intelligence or other authorized activities of the Agency; and

''(B) shall receive social security benefits based on the social security contributions made.

''(2) IRS REVIEW.—The Director shall establish procedures to carry out this subsection. The procedures shall be subject to periodic review by the Internal Revenue Service.

''(i) REGULATIONS.—The Director shall prescribe regulations to carry out this section. The regulations shall ensure that the combination of salary, allowances, and benefits that an employee designated under this section may retain does not significantly exceed, except to the extent determined by the Director to be necessary to exercise the authority in subsection (b), the combination of salary, allowances, and benefits otherwise received by Federal employees not designated under this section.

''(j) FINALITY OF DECISIONS.—Any determinations authorized by this section made by the Director or the Director's designee shall be final and conclusive and shall not be subject to review by any court.

''(k) SUBSEQUENTLY ENACTED LAWS.—No law enacted after the effective date of this section shall affect the authorities and provisions of this section unless such law specifically refers to this section.''.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

[SEC. 501. REPEAL OF SUNSET ON AUTHORITY TO ENGAGE IN COMMERCIAL ACTIVITIES AS SECURITY FOR INTELLIGENCE COLLECTION ACTIVITIES.

[Section 431(a) of title 10, United States Code, is amended by striking the second sentence.]

SEC. [502] *501.* DEFENSE INTELLIGENCE EXEMPTION FROM CERTAIN PRIVACY ACT REQUIREMENTS.

Section 552a(e)(3) of title 5, United States Code, shall not apply with respect to the collection of information by intelligence personnel of the Department of Defense who are authorized by the Secretary of Defense to collect intelligence from human sources.

SEC. [503] *502.* USE OF FUNDS FOR COUNTERDRUG AND COUNTERTERRORISM ACTIVITIES FOR COLOMBIA.

(a) AUTHORITY.—Funds designated for intelligence or intelligence-related purposes for assistance to the Government of Colombia for counterdrug activities for fiscal year 2005, and any unobligated funds available to any element of the intelligence community for such activities for a prior fiscal year, shall be available—

(1) to support a unified campaign by the Government of Colombia against narcotics trafficking and against activities by organizations designated as terrorist organizations

(such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC)); and

(2) to take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations.

(b) APPLICABILITY OF CERTAIN LAWS AND LIMITATIONS.—The use of funds pursuant to the authority in subsection (a) shall be subject to the following:

(1) Sections 556, 567, and 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2160, 2165, and 2166).

(2) Section 8077 of the Department of Defense Appropriations Act, 2004 (Public Law 108–87; 117 Stat. 1090).

(3) The numerical limitations on the number of United States military personnel and United States individual civilian contractors in section 3204(b)(1) of the Emergency Supplemental Act, 2000 (division B of Public Law 106–246; 114 Stat. 575), as amended by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (115 Stat. 2131).

(c) LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.—No United States Armed Forces personnel or United States civilian contractor employed by the United States Armed Forces will participate in any combat operation in connection with assistance made available under this section, except for the purpose of acting in self defense or during the course of search and rescue operations for United States citizens.

Mr. SESSIONS. Madam President, I ask unanimous consent that the committee amendments be agreed to, that the amendments that are at the desk be agreed to, that the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table en bloc, and that any statements relating to the bill be printed in the RECORD.

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

The committee amendments were agreed to.

The amendments (Nos. 4059 and 4060) were agreed to, as follows:

AMENDMENT NO. 4059

(Purpose: To strike section 306, relating to a repeal of the limitation on the length of service as a member of the Select Committee on Intelligence of the Senate)

On page 16, strike lines 1 through 16.

AMENDMENT NO. 4060

On page 9, line 16, add at the end the following: ''Such funds shall remain available until September 30, 2005.''.

On page 16, between lines 16 and 17, insert the following:

SEC. 307. INTELLIGENCE ASSESSMENT ON SANCTUARIES FOR TERRORISTS.

(a) ASSESSMENT REQUIRED.—Not later than the date specified in subsection (b), the Director of Central Intelligence shall submit to Congress an intelligence assessment that identifies and describes each country or region that is a sanctuary for terrorists or terrorist organizations. The assessment shall be based on current all-source intelligence.

(b) SUBMITTAL DATE.—The date of the submittal of the intelligence assessment required by subsection (a) shall be the earlier of—

(1) the date that is six months after the date of the enactment of this Act; or

(2) June 1, 2005.

SEC. 308. ADDITIONAL EXTENSION OF DEADLINE FOR FINAL REPORT OF THE NATIONAL COMMISSION FOR THE REVIEW OF THE RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY.

Section 1007(a) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 50 U.S.C. 401 note) is amended by striking ''September 1, 2004'' and inserting ''September 1, 2005''.

SEC. 309. FOUR-YEAR EXTENSION OF PUBLIC INTEREST DECLASSIFICATION BOARD.

Section 710(b) of the Public Interest Declassification Act of 2000 (title VII of Public Law 106–567; 114 Stat. 2856; 50 U.S.C. 435 note) is amended by striking ''4 years'' and inserting ''8 years''.

On page 19, strike lines 7 through 15 and insert the following:

''(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee retirement system for designated employees (and the spouse, former spouses, and survivors of such designated employees). A des-

On page 21, strike line 18 and all that follows through page 22, line 1, and insert the following:

''(iii) in the case of a designated employee who participated in an employee investment retirement system established under paragraph (1) and is converted to coverage under subchapter III of chapter 84 of title 5, United States Code, the Director may transmit any or all amounts of that designated employee in that employee investment retirement system (or similar

On page 22, strike line 24 and all that follows through page 23, line 5, and insert the following:

''(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee health insurance program for designated employees (and the family of such designated employees). A designated employee

On page 25, strike lines 6 through 12 and insert the following:

''(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee life insurance program for designated employees (and the family of such designated employees). A designated employee may not

On page 27, line 8, strike ''(B)(iii)'' and insert ''(B)(iv)''.

On page 30, strike lines 10 through 16.

The bill (S. 2386), as amended, was read the third time and passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

AMENDING SECTION OF IMMIGRATION AND NATIONALITY ACT

Mr. SESSIONS. I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4306, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4306) to amend Section 274A of the Immigration and Nationality Act to improve the process for verifying an individual's eligibility for employment.

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 4306) was read the third time and passed.

AMENDING AND AUTHORIZING JOHN F. KENNEDY CENTER ACT AND JOHN F. KENNEDY CENTER FOR PERFORMING ARTS

Mr. SESSIONS. I ask unanimous consent that the Senate now proceed to consideration of H.R. 5294, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5294) to amend the John F. Kennedy Center Act to authorize appropriations for the John F. Kennedy Center for the Performing Arts, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. SESSIONS. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 5294) was read the third time and passed.

IMPROVING ACCESS TO PHYSICIANS IN MEDICALLY UNDERSERVED AREAS

Mr. SESSIONS. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 775, S. 2302.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2302) to improve access to physicians in medically underserved areas.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike the part in black brackets and insert in lieu thereof the part printed in italic.]

S. 2302

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

[SECTION 1. WAIVER OF FOREIGN COUNTRY RESIDENCE REQUIREMENT WITH RESPECT TO INTERNATIONAL MEDICAL GRADUATES.

[(a) EXTENSION OF DEADLINE.—Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (8 U.S.C. 1182 note) (as amended by section 11018 of Public Law 107–273) is amended by striking ''2004.'' and inserting ''2009.''.

[(b) DESIGNATION OF HEALTH PROFESSIONAL SHORTAGE AREAS BY STATE AGENCIES.—Section 214(l)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(D)) is amended—

[(1) by striking ''professionals,'' and inserting ''professionals or in other shortage locations specified by a State department of public health (or its equivalent),''; and

[(2) by striking ''in a geographic area designated by the Secretary.'' and inserting ''in such a geographic area or other shortage location.''.

[(c) EXEMPTION FROM H–1B NUMERICAL LIMITATIONS.—Section 214(l)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(2)(A)) is amended by adding at the end the following: ''The numerical limitations contained in subsection (g)(1)(A) shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested State agency.''.]

SECTION 1. MODIFICATION OF VISA REQUIREMENTS WITH RESPECT TO INTERNATIONAL MEDICAL GRADUATES.

(a) EXTENSION OF DEADLINE.—

(1) IN GENERAL.—Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (8 U.S.C. 1182 note) (as amended by section 11018 of Public Law 107–273) is amended by striking ''2004.'' and inserting ''2006.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if enacted on May 31, 2004.

(b) EXEMPTION FROM H–1B NUMERICAL LIMITATIONS.—Section 214(l)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(2)(A)) is amended by adding at the end the following: ''The numerical limitations contained in subsection (g)(1)(A) shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.''.

(c) LIMITATION ON MEDICAL PRACTICE AREAS.—Section 214(l)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(D)) is amended by striking ''agrees to practice medicine'' and inserting ''agrees to practice primary care or specialty medicine''.

(d) EXEMPTIONS.—Section 214(l)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(D)) is further amended—

(1) by striking ''except that,'' and all that follows and inserting ''except that—''; and

(2) by adding at the end the following:

''(i) in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary;

''(ii) in the case of a request by an interested State agency, the head of such State agency determines that the alien is to practice medicine under such agreement in a facility that serves patients who reside in one or more geographic areas so designated by the Secretary of Health and Human Services (without regard to whether such facility is located within such a designated geographic area), and the grant of such waiver would not cause the number of the waivers granted on behalf of aliens for such State for a fiscal year (within the limitation in subparagraph (B)) in accordance with the conditions of this clause to exceed 5; and

''(iii) in the case of a request by an interested Federal agency or by an interested State agency for a waiver for an alien who agrees to practice specialty medicine in a facility located in a geographic area so designated by the Secretary of Health and Human Services, the request shall demonstrate, based on criteria established by such agency, that there is a shortage of health care professionals able to provide services in the appropriate medical specialty to the patients who will be served by the alien.''.

Mr. SESSIONS. I ask unanimous consent that the committee substitute amendment be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 2302), as amended, was read the third time and passed.

Mr. SESSIONS. Madam President, I believe that is all I have. I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I was struck by the fact that when my colleague from Alabama presented his chart on economic growth, it stopped at the end of last year and did not carry forward into this year. Of course, had it carried forward into this year, it would have shown a declining trend in economic growth and that is a matter, obviously, of very deep concern. In fact, there was a story last week, a Reuters news story last week, that said:

Top U.S. executives are pessimistic about next year's U.S. economy. About 70 percent of the chief executives surveyed by the Business Council projected flat to 2 percent U.S. economic growth. More bearish than forecasts by major economists, the Business Council survey, often seen as a gauge of corporate sentiment, was released ahead of a meeting of the group's members, about 125 CEOs from companies . . .

Then they cite a number of the large companies in the country, saying generally CEOs are a bit more pessimistic, referring to the difference of opinion between executives and economists.

The U.S. economy actually grew at a 3.3 percent annual rate in the second quarter of this year. Now these chief executives are projecting a flat to 2-percent growth. My colleagues on the other side, if you bring these uncomfortable facts to their attention, they say, well, you are talking doom and gloom. But how are we going to realistically deal with our problems if we do not face what our problems are?

I want to address one question, because the previous presentation talked as though the only relevant factor is economic growth. It never addressed job growth. It only addressed job growth in the sense of saying if you had economic growth, you would have job growth. If you didn't have economic growth, you would have job loss. But the problem is more complicated than that, the problem we are confronting right now. I want to point out a couple of factors in that regard.

This chart shows how unemployment has moved in previous postwar recoveries, and how it is moving in this one. What it shows: Of course, you obviously get a downward trend in employment as you go into a recession. Then you try to come out of a recession. Of course, recessions are measured by economic growth figures. In the average of postwar recoveries, this is what has happened with respect to employment. We have had this kind of growth. So we have had a good, rising trend in employment.

In this recession, this is what has happened to employment. There is a huge gap here in terms of the recovery with respect to jobs. That is why we are so concerned about jobs. That is why we continuously stress that point.

This figure was underscored earlier in the conversation we had about the number of long-term unemployed, which has jumped so substantially. One question becomes, Why are we not getting the jobs? I think one answer to that is to be found in these two charts. What we see in recent years is a sharp increase in productivity. In other words, that is what a worker can produce for each hour of work. But we do not see an increase in worker wages. Productivity is growing much faster than worker wages. The workers who are producing more for each hour worked are, in effect, not sharing in the benefits and their wages are running virtually constant.

One might ask, What happened in other recessions? What usually happens is that worker wages, as you come out of the recession, rise commensurate with their share of the economy, which is about two-thirds. But here is what is happening this time. The worker wages are not rising, but the corporate profits are rising 65 percent. So most of the benefit from the economic growth in this partial recovery is not going to the workers, but it is going to corporate profits. This is in marked contrast with previous recoveries. I want to underscore that point. This is a very different pattern than we have seen in the past. Of course, part of the reason for that is the policies of this administration.

Then the counterargument is made on the other side: If you give the corporation these profits, they will invest them and therefore strengthen the economy, build the economy and create jobs. But here is what has happened in this Bush administration. These are the growth rates of plant and equipment investment by U.S. corporations. As you can see, it actually is down, negative during this Bush administration, compared with previous administrations in which it was a positive figure. So what is happening is the benefits are being skewed away from the workers, but those receiving the benefits are not investing them in the economy in order to build businesses and create jobs. That, of course, explains in part, in my view, why there is such a tremendous lag in this recovery in terms of producing jobs. There is no way you can get around the fact.

I listened earlier. No one actually challenged any of the figures or facts about the employment situation. There is no way you can get around the fact that this is the first administration in 75 years not to have a net gain of jobs in the course of the administration. They are still down 825,000 jobs from where they were when they came into

office. They are down 1.6 million jobs in the private sector and they are down 2.7 million manufacturing jobs.

My colleague from Alabama says we have produced this year a gain of 93,000 jobs. He says that is a good thing. It is a good thing in the sense that we want to be positive in producing manufacturing jobs. It is not such a good thing if you put it in the context of the fact that we have lost 2.7 million jobs since January of 2001. If you put the figure in context, I am relieved that we gained a few manufacturing jobs this year. That is certainly better than losing them. But if you are looking at the record of this administration, the fact is in the course of this administration they have lost 2.7 million manufacturing jobs.

You can come to the floor and say we gained 93,000 manufacturing jobs this year, and that is a good thing. As far as that statement goes, it is a good thing. But it is in the context of the fact that we lost 2.7 million jobs over this time period, over the entire time period. That also relates, of course, to the points that are being made now about the gain in jobs that has taken place—well, the month that is usually used by my colleagues on the other side is, I think, August of 2003. I am pleased and relieved that we have gained some jobs. But the fact remains these job gains have tailed off in recent months.

The other side would have a story to tell if they had sustained job gains. They might have gotten out of the hole and actually produced more jobs, a net gain of jobs in the course of their administration. The Treasury Secretary was projecting it would create a huge number of jobs. It has not happened.

As this chart indicates, we are on a descending line month to month in terms of job creation going back to the beginning of this year. That is the concern about jobs.

It is fine and good to come to the floor and show economic growth charts, although one would have hoped that the chart would have carried out into this year and not stopped at the end of last year.

Second, one has to take into account what people are now saying about what to expect on economic growth, and particularly the story from last week about the Business Council meeting. The leading U.S. corporation chief executives met in Irving, TX, where the top U.S. chief executives said they are pessimistic about next year's economy. About 70 percent of the chief executives surveyed by the Business Council projected flat to 2 percent U.S. economic growth.

That is why we are concerned. That is why the public is concerned. That is why working people are concerned. They feel it.

You may come to the floor and say everything is a rosy scenario. But if you are long-term unemployed, you know it is not a rosy scenario. Long-term unemployed now as a share of the unemployed is at the highest figure it has been—over 20 percent now for 24 straight months.

Trying to portray a rosy scenario is not going to take care of the problem of the long-term unemployed. We tried to do something about that in the Senate. We tried to extend the unemployment benefits, but that was beaten back, regrettably. People who exhaust their benefits and aren't able to find a job find themselves in dire circumstances in terms of meeting the needs of their families.

I think we have a serious job unemployment situation. I think we need to face it. I don't think it helps to simply try to brush it away, paper it over. These trend lines, regrettably, are not working in the right direction.

Now, with this forecast from these top U.S. executives of the Business Council, we can see that we face an even greater challenge as we move towards 2005.

I simply close with the observation that this administration has not produced a net gain of jobs in the course of its tenure. You have to go all the way back to Herbert Hoover to find an administration, whether Democrat or Republican, through that period that failed to produce a net gain of jobs in the course of that administration. That, of course, is one of the very key reasons this election that comes before us on November 2 is so important for the future of our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Madam President, I thank the distinguished Senator from Maryland. I know he is very skilled in his knowledge of these issues. I don't know how the President can be blamed for this or that, or how any President can be.

I will just say this: When President Bush took office this economy was in trouble. In the first quarter he inherited there was negative growth; the second quarter was negative growth; the third quarter was 9/11. In the third quarter of former President Clinton's last year in office there was substantial negative growth, and one-half of the value of the NASDAQ stock exchange had been lost by the time President Bush took office. I will just say that he inherited a problem. And in the last 12 to 15 months, 1.9 million jobs have been created in this country. We had growth as high as 8 percent late last year for the third quarter, which is the highest growth in 20 years.

Yes. We have challenges. Five and four-tenths percent unemployment is too high for me. It is a lot better than Europe. It is a lot better than most countries in the world. But it is not good enough.

But I note this: The 5.4 percent unemployment rate that we have today, which we are working to improve, is better than the average unemployment rate of the 1970s, 1980s, or 1990s.

I hope we will continue to work on it here together in Congress, the President and everyone, to see what we can do to continue to help grow the economy. Certainly, if we don't have a growing economy we will not create jobs.

Mr. SARBANES. Madam President, will the Senator yield for a question?

Mr. SESSIONS. Yes.

Mr. SARBANES. Was the Senator disappointed by the jobs figures for the month of September of 96,000?

Mr. SESSIONS. I have not been disappointed for the last 6 months of job figures. There have been some tremendous numbers. What was the highest month we had this year? There were 300,000 or 400,000 jobs created in 1 month, and there was 1 where it was 100,000. I would like to see it stay at 200,000 or 300,000. Sure. The unemployment rate today is stable. But we did add jobs.

Mr. SARBANES. The Senator has to go back to March of this year to get the kind of job figures he is talking about.

Mr. SESSIONS. March of this year was just a few months ago. It is not as if it were 5 years ago.

Mr. SARBANES. The concern is that these job figures are coming down like this. It seems to me that the Senator has to face the fact that this is where the job figures have been trending over the last 6 months.

Mr. SESSIONS. We had—how many was it? I believe 240,000 jobs were created last month.

Mr. SARBANES. No.

Mr. SESSIONS. The month before last?

I reclaim the floor, Madam President. I was going to speak on another subject.

The PRESIDING OFFICER. The Senator from Alabama has the floor.

Mr. SARBANES. I would like to answer the question he just put to me.

Mr. SESSIONS. Maybe the Senator could read the last 3 or 4 months in job creation. Does he have them? There have been some pretty good months in there.

Mr. SARBANES. Not in the last 3 or 4 months, earlier in the year. Employment, again for the last 4 months, totaled 400,000 in the last 4 months. So it has averaged about 100,000 a month.

Mr. SESSIONS. It is better than what President Bush inherited from President Clinton.

Mr. SARBANES. He inherited a very strong economy in terms of the number of people who were working. And participation in the labor force was up very high. We broke records in terms of job production in the 1990s in the number of people we put to work.

Mr. SESSIONS. All right. Madam President, I will just say this: The economy was sinking when President Bush took office from President Clinton. And a sinking economy inevitably means you are going to have job losses, and that is what occurred. The President has turned this economy around. We have seen some robust growth in the last year. And we have created 2 million new jobs, as the Senator well knows, and we can debate that round

and round forever. I think the glass is at least half full. I guess the Senator is seeing it half empty.

STEM CELL RESEARCH

Mr. SESSIONS. Madam President, I am going to speak about the stem cell research issue, which I think is important. I don't have an answer to it fully.

I so much admire Christopher Reeve, whose death we have noted today. His commitment to dealing with the terrible problem of spinal cord injury was a passion of his. We believe that stem cell research may well result in improvement, and hopefully even a cure for spinal injury. It is certainly something that I support. I know the President supports it. I think every Member of this body supports it.

I want to share a few thoughts.

Last night, Dr. BILL FRIST, our majority leader, who, as the Senate knows, is one of America's great doctors—he was a heart and lung transplant surgeon at the Vanderbilt University Medical School, and he is a highly trained and skilled physician. He discussed these issues last night and I entered into a little dialog with him on the floor of the Senate.

But in light of some of the comments that have been made today, I think it is appropriate that we at least get some perspective on this issue and try to get back to a rational discussion about it.

There are different types of stem cells. The one that causes some concern is the embryonic stem cell. If it is not destroyed and allowed to develop, it will become a human being. That embryo has within it its genetic makeup, the markers that will determine whether that person is tall or short, red hair or brunette, whatever the color of eyes and every other characteristic of that unique human being in that cell. It is a stunning, remarkable, marvelous miracle of life.

When we destroy that which is on the way to being a fully developed human person, I don't think anyone can say such destruction does not raise at least some moral and ethical dilemmas. Doesn't it raise some question about how we should be able to proceed in dealing with it? I make that point first.

It is not a matter of insignificance, the concerns raised here, when we deal with an embryo that, if allowed to develop, would be a human person.

Senator FRIST laid it out well last night. He quoted Senator KERRY in the debate as criticizing President Bush for imposing a ''sweeping ban'' on stem cell research. We had Senators this afternoon say President Bush's policy would ''close the door'' on stem cell research. Senator FRIST said as a physician, putting on his physician robes, he said that this is a cruel thing to say to patients who are ill and dying, and it is just not true.

Senator KERRY knows it is not true. His comments are an attempt to make something out of nothing and to misrepresent the position of the President and this Congress on this issue. It is not true that the President wants to stop stem cell research.

Let me say where we are, as I understand it. People can agree or disagree with the policies. I agree with the policies.

First, there are what we call adult stem cells. These come from bone marrow and other parts of the human anatomy. President Bush has increased substantially the funding for adult stem cell research. We have made some medical progress in various diseases, including diabetes, using adult stem cell research. We are spending more money than we have ever spent on it, and we all support that. Private research is also ongoing on adult stem cell research.

Then there are the embryonic stem cell research issues that raise these moral and ethical questions. I don't claim to have the answer to all the concerns.

I remember the 100th Psalm that says, Without our aid he did us make. Or the Declaration of Independence says, We are created equal. If you believe we are created beings and that there is a sacredness to life, anybody ought to have at least some concern about this question of creating a human being in the making and then destroying that to carry out research matters.

It is a matter that deserves serious moral and ethical discussion. I don't think we respect life very much if we lightly move into this area without any limitations.

There are stem cell lines that have already been created from embryos that have been killed and destroyed, in effect, in their capability of becoming human, and those cell lines continue to produce today. There are 26 or more lines producing on a regular basis—embryonic stem cells—and Federal funding is allowed for that. Those that we have already done—and the President considered it carefully and thoughtfully, saying, well, we cannot go back and reverse that—let's go ahead and allow the research to go forward in that area.

In addition, I note there are no bans whatever on stem cell research. The question has simply been whether we will take Federal tax money and spend it on embryonic stem cell research. That has been the discussion on how we are going to do it. President Bush said we will do it for the existing lines but we will not take taxpayers' money and destroy life to do an experiment.

Universities, private labs, and hospitals, can all freely conduct scientific research on embryonic stem cells. It is not against the law. It is not prohibited. It is simply that we are not going to have the taxpayers—many people have strong feelings about this life issue—to take that money and fund it. It is appropriate to recognize this ethical issue and to show this small bit of respect for this marvelous, unique, sacred bit of life that is the beginning of a human person. I don't think we ought to be spending taxpayer money on it.

Dr. Frist explained last night only adult stem cell research today has shown progress in medical research. The embryonic stem cells have not. Senator Sam Brownback has talked about this. He said scientists are finding that the embryonic stem cell tends to be volatile and not as capable of being utilized in a therapeutic way as adult stem cells. Regardless of how it may turn out in the future, that appears to be the state of the science today.

So we are putting the tax money into the areas that not only do not raise ethical questions but have the most proven success in making therapeutic breakthroughs.

We are not slamming the door or closing the door on stem cell research. We do not have, as Senator KERRY falsely stated in the debate, a sweeping ban on stem cell research. That is not true. He ought not to have said that. He knows better. He is trying to scare people. It is a cruel thing for people out there with illnesses today who think there is a ban and that they cannot be helped with research from stem cells. There is unprecedented research in the stem cell area. We are going to continue that.

I don't know the answers. I am not a physician or scientist. Is there nothing we won't prohibit in the name of science or research?

I am familiar, from my home State of Alabama, with the research done on syphilis that left people infected so they could study them, and compare them to people who were treated for syphilis. We now know that was wrong.

We, in this country, have believed by a substantial majority that cloning human beings is not right and should not be done. We certainly have all seen the rejections of Nazi Germany's abuses of science. As a society and a nation, there ought to be some limit on what we can allow or should allow. People should be able to talk about it and wrestle with it and Congress ought to act on it. If there is serious doubt about one phase of scientific research, maybe it is perfectly appropriate that taxpayers not be required to fund that because when the Government funds it, there is a governmental and societal affirmation that this is a good and healthy way to operate. We should work on these issues very carefully.

I close with these thoughts. In the history of the world, no nation has invested so much in its effort to cure disease as this Nation. I have been pleased and proud of this Congress since I have been here 7, 8 years now, that we promised several years ago to double the funding for the National Institutes of Health. We have met that goal.

We have had tremendous increases in spending for the National Institutes of Health which is where our research money goes. For the most part, we

allow physicians and scientific experts to say how that money is spent, what diseases have the best chance of being cured, what experiments going on out there have the greatest opportunity for breakthrough. We don't try to micromanage that. In general, that is good and I support that.

There are things we as a society can speak about. We are not denying people hope. It would be terribly wrong to suggest what is going on as a policy in our Congress and in our Government is denying people hope that medical breakthroughs can occur from stem cells.

We are going to continue unprecedented Federal spending. We will continue unprecedented private spending on stem cells. We will spend Federal money on embryonic stem cells and Federal money on adult stem cells. Who knows, some of those may result in great breakthroughs that will help prolong the life and health of millions of American people and not just in America but the whole world.

This Nation, through our investment in scientific research, has lifted and improved the lives of people all over the world. It is something that we can take pride in as a people. It is something for which I am proud. I want to continue to see it developed.

As we go forward, as we continue to debate these ethical and moral matters, as we continue to see the improvements in science and learn more from science, we may adjust and be able to come up with different ideas as we go forward on stem cell research. Who knows what we will learn as time goes forward.

Based on what I understand today, I see no reason in science, I see no reason in ethics—that requires that we blindly go in and destroy life for scientific experimentation when there is no clear indication that experimentation will result in health benefits to American people.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

A MILITARY DRAFT

Mr. HARKIN. Mr. President, whenever I travel in Iowa, I hear moms and dads worrying out loud that if President Bush gets a second term, he intends to reinstitute the military draft. I hear the same thing from college-aged Iowans. In fact, a national poll of young people found that 55 percent expect the draft to be started up again. Of course, the joke that is going around is: President Bush insists that there will be no draft. And if anybody knows how to avoid a draft, it is George W. Bush.

But the facts tell a different story. The facts tell us that if President Bush continues on his current course, he will have to reinstitute the draft. In fact, to meet personnel needs in Iraq, President Bush has already imposed stage one of a new draft. Many soldiers whose enlistment time is up are not being allowed to leave the service, and people who left the service years ago are being forced to put on the uniform again against their will. So we already have a backdoor draft. Let's be honest about it. President Bush has already done away with the All-Volunteer military. Stage two of the reinstated draft would be easy to implement. Draft boards are already in place in every county in America. Young men who turn age 18 are already required to register with their local draft board. It is becoming increasingly obvious that because of President Bush's new doctrine of preemptive war, our military is stretched dangerously thin. We do not have enough people in uniform to meet current needs in Iraq and Afghanistan, much less to deal with a confrontation with Iran or North Korea or some other hot spot.

Here are the hard realities that cannot be ignored. Right now, total Active Army and Marine personnel number about 655,000. That includes support units, training units, headquarters personnel, and others who do not see combat.

In a long, drawn out war such as a Vietnam or an Iraq, units sent to the front lines have to be rotated out periodically and replaced by an equal number of forces. Now, currently, we have 135,000 troops in Iraq, 20,000 in Afghanistan, 36,000 in Korea, more than 100,000 in Europe, and some various troops scattered in Japan and Okinawa and a few other places.

Our Armed Forces have been stretched and strained to the breaking point. To fill the gaps and shortages, tens of thousands of guardsmen and women reservists have been called up, some for several years at a time. But there is a cost to all of this. Morale is suffering. Enlistments and reenlistments are down. The Army National Guard fell 10-percent short of its 2004 recruiting goal. The Regular Army has had to ease up on standards in order to meet its recruitment goals.

Now, what happens if all-out civil war breaks out in Iraq and we have to increase our troop strength to 200,000 or 300,000 to quell it? What happens if a newly reelected President Bush decides it is time for a preemptive war against Iran or Syria or North Korea?

President Bush has already effectively ended the All-Volunteer military. People are hesitant to join the Guard or Reserve because the odds of being sent into combat have skyrocketed.

So how in the world would a second-term President Bush meet the personnel needs of his doctrine of preemptive war? Bear in mind, President Bush has changed the standard for justifying preemptive war.

As the New York Times reported on Sunday, originally the criterion was that a rogue nation was an imminent threat to us, that it either possessed weapons of mass destruction or was actively attempting to build these weapons of mass destruction. But in response to the Duelfer report last week, which found no weapons of mass destruction stockpiles and no active program to produce these weapons in Iraq, President Bush says that does not matter. He said that a preemptive invasion is justified if an enemy is trying to avoid United Nations sanctions by ''gaming the system,'' as the President put it.

As the New York Times concluded:

> Mr. Bush appears to be saying that under his new standard a country merely has to be thinking about developing illicit weapons at some time.

Or as Joseph Nye of Harvard concludes:

> The President is saying that intent is enough.

Well, given either the old or the new standard for justifying preemption, the U.S. military is going to be very busy indeed if President Bush is reelected. Our military personnel needs will grow dramatically as morale, enlistments, and reenlistments fall. That is exactly why I have taken the floor today, to state this: That I believe President Bush intends to reinstate the draft. Why can I say that? Because he has no choice. To pursue his agenda of aggressive preemption, he must reinstate the draft.

Now, if you look at history, incumbent Presidents never reveal their true intentions on matters of war and the draft. Those of us who were around in the 1960s remember President Lyndon Johnson, a President of my own party. When he was running for election in 1964, people were afraid he had a secret plan to escalate the war in Vietnam. He denied it. President Johnson repeatedly promised: I will not send American boys halfway around the world to do a job that Asian boys ought to be doing for themselves.

Well, Mr. Johnson was reelected and, sure enough, millions of American boys were drafted and sent halfway around the world to Vietnam.

So young people today have good reasons for fearing the draft. They have good reasons for not believing President Bush's reassurances that he has no intention of reinstituting the draft. After all, President Bush has quite a lengthy track record of saying one thing and doing exactly the opposite. Well, I guess there is some kind of a technical term for this. I guess it is called: Flip-flopping.

Remember, as a candidate in 2000, President Bush was for a ''humble foreign policy'' before he was against it. He was against nation building in foreign countries before he was for it. He was for a peaceful resolution of the

confrontation with Iraq before he was against it. He was for an All-Volunteer military before the pressures of war in Iraq obliged him to do away with the All-Volunteer military.

Now he says he is against the draft. I think our young people can be forgiven for doubting President Bush is going to stick with that position. George W. Bush may have avoided the draft when he was a young man, but he is not going to be able to avoid the draft as President if he is reelected and pursues his policy of preemptive war.

OVERTIME PAY

Mr. HARKIN. Mr. President, I also want to talk about a few of the things that have happened here this year in the course of our deliberations and debate on legislation in the Senate and in the Congress.

One of the issues I would like to talk about—and it came to a head here at the end—has to do with agriculture. But before I get into that, I want to talk about overtime pay. Then I want to talk about agriculture and conservation.

Last week, in a replay of what happened almost a year ago, the Bush administration used a conference committee to kill my provision to stop the Department of Labor's new rule on overtime pay, a new rule which, if it is allowed to stand, will strip 6 million workers of their right to time-and-a-half overtime pay.

Once again, the overtime provision I offered and which was adopted by the Senate was killed in conference, despite votes in both Houses of Congress demonstrating strong bipartisan support for my amendment to stop these onerous rules of the President from going into effect and denying the right of overtime pay to some 6 million Americans.

Now, yesterday, we in the Senate, yet again, voted to protect hard-working Americans' right to earn overtime pay. That bill we passed—as the amendments I have offered before that we passed four times—serves the simplest of purposes. It lets stand the new threshold of $23,660, below which anyone who is working is automatically guaranteed the right to overtime pay, and it guarantees that no worker who currently receives overtime pay would lose the right to overtime under the new rule. That is what this Senate voted to keep four times, and the House, twice.

This is a subject I feel deeply about, and I know I am not alone. Wherever I travel in the United States, people come up to me and talk about what overtime pay means to them and their families. They can become quite emotional about it. They know what this administration is trying to do. They are angry that this administration wants to roll back this new overtime rule.

It is a simple matter of honoring work. People believe that when they put in more than 40 hours of work in a week, that they are giving up their premium time, their time with their families, and that their employers should provide them with premium pay if they are giving up their premium time.

Also, many Americans rely on that premium pay as a substantial part of their income—to put a little bit aside for a college education, a rainy day fund, or perhaps maybe to buy a better house, move up the ladder a little bit, buy a new car.

Other people, to tell the truth, would just rather not work a lot of overtime hours. They believe a 40-hour workweek is a full workweek. That is what the Fair Labor Standards Act established when Congress passed it in 1938. It established in law the principle of a 40-hour workweek, that anyone basically who works over that gets time-and-a-half overtime pay. That was 1938.

But get this, in 1933, this Senate, right here in this very Chamber—in 1933, after lengthy debate—passed a bill to establish not a 40-hour workweek, or 50-hours, as it was then, but a 30-hour workweek—a 30-hour workweek, in 1933. Think about that. They voted here to establish a 30-hour workweek in 1933.

Congress fought about it for about 5 years, and finally, in 1938, they compromised at 40 hours. It has been that way ever since. I will bet we couldn't pass a bill in this Senate today to establish a 50-hour workweek. By letting these rules go into effect, we are telling people, hey, you can work over 40 hours a week, but don't expect time-and-a-half overtime pay. That is exactly what we are talking about.

Again, we know that if overtime is free to the employer, if they don't have to pay anymore, they will work people overtime. This chart illustrates that. The red block is those who have no overtime protection. The green represents people who do have overtime pay protection. Of those who have overtime protection, only 19 percent work more than 40 hours a week, about one out of every five. These are people who get paid for overtime. But if you are not eligible for overtime pay, 44 percent work more than 40 hours a week, almost one out of every two. So if you don't have overtime pay protection, you are twice as likely to work overtime.

How about working more than 50 hours a week? If you have overtime pay protection, only about 5 percent work more than 50 hours a week, but if you don't have overtime pay protection, three times as many—15 percent—work more than 50 hours a week.

That tells the whole story right there. That is what is happening. If this new rule is allowed to stand, we will be back here 5, 6, 7 years from now, and you are going to see this red mark way up there, 50, 60 percent or more of people without overtime pay protection working more than 40 hours a week.

Last year, the Bush administration launched an assault on the time-honored principle of time and a half pay for over 40 hours. Actually the proposal of the President came out in a set of proposed rules from the Department of Labor. The Fair Labor Standards Act of 1938 has been amended and changed a number of times since 1938, but it has always been done through the legislative process, not administrative rulemaking.

Ordinarily, the administration comes to Congress. They say they would like to modify the Fair Labor Standards Act for one reason or another. The appropriate committees have hearings. They bring in witnesses. We work it out. We bring it to the floor. We pass it. It goes to a conference with the House, and it is sent to the President for signature. That is the way it ought to be done.

This time, for the first time, this President issued a proposed set of regulations drastically changing the overtime pay rules without one public hearing. They issued these proposed rules without having one public hearing. It actually took us several weeks, kind of plodding through the proposed rules, to see what they were proposing. The magnitude was breathtaking.

Some of the most harmful provisions were not discovered until months later. Frankly, we were shocked when we first saw in these proposed rules of the administration that they were proposing to strip overtime pay from police officers, firefighters, veterans, nurses, and many others—radical stuff. Of course, once the true intent and extent became known, many of those affected were in open rebellion. We talked about it, and I talked about it here on the Senate floor.

When the Department of Labor issued the final rule just this spring, the White House seemed to have an election year conversion. Under extreme pressure from labor unions as well as us here in Congress, the administration backed off its attempt to strip overtime from certain high-profile groups such as rank-and-file police officers, firefighters, emergency medical technicians. I salute the efforts of many individuals and groups who fought hard and who forced the administration to abandon several of these most offensive and egregious proposals.

But what did the change do? They took us from an estimated 8 million people hurt by these overtime rules to 6 million. So basically we went from a proposed set of rules that were profoundly terrible to a set of rules that were just plain terrible.

The administration said they fixed it up. Sure, I admit there are about 2 million fewer people who were affected in the final rules, policemen and others. But make no mistake about it, up to 6 million hard-working Americans earning as little as $23,661 a year will lose their right to time-and-a-half overtime pay.

Mr. FRIST. Will the Senator yield for a question? It is really an inquiry about tonight's schedule. About how

long do you think you will be? You are the last speaker. I know you outlined all the things you will be talking about. Just so I can plan personally.

Mr. HARKIN. I have been guaranteed 2 hours today. I spoke 10 minutes earlier. I assumed I had about an hour and 50 minutes.

Mr. FRIST. I can come back later tonight. My son's birthday is tonight. I have been here for the last 3 days. I wanted to plan for my dinner. Again, I can come back later tonight.

Mr. HARKIN. I have probably about 10 more minutes on overtime. I want to talk about the conservation program and just a little on the economy, so maybe 45 minutes.

Mr. FRIST. OK.

Mr. HARKIN. Frankly, at this point the administration has zero credibility. As I said, when the proposed rule was issued more than a year ago, it took months of reading the fine print before we realized just how destructive it was. Only belatedly did we discover that the administration was giving tips and advice to employers as to how they could avoid paying overtime to employees. Right in the rules there is advice to employers how they can get around it. I had never seen that before, either.

Here we go again. The administration is all smiles and happy talk. Again the administration is assuring workers they won't lose their overtime rights. When the Bush administration smiles and says it only wants to fix overtime, I have five words of advice to American workers: Hang on to your wallets.

What I am telling you about this new overtime rule is not just according to me. Just a couple of months ago, the top three people who administered these regulations over the course of the last two decades released a report detailing their indepth review of these rule changes. Of all the people in the universe of labor experts who have weighed in on the Bush overtime rule, I would have to think that the credibility of these three persons is unparalleled on this issue. Why do I say that? They have no ax to grind. They worked for Republican and Democratic administrations, going clear back to President Reagan, the first President Bush, and President Clinton. One of them worked for this Bush administration. These are the three experts who administered this program. If you have any reservations about my interpretation or criticism, I invite you to read their analysis.

These three career officials have said:

> In every instance where DOL [Department of Labor] has made substantive changes to the existing rules, it has weakened the criteria for overtime pay exemptions and thereby expanded the reach and scope of the exemption.

Let me repeat the administration's central claim. They are saying that no workers earning less than $100,000 a year will lose their right to overtime pay. Well, one of these career DOL officials was quoted in the New York Times as saying by his analysis, 3 to 5 million Americans would lose their eligibility.

This other chart I have shows the impact of this new rule. It is clear that employees earning $100,000 a year or more can be exempted because they are exempted under the highly compensated employee provisions, if they make more than $100,000. Then if you earn less than $23,660, you are automatically nonexempt. You have to be paid time and a half. Who is in between? Well, a lot of people but especially team leaders. I will talk a little bit about team leaders.

Under the new rule, a worker who leads a team of other workers loses his or her right to overtime. Under the old rule, there was no provision concerning so-called team leaders. There wasn't even such a term. But the new rule, section 541.203(c), states:

> An employee who leads a team of other employees assigned to complete other projects for the employer meets the requirements for exemption even if the employee does not have direct supervisory responsibility of the employees on that team.

This team leader loophole is big enough to run an Amtrak train through. Team leaders are commonplace throughout the manufacturing and service sectors. They are especially common in factories, refineries, chemical plants.

MIT professor of management Tom Kochan estimates that this team leader loophole alone could deny overtime rights to as many as 2.3 million workers. Again, the administration claims that no worker making between $23,660 a year and $100,000 a year will be denied overtime. That statement is just plain false.

When Congress enacted the Fair Labor Standards Act in 1938, it anticipated there would be a number of less than honorable employers who would try to cheat workers out of their overtime pay. So Congress included a penalty provision that would act as a strong deterrent. Here is what it was. Under the old rule, if an employer was cheating employees out of overtime pay, the penalty could be massive. All employees in the enterprise—all employees, including even salaried employees who were exempt from overtime—had to be paid time and a half overtime for the period that the improper practices took place. It was known as the nuclear deterrent. It was very tough.

Now, by contrast, under the new rule, the penalty is limited to the work unit where the violation was detected. This ignores the fact that, in nearly all instances, overtime violations are not limited to a renegade supervisor. They are almost always as a result of companywide practices. In other words, we have gone from the nuclear deterrent of old to the new sort of pussycat deterrent under the new rule. Under the new rule, many workers will legally lose their right to overtime pay. That is one part of it. And employers who cheat workers out of overtime pay illegally will receive a penalty that is nothing more than a slap on the wrist. No wonder the Wall Street Journal called the new rule a victory for business groups. No wonder this new rule is so strongly supported by corporate America.

It is time for the Bush administration to listen to Main Street, not just Wall Street; listen to ordinary working Americans. One of their highest concerns is economic security. Not only do they fear losing jobs, health care, and retirement; they are now afraid they will lose their right to time and a half compensation. They have good reason to fear that. They fear they will work a 50- to 60-hour week, with zero compensation. That is what is going to happen under these new rules. Last week, in 17 cities across the country, thousands of workers, who are angry about these new overtime rules, rallied in parks and outside Federal buildings. They delivered scores of boxes full of postcards to the Bush-Cheney campaign headquarters, asking the President to take back this overtime pay cut.

Dixie Harms, a long-time trainer of nurses in Des Moines, said:

> If overtime is changed for hospital nurses, we will see a mass exodus of registered nurses from the hospital setting, because they will get fed up and refuse to volunteer so many hours to do what they really love doing.

It is bad enough to deny American workers overtime pay rights, but what is striking is the mean-spiritedness of the Department of Labor. As I said, the Department offered employers what amounts to a cheat sheet, giving helpful tips on how to avoid paying overtime to the lowest paid workers. For example, the Department suggests cutting a worker's hourly wage so any new overtime payments will not result in a net gain to the employees. It also says you can take a worker's salary, raise it up a little bit so that it meets the threshold. Say an employee is making $23,600 a year. All you have to do is give them a $61 increase, and guess what. You don't have to pay them overtime; you can exempt them. That is in the Department's rule, those tips. I liken that to the IRS giving helpful hints to tax cheats, saying if you want to cheat on your taxes, here are some tips on how to do it. We would be up in arms if the IRS were to do that. But we let the Department of Labor do it. Here are helpful hints on how to cheat your workers out of their legitimate right to overtime pay.

It happened recently. According to an article in the Detroit News last month, 2 managers out of 150 at Rozwell's Metro Detroit Burger King franchises became eligible for overtime. Listen to this. Rather than make them hourly workers, the company gave them a $20 a week raise to maintain their salary status. Two managers out of 150 are eligible for overtime under these new rules. What a deal.

I want to close my statement on this by saying there is one group disproportionately harmed by these new overtime rules: working women. Why? Because women tend to dominate the workforce in retail, services, and sales positions, which would be particularly affected by the new rule. Three in 10 working women earn all or almost all of their family incomes. Three in 5 earn about half or more of their family's income. Four in 10 women work evenings, nights, or weekends on a regular basis. One-third work shifts different than their spouses or partners. From 1979 to 2000, married women increased their working hours by nearly 40 percent. Their contributions are especially important to lower and middle-income families.

Yet, now the administration's new rule will take overtime pay protection away from millions of American women. They will have to work longer hours for less pay. This means more time away from their families, more childcare expenses, with no additional compensation. Listen to what Sheila Perez of Bremerton, WA, says. She is a single parent, working hard to support her family. When she leaves work after a difficult 8-hour shift, she says:

> My second shift begins. There is dinner to cook, dishes to wash, laundry, and all the other housework that must be done, which adds another 3 or 4 hours to my workday. My time at home with my kids and family is truly my premium time. It is personal time. It is the most valuable time of the day. So if I am required to work longer than 8 hours, if I have to sacrifice that premium time with my family, then I ought to receive premium pay. That is overtime pay.

I have never heard it said better. Sheila Perez is right. If she is going to sacrifice her personal time, premium time, with her kids, it is only fair that she be compensated on the premium basis, with time and a half overtime pay.

Later this week, we will have another debate between President Bush and Senator KERRY. It is going to be on domestic issues—that is what I understand—the economy and domestic issues. I hope we will hear about this issue of overtime pay.

I am sure the President will say: Look, we expanded overtime pay. Why, we raised the base from $8,000 to $23,660.

Yes, with one hand, they raised up the base for low-income workers; and with the other hand, they took it right back. What a nice shell game. I gave you examples of how employers are getting around it, and the fact that the Department of Labor put out a cheat sheet on how to cheat workers out of overtime pay legally. How about the workers making $24,000, $25,000, or $26,000 a year? That is barely poverty wages. They are above the threshold. They will be exempt from overtime pay. Senator KERRY has stated that if he is inaugurated President in January, the next day he will rescind those onerous Bush administration rules. We will keep the base raise; we will raise the base from $8,000 to $23,660. That is what my amendment did. But we will guarantee that every worker in America who is eligible for overtime pay this last year will be eligible next year and the year after and the year after.

If President Bush is reelected, up to 6 million Americans will lose their right to overtime pay. To me, this is a gut issue. This affects our working families. We want to protect our overtime rights in America, getting time and a half over 40 hours. Senator KERRY, the day after he is sworn in as President, will rescind those onerous rules and put us on the right track.

I want to close my comments on this legislative year today regarding a couple of other matters, including the insistence by this administration that we take money for disaster assistance out of USDA conservation programs. Now, I have here a statement of the President of the United States, George W. Bush, that he made when he signed the farm bill.

I was there. I was chairman of the Agriculture Committee at that time. He touted the new farm bill for what it did on conservation. He said:

> This bill offers incentives for good conservation practices on working lands.

That is the Conservation Security Program. The President went on to say:

> For farmers and ranchers, for people who make a living on the land, every day is Earth Day. There are no better stewards of the land than the people who rely on the productivity of the land. And we can work with our farmers and ranchers to help improve the environment.

That is what he said when he signed the bill. However, twice now—once a little over a year and a half ago—the President has tried to take some $3 billion out of conservation funds. He succeeded in 2003, but then we put it back early this year.

Here we are again with the legislation that passed today. The President has once again taken just short of $3 billion out of conservation after saying he is for conservation. He said this in the debate last Friday. In his debate with Senator KERRY, he talked about how he was for strong conservation. I about came out of my chair when I heard that because at the very time the President in St. Louis was making this statement in the debate about how much he supported conservation, his people were up here on the Hill trying to gut it, take money away from it. Amazing.

Let me talk a little bit about this program. We have always had different conservation programs in America. We helped farmers who built terraces or grass waterways, for example. We supported practices to try to conserve soil and water, but much of Federal efforts entailed taking land out of production.

For years, farmers and ranchers all over the country have said: It seems that the people who get the USDA money are mostly those who are the worst in protecting soil and water. They plow up the turn rows, they go up and down the hills. They plant one crop right after the other. They do not rotate the crops, and they do not worry about soil erosion. Those were the ones who got the USDA funds. The good stewards stop runoff. They do not allow the streams to be polluted. But there is not much help for them, and these are most of our producers. These are the people who produce our food and fiber, the most abundant food anywhere in the world at the lowest cost, and the safest food.

Out of that came this idea that we ought to have an incentive program, as the President said in his statement, an incentive for good conservation practices on working lands.

We put that into the farm bill of 2002. It was called the Conservation Security Program. The idea was to begin to reward farmers for adopting and maintaining good practices. Unlike the commodity programs that give more money the bigger you are—the bigger the farmer, the more money he gets—unlike that, this program said: We do not care how big or small you are, it depends on what conservation you do. The more conservation work you do on your working lands—we are not taking land out of production; it is how you farm—then that is how you will get incentive payments.

The most any farmer, no matter how big you are, could ever get out of this is $45,000 a year. So it does help family-size farms. It helps all kinds of farms—vegetable farms, orchard and fruit farms. It helps corn, soybean, cotton, rice farms, and anybody else who wants to practice good conservation on their working lands. That was the cornerstone of the conservation title in the 2002 farm bill. And that is what the President talked about. That is what he touted. That is what he said he supported as recently as last Friday night in the debate.

The farm bill had a major conservation initiative. The President and his administration keep talking about it, but the President's people are up here gutting the program. Soon, right after it became law, they moved to take $3 billion out. They succeeded for a little while, but we put the money back. For 2005, the President in his budget is cutting nearly $600 million in conservation programs. That cuts the Environmental Quality Incentives Program, called EQIP, the Wetlands Reserve Program, the Farmland Protection Program, the Grassland Reserve Program, the Wildlife Habitat Incentives Program, and the Watershed Rehabilitation Program, and, of course, the Conservation Security Program. All of those are cut in his budget, yet the President last Friday night said he was for strong conservation.

For EQIP alone, President Bush requested a cut of more than $215 million. That does not include the additional $75 million to $100 million in cuts that will come from EQIP to pay for technical assistance, again a problem caused by this administration.

President Bush claims he supports efforts to restore wetlands, but each year he advocates cutting acreage for the Wetlands Reserve Program by 50,000 acres below the farm bill level. The Wetlands Reserve Program is the best tool we have to restore and protect wetlands, and the Bush administration is leading the way in keeping the enrollment down. Again, words are not matching what the President is doing.

In August of this year, President Bush announced in Minnesota—I was up there right about the time—he is going to direct the Secretary of Agriculture to offer early reenrollments and extension of existing contracts in the Conservation Reserve Program, those contracts that were set to expire in 2007 and 2008. Again, words do not match the deeds.

There is no automatic or guaranteed enrollment in CRP for producers whose contracts are expiring. On the contrary, all these producers got was the right to comment on how USDA should enroll the expiring acreage. There was no guarantee that any of the currently participating producers would get back into the CRP program; no guarantee that all these acres will be reenrolled; and certainly no reenrollment any time soon. So what was the President talking about in August in Minnesota?

In 2001 and 2002, we had a drought in many Western States. The Bush White House did not want to provide farmers and ranchers relief, as we have done in past emergency situations. They insisted if we are going to have disaster assistance, we have to get money out of the farm bill. What did they do? They went after the conservation funds to get the money to pay for it.

The Conservation Security Program is about our future. Here is what the Des Moines Register said in an editorial:

> The CSP holds enormous promise to sustain the soil for agriculture, to clean up rivers and lakes, to boost rural development. People will want to live and visit a fresh, pure countryside where wildlife and recreation flourish. Moreover, the program could be the template for the farm programs of the future, superseding the crop subsidies which are almost certain to be outlawed some day under the rules of international trade. CSP could give farmers an income safety net based on how well they take care of the land instead of how much they produce. It is shortsighted to fail to invest enough in the conservation security program.

That is what the Des Moines Register said about it, and yet the administration keeps wanting to gut the program.

There is uniform opposition to this action taken by the administration from farm, conservation, and environmental groups. When can anyone ever remember the commodity groups, the environmental groups, and the wildlife conservation groups being in such agreement?

I have served on Agriculture Committees in the House and Senate for nearly 30 years, and I can never remember in my life all of these groups being so united in one cause. That tells us something. It tells us that the administration's actions are just plain wrong.

The White House, through the OMB, insisted on taking money from the Conservation Security Program. Now we have heard a lot of talk that this program is spending more money than what was anticipated. Well, that is not really true. Here is what happened: In 2002, when we passed the farm bill, the CBO made an estimate as to how much CSP would cost over 10 years. They said it would cost $2 billion. OK, fine. We passed the bill. The President signed it. About 6 months later, not one rule has been written, not one regulation promulgated, nothing has been done, and now OMB comes out and says, well, they reestimated CSP's cost at $7 billion over 10 years.

Where did they get that figure? They just plucked it out of thin air. But then they said, well, now that we have $7 billion there we can take $3 billion out. Right away that tells us they are up to something funny, but that is what they did.

In so doing, they capped the program, changed the nature of the program, so it could not operate as intended by the farm bill. As I said, we reversed that, but just a few months later, just this month, they have come back and proposed it again. They reached in again, took nearly $3 billion out of it, put a cap on the program.

Some are saying we need to put a cap on it; it might cost too much. Well, we do not know for certain what it is going to cost. But I think CBO is way out of line exaggerating the cost. That is from my own personal standpoint. We do not hear this call to limit other programs. What about food stamps? Food stamps is an uncapped entitlement program. If one qualifies incomewise, they are eligible for food stamps.

We know as unemployment goes up, wages go down, more people apply for food stamps. When employment is up, wages are up, the cost of food stamps comes down. Medicaid is another program. It has no cap on it. If one qualifies, they get it. In agriculture, the commodity program has no cap. My goodness, the corn, the soybean, the cotton, the rice, and wheat, there is no cap on those programs. It depends on what kind of year one has.

If prices are high, we spend less. If prices are low, we spend more. I thought it was pretty interesting also when the farm bill passed we had a milk income loss contracts program. It was estimated by CBO to cost $1.7 billion for the life of the program. After the bill passed, CBO raised its cost estimate to $4.2 billion.

Now it looks like it may cost less than that, but it has already cost some $2 billion already, which is higher than the $1.7 billion estimate. We have another year to go under this program, and it may well spend more money, my point being that these are uncapped programs so that they can operate as intended. The CSP program was uncapped to operate as intended, that if one does certain things, if one meets certain requirements of conservation practices, they will qualify for tier 1, tier 2 or tier 3, anywhere from $20,000 to $45,000 a year for the life of the contract, which is 5 to 10 years.

By what the administration has done, by taking the money out and capping it, they have turned a national program into a selective conservation program for only a few people, and it has led to all kinds of distortions and problems. What the administration did this year is they said, OK, certain watersheds will be eligible to get in the Conservation Security Program and only a few farmers in those watersheds. So there could be a farmer in a watershed who is eligible for CSP, and 2 miles away there could be a farmer who is a better conservationist, who is doing better work on his farm in saving soil and water, but is not eligible.

The second abnormality is that even within a watershed, there could be farmers who are good conservationists, but they did not get accepted, they did not get in that little select group. And guess what.

They have to wait 8 years before they can apply again. What signal are we sending to farmers? Forget about it, that is the signal. Forget about help for conservation unless you are part of this little select group. Maybe you will be in it; most likely you will not. That is what they have done to this Conservation Security Program.

The President had the gall, last Friday, to say that he was strong for conservation. Well, I have just pointed out that they have been gutting conservation, and they continue to do so. To those who ask why they are opposed to the program because it is uncapped, I am sorry, that is what the Agriculture Committee voted. We hammered this out in long sessions and long negotiations between the House and the Senate, between Republicans and Democrats, between those from the South, the North, the West and the East. There is no surprise.

This is what we voted. It is not right for OMB and the administration, through the Appropriations Committee, of which I am a member, to come in and unilaterally change this program. That is not the purview of the Appropriations Committee. It is the purview of the Agriculture Committee. That is why I kept the Senate in this week and that is why I stood here on Friday and Saturday because I am fighting for farmers and for conservation. I am fighting for the right of our farmers to rely upon what we passed in the farm bill, not having the Appropriations Committee take it away. So we passed a resolution on Saturday. We passed a resolution—I am not going to read all the ''whereases,'' but here is the resolution.

One of the things I negotiated to let some bills go through was I said, let us have another vote on whether the Senate wants to take disaster money out

of conservation or whether they want to treat disaster money as an emergency like we ought to and have before.

This is the resolved clause of that resolution: Resolved that it is the sense of the Senate that the 108th Congress should provide the necessary funds to make disaster assistance available for all customarily eligible agricultural producers as emergency spending and not funded by cuts to the farm bill.

Guess what. It passed the Senate 71 to 14. Seventy-one Senators said, you are right, it ought to be treated as an emergency. But the President of the United States says, no; no, we will treat some disaster losses as an emergency but not the drought that hit Iowa or the floods that hit North Dakota or the drought that hit Colorado. No, they are going to be treated different. What the administration said we are going to do is we will take money out of conservation, out of agriculture to pay for that.

The junior Senator from Pennsylvania was here on the floor the other day arguing heatedly that disaster assistance should be taken out of the farm bill. I pointed out that Pennsylvania is one of the States covered by hurricane assistance. The hurricane money is not taken out of the farmers' pockets. Why should their disaster be different than the ones out west?

I heard one Senator say: They have had a drought for 4 or 5 years, and we cannot be putting emergency money into those States where they have a drought year after year.

Wait a minute. It seems to me that Florida gets hit by a hurricane every couple of years. That is hurricane alley. We don't get hit by hurricanes in Iowa, but Florida does. Maybe we should not have hurricane assistance because Florida gets hit year after year by hurricanes? What kind of nonsense is that?

Again, we passed that resolution on emergency funding 71 to 14.

Also, an agreement was struck between the leadership, the Republican leadership and the Democratic leadership, on another resolution that passed today. Since it passed by unanimous consent—that means no one objected—I want to read it because it was not read today. Here is a resolution:

To instruct conferees to the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2005, or on a Consolidated Appropriations Measure that includes the substance of that act.

Resolved that, for the purpose of restoring the provisions governing the Conservation Security Program to those enacted in the Farm Security and Rural Investment Act—

That is the farm bill of 2002—

and restoring the practice of treating agricultural disaster assistance as emergency spending, the Senate instructs conferees to the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2005, or a Consolidated Appropriations Measure that includes the substance of that act, to insist that the conference report contain legislative language striking subsections (e) and (f) of section 101 of division B of H.R. 4837. . . .

Mr. President, I ask unanimous consent a copy of these resolutions be printed in the RECORD.

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

S. RES. 454

Whereas, agriculture has been the cornerstone of every civilization throughout history and remains the driving force behind the nation's economy;

Whereas, American farmers and ranchers help keep food affordable in this country and also help to feed the world;

Whereas, America's farmers and ranchers produce the food and fiber that is so vital to our economy while protecting our soil, helping to keep our waters clean, and reducing air pollution across the country;

Whereas, all sectors of our country rely in some way on a successful, strong and vibrant agriculture industry;

Whereas, it is the nature of agriculture that farmers and ranchers will suffer production losses because of the vagaries of weather;

Whereas, Congress has responded to natural disasters by providing assistance to those affected including the nation's farmers and ranchers to help restore financial stability in times of such losses; and

Whereas, Congress has traditionally provided such assistance on an emergency basis without cutting programs to the class of those suffering.

Resolved, That it is the Sense of the Senate that the 108th Congress should provide the necessary funds to make disaster assistance available or all customarily eligible agricultural producers as emergency spending and not funded by cuts to the farm bill.

S. RES. 465

Resolved, That for the purpose of restoring the provisions governing the Conservation Security Program to those enacted in the Farm Security and Rural Investment Act and restoring the practice of treating agricultural disaster assistance as emergency spending, the Senate instructs conferees to the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2005, or a Consolidated Appropriations Measure that includes the substance of that act, to insist that the conference report contain legislative language striking subsections (e) and (f) of section 101 of division B of H.R. 4837, An Act Making Appropriations for Military Construction, Family Housing, and Base Realignment and Closure for the Department of Defense for the Fiscal Year ending September 30, 2005 and for Other Purposes.

Mr. HARKIN. What does all that language mean? It means that the Senate went on record today to instruct conferees, those of us on the Appropriations Committee, to undo what the administration did, to restore what was in the farm bill for conservation, and to not take the money out of conservation for disasters but to treat agricultural disaster assistance as emergency spending, as it should be.

So 71 Senators voted that way on the earlier resolution to treat it as emergency spending. Now we have an instruction to conferees. Can we get any plainer than that?

We will see. We come back in November. We have to come back in a lame-duck session because we have a continuing resolution to keep the Government running until November 20. So sometime before November 20 we in the Appropriations Committee and the Congress, we have to come back, are going to meet to either pass what is called an Omnibus appropriations bill or something of that nature, and we have instructions from the Senate to undo what the administration called for to cut conservation. We will see. We will see if Senators on that side of the aisle have the courage to stand up to this administration and to follow the will of the Senate and tell the President, no, you are not taking the money out of conservation. We will see. We have the instructions. We have 71 Senators who voted that way.

I will say about the future consequences to agriculture if this cut to the farm bill stands, this will set a precedent that will be used time and time again. Today it is conservation. Next time what will it be? How about the commodity programs? Those are uncapped entitlement programs. They go to rice and cotton and corn and soybean and wheat farmers. Someone will point out payments that go out to farmers and they will say: Wait a minute, we ought to cap that. If we cap it, we will have a lot of money to do other things. That is next. Or payment limitations. That has been fair game out here on the floor before.

My message to the farm groups in America is this is just the first step in reopening the farm bill. Reopen it here, and look out, it is fair game.

Shame on those in this administration who just 2 years ago loudly touted the farm bill. We signed off on it. We hammered out our agreements. Now they want to reopen it and take money out for disaster assistance. Look out. They will be coming after it again because there is money there. Commodity programs are uncapped entitlement programs. They are going to want to take that money for other things because people will look at this. There is a lot of staff around here. There are a lot of people looking at, where can I get money for this program and where can I get money for that? Those of us who represent farmers, are in the minority around here, aren't we?

There are a lot of good programs out there that maybe need money. Some of them I would even support myself. People are going to want to get money for them. Guess what. They are going to come after the farm bill because Congress and the White House now opened it. It is opened up wide. That barn door is open, and they are going to come after it. Mark my words. What are we going to say? We didn't protest enough? We didn't take strong stands against this administration when it refused to protect conservation, to protect our farmers? We will see when we come back. We will see when we come back in November whether we have the courage to override the administration.

THE ECONOMY

Mr. President, I will take a few minutes to talk about the economy and what is happening to American families. There is one question I never hear the President of the United States ask of anyone. I never hear it when I see him in all of the rallies. I never hear him asking one question: Are you better off today than you were 4 years ago? You never hear that question. Are you, your families, or is the country, better off than they were 4 years ago?

I want to talk briefly about why the answer to that is obvious. We are not better off, either personally, our families, or the country as a whole. If there is one word that describes the Bush economic policy, it is ''reckless.'' If there is one word to describe the President's foreign policy in Iraq, it is ''reckless.''

This President has recklessly pursued tax cuts for the most affluent in our society above other priorities. He has recklessly squandered the surpluses he inherited from President Clinton. He has recklessly supported outsourcing of our jobs. The President has recklessly ignored 45 million Americans without health insurance, and he has recklessly set us on a course to run up nearly $5 trillion in new debt over the next 10 years.

Last month, the Congressional Budget Office announced that this year's budget deficit will hit around $422 billion, a new record. What was the President's response? Let's cut some more taxes and run the deficit up even more. When it comes to fiscal policy, President Bush is simply out of control. He is driving this country the way he would be driving recklessly down a road.

For him, these tax cuts are practically theology, not ideology. Unfortunately, we don't have a prayer getting our economic house in order under his leadership.

Last year, the President's Council of Economic Advisers said that with the 2003 tax bill, the economy would create 306,000 jobs every month. In the past 4 months we have created jobs at a third of that rate.

We have suffered a net job loss of nearly a million since Mr. Bush took office, the only President since Herbert Hoover during his 4 years who has not created one net new job.

The unemployment rate, they will say, went down in September. Why? Not because people were getting jobs. According to the Bureau of Labor Statistics, the labor force shrunk by 152,000. Why? People gave up on looking for work. Therefore, conveniently they are no longer counted as unemployed.

Recent data released last month by the Census Bureau shows that since this President took office, real household income has fallen by $1,535. That compares to a gain of $5,498 during the Clinton years. Families were better off after Bill Clinton was President; with this President, a $1,535 loss in household income.

How about what consumers are paying for gasoline now. I filled up my car yesterday. It was $1.99 a gallon for regular. Today oil hit a new high—53-something dollars a barrel. I understand it may go as high as $60 a barrel. Gasoline prices are going up. Families have to drive their cars to work. Rural Americans have to drive a long way. Farmers have to fill up their combines and tractors with diesel.

The farm prices have come down, corn prices are down, bean prices are down, wheat prices are down. Guess what. Their fuel prices are up. Our farmers are hurting.

The number of Americans living in poverty has risen by nearly 4.3 million people. That is the number of people newly living in poverty under this President. During the Clinton years, we reduced those who lived in poverty by 6 million. You were better off after 4 and 8 years of Bill Clinton.

Over the last 4 years, the cost that employers paid for health insurance has climbed an extraordinary 59 percent. We wonder why so many of our small businesses are no longer covering their employees' health insurance. They simply can't afford to.

But this administration demanded a provision in the new Medicare law that expressly forbids the Government from negotiating lower drug prices, even though virtually every other developed nation negotiates lower drug costs with the pharmaceutical companies. But we have one agency of our Government that is allowed to do so, and that is the Veterans Administration. Guess what. The veterans get the cheapest drugs in America. God bless them. I am all for them. But why don't we let Medicare do the same thing as VA is doing? This administration says no. They wouldn't let them do that. This administration won't do it because they are joined at the hip, like Siamese twins, with the big pharmaceutical companies.

As I mentioned earlier, they have turned the clock back more than 60 years in taking away overtime pay rights of 6 million American workers. The President keeps saying we turned the corner. Maybe we have turned the corner and we are headed back to the 1930s. We are going back to the 1930s.

Remember the Depression? There had been all of these tax breaks for upper income people. We got into the Depression. People were working 50, 60 hours a week to try to make ends meet, if they could even get a job. So we put in a 40-hour workweek. We raised salaries and wages of people.

This administration has turned the corner. Mr. Bush says we have turned the corner but in fact it is back to yesterday, back to the 1930s.

When Mr. Bush took office we had the largest budget surplus in American history. Think of that. The largest budget surplus in American history.

According to all estimates, we were working toward a cumulative surplus of $5 trillion in this decade. Think about what a strong position that would have put our country in as the baby boomers began to retire. In less than 4 years, all of that has been turned upside down. This year we are running the largest budget deficit in American history; as I said, $422 billion.

What about this decade? We were going to have a $5 trillion surplus. But we are now looking at a cumulative deficit of $5 trillion. We went from a $5 trillion surplus to a $5 trillion deficit.

I am sorry. This President simply can't handle money. I don't think he could handle money when he was in the private sector either. But it is obvious this President can't handle our money either.

The Congressional Budget Office projects that by 2009 we will be paying roughly $1,000 for every man, woman, and child just in interest on the public debt. That is $4,000 for a family of four.

President Bush says he has cut your taxes. That is wrong. We are paying more in property taxes, sales taxes, and everything else.

But think about this: By 2009, every family of four will be paying about $4,000 a year in taxes to pay the interest on the national debt. Guess what. You can't cut that tax. We have to pay the interest on the debt.

As soon as a baby is born in the year 2009, that baby owes that year's interest on the national debt. I don't know how that 1-year-old baby or her family is going to earn enough.

Some keep talking about a death tax around here, an estate tax as a death tax. How about the birth tax? That is going to hit in 2009. For every child born in America, $1,000 that first year they will have to pay to cover interest on debt. Why? Because we took their money and we gave the tax breaks to the wealthiest in our society today. That is wrong. That is just simply wrong.

One last thing: As I said, those bonds must be paid, and that interest must be paid. Who is buying the bonds? Who will be paying interest? More and more foreign governments and their central banks.

Since Mr. Bush took office, Japan and China have more than doubled the U.S. debt that they own. Our Government now owes just those two countries $854 billion. Pretty soon it will hit $1 trillion.

We have all learned who pays the piper. It is called the consumer.

Just ask yourself. Would you rather be a creditor or a debtor? Which position would you like to be in, creditor or debtor? Think about our country being in debt to China and Japan to the tune of $1 trillion. What happens if we want to negotiate a little trade deal that is better and more fair? Who is holding all the cards then? They are the creditors and we are the debtors.

These are the realities that we have today: Massive tax cuts, rapid increases in Federal spending, record budget deficits, record trade deficits,

skyrocketing public debt. But the credit card bill will come due. You can't repeal the laws of economics. Eventually, massive Government borrowing will squeeze out private investment and force interest rates up.

Eventually, massive indebtedness to foreign nations will cause the dollar to fall even more dramatically than it has so far on Mr. Bush's watch. Instead of making the needed adjustments to meet our responsibilities to retiring baby boomers and our children, this administration undercuts those responsibilities.

The President just does not get it. He continues on his reckless way, reckless and stubborn, cutting funding for veterans and public education and other domestic needs but he wants to send some people to Mars.

Priorities, priorities, reckless priorities. Reckless in economics and stubborn in continuing to do the same thing over and over again and expecting a different result.

The President seems to say as long as we keep cutting more and more taxes for the wealthy, as long as we continue on this reckless course in Iraq, as long as we continue this reckless deficit spending, well, then it will all work out. It will be different sometime down the road.

I am sorry, it is going to dig us deeper and deeper in the hole. Someone once described insanity as doing the same thing over and over and over again and expecting a different result. But we cannot keep doing the same thing over and over again and expect a different result. We know what the result will be.

Public opinion polls show the majority of Americans believe the country is headed in the wrong direction. They are right. We are headed in the wrong direction economically. We are headed in the wrong direction for our kids and our grandkids. It is time to end this reckless course that we are on, to get back to a sound fiscal and economic policy in this country. This President will not do it. He is just stubborn. He is going to continue his war policy. He is going to continue his policy in Iraq, and he is going to continue his domestic economic policy because he believes it is right. He may believe it is right, but the majority of Americans do not think so.

That is why we need to chart a new course for America. That is why, under a President JOHN KERRY we will turn this country around. We will turn around the mess in Iraq. We will save young American lives. We will set right our economic policies. We will invest in education and the health care of our people. We will do it in a sound manner and 4 years from now we will stand here and say truthfully: You are better off today than you were 4 years ago because JOHN KERRY has been President of the United States.

UNFINISHED BUSINESS OF THE 108TH CONGRESS

Mr. DASCHLE. Mr. President, as we set to adjourn, I think back to what I said earlier this year about the need to set aside bitter partisanship and move towards a new politics of common ground.

During campaigns, candidates and parties should be clear about where we stand on the issues and how we differ with our opponents so that voters can make a choice. That is an essential part of democracy. But we also have a responsibility to work together constructively, where we can, to find common ground.

It is not simple, but it is the essential ingredient to making Congress work for the American people.

By this measure, the record of the 108th Congress is mixed.

At times, we have been able to work across party lines and, as a result, we have been able to make meaningful progress on some of the issues and challenges that matter most to Americans.

There is no better example than the National Intelligence Reform Act. Senators from both parties worked together with the members of the 9/11 Commission and the families of the victims of 9/11 to pass real intelligence reform that will make our Government better able to deal with the new threats we face, and make Americans safer in the process.

This legislation passed 96–2. It demonstrated how much common cause we can find—and how much we can do—when we put the needs of Americans first.

There have been other examples through the course of the 108th Congress.

We passed commonsense tax relief for middle-class families, ending the marriage penalty and extending the child tax credits. Under this new law, the 70,000 families in South Dakota will benefit from a $1,000 per child tax credit

We passed legislation protecting the pensions of 35 million Americans.

Notwithstanding the majority's claims, the Senate confirmed 201 of the President's 211 judicial nominations—95 percent—and the judicial vacancy rate now stands at an historic low.

I am particularly pleased that Senator JOHNSON and I have been able to work with our colleagues to advance measures deeply important to the citizens of South Dakota.

We honored the service of our National Guard members and Reservists by extending their access to the military's TRICARE health care system.

We approved key incentives for the ethanol industry that will mean thousands of jobs for South Dakota and millions of dollars in revenue for South Dakota farmers.

And we have offered significant help to farmers and ranchers struggling to deal with the effects of the 5-year drought.

Each of these accomplishments was the product of bipartisan leadership. They testify to the fact that the Senate can make progress for the American people when we put aside partisanship and focus on the real challenges facing Americans.

We all agree, however, that those moments were far too rare.

On a number of occasions, the Republican leadership pursued an all-or-nothing strategy that can be poisonous to the legislative process.

One of the most regrettable instances was the Transportation bill. In February, we passed legislation to modernize our transportation infrastructure and create 2 million jobs by an overwhelming, bipartisan margin. But despite that, the White House and House blocked the Senate bill from becoming law.

The same process was at work with the Energy bill. The Senate passed a bipartisan bill that had few controversial provisions. But once the Republican leadership insisted on attaching poison pill provisions, this bill became impossible to pass.

The same all-or-nothing approach kept us from passing a bipartisan gun liability bill.

It doomed a bipartisan effort to bring down the cost of prescription drugs for America's seniors by enabling them to shop for better prices across the border.

It prevented us from raising the minimum wage at a time when millions of Americans work full time yet still live and raise their families in poverty.

And it kept the Senate from passing a mental health parity bill that has 77 cosponsors in the Senate and 249 in the House.

There is a long list of bipartisan legislation that has been left undone. That list exists solely because the leadership put the needs of American families behind those of insurance companies, drug companies, HMOs, and other special interests. Rather than listening to the voices of the American people, they have worked to advance rigid ideological theories.

Nowhere has that dogmatic stance been more damaging than to the budget and appropriations process.

The minimum requirement of any Congress, our most basic responsibility, is to pass the appropriations bills that enable our Government to continue working for the American people.

At the beginning of the 108th Congress in 2003, we were told that the White House and Republican leadership would ensure the budget and appropriations process ran more smoothly than ever before.

But each of the last 2 years, the process has broken down. Last year, the Republican leadership was forced to resort to an omnibus spending bill that combined seven different appropriations bills.

This year, we might return after the November elections to vote on a massive omnibus spending bill that sews

together nine different appropriations bills.

This is not merely a difference of procedure. We all know that omnibus spending bills are fundamentally undemocratic, because they deny the American people the right to have their representatives the chance to vote on the details of how the Government is spending their money.

Omnibus bills are invitations to abuse. Last year, for instance, the Republican leadership used conference negotiations to attach to the omnibus a series of provisions that could never have passed the House or Senate on their own. We don't know what provisions will be attached to the omnibus this time, and we won't until the spending bill comes out of conference in November.

One thing is clear. This is not the way the Framers intended us to legislate or fund our Government. And it is not what the American people sent us here to do. They deserve better. They deserve leadership that put their needs first.

Throughout this Congress, we should have applied a simple test to our work. With each piece of legislation that came before us, we should have asked: Does it do right by America? Does it do right by our troops fighting for our security overseas? Does it do right by the seniors who need help buying prescription drugs? Does it do right by middle-class families struggling to make ends meet? Does it do right by our children whose future is in our hands?

Doing right by America demands a politics of common ground. We were able to achieve this common ground for the people of South Dakota.

And as the Intelligence Reform Act proved, Congress is able to put aside partisan politics for the sake of all America, as well.

We are capable of doing right by America. We have made progress, but clearly there is much work left to be done.

I look forward to taking up this work again next year, tackling the challenges of the American people, creating a true politics of common ground, and doing right by America.

FURTHER REVISED APPROPRIATIONS ALLOCATIONS COMMITTEE

Mr. STEVENS. Mr. President, today, I submit a revised allocation to subcommittee for fiscal year 2005. The allocation has been modified to conform outlays for the outcome on the conference on the Department of Homeland Security Appropriations Act.

These allocations are a revision to those printed in Senate Report 108–356, submitted on September 23, 2004.

I ask unanimous consent that a table setting forth the revised allocation to the subcommittees be printed in the RECORD.

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

FURTHER REVISED ALLOCATION FY 2005

[$ millions]

Subcommittee	Discretionary		Mandatory		Total	
	BA	Outlays	BA	Outlays	BA	Outlays
Agriculture	16,772	18,282	58,312	44,305	75,084	62,587
Commerce	39,792	40,440	704	705	40,496	41,145
Defense	390,931	415,689	239	239	391,170	415,928
D.C.	560	554	—	—	560	554
Energy & Water Development	27,988	27,897	—	—	27,988	27,897
Foreign Operations	19,386	26,785	43	43	19,429	26,828
Homeland Security	32,000	29,819	867	863	32,867	30,682
Interior	20,226	20,137	54	59	20,280	20,196
Labor-HHS-Education	142,317	140,936	342,503	342,402	484,820	483,338
Legislative Branch	3,575	3,696	113	112	3,688	3,808
Military Construction	10,003	10,010	—	—	10,003	10,010
Transportation-Treasury	25,439	69,601	18,261	18,262	43,700	87,863
VA, HUD	92,930	101,732	38,912	38,535	131,842	140,267
Total	821,919	905,578	460,008	445,525	1,281,927	1,351,103

Source: Committee on Appropriations, U.S. Senate.

VOTE EXPLANATION

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mr. DORGAN. Mr. President, I would like the RECORD to reflect that I was necessarily absent for the vote on the conference report to H.R. 4520. While I believe that there were some missed opportunities on this legislation, overall I support the bill. I voted for the original bill when it passed the Senate and to invoke cloture on the conference report. Had I been present, I would have voted in support of the conference report.•

RETIRING SENATORS IN THE 108TH CONGRESS

PETER, WE HARDLY KNEW YE

Mr. BYRD. Mr. President, at the close of the 108th Congress, we say farewell to Senator PETER G. FITZGERALD who is leaving us after one term.

The former congressional intern, commercial banking attorney, and Illinois State Senator was elected to the U.S. Senate in 1998. In fact, he was the first Republican in Illinois to win a Senate seat in 20 years.

It has been a busy 6 years for Senator FITZGERALD. During his brief tenure in this chamber he served on the Senate Agriculture, Commerce, Government Affairs, Small Business, and Aging Committees. He was active in a number of legislative areas, including mutual fund reform, consumer safety protection, aviation, environmental, and agricultural issues. And he actively pursued the expansion of overseas markets.

During his 6 years in this chamber, Senator FITZGERALD threw himself into some of the most challenging and complex issues considered by the Senate. In 2000, he attacked waste in Government contracting and crafted legislation to improve the process by which contractors are awarded taxpayer monies. He later worked with me to address the Pentagon's ''revolving door''—an egregious practice utilized by government contractors in exerting influence over the contracting process. In 2002, the former commercial banking attorney lashed out at Enron executives who robbed thousands of workers of millions of dollars of their life savings, and he later crafted legislation to reform the mutual fund industry.

Time and again he showed himself to be a Senator who is not intimidated by complexity. He did not simply talk about the issues of the day, he took time to study them, and understand them, and then try to do something about them. Time and again he demonstrated that he was a workhorse, not a show horse. The Senate needs more members like him, Senators whom we can look to when confronting difficult and complex issues.

And the Senate needs more Senators like Senator FITZGERALD who, on a number of high-profile issues, including gun control, health care, patient's bill of rights, and the environment, ANWR drilling, put the good of the people of his State, in particular, and the American people, in general, above partisan party interests and ideology.

In attacking political corruption and cronyism, he was bipartisan, not simply in rhetoric, which is easy, but rather in action, which is a good deal more difficult.

I wish Senator FITZGERALD and his wife Nina the best as they begin a new phase of their lives.

SENATOR JOHN BREAUX

Mr. BYRD. Mr. President, when the 109th Congress convenes in January, 2005, this Chamber and our Nation will, unfortunately, be without the services of Senator JOHN B. BREAUX.

This will truly be a loss to the Senate and to our Nation. With the retirement of Senator BREAUX, we lose a man of exceptional political experience. This son of an oil-field worker and a dressmaker began his political career as a staff aide to Congressman, and later, Governor, Edwin Edwards.

Mr. BREAUX was elected to the U.S. House of Representatives seven times, the first when he was just 28 years of age, making him the youngest member of the United States Congress at the time. He served in the House for 14 years where he, among other things, was a principal architect of the 1983 reauthorization of the Endangered Species Act.

In 1986, he was elected to the U.S. Senate, and has served three terms in this chamber. Now, after 32 years of congressional experience, Senator BREAUX is leaving us.

With the retirement of Senator BREAUX, we lose one of those Senators who is always ready and willing to reach across the aisle to find common ground, to achieve the workable compromise. He has constantly demonstrated the ability to reach beyond partisan and ideological differences, without abandoning his basic principles. Politics is said to be the art of compromise, and this was an art that Senator BREAUX constantly practiced. On issue after issue, including health care, energy production, tax cuts, and welfare, he demonstrated his ability to broker bipartisan deals, his penchant for deal making, and his talent for fashioning legislative coalitions. With his efforts to break Senate stalemates on Medicare, Social Security, education, health care for the uninsured, and other issues, he earned a well-deserved reputation as a behind-the-scenes mediator. Senator BREAUX exemplified the wisdom of not allowing the perfect to be the enemy of the good.

Even when I disagreed with him, which I have, I still admired his efforts to find that workable solution. Even when he was unsuccessful, which was rare, I still respected his skill and the cause he was advocating. With wit, determination, and patience he is always in pursuit of a constructive course of action, and that won him many admirers, including me.

Because of his efforts and his considerable skills, he chaired the National Bipartisan Commission on the Future of Medicare and he co-chaired the National Commission on Retirement Policy. He also served as chairman of the Special Committee on Aging and as chairman of the Surface Transportation and Merchant Marine Subcommittee. He is currently the senior member of the Finance Committee.

Recognizing and appreciating his leadership abilities, in 1993, his Democratic colleagues elected him chief deputy whip, and in this postion Senator BREAUX has served this chamber, my party, and our country effectively and successfully for more than a decade.

With the retirement of Senator BREAUX, the Senate will also be losing a fine musician. Every year at Mardi Gras, Senator BREAUX entertains the multitudes by playing a washboard. As a musical instrument, a washboard is not a fiddle, but I am sure it sounds good, as good as a washboard can, I guess.

With the retirement of Senator BREAUX, we will be losing a Senator known for his disarming humor. During the anthrax problem of October 2001, he boasted that the fish in his office would survive because ''they are not weak Northeast fish . . . They are strong Louisiana fish.'' I think that was supposed to be funny. If it was supposed to be a fact, I will put up a good West Virginia mountain rainbow trout any day against his Cajun aquatic bottom feeders.

Most importantly, with the retirement of Senator BREAUX, we will be losing a good man. A man who was always there to help. A man whose word is his bond. A man who has constantly demonstrated his loyalty to this chamber and to his country. A man who came up the ''hard way,'' without anything being handed to him, but through hard work, dedication to duty and to his State and our country, fashioned a remarkable and successful career.

I wish Senator BREAUX and his wife Lois the best as they enter the next phase of their lives and careers.

SENATOR GRAHAM

Mr. BYRD. Mr. President, the Bible tells us that ''unto whomsoever much is given, of him shall be much required.''

When BOB GRAHAM came to the United States Senate, ''much'' was expected from him because much had been given.

He came to the Senate from a wealthy and successful family. His father, Ernest ''Cap'' Graham, was a wealthy and successful Florida dairy man and politician. His half-brother, Phil Graham, was a well-known publisher of a major newspaper here in the Nation's capital.

He came to the Senate with a wealth of experience. After graduating from the University of Florida and Harvard Law School, he served two terms in the Florida House of Representatives, 1967–1971; two terms in the Florida State Senate, 1971–1979. In 1978, he was elected Governor of Florida, where he served two terms, 1978–1986.

In 1986, having never lost an election, and with a record of accomplishments as both legislator and a chief executive, he was elected to the U.S. Senate. Therefore, no one could have been faulted for expecting much from him, and I am pleased and proud to say he has delivered.

He was a most effective member on a number of important Senate committees, including the Senate Committee on Banking, Housing and Urban Affairs, the Senate Finance Committee, the Senate Committee on Environment and Public Works, and the Senate Committee on Veterans' Affairs. He has also served as chairman of the Senate Intelligence Committee.

In his committee work, and in his daily work on the Senate floor, Senator GRAHAM earned the respect of everyone in this chamber for his honesty, his decency, and his integrity. In the rough and tumble world of American politics, Senator GRAHAM always remained a gentleman.

He also earned the respect of his colleagues for his ability to reach across the aisle for the greater good of his State and our Nation. As a result, Senator GRAHAM established a long record of bipartisan accomplishments on issues of national security, health care, education, environment, veterans benefits, and intelligence matters.

The people of Florida have been well served by their Senator. In this Chamber, he has helped protect the workers in his State from unfair cheap imports, worked to secure the protection of the Everglades, and has fought tenaciously to reduce the traffic in illegal drugs in Florida. He was one of the principal architects of the 1988 omnibus anti-drug bill and organized efforts to attack money laundering by drug smugglers.

During his political career, Senator GRAHAM also became famous for three things. The first is his wardrobe, that is, the ties that he wears. Everyone who knows Senator GRAHAM knows that he only wears ties with an outline of Florida on them.

The second is that for almost three decades he has recorded in detail every waking moment of his life.

The third thing for which Senator GRAHAM is well known is his so-called ''workdays.'' One day each month for the past three decades, he has performed a job, usually manual labor, in order to stay in touch with and to better understand the problems and the needs of the people of his State.

He has now performed nearly 400 different jobs. He has been a flight attendant, a truck driver, and a chicken plucker. He has cleaned up after hurricanes, and he has cleaned up after dogs as he once spent a day handling a ''pooper scooper.'' He once spent a day bagging groceries, and has even performed on stage. He has worked with policemen, doctors, fishermen, firefighters, and teachers.

These ''workdays'' were not gimmicks or media events. They were important means by which he could better serve people of his State. While Governor of Florida, it was during his workday as a public schoolteacher that he experienced firsthand the serious overcrowding in his State's school system. As a result, when he got back to Tallahassee, he sought more funding for school construction to accommodate the State's booming student population.

On his 355th workday he worked in a hospital, trying to secure insurance provider authorization for treatment in the emergency department. This frustrating experience led him to introduce the Emergency Medical Services Act.

While serving customers in a Florida pharmacy, he heard from seniors who could not afford to pay for their prescription drugs. Afterwards, he played a lead role in the effort to expand Medicare benefits to cover prescription drugs for seniors.

Despite my admiration for Senator GRAHAM, I must confess that I have had my disagreements with the senior Senator from Florida. More than once, I have heard him issue his boast that, ''the future of America is Florida.'' We all know, of course, that the future of America is West Virginia. But neither this, nor other disagreements, has deterred or subtracted from my respect for him. He has made an enormous contribution to the Senate, where he has effectively and successfully served his State and our country.

Unfortunately, Senator GRAHAM has decided that, after three terms in the Senate, it is time to leave us. We will miss his wisdom, his decency, and his remarkable dedication in service to our Nation. Much was expected of Senator GRAHAM, and he, indeed, exceeded all expectations.

I wish him and his wife, Adele Khoury, the best of health and happiness in their retirement.

SENATOR DON NICKLES

Mr. BYRD. Mr. President, the motto of the great State of Oklahoma is ''Labor Conquers All.''

How perfect this is for the senior Senator from Oklahoma, Senator DON NICKLES, who has accomplished so much, and gone so far because of his willingness to work.

As a young man, after the death of his father, DON NICKLES worked his way through college as a janitor making minimum wage. After graduation, he returned to his home town of Ponca City to help run the family business, the Nickles Machine Corporation, of which he became vice persident, and then general manager.

In 1978, he was elected to the Oklahoma State Senate.

Two years later, in 1980, he was elected to the U.S. Senate as part of the ''Reagan Revolution.'' When he took office in 1981, he was just 31 years of age, the youngest Senator in the 97th Congress. Seventeen years later, in 1998, he became the only Oklahoma Republican ever elected to a fourth term in the U.S. Senate.

During his 24 years in the Senate, for better and for worse, Senator NICKLES has remained consistently true to his basic conservative principles. Congress Daily has justly referred to him as, ''the keeper of the conservative flame.''

Being true to his conservative principles has sometimes led him into taking some lonely stands. And his unflinching commitment to his conservative principles have led him to take positions that have angered constituents of his own State. His principles have even led him into positions on issues that have annoyed me. In addition to his views on tax cuts, I could mention his efforts to block the Patient's Bill of Rights, his efforts to defeat increases in the minimum wage, and his effort to scuttle a Democratic initiative to help unemployed workers to be able to afford medical insurance coverage. Still, I have always admired and respected him for the firmness of his convictions and his beliefs, and his willingness to stay with them despite the consequences.

Even with the firmness of his convictions, he has never allowed himself to be trapped or bound by dogmatic partisan stands. Time and again I have watched and admired his willingness to reach across the aisle and work with Democratic Senators in bipartisan efforts to extend unemployment benefits, to win passage of a regulatory reform bill, and to secure passage of other measure that, otherwise, may well have gone down in defeat.

During his 24 years in this chamber, Senator NICKLES has served on the Senate Finance Committee, Senate Energy and Natural Resources Committee, Labor and Human Resources Committee, Small Business, and Joint Committee on Taxation.

For 14 of his 24 years in the Senate, he has served in Republican Senate Leadership, first as chairman of the Senate Republican Senatorial Committee, and then as chairman of the Republican Policy Committee, which he transformed from a lunch club into a ''conservative think tank.'' In 1996 and again in 1998, he was elected Assistant Republican Leader, Republican Whip.

In January, 2003, Senator NICKLES left the Senate Republican leadership to become chairman of the Senate Budget Committee, and this is where I really came to know and appreciate what an outstanding legislator he is.

As I attended Budget Committee hearings and markups held by Chairman NICKLES, I came to realize his appreciation for the Senate as an institution, and his determination to make this institution work. I saw, first hand, his efforts to accommodate differences and to restore bipartisanship to the Senate Budget Committee. While he staunchly advocated his beliefs, Budget Chairman NICKLES emphasized politeness, courtesy, cordiality, and amiability. These qualities endeared him to Democratic and Republican members of the Budget Committee.

It was here in the work of the Budget Committee that I really saw his personal side. I remember Senator NICKLES's first Budget Committee markup as chairman. Senator NICKLES arrived at the markup and announced that his daughter had given birth to his first grandchild, Nicholas Fenton Rossiter. I had seen many times the look of pride on a new grandfather's face, and it inspired me to recite a poem for his grandson. ''Dear Nicholas, first, in thy grandfather's arms, a newborn child, thou didst weep, while those around thee smiled, so live, that in thy lasting sleep, thou mayst smile while those around thee weep.''

But at the same announcement of the birth of his grandson, I could not help myself in reminding Budget Chairman NICKLES that, given his support for a budget that embraces record deficits, his sweet grandchild was born owing $24,000 on the national debt.

Although I failed to disabuse him of his egregious interpretation of the budget reconciliation process, Senator NICKLES, I am convinced, has come to understand the importance of debate in the Senate. Earlier this year, he devoted many hours to studying the budget rules for ways to eliminate the so-called ''vote-a-ramas'' that usually accompany the Senate's budget debates. To his great credit, Senator NICKLES demonstrated that rule changes are not necessary. Together with Senator CONRAD, he orchestrated this year's budget debate in a manner that allowed adequate time for all Senators to offer and debate their amendments. For the first time in many years, there was no ''vote-a-rama,'' thanks to Senator NICKLES.

It has been reported in the media that Senator NICKLES was discouraged and disappointed that, in his final year as chairman of the Budget Committee, the Senate was not able to reach a consensus with the House of Representatives on a budget resolution. I hope Senator NICKLES realizes that the model of civility he created as chairman of the Budget Committee will be remembered and emulated, and that this accomplishment will survive in the annals of the Senate longer than any budget document.

While I must admit that I will not miss some of the values that he so eloquently advocated, and for which he so effectively fought, I do regret anytime the Senate loses a good person, and Senator NICKLES is a very good person. During his 24 years, this outstanding Senator, through his hard work, his friendliness and his dedication and determination, has helped make the Senate a better place, and for that, I am grateful and thankful. Time and again he has demonstrated that ''labor'' certainly does ''conquer all.''

I wish him and his wife, Linda, happiness, health, and prosperity as they enter the next phase in their lives.

BUSH TRANSPORTATION POLICIES ARE WRONG FOR RURAL AMERICA

Mr. BYRD. Mr. President, 4 years ago, candidates George Bush and DICK CHENEY promised those of us from rural America that they understood the challenges we face and that they would work to make our lives better. Now, the President and Vice President are going back out to the rural parts of the country, to Appalachia, to my home State of West Virginia, to tell us that we have turned the corner. They are saying that, thanks to their work during these past 4 years, our prospects are improving. They tell us that, due to their policies, job growth is increasing. And they argue that if we want

more of the same in the future, we need to re-elect them to another term.

The reality is a far cry from the picture the President paints. Those of us in rural America, and for me that means the rugged Appalachian mountains of West Virginia, have known that, in order to improve our ability to attract and maintain good-paying jobs, we have to build an infrastructure to match those in the urban parts of America. That includes more four-lane divided highways and an improved national passenger rail network. But, the President has proposed policies to slow highway construction and shut down Amtrak. If enacted, these proposals would add to the staggering job losses already experienced in rural America under the Bush administration.

This Congress is now a year late in passing reauthorization legislation for the Federal Government's surface transportation programs. The main reason for this delay is that the President opposes efforts to adequately fund the construction of better and safer roads, particularly in rural America. In the meantime, transportation projects are stalled and tens of thousands of construction jobs have been lost.

In 1965, the Congress adopted the Appalachian Regional Development Act that promised a network of modern highways to connect the Appalachian Region to the rest of the Nation's highway network and, even more importantly, the rest of the Nation's economy. Absent the Appalachian Development Highway System, ADHS, my region of the country would have been left solely with a transportation infrastructure of dangerous, narrow, winding roads which follow the paths of river valleys and stream beds between mountains. These roads are still, more often than not, two-lane roads that are squeezed into very limited rights-of-way. They are characterized by low travel speeds and long travel distances and are often built to inadequate design standards.

The rationale behind the completion of the Appalachian Development Highway System is no less sound today than it was in 1965. Unfortunately, there are still children in Appalachia who lack decent transportation routes to school; and there are still pregnant mothers, elderly citizens and others who lack timely road access to area hospitals. There are thousands upon thousands of people who cannot obtain sustainable, well-paying jobs because of poor road access to major employment centers.

We have virtually completed the construction of the Interstate Highway System and have moved on to many other important transportation goals. However, the people of my region are still waiting for the Federal Government to live up to its promise, made some 39 years ago, to complete the Appalachian Development Highway System. And under the President's plan, they may have to wait several more decades.

Regrettably, the President has threatened to veto the highway bill that was passed by an overwhelming margin in the Senate. That bill would provide the funds necessary for a robust investment in rural America's infrastructure, including the Appalachian Development Highway System. It appears that under this administration, investments in road conditions are beginning to mirror the distribution of wealth in our country. The rich are getting richer while the poor get poorer.

The President and Vice President also have proposed to further limit our transportation options in rural America, including West Virginia, by underfunding and thereby shutting down Amtrak. Each of the Bush administration's four budget requests has targeted Amtrak and suggested funding levels that would have rendered the system inoperable. President Bush has proposed to limit Amtrak to the Northeast where it would serve only as a commuter rail network. Long distance trains, such as the Cardinal that provides a lifeline for communities across southern West Virginia, or the Capitol Limited that serves the eastern panhandle, would be eliminated under the President's plan.

Amtrak is a critical transportation link for people in all corners of this country. Each day, millions of people ride the rails to get to and from work, to visit family and friends living many miles away, or to travel on vacation. Make no mistake, if Amtrak closes operations, it will not be without great cost to communities both large and small. If Amtrak were to shut down, the Nation's transportation system would be thrown into chaos.

For many rural Americans, Amtrak represents the only major transportation link to the rest of the country. If the President has his way, West Virginians who live in or near Harpers Ferry and Martinsburg would lose access to the Capitol Limited train that runs from Washington, DC, to Chicago. Others who live in or near White Sulphur Springs, Hinton, Beckley, Thurmond, Montgomery, Charleston, and Huntington would lose access to the Cardinal train that runs from New York City to Chicago.

At a time when countries across the globe are moving forward by making investments in various passenger rail projects, whether it be high-speed bullet trains in Taiwan or Mag-Lev trains in Japan, President Bush has proposed to shut down America's passenger rail service. Next time the President or Vice President campaigns in Huntington, Charleston, or Beckley, I hope they will explain why they believe the economic prospects of these communities will be improved with the elimination of the national passenger rail network.

I have worked my entire Congressional career to ensure that West Virginia gets a fair shake from the Federal Government. My State was long ignored by those deciding where Federal monies would be spent. Infrastructure development in rural America still lags far behind the investments being made in our urban areas. And this problem will only be compounded by the re-election of a President who is tone-deaf to the needs of rural America.

The President continues to make empty promises, continues to assure us that we have, indeed, turned the corner. But, for many rural Americans, that corner is on a dangerous, winding road with no help in sight.

ATTEMPTS TO KILL THE ESLGP

Mr. BYRD. Mr. President, the Bush administration would like us to think it has spent the last 4 years standing up for steel in West Virginia and across the Nation. But this administration has never stood up for steel. If the West Virginia steel industry has benefited at all in the past 4 years, it is in spite of the Bush administration.

The Bush administration said it would impose Section 201 tariffs on imports of unfairly traded steel, but then it lifted the steel tariffs 15 months early. The Bush White House refused to stand up for steel, and I would like to take this opportunity to remind America's steelworkers, including those in West Virginia, of this important fact.

Let's look at some other important facts: over the past 4 years there has been a program to provide tangible relief to steelworkers in West Virginia, Ohio, and Pennsylvania. That program is the Emergency Steel Loan Guarantee Program, which I enacted in 1999 with bipartisan support to help steel companies in economic distress. Over the past 2 years, that program has served as an absolute life-line to thousands of steelworkers from Ohio, Pennsylvania, and West Virginia. The Steel Loan Guarantee Program has saved thousands of jobs in spite of the Bush administration, which has worked night and day to kill the Emergency Steel Loan Guarantee Program.

The story of steel in West Virginia over the past 4 years is a dramatic story of hard work, hope, and triumph. But that is no thanks to this administration. Over the past 4 years, both Weirton Steel and Wheeling-Pittsburgh Steel filed for bankruptcy due to unfair imports. But the Bush administration still thought it was a good idea to lift the steel tariffs 15 months ahead of schedule.

In dire straits, both companies sought the only real relief that was available to them, which were loan guarantees provided by the Emergency Steel Loan Guarantee Program. The steel companies filed applications for emergency steel loan guarantees with the program's loan board to enable them to stay in business and not put 8,000 to 10,000 people out of work.

And what was the Bush administration's response? In both its fiscal year 2003 and 2004 budget requests, at exactly the time when Weirton and

Wheeling-Pittsburgh Steel and their thousands of workers desperately needed a loan guarantee to stay alive, what did this administration do? It sought to rescind all of the funds available to the Emergency Steel Loan Guarantee Program. These rescission requests were pending at exactly the same time that both Weirton and Wheeling Pittsburgh Steel had loan guarantee applications pending before the loan board. When Wheeling-Pittsburgh's first application was denied, it had to refile. The administration continued to request rescission of all funds in the loan program.

But those of us who know West Virginia, who love West Virginia, and love its people, stood up for steel and stood against the Bush administration. We put our shoulders to the grindstone and pushed with all our might to find a way to keep West Virginia's steel industry in business. Unlike the Bush administration, we kept faith with the people of West Virginia. As ranking member of the Appropriations Committee, I was able to persuade the committee to retain funding for, and reject the administration's attempts to kill, the Emergency Steel Loan Guarantee Program in both 2003 and 2004. But that didn't stop the Bush administration. When it became clear that they couldn't kill the program in their budget, they tried to kill it administratively, by shifting funds out of the steel loan guarantee program and into another Commerce Department account. Instead of helping steelworkers keep their jobs, the Bush administration wanted to shift money in the loan guarantee program to some other account at the Commerce Department, an agency that, in this administration, has spent millions of dollars helping multinational corporations transfer American jobs overseas.

But, some of us, unlike the Bush administration, believe in keeping American jobs here at home. So we kept pushing to save our steel jobs. To stop them from being sent overseas. And, we did it. We did it in spite of the Bush administration. If you don't believe me, listen to what Jim Bradley, the CEO of Wheeling-Pittsburgh Steel Company said on March 26, 2003, the day on which Wheeling Pittsburgh's application for a steel loan guarantee was approved. He stated:

> Without the leadership of Sen. Robert Byrd, Wheeling-Pittsburgh Steel's 3,800 employees would be facing a bleak future. By creating and fighting for the Emergency Steel Loan Guarantee Program, Sen. Byrd has given this company and its workers the opportunity to build a future for themselves and for the communities in which they live and work.

Now, I am not reading this to toot my own horn. I am reading it to remind West Virginia steelworkers and their families that this administration is not here to help you. I am reading it to remind everyone listening that this administration worked to kill the very steel program that saved the steel jobs of thousands of steelworkers from Ohio, Pennsylvania, and West Virginia. And that is not ROBERT BYRD saying it; that is the president of the steel company where 4,000 jobs were saved saying it.

So, let me say this, loud and clear: steelworkers in West Virginia and across the Nation, believe me when I tell you that this administration is not in your camp. Don't be hoodwinked by their phony concern for your welfare. It is not sincere. They don't care about you. Words are cheap. Actions matter.

As the Book of James states, ''What good is it, my brothers, if a man claims to have faith but no deeds?'' This administration loves to talk about what it has done for West Virginia steel, but it did nothing. Where are the deeds? The Bush administration hasn't been there for Weirton and Wheeling-Pittsburgh Steel's thousands of steelworkers and retirees when they needed its help.

And we know that, based on its deplorable track record, the Bush administration won't be there for them in the future.

LEAVING WEST VIRGINIA CHILDREN BEHIND

Mr. BYRD. Mr. President, I attended a two-room school house as a young boy. When I moved on to high school, I was one of 28 students in my graduating class at Mark Twain High School. At Mark Twain, there was no question of accountability. The teachers were in charge. The students were there to study. My parents drilled one idea in my head, and it remains a guide for me today: learn. Learn, and always strive to make yourself smarter tomorrow than you are today.

Sadly, too often today, that same emphasis is not placed on teaching and learning. I know it. Parents know it. Members of Congress know it. That is why we voted to create the No Child Left Behind Act. Congress and President Bush worked together to ensure greater accountability in America's schools. We established standards. We set the bar. But to help schools reach those standards and surpass them, Congress and the President promised increased resources to help schools succeed. To date, it has been an empty promise.

Since President Bush signed the No Child Left Behind Act into law with such great fanfare in 2002, not one Bush administration budget has provided the funds that America's schools expected. In fact, nationwide, the Bush White House has shortchanged schools by $33 billion. How often do we hear that fact from the White House? Not once. The administration trumpets its No Child Left Behind Act, but fails miserably when funding it. Accountability cannot just be a standard for teachers; it must also be a standard for this administration.

Compounding the problem and the frustration for parents and teachers, each time I and other Senators offer amendments to make good on the promise of No Child Left Behind, the Bush White House and the Republican congressional leadership line up and defeat those amendments. Making false promises to teachers and students and parents is no way to improve teaching and learning. It is another in this administration's broken record of broken promises.

Look at one program as an example. The Federal title I initiative provides dollars geared specifically for children from poor school districts. The No Child law established specific funding levels for title I for every year through 2012, including $20.5 billion this year. But the Bush administration tells schools to make do with a whole lot less, undercutting that pledge in its budget by more than $7 billion.

In my state of West Virginia, about half of the public schools receive title I funding. While the President's No Child Left Behind Act promised Mountain State schools $154 million for title I for 2005, the Bush administration's budget undercut that funding by 36 percent. Translated into students, the President's budget would deny full services to 18,398 West Virginia children. Evidently, ''Leave Only 18,398 Children Behind'' was not a catchy enough title for the new law.

When President Bush signed the No Child Left Behind Act on January 8, 2002, he made a statement that I wholeheartedly endorse. The President said:

> There's no greater challenge than to make sure that every single child, regardless of where they live, how they're raised, the income level of their family, every child receive a first-class education in America.

That is what the President said.

But what the President said and what the President coughs up in funding have proved to be vastly different stories. The No Child Left Behind Act promised to give schools the money they need to help every young person in this country succeed in the classroom. That promise has been broken. When it comes to America's schools and keeping the promise of No Child Left Behind, the Bush White House gets an F.

The title I program is not the only education program facing funding shortfalls. The Bush administration freezes Pell Grant awards for the third straight year, cutting back on college financial assistance. The White House also has proposed to eliminate funding for 38 school programs including dropout prevention, school counseling, alcohol abuse reduction, and arts in education.

If there is one Federal investment that can offer real dividends down the road, it is education. But the White House continues to play political games with classroom funding. It is time to end the posturing and give students and teachers the resources that they need to succeed.

In the coming weeks, the Senate will once more vote on the legislation that funds No Child Left Behind and Pell

Grants and education initiatives throughout the country. I urge Senators to finally make good on the promise made to parents and students and teachers. And I urge the administration to stop playing games with America's kids. Our schools and our children cannot afford 4 more years of broken promises.

DOD AUTHORIZATION CONFERENCE REPORT

Mr. BUNNING. Mr. President, I rise today in support of the Department of Defense Authorization conference report.

This bill funds important priorities for our troops. It gives them a 3.5-percent pay raise. It makes last year's increases in special pay for combat duty and family separation permanent.

The bill expands health care coverage for our National Guard and Reserve members and improves retirement and survivor benefits for those who have served.

The bill also funds the safety needs of our troops for the coming year. It includes over $750 million for force protection gear, including over $430 million for body armor. More than $570 million is provided for additional armored humvees, and another $100 million will be used on more armor for existing vehicles.

This bill gives our troops the tools they need to do their jobs, and the benefits they and their families deserve.

This bill also contains important reforms to the Energy Employees Compensation Program.

The Bunning-Bingaman worker compensation Amendment was added in the bill when it was on the Senate floor. The amendment included reform for the compensation program and was cosponsored by a bipartisan group including myself and 18 other Senators.

I thank the Senate managers, Senators WARNER and LEVIN, for their consideration and support of this important provision in the conference report.

This provision will fix the problems with Subtitle D of the Department of Energy's Energy Employees compensation program for sick injured cold war workers at Energy sites throughout the country.

Since the end of World War II, workers at Department of Energy sites across the country helped our Nation face threats from our enemies by creating and maintaining our Nation's nuclear weapons.

Many of these workers sacrificed their health and safety and were exposed to harms unknown at the time in their work to preserve our freedoms.

Congress passed a compensation program for the energy workers in 2000 in an effort to help these workers.

The Department of Energy's Subtitle D program failed miserably. During the past 4 years the Department received $95 million but processed and paid only a small number of the more than 25,000 claims for workers who were made ill by their work.

DOE's miserable job with this program was especially troubling because of the Kentucky workers at the Paducah Gaseous Diffusion plant, where the uranium shipped to sites throughout the country was refined.

Under DOE's operation, more than 3,000 former Paducah workers have filed for compensation for their illnesses. But zero Paducah workers have received compensation for their illnesses.

The provision in this bill transfers Subtitle D claims processing operations from the Department of Energy to the Department of Labor, which is currently handling thousands of similar claims under Subtitle B of the program.

The Department of Labor runs one of the largest and most efficient claims operations in the country.

Payments will be made directly by the Department of Labor to the worker or survivor. This solves the current issue of no willing payer for all eligible claims. Workers will get prompt medical care for their covered illnesses with no need to go through another system at the State.

This reform effort finally fulfills the promise that Congress made to DOE workers in 2000.

Many of these workers are ill and dying. Because of this reform, they will not have to wait for the Department of Energy to get its act together to process and pay the valid claims in a timely manner. DOL will take over these operations and process the claims much more efficiently and get deserving claimants the compensation Congress promised.

I urge you to support this conference report to help protect those workers who risked their health and safety to help us win the cold war.

Mr. JEFFORDS. Mr. President, I rise to express my concern about section 3116 of the fiscal year 2005 Department of Defense Authorization Conference Report, S. 4200, which the Senate passed by unanimous consent this week. Section 3116 establishes new procedures for the disposal of high-level radioactive waste in South Carolina and Idaho that resulted from the reprocessing of spent nuclear fuel at Department of Energy, DOE, facilities.

As my colleagues will recall, 48 members of this body voted to remove these provisions during Senate floor consideration of the fiscal year 2005 Department of Defense Authorization bill. Senators were concerned that the provisions in the Senate-passed bill would allow the Department of Energy to leave millions of gallons of high-level nuclear waste next to drinking water supplies in South Carolina. While these provisions have been modified in conference and some changes have been made in an effort to strengthen the language, I regret to say that loopholes still remain that cast serious doubt about whether the environment near these facilities will be protected.

I want to be certain that this language does not preempt the ability of States in which these facilities are located to issue permits to protect the surface and drinking water near these DOE facilities. The new conference report language in section 3116 appears to protect the right of states to approve closure plans or issue permits for the closure of nuclear waste containing tanks. The opening lines of section 3116 specifically eliminates the ability of the Federal Government to regulate these tanks under the Nuclear Waste Policy Act of 1982, the Energy Reorganization Act of 1974 or ''other laws that define classes of radioactive waste.'' This language is silent on state's authority, delegated to them by the federal government under the Clean Water and Safe Drinking Water Acts, to issue permits protecting surface water and drinking water. The conferees did not exempt the requirements of the Clean Water and Safe Drinking Water Acts. These laws and the regulations that implement them, which do contain lists of radioactive pollutants, are not overridden. It is my hope that these laws will be implemented the way the conferees intended, and States will continue to be allow to protect their citizens from exposure to radioactivity through the water they drink and our lakes, rivers, streams and wetlands.

I am also concerned that nuclear waste greater than class C, and generally not suitable for near surface disposal, will remain onsite with limited oversight. Section 3116 allows these wastes to stay onsite pursuant to a plan developed by the DOE in consultation with the NRC. I would have preferred that NRC be explicitly required to follow current regulation regarding disposal of greater than class C waste. Section 3116 instead requires a new ''plan'' that has no particular requirements. Mr. President, radioactive waste remains environmentally harmful for an extremely long period of time. It had been my hope that we could have been more clear about the guidelines for its disposal.

As a member of the Committee on Environment and Public Works, one of the Senate Committees with jurisdiction over the management of nuclear materials, I am deeply concerned with this provisions. It is unfortunate that it will soon be law. I am concerned that, in the future, with one small change in this legislation, several other States may find their water resources at risk.

Indeed, if this waste sludge remains, the Savannah River site would continue to be among the most radioactively contaminated sites on the planet. It is my hope that the agencies responsible for implementing this section will do so responsibly, and I will be monitoring their actions.

20TH ANNIVERSARY OF NATIONAL BREAST CANCER AWARENESS MONTH

Mr. JOHNSON. Mr. President, I rise today to share my support and

thoughts on the 20th anniversary of October's designation as National Breast Cancer Awareness Month. I am pleased to see the dedication and awareness that has grown over the past 2 decades regarding this specific type of cancer.

Twenty years ago, very few people openly discussed breast cancer. General public awareness regarding the high occurrence or symptoms was next to none. As a result many lives were lost do to the lack of knowledge and education regarding detection, treatment, and prevention. However, over the past 2 decades awareness has reached astronomical levels. Today, breast cancer awareness is displayed by various organizations and facets of all kinds both in and out of the health care community. Most of all breast care awareness is highlighted by the growing number of survivors who are alive to share their stories of difficulty and hope. That alone is a feat in itself which shows that public awareness has grown and continues to do so.

My wife Barbara is one of these survivors, who battled this condition, not once, but twice. If it was not for the continuous efforts over the past 2 decades, my wife may not have had the knowledge or encouragement to detect early symptoms and seek diagnosis and treatment. My family and I are thankful everyday that Barbra made it through these difficult ordeals. Together we learned how important it is for women of all ages to be proactive in learning about prevention, detecting symptoms, and seeking early treatment.

I applaud the various efforts that are being carried out nationwide by varying entities such as business, corporations, media, publications, schools, spokespersons, and women and men of all ages. This widespread dedication is a tremendous force that has proven to be influential in our Nation's efforts to combat this disease.

I believe it is important for all of us to take an active part in helping to educate the public and find a cure. Currently, there are legislative initiatives geared towards increasing research and funding for all types of cancer, including breast cancer. It is my hope that as this Congress draws to a close that we work together in a broad bipartisan manner to see that we secure necessary funding for the National Institutes of Health, NIH, and the Centers for Disease Control and Prevention, CDC. The President has requested inadequate funding levels in the fiscal year 2005 budget for these programs, which oversee a great deal of cancer research done in this country. As a member of the Senate Committee on Appropriations I was pleased to support and help pass increased funding for the NIH and CDC in the fiscal year 2005 Labor, Health and Human Services, and Education appropriation bill. But it is still critical that my colleagues work in a bipartisan manner and support these increases as we complete the final stages of the appropriations process.

Once again, I commend the work and dedication of all the individuals who continue to bring awareness to this important cause in the month of October, as well as year round. These efforts have saved numerous lives and will someday hopefully eradicate this type of cancer.

MILC PROGRAM

Mr. FEINGOLD. Mr. President, while the Senate has passed some important legislation over the last few days, I deeply regret that the Senate will leave town today without extending the Milk Income Loss Contract, MILC, Program. Wisconsin's dairy farmers have relied on the safety net provided by the MILC Program to get them through the lowest milk prices in recent years, and this program needs to be extended.

I applaud my colleagues, the senior Senator from Wisconsin, Mr. KOHL, for his efforts to extend the MILC Program. Wisconsin farmers count on the safety net the MICL Program provides, and I hope that the Senate will take up and pass an extension of MILC before that program expires on September 30, 2005.

NATIONAL SPINA BIFIDA AWARENESS MONTH

Mr. DODD. Mr. President, I rise today to remind my colleagues that October is National Spina Bifida Awareness Month and to pay tribute to the more than 70,000 Americans and their family members who are currently affected by Spina bifida—the Nation's most common, permanently disabling birth defect.

Spina bifida is a neural tube defect that occurs when the central nervous system does not properly close during the early stages of pregnancy. Spina bifida affects more than 4,000 pregnancies each year, with 1,500 babies born with Spina bifida each year. There are three different forms of Spina bifida—the most severe being myelomeningocele Spina bifida, which causes nerve damage and severe disabilities. Myelomeningocele Spina bifida is diagnosed in 96 percent of children born with this condition. Additionally, 70 to 90 percent of the children born with Spina bifida are at risk of mental retardation, a condition caused when spinal fluid collects around the brain.

The exact cause of Spina bifida is not known, but researchers have concluded that women of childbearing age who take daily folic acid supplements can reduce their chances of having a Spina Bifida pregnancy by up to 75 percent. Progress has been made with regard to the importance of consuming folic acid supplements and maintaining diets rich in folic acid. The September 17, 2004, edition of the Centers for Disease Control and Prevention publication, Morbidity and Mortality Weekly Report, finds that 40 percent of women of childbearing age reported taking a vitamin containing folic acid every day, an increase of eight percentage points from 2003. This increase suggests a substantial positive change in behavior. Since the Food and Drug Administration decision to fortify enriched grains with folic acid, the CDC has documented a 26 percent decline in these birth defects. Despite this success, thousands of pregnancies each year continue to be affected by these preventable birth defects. Thus, increasing use of vitamins containing folic acid remains an important strategy for preventing these birth defects.

Although folic acid consumption reduces the risk and incidence of Spina bifida pregnancies, we will still have babies born with Spina Bifida who need intensive care and families that need guidance and support in caring for and raising these children. As a result of this neural tube defect, most babies suffer from a host of physical, psychological, and educational challenges, including paralysis, developmental delay, numerous surgeries, and living with a shunt in their skulls in an attempt to ameliorate their condition. Today, approximately 90 percent of all babies diagnosed with this birth defect live into adulthood, approximately 80 percent have normal IQs, and approximately 75 percent participate in sports and other recreational activities. With proper medical care, people who suffer from Spina Bifida can lead full and productive lives. However, they must learn how to move around using braces, crutches or wheelchairs, and how to function independently. They are also at risk of a host of secondary health problems ranging from depression and learning disabilities to skin problems and severe latex allergies.

Lifesaving breakthroughs in research, combined with improvements in health care and treatment of children with Spina Bifida, now fortunately lead many with Spina bifida to live into adulthood. However, adults with Spina bifida face many new challenges in the fields of education, job training, independent living, health care for secondary conditions, and concerns related to aging.

I am grateful for my colleague from Missouri, Senator BOND who, along with myself, has been working to improve the quality of life for individuals with Spina bifida with the passage of the Birth Defects and Developmental Disabilities Prevention Act of 2003 and supporting increased funding for the National Spina Bifida Program at the Centers for Disease Control and Prevention. In fiscal year 2004, Congress provided a much needed $3 million in funding for the National Spina Bifida Program. I strongly urge my colleagues to support increased funding in fiscal year 2005 to ensure that the CDC has the resources necessary to prevent Spina bifida, improve quality-of-life for those living with the condition, and to deliver important public health messages to those communities most at-risk for a Spina bifida pregnancy.

I want also to recognize the special work of the Spina Bifida Association of America, an organization that has helped people with Spina bifida and their families for nearly 30 years, working every day to prevent and reduce suffering from this devastating birth defect. The SBAA was founded in 1973 to address the needs of the individuals and families affected by Spina bifida and is currently the only national organization solely dedicated to advocating on behalf of the Spina bifida community. As part of its service through approximately 60 chapters in more than 125 communities across the country, the SBAA puts expecting parents in touch with families who have a child with Spina bifida. These families answer questions and concerns and help guide expecting parents. The SBAA then works to provide lifelong support and assistance for affected children and their families.

Together, the SBAA and the Spina Bifida Association of Connecticut work tirelessly to help families meet the challenges and enjoy the rewards of raising their child. I would like to acknowledge and thank SBAA and the SBAC for all that they have done for the families affected by this birth defect, especially those living in my State. The Spina bifida community and our nation owe a tremendous debt to the SBAA for its work over the past three decades. I am honored to be an honorary co-chair along with Majority Leader FRIST of the 16th Annual Roast for Spina Bifida to benefit the Association and its work in local communities around the country.

As a nation, we have accomplished a great deal in our battle against birth defects. However, much more work remains to be done. I urge all of my colleagues and all Americans to endorse the important efforts to prevent Spina Bifida but also to support those already living with this often debilitating birth defect. Those living with Spina bifida and their loved ones deserve our utmost support. It is my hope that by recognizing National Spina bifida Awareness Month we can move closer to the laudable goal of eventually eliminating the suffering caused by this terrible birth defect.

INTELLECTUAL PROPERTY LEGISLATION

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mr. LEAHY. Mr. President, we live in a nation of the most creative and inventive people in the world, but apparently some of my Republican colleagues do not appreciate them or their efforts. Thanks to the ingenuity, the inspiration, and the hard work of thousands of our fellow citizens, the United States enjoys the best in artistic expression and technological advancement, but that seems to mean little to those Senators. We enjoy the fruits of the labors of all the inventors and authors and artists—and of all the people who work in connection with them—not only as individuals but as a nation, but not everyone here recognizes the debt we owe them. In the twenty-first century, it is intellectual property that keeps this country at the forefront of the world economy, and what preserves our force as a global power, and I would think that those across the aisle would value the importance of that power.

Affording that intellectual property the most straightforward and reasonable protections, and giving law enforcement officials the resources to give those protections genuine power, would seem to be a sensible goal. Indeed, failing to do so would be unconscionable. In the United States, copyright industries alone account for 12 percent of the gross domestic product, and employ more than 11 million people. Those copyright industries have been adding workers at an annual rate that exceeds that of the economy as a whole by 27 percent, and those industries have achieved annual foreign sales and exports of almost $90 billion. But some Republicans are preventing the Senate from passing the most important intellectual property legislation before the Congress this year, and they are hiding behind anonymous holds. This is wrong.

Senator HATCH and I, and many of our colleagues on the Judiciary Committee, have been working on this legislation for some time now—most recently doing so late at night and through the weekends. We have done so because of the crushing need to ensure that the intellectual property laws are adequate to the legitimate and pressing concerns raised by many about the effectiveness of those laws. We have a package of strong and significant measures that would bolster protection of the intellectual property that drives our nation's economy and that would ensure law enforcement has the tools it needs to offer that protection. There was no reason not to send this package to the House immediately, and work with our colleagues there to ensure it became enacted into law, as soon as humanly possible.

In blocking this legislation, these Republicans are failing to practice what they have so often preached during this Congress. For all of their talk about jobs, about allowing the American worker to succeed, they are now placing our economy at greater risk through their inaction. It is a failure that will inevitably continue a disturbing trend: our economy loses literally hundreds of billions of dollars every year to various forms of piracy.

Instead of making inroads in this fight, we have the Republican intellectual property roadblock. It is a barrier that stands in the way of the CREATE Act, a noncontroversial bill the text of which has already passed both the Senate and House. The CREATE Act clarifies an important component of the Bayh-Dole Act that, when read literally by the courts, runs counter to Congress's intent. By failing to make this clarification Congress is creating a deterrent to forming the very same public-private research partnerships meant to be encouraged by that Act. These partnerships have proved incredibly beneficial to universities, the private sector, the American worker, and the U.S. economy. All are placed in jeopardy by Congressional inaction.

The roadblock has also scuttled the ART Act, a bill that passed the Judiciary Committee and then the full Senate by unanimous consent. This legislation would have provided new tools in the fight against bootleg copies of movies snatched from the big screen by camcorders smuggled into theaters. And it would have adopted a creative solution developed by the Copyright Office to address the growing problem of piracy of pre-release works. Our anonymous Republican friends have ensured that these problems are left unaddressed by the 108th Congress.

The PIRATE Act, too, passed the Senate by unanimous consent. That bill would have given to the Attorney General new tools in the fight against piracy of books, music, movies and other creative works. Senator BIDEN's Anticounterfeiting Act, which would have marked a step forward in the fight against software piracy, was also included in the intellectual property package. We can tell our software companies that they will have to wait at least another year for the remedies promised by this legislation. And it is important to note that the Business Software Alliance tell us that $29 billion in software was stolen in 2003 alone.

There are other noncontroversial provisions in this legislation as well, such as language that would help ensure that the Library of Congress is able to continue its important work in archiving our nation's fading film heritage. Some of America's oldest films—works that document who we were as a people in the beginning of the 20th century—are literally disintegrating faster than they can be saved.

None of these were partisan provisions. And when Senator HATCH and I put our names on the same piece of legislation, you can bet that the result is never a bill that veers very far to the right or the left. He and I have worked together to produce a great deal of good intellectual property policy over the years, and I am sorry to see that some on his side of the aisle have blocked our efforts at similar progress this year.

We can foresee the disappointing result of this roadblock: our copyright holders will suffer, our patent holders will suffer, and so too will the American worker. In yet another important area, the Republicans that control the House of Representatives, the Senate, and the White House, have failed to respond to the needs of the American people. That is a shame.•

HUNGARIAN GOLD TRAIN CASE

Mrs. CLINTON. Mr. President, I rise to join my colleagues in supporting the quest for justice in the Hungarian Gold Train case. I have heard from these Holocaust survivors. Their story is painful, and the evidence is overwhelming. Our moral duty is clear.

One of the most troubling aspects of this is that we should not be having this debate at all. The facts of the Gold Train incident are not really in dispute. And for all the effort expended by the Federal Government in court trying to evade these facts, the facts were disclosed to the world by the Federal Government itself.

The reason we know about the Gold Train is because of the Presidential Advisory Commission on Holocaust Assets, PCHA. In the 1990s, our own Government told other nations they should look into their pasts—face the facts—and make redress as appropriate. Seventeen nations established commissions to do that. So did we. This Congress created the PCHA to study the past and reveal the truth. The Commission was fortunate to have Edgar Bronfman, then chairman of the World Jewish Congress, as its head. Stuart Eizenstat, the government's top official dealing with these matters, was a key member. It had a full staff of historians and researchers and a budget of several million dollars.

The Commission found that the record of the United States was a source of pride. Our Nation not only liberated Europe, but after the war, served as a model for how to handle the assets that had been stolen from Europe's Jews—with one glaring exception. In 1999, the Commission issued a report on the Gold Train. After half a century of silence and coverup, the Federal Government stated that the Gold Train was an ''egregious failure of the United States to follow its own policy regarding restitution of Holocaust victims' property after World War II.'' We cannot be proud of this conduct, but we can all be proud that the Government made this admission.

We should all have expected that the next step was to make good on these disclosures and this conclusion. The Government should have compensated these survivors. Instead, the survivors were forced to go to court. The Justice Department is fighting them inch by inch.

One would expect the Justice Department to defend the Government's PCHA report. Instead, the Justice Department has disputed the accuracy of the report and claimed that the Commission withdrew its report. However, as Chairman Edgar Bronfman has made plain, the Progress Report is an ''accurate account of the United States' handling and disposition of the 'Gold Train' property.'' Bronfman also has noted that, ''In no way . . . did the PCHA intend to retract or retreat from the findings of the Progress Report.'' In fact, Mr. Bronfman points out, the report is prominently displayed on the commission's website.

Our Nation has a duty to the past. It has a duty to these people. They are dying every day. The Justice Department should sit down and resolve this matter with these survivors. That is the right thing to do.

INTELLECTUAL PROPERTY PROTECTION ACT

• Mr. McCAIN. Mr. President, I wish to briefly remark on H.R. 2391 and H.R. 4077, a package of bills referred to as the Intellectual Property Protection Act of 2004. I have objected to the further consideration or passage of these bills by unanimous consent.

From the text of the bills that have been available to date for Senators to review, I believe that one part of this broad legislation, the Family Movie Act, may actually harm consumers while appearing to help them. To be clear, I support the stated goal of the act's authors: immunizing from legal challenges a technology that enables parents to skip offensive material from prerecorded copies of films and television. While I applaud the merits of their stated intent, I fear that the very exemption designed to achieve this laudable goal simultaneously creates an implication that certain basic practices that consumers have enjoyed for years—like fast-forwarding through advertisements—would constitute criminal copyright infringement. I note that Consumers Union and Public Knowledge, as well as a host of others parties interested in protecting consumers, share my concerns.

Americans have been recording TV shows and fast-forwarding through commercials for more than 30 years. Do we really expect to throw people in jail in 2004 for behavior they've been engaged in for more than a quarter century?

I look forward to working with my colleagues in this Chamber to address not only these concerns, but also the uncertain liability created for manufacturers that bring other innovative and pro-family products to market in the face of continual threats of extinction from powerful interests who seek to thwart their entry.

For these reasons, I do not intend to remove my hold on these bills until I am satisfied that consumer interests have been protected in this legislation.•

CONGRATULATIONS TO ASCAP ON 90 YEARS OF SUCCESS

Mr. HATCH. Mr. President, I am delighted to take this opportunity to recognize the 90th Anniversary of ASCAP, the American Society of Composers, Authors and Publishers.

In 1913, nine men braved foul New York weather to attend a small meeting at a restaurant called Luchow's. The meeting had been organized by three of the men; Raymond Hubbell, a composer, George Maxwell; a publisher; and Nathan Burkan, an attorney. They were brought together by the novel idea of creating a society to ensure writers and publishers received the recognition and revenue their works generated. Enlisting the help of songwriter Victor Herbert, the group found five other writers and publishers to get the word out. A second meeting was scheduled, and in February 1914, over 100 members of the music community officially began the American Society of Composers, Authors and Publishers.

In the time that has passed, ASCAP has represented many of the greatest musical talents in recent history. The society's members have included Louis Armstrong, Cab Calloway, Peggy Lee, Garth Brooks, Jimmy Hendrix, Carly Simon, Bob Marley, Henry Mancini, Billy Joel, Bruce Springsteen and Madonna. Members have won countless awards for their work, including current president Marilyn Bergman, who, in collaboration with her husband, has won three Oscars, two Grammys and four Emmys. Under her outstanding leadership it has grown to 185,000 members, including many of the newest and greatest names in music.

This year, ASCAP celebrates its 90th anniversary in a time of great importance to the music copyright community. With the current debate over file sharing and constantly developing technology, individual artists are virtually powerless to protect their own work from illegal copying. As a songwriter and member of ASCAP myself, I truly understand the joy and pride that comes with the creation of a song, as I also understand the need for artists' rights to their songs to be protected. I have also had a professional connection with the property rights issues the society addresses. As the chairman and a long-time member of the Senate Judiciary Committee, which oversees matters of intellectual property law, I appreciate the dedication the society has shown toward maintaining the integrity and efficiency of copyright laws.

In the past 90 years, ASCAP has witnessed the transitions from records to 8 tracks to cassettes to compact discs and now to mp3s. It has been through the many trends of music, from big band and swing in 1920s and 1930s, to the wide range of musical styles available today. ASCAP has stood the test of time. I hope my colleagues will join me in recognizing its great contributions to the world of intellectual property law and wishing ASCAP and its members well in the years to come.

THE SCIENCE OF CLIMATE CHANGE

Mr. INHOFE. Mr. President, as chairman of the Committee on Environment and Public Works, I have previously addressed the Senate to discuss the issue of so-called global warming. I have taken a special interest in this issue because the gravity of what is at stake demands it. I have taken a simple, yet profound approach to dealing with environmental issues, working to

ensure that the laws we pass represent sound public policy. Of my three guiding principles for all committee work, the first principle is that Government should rely on the most objective science.

Unfortunately, a commitment to drawing conclusions based on science is not a popular approach. What has most galled my critics is that I do not ''spin the science'' to make it something it is not. Good science is and should remain the product of well designed and reproducible studies and research.

All too often, however, the studies that are touted by my critics are tainted by political and ideological agendas and cannot be reproduced because the authors will not release the data that supposedly supports their conclusions—all of which raises the eyebrows of credible scientists. Such science has no place in our system of government and should not be used to drive major U.S. policy.

When I led the congressional delegation to Milan last December, I was greeted by posters that quoted me as saying global warming is ''the greatest hoax ever perpetrated on the American people.'' I thanked the green activists for uncharacteristically quoting me correctly. Global warming is the greatest hoax ever perpetrated on the American people. It was true when I said it before, and it remains true today.

Perhaps what has made this hoax so effective is that we hear over and over that the science is settled and that there is consensus that, unless we fundamentally change our way of life by limiting greenhouse gas emissions, we will cause catastrophic global warming. This is simply a false statement.

Mr. President, 4,000 scientists, 70 of whom are Nobel Prize winners, signed the Heidelberg Appeal, which says that no compelling evidence exists to justify controls of anthropogenic greenhouse gas emissions. Over 17,000 scientists signed another document that directly contradicts the false claims of consensus. The Oregon Petition, compiled by Dr. Frederick Seitz, a past president of the National Academy of Sciences and a professor emeritus at Rockefeller University, reads as follows:

> There is no convincing scientific evidence that human release of carbon dioxide, methane, or other greenhouse gasses is causing or will, in the foreseeable future, cause catastrophic heating of the Earth's atmosphere and disruption of the Earth's climate.

What a powerful, unequivocal statement that is. So powerful, in fact, that ideologues fraudulently sent in made-up names and belittled legitimate scientists on the Petition, such as Dr. Perry Mason, simply because he and a few others shared their names with famous fictional characters. Such immature acts belong on a grade school playground, but are simply shameful in a serious policy debate. Yet we have heard these baseless charges repeatedly. But these distortions only serve to underscore the fragileness of the myth that there is consensus. If there truly is consensus, why would so many renowned scientists sign such statements? If there truly is consensus, why would these environmental activists be so threatened by these documents that they would make fraudulent submissions? In short, if there is such controversy over whether there is consensus, how can there possibly be consensus? The controversy over its existence is itself proof that no consensus exists.

This point was made succinctly by former Carter administration Energy Secretary James Schlesinger, who wrote in the Washington Post: ''There is an idea among the public that the science is settled. That remains far from the truth.'' He also wrote that the global warming theory has hardened into orthodoxy that searches out heretics and seeks to punish them.

And that was James Schlesinger, Energy Secretary in a Democrat administration.

Thankfully, despite the efforts to ''punish them,'' credible scientists continue to conduct well-designed, reproducible studies, and I will list some of them here today. Last year, I spoke at length to describe the great number of uncertainties surrounding claims of global warming. I described real science that contradicts the alarmists, who, wracked by fear, see a future plagued by catastrophic flooding, war, terrorism, economic dislocations, droughts, crop failures, mosquito-borne diseases, and harsh weather—all caused by man-made greenhouse gas emissions.

We cannot afford to forget that climate change alarmists' visions have been with us for decades. In 1972, the National Science Board, the governing body of the National Science Foundation, observed:

> Judging from the record of the past interglacial ages, the present time of high temperatures should be drawing to an end . . . leading into the next glacial age.

In 1974, Time magazine in an article entitled ''Another Ice Age?'' warned:

> However widely the weather varies from place to place and time to time, when metrologists take an average of temperatures around the globe they find that the atmosphere has been growing gradually cooler for the past three decades. The trend shows no indication of reversing. Climatological Cassandras are becoming increasingly apprehensive, for the weather aberrations they are studying may be the harbinger of another ice age.

These fears became the motivation of a drumbeat from environmentalists that we must fundamentally alter our way of living to avoid a cataclysmic ice age. Of course, these fears proved baseless.

And when this 30-year cooling cycle ceased, these same alarmists again proclaimed we must fundamentally alter our way of living to avoid cataclysmic global warming. From the scientific literature, I believe these fears are equally baseless.

I believe it would be unconscionable to heed the alarmists' cries for economic disarmament without subjecting these claims of doom to the scrutiny they deserve. Predictably, those who peddle fear do not want discussions of science. Hiding behind claims of ''the science is settled,'' they conjure ever more creative ways to market the myth.

The most recent example is the movie, ''The Day After Tomorrow,'' in which the laws of physics are repeatedly violated to create fear of an ice age caused by global warming. First it was an ice age. Then it was global warming. Now it is an ice age caused within days because of global warming. Seems they can't make up their minds what they are afraid of—but their solution is always the same, restrict the economy and outsource American jobs overseas.

Of course, the movie was widely panned, not simply as a ''bad'' movie, but a ''stupid'' movie. Even some environmentalists had to admit there was no science to support the movie. For instance, Dan Schrag, a paleoclimatologist, said:

> My first reaction was, ''Oh my God, this is a disaster because it is such a distortion of science.

What disturbed me was not the movie, which after all is simply the vision of a German film producer with a dislike for Americans who says, ''My secret dream is that this film moves politicians to act.'' No, what disturbed me was he may get his wish. Former Vice President Gore teamed up with the activist group, MoveOn.org, to use the movie as an opportunity to market their alarmist views and economy-capping solutions. This is exactly what is wrong with how alarmists discuss this issue. Rather than joining me and those like me in a commitment to using the best, nonpoliticized science—whatever it finds—politically motivated groups, such as MoveOn.org, pander to our worst fears to drive their political agenda.

I would rather discuss what real science is showing. I said last July that:

> After studying the issue over the last several years, I believe that the balance of the evidence offers strong proof that natural variability is the overwhelming factor influencing climate.

After continuing to study the science over the last year, that belief has been strengthened. I submit, furthermore, that the scientific debate is shifting away from those who subscribe to global warming alarmism.

IPPC incorrectly attributes ground station temperature rise to climate change instead of local activity. One of the areas that has caused global warming advocates the most heartburn has been the inconvenient, yet inescapable, fact that records from satellites using highly reliable microwave sounding units show little warming, on a globally averaged basis, in comparison to ground station records. This important discrepancy on its face would suggest the ground-based data is contaminated.

It is now widely recognized that ground-based measurements are affected by such things as the ''heat island'' effect, large-scale land-use changes and problems with maintaining ground-stations.

The Intergovernmental Panel on Climate Change, or IPCC, report published in 2001 is claimed to be the most authoritative source for claims that temperatures are rising due to climate change. The IPCC has become increasingly alarmist in its three successive reports. In its summary referring to globally averaged temperature data, it says only that ''These numbers take into account various adjustments, including heat island effects.'' The discussion within the body of the report to this important issue, which must be thoroughly explained if ground-based data is to be considered of more importance than highly reliable satellite data, is disappointingly brief and uninformative as well. Moreover, it leaves the impression that everything except for temperature changes due to climate has been factored out.

Thus, the entire validity of the conclusions from ground-station temperature data rests on the claim that these temperature bias effects in the data from such things as growing cities, construction, agricultural practices and other economic activities which potentially could impact temperature measurements have been completely subtracted out from the conclusions. But this may not be true.

A new study by Drs. Ross McKitrick and Patrick Michaels that was presented in an article published in the May 25 issue of ''Climate Research,'' throws these assurances of the IPCC into serious doubt.

The study examined temperature records for 218 individual stations located in 93 countries since 1979, when satellite data first began being collected. The study then compared these to the IPCC grid cells containing these 218 stations.

The study concluded that the differences between the satellite data and the ground station data were almost completely explained by local economic and social factors, and data quality control. Moreover, it found that:

> outside the dry/cold regions the measured temperature change is primarily explained by economic and social variables.

In short, the IPCC's claims of increasing temperatures based on ground-based data appear to be greatly overstated. As the article puts it, non-climate-related variables ''add up to a significant net warming bias at the global level.''

This finding is of tremendous importance, seriously eroding the foundation for the house of cards upon which the global warming hysteria is built. Moreover, the study is well-designed and reproducible.

Mann's hockey stick is flawed and irreproducible. That study's design and reproducibility stands in stark contrast to another study heavily relied upon by global warming advocates—the famous, or perhaps I should say, infamous hockey stick chart published by Dr. Michael Mann. The conclusions of this study have become a rallying cry for alarmists who would have us believe this is final proof that 20th century temperatures have spiked up dramatically. These results are routinely used in presentations to corporate officers to demonstrate that they had better restructure their companies' operations and annual reports.

But Mann's conclusions have come under intense criticism recently, as other researchers have challenged both the methodology he used and the reliability of the results.

A team of scientists led by Dr. Willie Soon and Dr. Sally Baliunas, who are astrophysicists from the Harvard-Smithsonian Center, surveyed 240 articles concerning local and regional-scale climate reconstructions over the last 1,000 years. The proxy record they examined was far more extensive than that used by Mann. While Mann's analysis relied mostly on tree-ring data from the Northern Hemisphere, the researchers offer a detailed look at climate changes that occurred in different regions around the world over the last 1000 years using over 20 different proxies.

As a result of this extensive survey, Drs. Soon and Baliunas concluded that:

> the 20th century does not contain the warmest anomaly of the past millennium in most proxy records, which have been sampled world-wide. Past researchers implied that unusual 20th century warming means a global human impact. However, the proxies show that the 20th century is not unusually warm or extreme.

Other studies that are devastating to Mann's conclusion focus not on its inconsistency with the results of work of a multitude of other researchers, but on his extremely questionable and improper methods. In an attempt last year to perform an audit of Mann's unique conclusions, Drs. McIntyre and McKitrick found that Mann's work was irreproducible without resorting to the use of flawed data sets, inappropriate data manipulation, or ill-advised statistical procedures. To quote the researchers, ''the dataset used to make [the Mann reconstruction] contained collation errors, unjustified truncation or extrapolation of source data, obsolete data, incorrect [methodological] calculations, geographical mislocations and other serious defects.''

When the researchers corrected for these data and methodological flaws, they conclude that temperatures in the early 1400s rivaled those of today, indicating that human influences have not taken the climate to unprecedented territory.

Dr. Esper, a paleoclimate researcher, and his colleagues published a paper that suggests that the tree-ring histories heavily relied upon by Mann in his temperature reconstructions were manipulated in such a way as to have most of the long term variability removed, making the 20th century temperatures appear much more unusual than they in fact were. Esper and his colleagues produced temperature reconstructions for the past 1,000 years using a more scientifically defensible approach to handling tree-ring records that preserves long-term variability.

The study concludes that the past 1,000 years have been characterized by periods of warm and cold, and that as far back as about 1,000 years ago, temperatures were as warm or warmer than in the late 20th century.

Of course, these studies show that the ''shaft'' of the hockey stick created by Mann is wrong. And it is intuitively true that the shaft is wrong. We have known for years about the Medieval Warm Period from 800 to 1400 A.D. We have known for years about what has been called the Little Ice Age from 1600 to 1850 A.D. And the new studies I've just described confirm these well-established naturally occurring climatic events.

In other words, in creating his so-called hockey stick, Mann deliberately eliminated the first blade of the hockey stick. By eliminating the blade he left the false conclusion that the 20th century temperatures are unprecedented. They are not. The fact is that the real temperatures spike far higher during the period he portrays as a straight shaft than current temperatures—despite that his extraordinarily flawed results indicate we are living in the hottest period in the last 1,000 years.

Ironically, the often-criticized IPCC report itself contradicts Mann's findings. As I described earlier, a new reproducible study indicates the IPCC's estimates of temperature rise themselves appear to mistakenly attribute socioeconomic and data quality factors that affect temperature readings to climate change. Yet even so, the IPCC shows a far smaller temperature increase than Mann. The IPCC shows an increase of 0.6 degrees Celsius over the last 100 years, but the ''blade'' of the Mann hockey stick shows an increase of 0.95 Celsius—more than a 50 percent larger increase.

Moreover, the so-called hockey stick ''blade'' does not appear to be explained by the statistical techniques Mann claims he used. In a recent letter published in Geophysical Research Letters, Drs. Soon, Baliunas, and Legates closely examined the ''blade'' and found that it could not be reproduced using either the technique Mann says he used, or other common statistical techniques. Once again, this key requirement of reproducibility seems missing from the flagship study of those crying that the sky is falling.

Most recently, Dr. Chapman and his colleagues commented on a comparison of borehole temperature measurements with Dr. Mann's proxy records and questioned Dr. Mann's analysis techniques, concluding they are ''just bad

science'' and that Dr. Mann had undertaken a ''selective and inappropriate presentation'' of results.

Thus, as Dr. Legates concluded in testimony before the Environment and Public Works Committee, this so-called flagship study:

> certainly does not conform to the requirements of open access and reproducibility, required by the Data Quality Act, nor does it meet even minimal quality standards.

Dr. Legates went on to say in respect to the many problems inherent in Mann's study:

> This leads me to reject Dr. Mann's . . . conclusions . . . that anthropogenic factors provide the overwhelming influence on global and hemispheric temperatures in the last 1800 years and that the 1990s are the warmest decade, and 1998 the warmest year, of the last 1800 years.

Some may try to defend the Mann conclusions, and believe his work is unimpeachable. But a recent article published in the July 1st, 2004 issue of Nature magazine repudiates that belief. In a brief ''corrigendum,'' Mann makes a clear admission that the disclosure of data and other methods supporting the hockey stick was materially inaccurate. This corrigendum was ordered by the Editorial Board after two other scientists, Dr. McIntyre and Dr. McKitrick filed a ''Materials Complaint.'' According to these scientists, the on-line supplemental information accompanying Mann's correction notice essentially concedes for the first time that key steps in the computations behind his conclusions were left out of and conflict with the description of methods in the original paper.

Despite this, Mann continues to assert that these errors do not affect his results, saying: None of these errors affect our previously published results.

But as McIntyre and McKitrick point out:

> if this were true, then a simple constructive proof could have been provided, showing before and after calculations. This is conspicuously missing . . . We have done the calculations and can assert categorically that the claim is false. We have made a journal submission to this effect and will explain the matter fully when that paper is published.

While this sad spectacle clearly is not yet over, three things are clear. Mann's hockey stick has never been reproduced, efforts to do so showed that the study was replete with errors and miscalculations, and despite his continuing faith in his hockey stick conclusions, Mann has yet to offer any proof whatsoever that they are correct. And yet the alarmists continue to claim we should unilaterally disarm America's economy based on Mann's unbelievable—literally unbelievable—results.

Another controversial claim is that sea level is rising, and that this is due to climate change. It has been claimed for years that sea level was rising rapidly, yet again fueling the call for action. Based on modeling, the IPCC estimates that sea level will rise 1.8 millimeters annually, or about one-fourteenth of an inch.

In a study published this year in Global and Planetary Change, Dr. Nils-Axel Morner of Sweden found that sea level rise hysteria was overblown. In his study, which relied not only on old observational records, but satellite altimetry as well, he concluded that:

> there is a total absence of any recent ''acceleration in sea level rise'' as often claimed by IPCC and related groups.

Morner's findings go to the heart of the debate—the reliance by global warming advocates on faulty models that conflict with observational records instead of observational records themselves. According to Morner, the:

> IPCC made an estimate of all variables and their possible contribution to sea level rise. They arrived at a mean value of 0.9 millimeters per year. This value is in harmony with the records of the present and near-past . . . Still—and this is remarkable, [says Morner,]—IPCC compared their own value with a model value of 1.8 millimeters per year and discarded their own estimate as unrealistic.

Morner has blunt words for the IPCC approach, saying that he ''discard[s] the model output of IPCC as untenable, not to say impossible.''

Using satellite altimetry and other observational data, Morner finds that the late 20th century lacks any sign of acceleration of sea rise, including the last decade. He concludes that, based on long-term observational data as well as the newest technology, sea level in a century can be expected to be within the range of a 10 centimeter sea level decline to a 20 centimeter sea level rise, which translates to about a four inch sea level decline to an eight inch sea level increase.

Yet, remarkably, we still hear fears that the world will become flooded due to global warming. Such claims are, to be blunt, completely out of touch with most comprehensive science. As Sweden's Morner puts it, ''there is no fear of massive future flooding as claimed in most global warming scenarios.''

Something else I am told is that there has been an increase in the number and intensity of severe weather events. Typically these doomsayers point to the droughts in the Southwest or point to more violent hurricanes to prove that global warming is occurring.

In response to the current 5-year drought in the southwest, the New York Times proclaimed on May 10 that ''Drought may be normal, but there may be nothing normal about this drought.'' Of course, the paper inserted a weasel word to avoid actually describing how it was abnormal.

This is one of those claims that makes me want to utter the old insult, ''You are so wrong, I don't know where to begin.'' If an increased number of severe droughts is to prove global warming, it would have to be true that the number and severity of these droughts are, in fact, increasing. But nothing could be farther from the truth.

Drought is a serious and damaging climate-related hazard. But this fact should not obscure the fact that carbon dioxide is not the cause of this recurring disaster that plagued even the Ancient Egyptians. The two worst droughts to hit this country in the last century occurred in the 1930s—known as the Great Dustbowl—and the 1950s. But they were neither the longest droughts to afflict this country, nor the most severe.

According to an article published in the December 1998 Bulletin of the American Meteorological Society, Dr. Connie Woodhouse and Dr. Jonathan Overpeck conducted tree-ring reconstructions in the Southwest that suggest the lengths and severity of droughts of the 1930s and 50s have been equaled or, in some regions, surpassed by droughts in the past several centuries.

They further concluded that it is clear that major multi-year Great Plains droughts have occurred naturally once or twice a century over the last 400 years. And there is evidence that during the 13th and 16th centuries, there were two megadroughts that exceeded the severity, length and spatial extent of 20th century droughts.

Of course, this study was published before the onset of the most recent 5-year drought in the Southwest. More recent studies published just last year, however, confirm its findings. In a 2003 article in Geophysical Research Letters, Dr. Stephen Gray and his colleagues stated that:

> like the 1950s drought, the late 16th century megadrought was followed by a wet period, and both events were associated with intense La Nina episodes typical of southwestern U.S. and Great Plains droughts.

In an article in the July 2003 issue of the American Meteorological Society, Dr. Falko Fye and his colleagues found that:

> There appear to have been at least 12 droughts since 1500AD that were analogous to the 1950s drought in terms of location, intensity, and duration. . . . [and] the 16th century megadrought lasted some 18 years and the tree-ring data indicate it was the most severe sustained drought to impact North America in the past 500 to perhaps 1000 years.

What is also worth noting is that the global temperature record doesn't provide any useful information concerning drought conditions.

In the wake of this year's successive hurricanes hitting Southeast and Gulf States, some have even had the gall to claim it is due to global warming. Credible meteorologists have been quick to dismiss such claims. As Hugh Willoughby, senior scientist at the International Hurricane Research Center of Florida International University stated in the plain language we non-scientists can understand:

> This isn't a global-warming sort of thing. . . . It's a natural cycle.

Benjamin Preston, senior research fellow at the Pew Center on Global Climate Change—a green activist organization that promotes the global warming theory echoed his sentiments, saying about the link between hurricanes and global warming:

The general consensus is that it's unlikely. . . . We can actually explain an active hurricane season using natural variability.

If even the Pew Center has said that, it seems pretty obvious that the activists and writers who have been quick to implicate global warming should be dismissed as the opportunists they are. Weather simply changes. In the words of Professor Perry Samson, associate chair of the Department of the Atmospheric, Oceanic, and Space Sciences at the University of Michigan:

Abnormal weather is normal.

When it comes to the argument that hurricanes are getting worse, it is typical to hear statistics about increasing costs due to hurricane damage. Of course, we can expect monetary damage from hurricanes to increase in the future, ''not as a result of anthropogenic climate change, but from natural climate cycles, and . . . increasingly expensive properties along the coast.''

These are not my words, but of a top U.S. Government scientist named Dr. Christopher Landsea.

Science simply doesn't support the claims that there is a link between hurricanes and global warming. A team led by the National Oceanic and Atmospheric Administration's Dr. Landsea concluded that the relationship of global temperatures to the number of intense landfalling hurricanes is either not present, or is very weak. In fact, if we examine hurricane records for which we have good data going back to the 1800s, there is much evidence supporting the conclusion that we have had more hurricane activity historically than in the last few decades, so an increase the last several years should perhaps be expected as part of natural variability. The overall number of hurricanes and the number of the strongest hurricanes fluctuated greatly during the last century, with a great number in the 1940s. In fact, through the last decade, the intensity of these storms has declined somewhat.

Hopefully, we can finally put to rest the unsubstantiated claim that global warming is leading to more severe and unpredictable weather. What is certain is that the drought record in the Southwest over the last 1,000 years and the hurricane record flatly refutes that claim.

Global warming advocates will often recite statistics that glaciers are in retreat. For instance, it is said that the number of glaciers in Glacier National Park has dwindled from 150 more than a century ago to about 35 today and that the part of the Arctic Ocean that remains frozen year-round has been shrinking.

But what do these examples really say about global warming? Scientists know very little about glacial activity, but what they do know suggests there are as many expanding glaciers as there are shrinking ones—this even happens with two glaciers within a few miles of each other—and that there is no universal trend either way. There are more than 160,000 glaciers on the planet. Scientists have good, long-term mass balance measurements on a comparative handful of them. So how can someone assert that glaciers are shrinking?

Dr. Roger Braithwaite last year looked at mass balance trends in 246 glaciers worldwide from 1946 to 1995. He found that ''there are several regions with highly negative mass balances in agreement with a public perception of ''the glaciers are melting,' but there are also regions with positive balances.'' This holds true even within continents. In Europe, ''Alpine glaciers are generally shrinking, Scandinavian glaciers are growing, and glaciers in the Caucasus are close to equilibrium for 1980–95.'' Globally, adding all the results together, ''there is no obvious common or global trend of increasing glacier melt in recent years.''

Indeed, the observed variability of Arctic sea ice thickness, which shows that the sea ice mass can change by up to 16 percent within one year, contrasts with the concept of a slowly dwindling ice pack, produced by global warming.

But if global warming is not the cause, what is? In 2002, work done by Dr. Greg Holloway and Dr. Tessa Sou, showed that the decadal-scale wind pattern changes were responsible for rearranging the ice, giving some regions thinner and others thicker amount of ice. Research by Dr. Ignatius Rigor in 2002 confirmed this, finding much of the so-called Arctic ice thinning is caused by decadal variations in wind patterns over the Arctic.

Alarmists also speak eloquently about Kilimanjaro, and like to show two pictures—one from the early 1990s with a modest snow cap on it, and another from 2000 showing the snow caps had shrunk.

Of course, those are just two pictures. Let me tell you about three. Yes, Kilimanjaro's snows were smaller in the late 90s than the 80s, but they were bigger in the 80s than in the 70s. In fact, the snows of Kilimanjaro in 1997 appear to resemble the snows of Kilimanjaro in 1976.

This makes a simple point. If you are given only partial facts, you can easily be misled into thinking you see something when in fact you are seeing a very different thing indeed. The pictures you have been shown are simply transient snows and are meaningless. To quote an April white paper from the Center for Science and Public Policy entitled The Consensus on Kilimanjaro is Wrong, ''though a photograph may be worth a thousand sound bytes, those words and photos do not go together.''

Of course, the real question is what does the issue of melting glaciers on Kilimanjaro have to do with man-induced global warming? Not much. On November 26, the New York Times had some interesting insights into Kilimanjaro and global warming. Here's what the Times had to say:

The glaciers on Kilimanjaro have been in retreat for at least a century, shrinking by 80 percent between 1912 and 2000. Although it is tempting to blame global warming, the most likely culprit is deforestation.

As explained in Nature's Science update, with forest present, the natural updraft from the slopes carried moist air to the summit and helped reinforce and sustain the ice cap. Without those forests, the updrafts are dry and fail to replenish the ravages of the sun on the summit ice cap. And since the equatorial sun is extremely hot, deforestation also means the updrafts are warmer than they were when Kilamanjaro's forests were abundant.

Conjuring up fears of global warming because of Kilimanjaro's glaciers—to my mind—represents exactly the kind of misuse of science that leads to increased misunderstanding instead of understanding. If the problem is deforestation and there is public will to fix the problem, fix it. Don't try to mislead people into thinking the problem is something else simply because that fits your agenda.

This is a point I have made repeatedly. I believe it is extremely important for the future of this country that the facts and the science get a fair hearing. Without proper knowledge and understanding, alarmists will scare the country into enacting its ultimate goal: making energy suppression, in the form of harmful mandatory restrictions on carbon dioxide and other greenhouse emissions, the official policy of the United States.

While the science underlying hysterical claims of catastrophic global warming is thin, the analyses showing the costs of capping our economy are not. Perhaps the most well known study examining the Kyoto Protocol came from Wharton Econometric Forecasing Associates, or WEFA. According to WEFA economists, Kyoto would cost 2.4 million American jobs and reduce GDP by 3.2 percent, or about $300 billion annually, an amount greater than the total annual expenditure on primary and secondary education.

It is hard to imagine such huge amounts, so I will put the findings in context. Because of Kyoto, American consumers would pay 11 percent more for food, 14 percent more for medicine, and 7 percent more for housing. Electricity prices would nearly double and gasoline prices would go up an additional 65 cents per gallon.

New studies that have come out since my last speech on global warming examining the consequences of unilaterally putting a cap on the economy through carbon restrictions are also revealing. Using perhaps the most sophisticated model to assess the issue—what is known as a dynamic model that incorporates future changes in behavior—the renowned economic forecasting firm of Charles River Associates has concluded that under the McCain-Lieberman bill, S. 139, economic growth would slow.

The Nation would lose up to a quarter million jobs by 2010, increasing to

up to 610,000 jobs by 2020. Energy-intensive industries would be the hardest sector hit. Natural gas prices would increase by up to 82 percent, driving thousands of companies overseas, as we have already seen happen to fertilizer manufacturers, who cannot afford to make their product at even today's natural gas prices. Production from these energy-intensive industries alone would decline annually by up to $160 billion.

The bill would hit specific state economies harder. For instance, Ohio and West Virginia, both with economies that rely on coal production, would see their industries decimated, with production decreasing by as much as 73 percent.

Average households in the United States would incur a financial cost up to $1,300 in the year 2010, with the annual cost rising up to $2,300 by 2020. Families' direct costs in the form of higher electricity and gasoline prices would increase dramatically. Within 6 years, residential electricity prices would rise by up to 30 percent, dramatically increasing families' monthly electricity bills. By 2020, those prices would rise by up to 43 percent due to carbon restrictions.

Regardless of which study one looks at, gasoline price increases will be substantial. According to the Energy Information Administration, gas prices will increase by 27 percent, or 40 cents. The more sophisticated Charles River Associates assessment puts the cost even higher, with gasoline prices increasing by up to 50 cents.

Of course, for many wealthier people, these may seem like trivial costs. Rich people don't think about their electric bills or the cost of gasoline at the pump. But average Americans do. And the elderly living on fixed income, and the poor, pay attention to these costs even more. What is worse, these costs are regressive, which means that poor people will bear a bigger burden because they spend a larger share of their income on energy, such as gasoline and electricity. When the costs go up, they must give up something else important to them.

And what do we buy for costs?

As even James Hansen, the NASA scientist who popularized the global warming theory, admits, it would take massive reductions in carbon emissions to have any appreciable impact on climate change. And, of course, his views are based on the assumption it even exists. Calculating what affect implementing the Kyoto Protocol would have, Martin Parry and other researchers concluded in Nature that Kyoto would only reduce global surface temperatures by 0.06 Celsius by 2050. Coming to a nearly identical conclusion, U.S. Global Change Research Program researcher Tom Wigley estimated in Geophysical Research Letters that implementing the Kyoto Protocol would reduce global surface temperatures by 0.07 Celsius by 2050. The temperature differences within this room exceed such a minuscule amount.

Despite these studies which increasingly suggest that precipitous action to combat global warming is unjustified, alarmists often trot out a concept known as the precautionary principle—which is that it is better to be safe than sorry. But they misunderstand or at least, misapply this concept. From all I have learned about the subject of global warming, I believe that the safest course is to reject the hypothetical claims of those who fear planetary doom is around the corner and are willing to doom the economy to avert it. The science of global warming is uncertain, the costs of capping our economy with carbon restriction are high, and even if the doomsayers were correct, it would do little to nothing to reduce the temperature increases.

But there is more to the story. Taking precipitous action will actually do more harm than good.

A 2003 study by Indur Goklany of the Department of Interior examined this question in some depth. In the study, which did not challenge the validity of global warming's existence and its consequences in its assumptions, Goklany examined the benefits and opportunity costs of taking action to mitigate global warming. In essence, the study examined whether humanity would be better off if we tried to avert or otherwise mitigate global warming or whether humanity would better off adapting to it.

What the study concluded was remarkable. Even if global warming were real, money spent to combat global warming would do comparatively little—as a percentage of the problem to reduce the afflictions of hunger, malaria, and water shortages versus if no action were taken at all. Yet it went farther—it then examined the benefits of diverting the money spent on global warming and using the monies to directly fight these afflictions through such activities as agricultural research and development and investments in treatment and prevention in combating malaria. The final results? Fewer people would go hungry, fewer would suffer from malaria, and fewer would lack access to adequate supplies of water if we simply adapted rather than attempted to combat global warming. And at far less cost, meaning those resources can be invested productively.

So rationing our energy supply would make the world not safe, but sorry. And that is assuming global warming is happening. How much sorrier will we be if it isn't?

British Prime Minister Tony Blair's goal of serious investment in public health and infrastructure for energy and water, and delivering real progress on African development is in conflict with his aims on global warming. His Science Advisor, Sir David King, has stated that choices won't have to be made as to how to spend resources. But that flies in the face of basic economics. If resources are spent in one way, they are not available to be spent another. In short, even a wealthy future world will have constraints on the resources it can devote to disease and other problems. How much more will those constraints be in a poorer world.

The point is clear. Back in the earlier part of the last century, when Asia was far poorer than it is today, deaths from climate events were far higher than now, when the region is wealthier. And let's look at the hurricanes from this hurricane season. Unfortunately, 100 Americans died during four naturally occurring hurricanes to hit land. But compare the fate of this wealthy country to that of Haiti, where in that small, terribly poor country 2,000 people died and 300,000 become homeless from a single hurricane—Hurricane Jeanne.

It is not simply common sense, its backed up by data. Capping carbon will cap the economy. There is an incredibly strong relationship between a country's GDP growth rate and its carbon dioxide growth rate. Because carbon is synonymous with economic activity. While we can and should increase our energy efficiency because its good business, we must realize that we are tied to carbon.

Fossil fuel is the energy base of this country. And while some may claim we can simply and easily move to a noncarbon based society, they are not being honest. We have an enormous infrastructure reliant on fossil energy that will be with us for many, many decades to come. And for those few alternatives that could replace older units such as building wind-farms off Nantucket or building new dams or new nuclear plants, green activists bring efforts to a grinding halt. As the chart shows, technology will not quickly restructure our energy infrastructure.

Unfortunately, despite the many studies, facts and figures I have shared with you today demonstrating that the science does not support catastrophic global warming claims, well-designed, reproducible studies are not the driving force behind today's climate science debate. Rather, ideology is.

This point was made by Dr. Richard Lindzen in regards to his contributions to the preparation of the United Nations IPCC report. Lindzen stated:

> I personally witnessed coauthors forced to assert their 'green' credentials in defense of their statements.

But Lindzen's words are tame compared to those spoken earlier this year in Russia. At a press conference on global warming and the Kyoto Protocol, Russian Presidential Economic Advisor Andrei Illarionov made some comments about ideology that are nothing short of remarkable. Let me share with you what he says is driving the global warming debate. Illarionov stated:

> There have been examples in our fairly recent history of how a considerable portion of Europe was flooded with the brown Nazi ideology, the red Commie ideology that caused severe casualties and consequences for Europe and the entire world. Now there is a big

likelihood that a considerable part of Europe has been flooded with another type, another color of ideology—[and he is speaking of global warming here—again, another type, another color of ideology]—but with very similar implications for European societies and human societies the world over.

He also said that imposition of the Kyoto Protocol ''would deal a powerful blow on the whole humanity similar to the one humanity experienced when Nazism and communism flourished.''

And that was the chief economic advisor to Russian President Putin. The world has certainly turned on its head that we Americans must look to Russians for speaking out strongly against irrational authoritarian ideologies. Putin's economic advisor's words are underscored by the conclusion of the Russian Academy of Science which this last May concluded that there is a high degree of uncertainty that global warming is caused by anthropogenic factors, that the Kyoto Protocol does not have a scientific basis and it would not be effective in achieving the IPCC's aims.

And while the Russia legislature may well indeed ratify the Kyoto Protocol, Illarionov has stated that it would occur for political considerations, not scientific or economic. Last May, it was reported that the European Union had promised to help Russia enter the World Trade Organization and would smooth over WTO requirements in exchange for signing the Kyoto Protocol. Additionally, there is speculation within Russia that the Kyoto Protocol will fail of its own weight since only two European countries will meet their carbon emission targets. So, clearly, Russia is playing politics with the issue for its purposes just as others have for their own.

That much of this debate is about world governance and not science is not news. At the Hague in November 2002, French President Jacques Chirac stated that Kyoto represents ''the first component of an authentic global governance.''

Those are his words, not my characterization of his words.

To summarize my remarks today, it makes no sense to take action on climate change when the costs are so profound and the benefits are non-existent.

Last year, I spent two hours addressing the Senate about the state of science regarding the global warming debate. And today, I have spent another two hours providing the latest, most up-to-date information on the science about global warming—or more to the point—the lack of credible science supporting it.

I have been told many times that the science is irrelevant—that we have moved beyond the science, and that we must now concentrate on what to do to stop global warming from happening. I, for one, would hope that we never abandon the science. Those who are afraid of the newest and best science are usually the same people who are afraid that the more the public actually knows, the more it will interfere with their grand geopolitical plans to ration America's energy.

I believe we should be held accountable for the actions we take, and not bet the American economy on something unless it is firmly rooted in science, and our actions can have some beneficial effect. Global warming ideology has no place in policy debates regarding scientific issues. Credible, reproducible studies should be our gold standard—our minimum standard. By that standard, carbon restrictions fail the test.

Unfortunately, we are in a political season and some legislators believe that they can score political points with this issue. Last year, when Senator JOHN KERRY was focusing on the liberal base in his primary, he criticized President George Bush on his campaign website for rejecting the global warming treaty, stating:

Dropping out of international implementation of the Kyoto Protocol was foolhardy then, and it is even more obviously foolhardy today.

But now that JOHN KERRY is trying to be more mainstream he has removed that statement from his website and replaced it with the following:

John Kerry and John Edwards believe that the Kyoto Protocol is not the answer. The near-term emission reductions it would require of the United States are infeasible, while the long-term obligations imposed on all nations are too little to solve the problem.

Yet in the September 30 presidential debate, he criticized President Bush when he said:

You don't help yourself with other nations when you turn away from the global warming treaty, for instance, or when you refuse to deal at length with the United Nations.

I am trying to figure out what he means by those statements.

And unless he is simply doing another of his all-too-familiar flip-flops, I can only conclude that while he does not believe the Kyoto Protocol is the answer, he would support it anyway. If I lived in the Midwest, I would find his shifting stances worrisome.

I have laid out my case today for why capping our economy with carbon restrictions is wrong-headed and rash. And I believe that the future health of our great Nation and the world is too important to have an issue as vital as this one relegated to the status of a political football. My hope is that the legislators who have moved beyond the science will, once again, develop a healthy respect for what it has to say in guiding our actions.

ARIZONA WATER SETTLEMENTS ACT

Mr. KYL. Mr. President, the water users and providers of Arizona have waited a long time for this day. The Arizona Water Settlements Act, S. 437, is the product of 15 years of negotiation, litigation, and more negotiation. Virtually every major water user and provider in central Arizona has devoted itself to the passage of this bill. In fact, S. 437 would codify the largest water claims settlement in the history of Arizona. The three titles in this bill represent the tremendous efforts of literally hundreds of people in Arizona and here in Washington over a period of 15 years. Looking ahead, this bill could ultimately be nearly as important to Arizona's future as was the authorization of the Central Arizona Project, CAP, itself.

Since Arizona began receiving CAP water from the Colorado River, litigation has divided water users over how the CAP water should be allocated and exactly how much Arizona was required to repay the Federal Government. This bill will, among other things, codify the settlement reached between the United States and the Central Arizona Water Conservation District over the State's repayment obligation for costs incurred by the United States in constructing the Central Arizona Project. It will also resolve, once and for all, the allocation of all remaining CAP water. This final allocation will provide the stability necessary for State water authorities to plan for Arizona's future water needs. In addition, approximately 200,000 acre-feet of CAP water will be made available to settle various Indian water claims in the State. The bill would also authorize the use of the Lower Colorado River Basin Development Fund, which is funded solely from revenues paid by Arizona entities, to construct irrigation works necessary for tribes with congressionally approved water settlements to use CAP water.

Title II of this bill settles the water rights claims of the Gila River Indian Community. It allocates nearly 100,000 acre-feet of CAP water to the community, and provides funds to subsidize the costs of delivering CAP water and to construct the facilities necessary to allow the community to fully utilize the water allocated to it in this settlement. Title III provides for long-needed amendments to the 1982 Southern Arizona Water Settlement Act for the Tohono O'odham Nation, which has never been fully implemented. Title IV creates a placeholder for a future settlement on the Gila River for the San Carlos Apache Tribe and reiterates the fact that titles I, II, and III do not affect the water rights claims of the San Carlos Apache Tribe or the claims of the United States on their behalf.

For the San Carlos Apache Tribe and other Indian communities in Arizona that have not yet settled their water rights claims, this bill offers hope for the future. This bill creates a fund for future Indian water settlements in Arizona. In addition, through this legislation, 67,300 acre-feet of CAP water will be set aside for future Indian water rights settlements. The water needs of each Indian tribe in Arizona are particular to that individual tribe. Likewise, the contours of each Indian water rights settlement must be tailored to

the needs of the tribe and the local communities that surround it. Through this bill we give those tribes, the Secretary of the Interior, and future Congresses a framework of water and funding that can be customized to meet the needs of each settlement.

For now, this bill will allow Arizona cities to plan for the future, knowing how much water they can count on. The Indian tribes will finally get ''wet'' water—as opposed to the paper claims to water they have now—and projects to use the water. In addition, mining companies, farmers, and irrigation delivery districts can continue to receive water without the fear that they will be stopped by Indian litigation.

All final issues between the parties or the United States have been resolved. In particular, the states of Arizona and New Mexico have negotiated the best way to address New Mexico's right under the 1968 Boulder Canyon Project Act, authorizing the CAP, to exchange CAP water on the Gila River.

In summary, this bill is vital to the citizens of Arizona and will provide the certainty needed to move forward with water use decisions. Furthermore, the United States can avoid litigating water rights and damage claims and satisfy its trust responsibilities to the Tribes. The parties have worked many years to reach consensus rather than litigate, and I believe this bill represents the best opportunity to achieve a fair result for all the people of Arizona.

U.S. POLICY IN IRAQ

Mr. LEVIN. Mr. President, this evening on the campus of Michigan State University in Lansing I will be speaking on U.S. policy in Iraq.

My conclusion is that just as it took a new administration to extract the United States from Vietnam, it will take a new administration to extract us from Iraq in a way which leaves that country stable and democratic. We cannot leave Iraq as we did Vietnam.

Nor can we just continue a western occupation of a Muslim nation that is the target and magnet for violence and terror, and that has become more destabilizing than stabilizing. We must change course in Iraq—or else Iraq's future is not likely to be stability and democracy, and the legacy to the world of the Iraq war is likely to be greater turmoil and terror.

I ask unanimous consent that the remarks I will be making this evening be included in full at this point in the RECORD.

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

''IRAQ: WHAT NEXT?''

Good evening. I am delighted to be here with you to discuss where we are and where I think we need to go in Iraq.

This is going to be a pretty sober discussion, because I agree with what Republican Senator CHUCK HAGEL said recently: ''We're in deep trouble in Iraq.'' Although President Bush continues to say that things are going well in Iraq, even Secretary of State Colin Powell acknowledged recently that the situation is ''getting worse.''

And it is. American soldiers and Marines face an ever strengthening insurgency that puts our troops, the Iraqi people and a stable Iraq at increasing risk. Our troops continue to die and suffer wounds at increasing rates. American and other contractors are being taken hostage and brutally murdered.

The lack of security is having a profound effect on reconstruction and on the effort to establish a stable Iraqi government. We are paying the price for a failed strategy that included rosy pre-war assumptions and a rush to war without first allowing United Nations weapons inspectors to complete their work and without first building a credible and effective international coalition, including Muslim countries, as President Bush's father did in the first Gulf War. This was compounded by the failure to plan for the post-war period and the major mistake of abolishing the Iraqi army rather than using it to help provide security after the cessation of major combat operations.

President Bush said recently that ''It's hard to help a country go from tyranny to elections to peace when there are a handful of people who are willing to kill in order to stop the process...'' Only a handful of people willing to kill? That's not facing reality—that's ignoring reality.

Late last month, the Washington Post, quoting figures released by Iraq's Health Ministry and the Pentagon, reported that attacks over the previous two weeks had killed more than 250 Iraqis and 29 U.S. military personnel. Further, a sampling of daily reports produced for the U.S. Agency for International Development shows that such attacks now typically number about 70 each day, in contrast to the 40 to 50 a day during the weeks prior to the transfer of sovereignty from the Coalition Provisional Authority to the Iraqi Interim Government. Those reports also indicate that the attacks are wide-spread, with a majority occurring outside the three provinces that have been the principal locations for insurgent violence.

The security situation has deteriorated to the point that there are cities and towns in Iraq where the U.S. and Coalition forces do not go. In the absence of a presence on the ground in places like Fallujah, which has been taken over by insurgents, the U.S. military has resorted to air power to strike safe houses and other places where intelligence indicates the insurgents are located. These attacks have caused death and injuries to innocent Iraqi civilians, and an even greater lack of support for the U.S. presence in Iraq and for the Interim Iraqi Government which supports and relies upon our presence. Assassinations, kidnapings, and beheadings are becoming more frequent. The result is that Iraqis who would like to cooperate with us are deterred from doing so, and we are denied the intelligence that we need to fight the insurgency.

The President may say things are going well in Iraq, but the U.S. Intelligence Community has a different view. The July 2004 National Intelligence Estimate on Iraq reportedly sets out three possible scenarios for Iraq. The worst case was developments that could lead to civil war, and the best case was that the security environment would remain tenuous. This pessimistic National Intelligence Estimate bears out the analysis of former president George Bush in his 1998 book A World Transformed concerning the question of whether to march to Baghdad during the 1991 Gulf War. He wrote that ''To occupy Iraq would instantly shatter our coalition, turning the whole Arab world against us. . . It would have taken us way beyond the imprimatur of international law bestowed by the resolution of the Security Council. . .'' He wrote further that doing so would also commit our soldiers to an ''urban guerilla war'' and ''plunge that part of the world into even greater instability and destroy the credibility we were working so hard to reestablish.''

Sound familiar?

The President recently dismissed that pessimistic July 2004 analysis of the Intelligence Community, saying ''they were just guessing as to what the conditions might be like.'' Conservative columnist Robert Novak wrote that ''for President Bush to publicly write off a CIA paper as just guessing is without precedent.'' Publicly stating so might be unprecedented, but it appears that this is not the first time the President has actually dismissed CIA warnings. According to the New York Times recently, ''two classified reports prepared for President Bush in January 2003 by the National Intelligence Council, an independent group that advises the director of central intelligence . . . predicted that an American-led invasion of Iraq . . . would result in a deeply divided Iraqi society prone to violent internal conflict.''

The Administration disregarded that warning, insisting that an American invasion would be welcomed by the Iraqis with open arms. The violent bottom line is that when we attacked Iraq, we blew the lid off the boiling Iraqi pot without a plan to keep the contents from boiling over.

General Franks, the former Commander in Chief of U.S. Central Command, told Senator John Warner and me that he had been told to focus on the combat phase of the war plan and to leave the planning for the stability phase, the aftermath, to the Pentagon's civilian leadership. Then that leadership failed to ensure an adequate number of troops were committed to provide for security, prevent looting, and nip the resulting insurgency in the bud. Back in April of 2003 at the height of the looting in Iraq, Defense Secretary Rumsfeld dismissed newspaper reports of chaos, violence and unrest in Iraq by saying ''it was just Henny Penny—the sky is falling.'' Eighteen months later, it is still falling.

These failures to adequately plan for the post-combat stability phase and to ensure that adequate numbers of troops were on-hand were compounded by the Administration's disastrous decision to disband the Iraqi Army, thereby forcing the U.S. military to begin from scratch to build a new Iraqi security force, and throwing thousands of trained Iraqi military men into the ranks of the unemployed and many into the arms of the insurgency's recruiters.

It is difficult to discern a strategy that is being followed for Iraq today. Marine Lieutenant General Jim Conway, then Marine Corps commander in Iraq, publically criticized the conflicting orders he received with respect to Fallujah—first the initial order to go in and remove the insurgents, which went against the Marine Corps' strategy of engagement with the civilian population; and then the subsequent order to withdraw, after the Marines had only partly secured the city and after the loss of Marines. Once the orders were reversed, the Marines were withdrawn and control of the city was turned over to a local security force which quickly lost control to the insurgents.

The chaos in Iraq puts the Iraqi elections scheduled for next January at great risk. The UN Special Representative for Iraq, Ashraf Qazi, reported to the Security Council on September 14 that the ''vicious cycle of violence'' and the lack of security was undermining the world body's efforts to assist in elections set for January. UN Secretary

General Kofi Annan told me last week that the United Nations had supervised many elections in the past, but never one in a war zone like Iraq. He is concerned that the lack of security and the tight time-table will be major impediments to a successful election.

This is compounded by the fact that the Administration has so far been unable to convince any country to provide troops needed to protect the UN presence in Iraq. According to Secretary General Annan, they will be unlikely to do so and the UN will have to depend on the United States and British forces now in Iraq to provide that security. That will mean about 5,000 troops being diverted from fighting the insurgency to protecting the UN presence. Secretary General Annan told me that an American general committed to do that.

This failure to convince any other nations to contribute to a UN security force is a direct consequence of the Administration's alienation of large portions of the world community by its go-it-alone approach to the war in the first place.

The unfortunate result is that a scant four months before nation-wide elections in Iraq, there are only 35 UN staff members in Iraq—far short of the 200 required to support the U.N. staff so essential to a credible election. Just as troubling, virtually none of the 120,000 Iraqis needed to run the 20,000 to 30,000 polling places have been identified and trained for the task.

In the upcoming election, seats in the 275–member National Assembly will be allocated based upon a percentage of overall votes received throughout Iraq. The Secretary General told us that it is not possible to have a credible election in Iraq if parts of the country are not able to participate because of an on-going insurgency. Apparently Secretary of Defense Rumsfeld does not share that concern. In recent testimony before the Senate Armed Services Committee he said, ''Let's say you tried to have an election and you could have it in three-quarters or four-fifths of the country. But in some places you couldn't because the violence was too great . . . Well, so be it. Nothing's perfect in life, so you have an election that's not quite perfect. Is it better than not having an election? You bet.''

Well, maybe it is not better than not having an election—in fact, it very well might be worse. How would people in Lansing, Detroit and Traverse City feel about the legitimacy of a state-wide election for Governor that they couldn't vote in? A single district election in which large numbers of Iraqis are unable to participate is not likely to move Iraq forward toward a stable political system but toward civil war because it would further alienate a significant portion of the population from the Iraqi government.

The first step in dealing with the problems in Iraq is to face reality. If we insist things are going fine, or if we pretend, as the President incredibly enough put it, that we are dealing with just a ''handful of people who are willing to kill,'' we will be less willing to search for ways to change the negative dynamic and downward spiral which have been unleashed in Iraq. And we will be less willing to search for ways to motivate Iraqi factions' leaders and Islamic countries to become more involved in and be willing to take the risks necessary to build a democratic nation in Iraq. Surely, unless Iraqis want a democratic nation for themselves as much as we want it for them—unless they suppress the violent ones inside their own communities and the terrorists who want to prevent the election in January from happening—our presence will continue to be more destabilizing than stabilizing.

In a recent interview, President Musharraf of Pakistan was asked whether the world is a safer place because of the war in Iraq. He replied, ''No. It's more dangerous. It's not safer, certainly not.'' President Musharraf continued, ''I would say that [the war] has ended up bringing more trouble to the world.'' President Musharraf concluded that the war in Iraq has ''complicated'' the war on terror and ''has made the job more difficult.'' The leader of a pivotal Muslim nation and one of America's key allies in the fight against al Qaeda has concluded that the Iraq war has made the world more dangerous and complicated the overall war on terror.

On September 12, 2001, the day after the 9/11 attack upon us, headlines in European newspapers proclaimed ''We are all Americans.'' The world community united behind America in the effort to destroy al Qaeda and remove the Taliban regime in Afghanistan that supported it. But the President's unilateralist policies and cocky ''bring 'em on'' rhetoric squandered that good will and undermined that spirit of cooperation by terminating UN inspections and invading Iraq without any Islamic nations' support—thereby diverting the focus from the real terrorist threat of Osama bin Laden and al Qaeda in Afghanistan. The western invasion and occupation of an Islamic country has swelled the ranks of terrorists.

We would be compounding that strategic blunder by leaving Iraq as an unstable, failed state dominated by Islamist extremists and a haven and breeding ground for even more terrorists. To succeed we must be willing to change direction to seek an alternative third path to the two stark choices the President offers—of staying the course or cutting and running.

The alternative is to change our course with an Administration that sees the reality on the ground; that is open to new approaches and isn't locked in to a course of action that isn't working; and that hasn't dismantled bridges to the international community, particularly Islamic countries, whose support we need.

President Bush is incapable of rebuilding the bridges to the international community which he dismantled. A poll by a Canadian company found that only 20% of the people in the countries surveyed overseas support President Bush's policies.

Loss of public support in other countries isn't simply a matter of losing a popularity contest—it is a direct threat to our security. The leaders of those countries are far less likely to take the political risks that are entailed in joining us in Iraq with troops or police if their publics strongly oppose their doing so and strongly disagree with the policies of the American administration. Listen to what the Director of the Defense Intelligence Agency, Admiral Lowell Jacoby, told the Senate Armed Services Committee about how America is viewed in the world:

''Much of the world is increasingly apprehensive about U.S. power and influence. Many are concerned about the expansion, consolidation, and dominance of American values, ideals, culture, and institutions . . . . We should consider that these perceptions mixed with angst over perceived 'U.S. unilateralism' will give rise to significant anti-American behavior.''

So what should we do in Iraq?

We need an Administration which can rebuild those bridges to the international community, so we can ''de-Americanize'' this conflict and move towards a stable and democratic Iraq. To do that, we need additional international troops, particularly from Muslim nations, which this Administration has proven incapable of obtaining.

We also need to train and equip Iraqi troops more quickly and more throughly than we are currently doing. It is particularly critical to provide these Iraqi troops far more quickly with the equipment that will instill in them a confidence in their abilities to defeat insurgents.

Creating a secure environment is not only a military task, but a political one as well. We must make it clear to all segments of Iraqi society that the U.S. has no design on Iraqi oil or other resources and has no intention of creating a long-term base structure or military presence in Iraq.

The reconstruction effort must be brought back on track. According to a recent report by the Center for Strategic and International Studies, ''The lack of sufficient electricity in major cities continues to undermine public confidence, fueling worrisome discontent in cities like Fallujah and Mosul, which were favored under Saddam and now receive considerably less power than in prewar days. Sewage systems are worse that they were under Saddam, causing spillover health and environmental problems.''

Eleven months after Congress approved the money, only 6% of the $18.4 billion for Iraq reconstruction has been spent. And recently the Administration asked Congress for permission to transfer nearly $3.5 billion from Iraqi water, sewer and electricity projects to security and electoral efforts. Unfortunately this needs to be done, but it is another example of how the failure to properly plan for the post-combat stability phase and the failure to ensure the necessary troop levels to ensure security has hampered reconstruction and the creation of a stable Iraq.

The Republican Chairman of the Foreign Relations Committee, Senator DICK LUGAR, recently blamed the mismanagement of the whole Iraq reconstruction effort on ''incompetence in the administration''. The focus of the reconstruction effort must be shifted from large projects awarded to U.S. and other foreign companies to those that will employ the greatest number of Iraqis, giving Iraqi society at large an economic stake in the post-Saddam Iraq that will contribute to a politically stable state.

None of this will be easy. But we are where we are in Iraq. Just as it took a new administration to extract the United States from Vietnam, it will take a new administration to extract us from Iraq in a way which leaves that country stable and democratic. We cannot leave Iraq as we did Vietnam.

Nor can we just continue a western occupation of a Muslim nation that is the target and magnet for violence and terror, and that has become more destabilizing than stabilizing. We must change course in Iraq—or else Iraq's future is not likely to be stability and democracy, and the legacy to the world of the Iraq war is likely to be greater turmoil and terror.

JOHN F. KENNEDY CENTER REAUTHORIZATION ACT OF 2004

Mr. INHOFE. Mr. President, I rise in support of the passage of HR 5294—the ''John F. Kennedy Center Reauthorization Act of 2004.'' As Chairman of the Senate Committee with jurisdiction over the John F. Kennedy Center for the Performing Arts, I am pleased that, working closely with the Kennedy Center, we were able to reach an agreement with the House of Representatives. This legislation authorizes funding for the maintenance, repair and security, as well as capital projects through Fiscal Year 2007. Additionally, the legislation revises the John F. Kennedy Center Plaza Authorization Act of 2002 to direct the Secretary of Transportation to establish a Center Plaza

Project Team consisting of the Secretary, the Administrator of General Services, the Chairman of the Board of Trustees, or their designees, and other individuals the Project Team considers appropriate. The Board is required to consult with the Project Team on specified matters, including construction of buildings.

I wish to recognize Marty Hall and Andrew Wheeler of my Committee staff for their work on this legislation. I also wish thank Michael Kaiser, President of the Kennedy Center for his support for this bill. Mr. Kaiser has done an outstanding job of making the Kennedy Center a world class operation and center for the performing arts. Mr. Kaiser is responsible not only for the artistic programming, he is also the person charged with ensuring its financial health. By any measure, he has been very successful in both ventures. I would also like to express my appreciation to Kennedy Center staff, specifically Jared Barlage and Ann Stock, who have worked very closely with my staff in developing this legislation.

From its very beginnings, the Kennedy Center has represented a unique public/private partnership. Because the Center is the Nation's living memorial to President Kennedy, it receives federal funding each year to pay for maintenance and operation of the building, a federal facility. However, the Center's artistic programs and education and outreach initiatives are paid for almost entirely through ticket sales and gifts from individuals, corporations, and private foundations. I am pleased that we can send this legislation to President Bush and continue the good work of this valued institution.

THE IMMIGRATION PROVISIONS OF H.R. 10

Mr. KENNEDY. Mr. President, I have serious concerns about the direction our Republican colleagues in the House of Representatives have taken on the legislation to implement the recommendations of the 9/11 Commission. The House bill, H.R. 10, departs in significant and problematic ways from the Commission's specifically-tailored recommendations to protect our country against future terrorist attacks. The recommendations call for preventing terrorist travel, establishing an effective screening system to protect our borders, transportation systems, and other vital facilities, expediting full implementation of a biometric entry-exit screening system, establishing global border security standards by working with trusted allies, and standardizing identity documents and birth certificates.

Instead of adhering to these carefully considered measures, as the Senate has done, the House Republican leadership has included long-rejected, antiimmigrant proposals that have nothing to do with the Commission's recommendations. The House bill severely limits the rights of immigrants, asylum seekers, and victims of torture and fails to strengthen the security of our nation.

Among the worst provisions in the House bill are those which create insurmountable obstacles and burdens for asylum seekers, including many women and children, eliminate judicial review, including the constitutional writ of habeas corpus, for certain immigration orders, and which allow the deportation of individuals to countries where they are likely to be tortured, in violation of our international treaty obligations.

Many share my concerns with the House bill. The list of critics, lead by families of the 9/11 victims, is rapidly growing. A recent letter to House members, signed by more than two dozen family members of persons who died in the terrorist attacks, states that the immigration provisions are outside the scope of the Commission's recommendations and urges House members not to enact them. To underscore their concerns, the families state their ''strong collective position that legislation to implement the 9/11 Commission recommendations not be used in a politically divisive manner.''

Similarly, the chair of the 9/11 Commission, Thomas Kean, has said that the House immigration provisions ''which are controversial and are not part of our recommendations to make the American people safer perhaps ought to be part of another bill at another time.'' Likewise, the vice-chair, Lee Hamilton, warned that the inclusion of these ''controversial provisions at this late hour can harm our shared purpose of getting a good bill to the President before the 108th Congress adjourns.''

I am submitting for the record the letters of a broad spectrum of religious, immigrant, human rights, and civil liberties groups voicing their strong opposition to the immigration provisions in the House bill. These groups include the American-Arab Anti-Discrimination Committee, the American Civil Liberties Union, the American Immigration Lawyers Association, the American Jewish Committee, Amnesty International, the Arab-American Institute Center for Community Change, the Fair Immigration Reform Movement, Freedom House, the Hebrew Immigrant Aid Society, Human Rights First, Human Rights Watch, the Lutheran Immigration and Refugee Service, the National Asian Pacific American Legal Consortium, the National Council of La Raza, the National Immigration Forum, the RFK Memorial Center for Human Rights, the Service Employees International Union, the Tahirih Justice Center, the U.S. Catholic Bishop's Committee on Migration, World Relief, and the Women's Commission for Refugee Women and Children.

In these difficult times for our country, we know that the threat of terrorism has not ended. We have to keep doing all we can to see that our borders are protected and our immigration laws are enforced, and that law enforcement officials have the full support they need. But we must do so in ways that respect fundamental rights. Congress should not enact laws that ride rough-shod over basic rights in the name of national security. Immigrants are part of our heritage and history. We jeopardize our own fundamental values when we adopt harsh security tactics that trample the rights and liberties of immigrants. We must learn from the past, so that we do not continue to repeat these mistakes in the future.

This legislation is too important for it to be derailed by political pandering to anti-immigrant extremists. We need to pass this reform legislation, but we need to get it right. The American people expect, and deserve, better.

I ask unanimous consent to print the above-referenced letters in the RECORD.

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

AN OPEN LETTER

To: House of Representatives.
From: Family Members of 9–11 Victims.
Re: H.R. 10.

DEAR REPRESENTATIVES: We are family members of those who died in the tragedy of 9–11. While we have diverse political views on many issues, we write to you today in one voice to express our strong collective position that legislation to implement the 9–11 Commission recommendations not be used in a politically divisive manner. The discussion around these recommendations is extremely serious and important to 9–11 families across the political spectrum. We have heard the House Bill to implement the 9–11 Commission Recommendations (H.R. 10) also includes provisions to expand the USA Patriot Act and reform immigration law in ways not recommended by the commission.

We strongly urge you to take these provisions out of the bill, and not vote for any bill that contains them. These provisions are outside the scope of the Commission's recommendations, and this is neither the time nor place to consider controversial, unrelated issues. Those issues can be discussed at a later date and proposed in different legislation. Last week, members of the 9–11 Commission themselves (3 Republican and 3 Democrats) also called on House leaders to drop these provisions. The Chairman of the 9–11 Commission, Thomas Kean, said on September 30th: ''We're very respectfully suggesting that provisions which are controversial and are not part of our recommendations to make the American people safer perhaps ought to be part of another bill at another time.''

Please respect the seriousness of the discussions around the Commission Recommendations and immediately remove all unrelated provisions.

Yours Sincerely,

Colleen Kelly (Sister of William Kelly Jr.).

Adele Welty (Mother of Timothy Welty, FDNY, killed 9–11 in line of duty).

Laurette Poulos Simmons (Sister of Stephen Emanuel Poulos who died in the WTC).

Karen Shea (Niece of Steven Tighe).

Barry Amundson (Brother of Craig Amundson, killed at the Pentagon).

Kelly Campbell (Sister-in-law of Craig Amundson).

Wright and Meredith Salisbury (Father- and mother-in-law of Ted Hennessy, Jr., who was killed on 9/11).

John Leinung (Step-father of Paul Battaglia, WTC Tower 1, 100th floor).

Andrew Rice (Brother of David Rice).

Rita Lasar (Sister of Ephraim Lasar).

David Reynolds (Cousin of Scott M. Johnson, died on 9/11/2001—South Tower, 89th floor, WTC).

Alissa Rosenberg-Torres (Widow of Luis Eduardo Torres, North Tower).

David Potorti (Brother of Jim Potorti).

George Choriatis (Nephew of Theodoros Pigis, killed in the World Trade Center attacks).

Roberta Shea (Sister of Stephen Tighe, died in the WTC).

Terry Rockefeller (Sister of Laura Rockefeller).

Nissa Youngren (Daughter of Robert G. LeBlanc, United Flight 175).

J. William [Bill] Harris (Brother-in-law, Laura Rockefeller).

Logan Harris (Niece of Laura Rockefeller).

Maureen Donegan (Sister of William Kelly Jr.).

Jim and Barb Fyfe (Father and mother of Alicia Fyfe, flight attendant).

Andrea LeBlanc (Widow of Bob LeBlanc).

Loretta Filipov (Widow of Al Filipov).

SEPTEMBER 28, 2004.

DEAR REPRESENTATIVE: The undersigned organizations urge the House of Representatives during the debate and vote on H.R. 10 (the ''9/11 Recommendations Implementation Act'') and amendments to H.R. 10, to be faithful to the Commission's recommendations and its admonition that the 'border and immigration system of the United States must remain a visible manifestation of our belief in freedom, democracy, global economic growth, and the rule of law, yet serve equally well as a vital element of counterterrorism.''

As we seek to enhance our security, we must do so in ways that are effective and bring our nation together. If we do not rise to this challenge, legislation that is passed and signed into law could have the unintended consequences of hurting our security and making our immigration processes even more dysfunctional than they are today. Unfortunately, H.R. 10 was not crafted in a bipartisan manner and the House did not hold a sufficient number of hearings on the important issues this legislation raises. The bill also includes many provisions that we strongly oppose that go well beyond the scope of the Commission's recommendations. These provisions will distract our government from effectively enhancing our security and threaten to stall the passage of needed reforms. We urge you to oppose them:

Section 3005—Prohibition on Acceptance of the Consular Identification Card: This provision would prohibit federal employees from accepting consular identification cards. However, in a security-conscious environment, people who are here, whatever their status, must be able to prove their identity. Many cities, counties and law enforcement agencies accept consular identification cards as valid forms of identification.

Section 3006—Expedited Removal: This provision significantly expands the expedited removal regime and would subject all individuals who entered the U.S. without inspection to expedited removal unless they have been physically present in the U.S. for more than 5 years. Expedited removal currently has created significant due process concerns; this provision would magnify those concerns immeasurably.

Sections 3007, 3009 and 3033: These provisions encompass key aspects of the so-called ''Fairness in Immigration Litigation Act (H.R. 4406) that would further undermine the availability of basic due process protections for non-citizens by: prohibiting habeas corpus review of a variety of immigration decisions; raising the bar substantially for a grant of asylum; prohibiting federal courts from granting stays of deportation while a case is pending except in extraordinary cases; and authorizing the government to remove foreign nationals to countries that lack a functioning government so long as that country does not physically prevent the removal.

Section 3008—Revocation of Visas and Other Travel Documents: This provision makes individuals who enter the U.S. on a valid visa that is subsequently revoked by the State Department subject to removal. This provision would prohibit all administrative and judicial review of the revocation decision. Thus, an individual whose visa is revoked based on false information (or other errors) would be removable from the U.S. without the opportunity to challenge the basis for the removal.

Section 3053—Minimum Document Requirements and Issuance Standards for Federal Recognition: This provision bars Federal agencies from accepting driver's licenses or other ID cards issued by a state unless it satisfies certain requirements established by the Secretary of Homeland Security. These requirements include: verification by the issuing agency of the authenticity of documents prior to issuance of a driver's license or other ID; proof that the applicant possesses a social security account or that the person is not eligible for one; and confirmation by the SSA of the accuracy of the social security number presented. Not only would these requirements grind to a halt the issuance of driver's licenses throughout the country, they also would lead to a de facto immigration status requirement. Such a result would severely undermine the law enforcement utility of the Department of Motor Vehicle databases by discouraging individuals from applying for licenses.

Legislation that would enhance our security and our immigration system, and reinforce due process, civil liberties and privacy concerns needs to address the following:

1. Create a system that can deliver on its ''basic commitments.'' The Commission notes that an immigration system unable to deliver on ''basic commitments'' was one of the ''two systematic weaknesses'' that ''came together in our border system's inability to contribute to an effective defense against the 9/11 attacks.''.

2. Strengthen the U.S.'s intelligence capacity and create a multi-layered border with several tiers of protection to most effectively enhance security. The Commission report repeatedly underscores the need to enhance our intelligence capacity and develop layers of protection that keep targeted people from entering the U.S. to implement such a layered border, Congress and the Administration must, among other actions, direct more money to our consulates, ensure the accuracy of watchlists and create a process that allows the deletion of names that do not belong on such lists, mandate adequate and consistent training for those who implement immigration law, and ensure that ports-of-entry receive sufficient funding and are adequately staffed with well-trained officers with access to accurate, functioning, and interoperable databases. Another critical component to well-functioning borders and ports-of-entry is access to counsel to facilitate the flow of people and ensure that the government's broad powers to admit or bar noncitizens from entry are not used improperly.

3. Effective security measures must include rigorous civil liberties, due process, and privacy protections. In this context, Congress must not erode judicial review. These measure must reflect our nation's binding commitment to protect civil liberties, due process, and individual privacy. The Commission recognizes the need to reconcile ''security with liberty, since the success of one helps protect the other.'' While acknowledging the difficult challenge involved in preserving this balance, the Commission emphasizes the critical importance to get it right. The Commission also points out the importance of placing the burden of proof on the Executive for retaining governmental power.

4. Our nation needs an immigration system that shrinks the haystack by facilitating the entry of ''trusted travelers'' so we can better focus our resources on those who mean to do us harm. The 9/11 Commission recognizes the importance of facilitating travel so that resources can be focused on those who mean to do us harm. The Commission urges that the ''programs to speed known travelers'' be made a ''higher priority, permitting inspectors to focus on greater risks.'' In addition, because the U.S. cannot shrink the haystack, enhance our security, and secure our borders without reforming our immigration laws, it is vitally important to reform our laws by legalizing the status of those currently living and working in the U.S., reducing the long backlogs in family-based immigration, and creating break-the-mold worker programs that allow people to enter and leave the U.S. lawfully.

5. Measures designed to enhance our security must include provisions that mandate sufficient funding, an adequate number of well-trained officers, reasonable deadlines, accurate databases, technology that is up the task, and Congressional oversight of implementation, along with prioritizing initiatives. Our history is riddled with laws that do not take these factors into account. Congress also must engage in rigorous risk-based and cost-benefit analysis to ensure that agencies are guided by clear priorities and are not overwhelmed by a flood of unachievable mandates.

6. The United States must remain a nation that welcomes people to its shores. Immigration is in our national interest, and a system that works is essential to our national and economic security. Our immigration system needs to reflect the importance of reuniting families, fulfilling the needs of American business, maintaining America's economic security (which contributes to our nation's well-being and national security), protecting refugees and asylees to meet our moral and international obligations and, as the Commission underscores, helping to enhance our security. The U.S. is a nation of immigrants and immigration remains central to who we are and helps to explain our success as a people and a country.

Sincerely,

ACORN, American-Arab Anti-Discrimination Committee, American Immigration Lawyers Association, American Jewish Committee, Arab-American Institute, Center for Community Change, Fair Immigration Reform Movement, Hebrew Immigrant Aid Society (HIAS), Lutheran Immigration and Refugee Service, National Asian Pacific American Legal Consortium, National Council of La Raza, National Immigration Forum, Service Employees International Union (SEIU), AFL–CIO, CLC, Tahirih Justice Center.

SEPTEMBER 30, 2004.

DEAR REPRESENTATIVE: We strongly oppose a provision in H.R. 10 that would authorize the outsourcing of torture to brutal dictatorships like Syria, Saudi Arabia, and China.

Section 3032 of H.R. 10, the 9/11 Recommendations Implementation Act of 2004, would make it official U.S. policy to send or return individuals to countries where they

would be at grave risk of torture. This provision would violate U.S. law and policy, and it is completely inconsistent with decades of efforts by Republicans and Democrats alike to make America a world leader in the fight against torture and for human rights. Far from implementing the 9/11 Commission's recommendations, it directly contradicts the Commission's counsel that the United States should ''offer an example of moral leadership in the world, committed to treat people humanely, [and] abide by the rule of law.''

The legal prohibition on torture is absolute. Along with 135 other countries that have ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United States has committed itself to upholding this fundamental principle of human dignity. Just as governments cannot engage in torture directly, they cannot send people to places where they risk being tortured. The Convention against Torture states that ''no State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.''

Congress reiterated its commitment to upholding this obligation in 1998 when it passed section 2242 of the Foreign Affairs Reform and Restructuring Act, stating that ''[i]t shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.'' Section 3032 of H.R. 10 would violate that legal and moral obligation by permitting the U.S. government to turn over people to other countries even if it is 100 percent certain they will be tortured. This will have immediate and damaging consequences.

For example, the government of China has been demanding that the United States turn over to it a number of ethnic Uighur detainees held at Guantanamo Bay, Cuba. Because it believes the detainees would likely be tortured, the Bush Administration has rightly refused and is instead seeking other countries to accept them. If Congress were to approve this provision, there would be no legal bar to sending these detainees back to torture.

By contrast, in 2002 the U.S. government sent a transiting Canadian-Syrian national, Maher Arar, to Syria despite its systematic use of torture. Now safely back in Canada, Arar alleges he was severely tortured, including beatings with electrical cords, during his ten months in a Syrian prison. Such incidents undermine the credibility of U.S. efforts to promote human rights and democracy in the Arab world, which President Bush has identified as a key element in the Administration's long-term strategy to combat terrorism. If this provision is passed, such incidents will become more common, dealing a profound blow to America's moral authority in pursuing a vital goal.

In the wake of the Abu Ghraib scandal, President Bush and the Congress have gone to great pains to persuade the world that U.S. policy does not condone torture. If Congress enacts this legislation, it would make tolerance of torture official U.S. policy. We urge you to strike this provision from the bill and to reaffirm America's commitment to a world without torture.

Sincerely,

William Schulz, Amnesty International USA; Douglas A. Johnson, The Center for Victims of Torture; Jennifer Windsor, Freedom House; Elisa Massimino, Human Rights First; Kenneth Roth, Human Rights Watch; Scott Horton, International League for Human Rights; Ralston H. Deffenbaugh, Jr., Lutheran Immigration and Refuge Services; Robin Phillips, Minnesota Advocates for Human Rights; Loenard Rubenstein, Physicians for Human Rights; Todd Howland, RFK Memorial Center for Human Rights; R. Timothy Ziemer, Rear Admiral USN (Ret.), World Relief.

NATIONAL IMMIGRATION FORUM,
Washington, DC, October 5, 2004.

DEAR REPRESENTATIVE: We write to express concern about several provisions of H.R. 10 that, contrary to the recommendations of the bipartisan 9–11 Commission, broadly restrict the rights of immigrants while failing to enhance national security.

Like all Americans, the National Immigration Forum supports proposals to enhance domestic security and prevent acts of terrorism. We applaud the bipartisan 9–11 Commission's recommendations that effectively target terrorism and not immigrants. Similarly, the bipartisan Senate bill appears to capture these recommendations and is largely free of attacks on the newcomer community. Unfortunately, House leaders crafting H.R. 10 have decided to take a different tactic and play politics with this critical legislation.

Several immigration-related provisions of H.R. 10 are of grave concern. They focus on limiting immigrants' rights to due process and legal identification documents, measures which are not only un-American, but actually counterproductive to our goal of improving national security. Specifically, we are opposed to the following provisions of this legislation:

Subjecting an immigrant with less than five years' physical presence in the U.S. to an expedited deportation, without a hearing on her right to remain in the United States (3006).

Restricting states' right to permit all immigrant drivers to be legally licensed and insured (3052).

Barring federal acceptance of identity documents issued by foreign governments (other than passports), no matter how secure the documents are determined to be (3005).

Putting up new hurdles and pitfalls for asylum-seekers that purport to address terrorism concerns, but which are unnecessary, excessive, and in violation of international conventions (3006, 3007, 3031, 3032, 3033).

Further limiting immigrants' access to meaningful judicial review (picking up where the 1996 immigration laws left off), including the right to a simple challenge of their detention pursuant to the writ of habeas corpus (3006, 3008, 3009).

Expanding the instances in which individuals can be deported to countries with no functioning governments or where they are likely to be tortured (3032, 3033).

As the 9–11 Commission pointed out in its report, intelligence is the key to finding terrorists and shutting down their operations; broad-based immigration restriction measures that cast a wide net are ineffectual at best, and a waste of precious resources. The H.R. 10 immigration provisions outlined above fail on all counts: they don't enhance the government's ability to collect or analyze intelligence, to use intelligence in making law enforcement decisions, or to respond to or prevent terrorism. These provisions simply expand the federal government's authority to deport foreign nationals quickly and without proper judicial review, and push immigrants who want to play by the rules further underground. They have no place in this ''9–11 Commission recommendations bill,'' which is why distinguished members of the Commission, and even the White House, have called for the removal of several of these sections.

We urge members of the House of Representatives to strike these provisions from H.R. 10 and to pursue instead the well-reasoned recommendations of the 9–11 Commission.

Sincerely,

ANGELA KELLEY,
Deputy Director.

WOMEN'S COMMISSION FOR
REFUGEE WOMEN AND CHILDREN,
October 5, 2004.

Hon. DAVID DREIER,
Chair, Committee on Rules,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We are writing to you on behalf of the Women's Commission for Refugee Women and Children concerning several immigration-related provisions contained in H.R. 10, the ''9/11 Recommendations Implementation Act.'' While the Women's Commission understands the need to pass legislation addressing the findings and recommendations of the National Commission on Terrorist Attacks Upon the United States, we believe that several of the provisions in the proposed bill go beyond the scope of what the report called for and unnecessarily harm women and children asylum-seekers. Specifically, we are concerned with the following provisions:

Section 3006. Expedited Removal: We believe that this provision impacts women and children escaping persecution in a particularly harmful manner. The new provision provides no review process for those individuals expressing a fear of persecution if they have been in the United States for longer than one year. Refugee women and children who are escaping rape, female genital mutilation, honor killings, forced marriages, sexual slavery, trafficking, recruitment as child soldiers, and other forms of age and gender related persecution often face the most difficulty in presenting their cases. Due to the extremely sensitive and often painful nature of such claims and cultural barriers that inhibit women and children from expressing themselves and their needs, women and children often require significant time and counseling before they can articulate their claims, particularly in front of government officials.

Moreover, highly specialized skills are needed to interview women and children asylum seekers in a gender and age sensitive manner, and it is unlikely that front line immigration officials will have these skills. The result could be returning at-risk women and children to life-threatening situations.

Finally, children have traditionally been exempt from expedited removal in recognition of the vulnerabilities that their tender age creates. H.R. 10, however, would apply expedited removal regardless of age, thus subjecting children to a process that they cannot reasonably be expected to understand or appreciate. Even if protections are put in place for children, children may be improperly classified and treated as adults due to the lack of a scientifically sound method to determine age.

Section 3007. Preventing terrorists from obtaining asylum. This section in actuality is irrelevant to terrorism. Instead, it fundamentally alters the evidentiary standards for asylum claims and the burden of proof for asylum applicants.

This section would require an asylum seeker to establish that the central motivation for his or her persecutor's actions was one of the five protected grounds under the refugee definition. This change would be catastrophic for both women and children asylum-seekers. Even under current law, which

requires a finding of ''mixed motivation,'' many women and children asylum-seekers have a difficult time proving motive. Most gender and age related claims are based on persecution by a private rather than government actor. Often, the violence occurs in private settings. It is thus extremely difficult to prove that the perpetrator is motivated by the victim's age or gender.

Furthermore, the provision would require the applicant to provide corroborating evidence unless unreasonable to do so. The private nature of most gender and age related persecution makes it highly unlikely that such evidence will be available. Moreover, even if it exists, children in particular are unlikely to be able to produce it unless intensive legal assistance is provided; the reality is that more than one-half of children are unrepresented when presenting asylum claims.

This section would also allow an adjudicator to consider any statements made by asylum-seekers in determining credibility. Thus, if a woman or child discusses their persecution for the first time in front of an asylum officer or an immigration judge, their failure to discuss it in prior conversations with immigration officials could be considered proof of inconsistent statements. This requirement again fails to consider the extremely difficult nature of age and gender related claims. It is unrealistic to expect a woman or child claimant to articulate the embarrassing details of their abuse to immigration officials when they first arrive in the United States and are still fearful and confused. To later use this natural reticence against them is grossly unfair.

Furthermore, this section condones the evaluation of an applicant's demeanor in assessing credibility without clarifying that an applicant's behavior should be considered in the context of their culture. This framework completely discounts the complex psychological, social and cultural context of many women and children asylum-seekers.

Section 3033. Additional Removal Authorities. This section authorizes the removal of individuals to countries other than their country of origin. Deporting women and children to a third country may be extremely hazardous to their safety. Women often and children always are heavily dependent on family and community support to ensure their well-being.

Section 3082. Expanded pre-inspection at foreign airports. This provision would require the expansion of pre-inspection at foreign airports. Immigration officials charged with enforcing pre-inspection would not have sufficient training or expertise to determine whether a woman or child is fleeing persecution. Even if such training were provided, the lack of oversight of such officers and the absence of assistance for women and children are likely to result in many at-risk women and children being prevented from departing the country in which they are being persecuted.

Section 3083. Immigration Security Initiative. This provision mandates the posting of immigration officials at overseas airports to check documentation of individuals traveling to the United States. This provision may inadvertently lead to more trafficking in women and children. Asylum seekers who are desperate to leave countries in which they are experiencing persecution often resort to the assistance of outsiders, who may wish to exploit them through trafficking. The more difficult it is to travel without appropriate documents, the more such vulnerable refugees will resort to avenues that could result in their further persecution.

While we have limited our comments to those sections of H.R. 10 that we believe are particularly harmful to women and children, we stand with our colleagues in also opposing those other sections (for example, section 3032) that harm all people fleeing past and future harm. Women and children constitute both the majority of and the most vulnerable of the world's refugees. Regardless of the critical merits of fighting the war against terrorism, we cannot afford to relinquish our strong international leadership role in their protection, especially when these women and children present no harm to us.

Thank you for considering our concerns. Please do not hesitate to contact us if you would like to discuss any of these issues further.

Sincerely,

WENDY YOUNG,
Director of External Relations.

JOANNE KELSEY,
Senior Coordinator for Detention and Asylum.

ADDITIONAL STATEMENTS

TRIBUTE TO RETIRED COLONEL FRANK ROHRBOUGH, UNITED STATES AIR FORCE

• Mr. MCCAIN. Mr. President, today I honor a true leader and exceptional American. After a long and distinguished career of service to our Nation, COL Frank Rohrbough is retiring from his position as Deputy Director for Government Relations of the Military Officers Association of America, MOAA. On this occasion, it is fitting to recognize his 30 years of commissioned service as an Air Force officer and 13 years as one of the foremost health benefit advocates for the uniformed services community. Colonel Rohrbough's career illustrates a lifelong commitment of service to the nation and to preserving the welfare of uniformed members and their families.

In 1961, Frank Rohrbough graduated from the Reserve Officer Training Corps at Texas A&M University, earning his commission as a second lieutenant in the U.S. Air Force. Appointed to the Medical Service Corps, he served with distinction at all levels in the Air Force, from small community military medical treatment facilities to large regional hospitals. His distinguished career culminated with his appointment to the Air Force's top Medical Service Corps position—Chief of the Air Force Medical Service Corps and Assistant Surgeon General for Healthcare Support.

After retiring from the Air Force in 1991, Colonel Rohrbough joined the MOAA staff and served as principal advisor on health issues. In this position, he worked with the Armed Services Committees of both the House and the Senate, the Department of Defense, and numerous organizations and agencies to protect health care benefits for uniformed services beneficiaries. His personal efforts contributed significantly towards important legislation including lifetime health care and pharmacy coverage for Medicare-eligible beneficiaries and extending eligibility for the Federal Long Term Care Insurance Program to the entire military community.

Our Nation is grateful to Colonel Rohrbough for supporting members of the Armed Forces and their families, the Military Coalition, and all veterans, while serving in uniform and in private life. We offer him a sharp salute and wish him continued success and happiness in retirement.•

AMERICAN JOBS CREATION ACT OF 2004

• Ms. MIKULSKI. Mr. President, I rise today in support of the American Jobs Creation Act. This bill is known as the ''JOBS'' Act because it will bring American jobs home, it will protect American jobs here, and it will create more American jobs.

I have been fighting for a patriotic tax code that closes tax loopholes. This bill is not perfect. I have some yellow flashing lights about provisions that were stripped out in this conference report, particularly those affecting our workers right to overtime and our National Guard and Reservists.

Our middle class is hurting. They are worried about keeping their jobs, paying for health care, and sending their children to college. America is hemorrhaging jobs—2.7 million manufacturing jobs have disappeared since 2001. My State of Maryland has lost 21,000 manufacturing jobs since 2001.

Where are these jobs going? They are going overseas. They are going on a slow boat to China or on the fast track to Mexico. These jobs are headed to dial 1–800 anywhere.

Why are they going? These jobs are leaving because American companies are at a competitive disadvantage. Our American companies pay their workers a livable wage, pay their fair share of taxes, and provide health care and retirement benefits to their employees.

I think it is wrong to give companies incentives to send millions of jobs to other countries when millions of Americans are losing their jobs. It is wrong to put companies who stay in America at a competitive disadvantage. They are at a competitive disadvantage because they have their business here at home, because their workers are here at home, because they pay their fair share of taxes, and because they provide health care to their employees.

We should be rewarding these companies with good guy bonuses for hiring and building their businesses here in America. That is what I am fighting for in the U.S. Senate.

But, this bill is not perfect which is why I fought to improve this bill during the Senate debate. Senator DORGAN and I offered an amendment to end tax subsidies to U.S. companies that send plants and U.S. jobs overseas. Our amendment would have required U.S. companies that open foreign plants or move plants overseas then export those goods made abroad back to the U.S. to pay taxes on the profits from these operations. Our amendment said the U.S.

Tax Code can no longer be used to boost corporate rewards at the expense of American workers.

We should be rewarding our American companies who hire and build their businesses right here in the United States with good guy tax breaks. We should be giving good guy bonuses to American businesses that are providing health care to their workers and to their retirees.

I have fought to help make health insurance more affordable for self-employed individuals by allowing self-employed individuals to be able to fully deduct their health care premiums.

I fought to provide workers and retirees who have lost health insurance due to trade with a tax credit of 65 percent for health care premiums, and I am still fighting to provide small businesses with a 50 percent tax credit for the cost of health insurance premiums for their workers.

I am standing up for America by standing up for a strong economy right here at home. This bill would help American jobs in three ways. This bill will help reinvigorate the U.S. manufacturing sector by creating incentives to retain more U.S. manufacturing jobs here in the U.S. by lowering the cost of production. Next, this bill helps U.S. companies compete abroad by putting U.S. companies on a more equal footing with foreign competitors. Lastly, this bill will help put an end to the tariffs imposed by EU on U.S. exports by repealing the income tax preferences that have been ruled illegal by the World Trade Organization. If we don't pass this legislation, these tariffs would cost American businesses up to $4 billion per year. And that's not okay.

When I consider any tax proposal, I apply three criteria. Does it create jobs? Are the tax cuts targeted or temporary? Does the proposal increase structural deficit? The JOBS bill meets all my criteria. This bill would provide nearly $137 billion in new business tax cuts. There are four major sections of this bill: a new domestic manufacturing tax break; international tax simplification; small business provisions; and, shutting down tax shelters and closing tax shelters.

The JOBS bill would reduce taxes for many of our U.S based manufacturers, by reducing their overall tax rate by 3 percent. This would lower the cost of doing business in the U.S. for U.S. manufacturers, and would help U.S. manufacturers compete against low-cost manufacturing in other countries. The domestic manufacturing tax break is based on the amount of U.S.-based manufacturing profits. So companies can only get the tax break if they manufacture here at home. This bill also includes a very broad definition of manufacturing so it would help a broad range of companies.

This bill also helps American companies working abroad to be more competitive with about $42.6 billion in tax breaks to U.S.-based multinationals. This legislation simplifies international tax rules, eliminates many redundant and complicated tax provisions, and reduces the double taxation of foreign-earned profits for U.S.-based companies. If our American companies are strong at home and abroad, our American economy will be strong. And that's what I'm fighting for.

I know how important small businesses are to the health of the economy and to the communities that they serve. This legislation includes about $7.1 billion in tax breaks for small businesses in two important ways. First, this bill will provide tax breaks for restaurant owners and certain real estate developers so that they can write off the cost of improving their facilities faster, saving thousands of dollars. This legislation also extends the small business tax breaks from 2003 bill which allows small businesses to write off up to $100,000 for the purchase of new equipment. If we do not pass this legislation, our small businesses will only be able to write off $25,000 for investments in new equipment.

This legislation funds tax breaks for our good guys by shutting down the types of tax loopholes used by Enron, cracking down abusive shelters, closing tax loopholes for companies and individuals who hide assets in tax havens to avoid paying U.S. taxes, and ending certain leasing arrangements for public infrastructure projects. I don't believe that the American taxpayer should be subsidizing the Paris metro. I say let's keep those dollars here at home.

Though I am supporting today's bill, I also believe there are problems with it. I introduced an amendment with my colleague from Louisiana—Senator MARY LANDRIEU. Though this amendment passed unanimously in the Senate, it is nowhere to be found in this conference report. Senator LANDRIEU and I introduced an amendment that provides benefits to our good guy employers who pay their employees the difference between their National Guard salary and their civilian job. This important provision would have provided a 50 percent tax credit to employers who continue to pay their activated Guard and Reserve employees their civilian wages. This provision would also have provided a $6,000 tax credit to help small business owners hire temporary workers and provided a $10,000 tax credit for small manufacturers to hire temporary workers when their National Guard employees have been deployed. I wish that these provisions were included in the bill that we passed today.

Our National Guardsmen are often our first responders. They are our policemen and firemen in times of crisis. They are ''Our Active Duty Americans''—on duty in times of peace and war. When our National Guardsmen and women are sent to Iraq, Afghanistan, or called to protect our critical military installations here in the U.S., they shouldn't have to worry about paying their bills here at home. It's just wrong that this provision was not included in the final JOBS bill.

I am happy that we were able to reach a compromise and pass a bill, H.R. 1779, which would provide a 50 percent tax credit to small businesses who continue to pay their activated Guard and Reserve employees their civilian wages, and provide a $6,000 tax credit to help small business owners hire temporary workers. But, the bill we passed today leaves out our First Responders. It also leaves out the extra help for our manufacturers. Now that we have done our job here in the Senate, we have to hope that the House takes action on this bill when we return. Well, we all know what that means. I am going to continue to fight for this provision when we come back. I am also going to fight to do the same thing for our federal government employees with the Durbin-Mikulski Pay Security Act.

I have another problem with the legislation we are discussing today. I am so disappointed that the amendment to protect overtime pay was again stripped out in conference. Once again, the White House got its way even though Congress and the American public are opposed to the new overtime rules. Millions of Americans depend on overtime pay to pay their bills and to make ends meet. I thought that in this country the best social program was a job. Yet, up to 6 million workers have lost overtime protection under the new overtime rules. Workers should receive overtime pay for working overtime. It's just that simple. This isn't complicated—it's fair and right.

The JOBS bill makes good things happen by helping U.S. companies. The JOBS bill also stops bad things from happening by going after tax cheats. But, the conference report is not near the bill that was passed by the Senate.

I will vote for this legislation because I think it helps create a patriotic Tax Code, provides good guy bonuses to American manufacturing companies that keep jobs here, creates a level playing field for U.S. companies competing abroad, and cracks down on tax cheats and closing tax loopholes.

I call on my colleagues to think about where America is going in the 21st century. Where are we going to be? Are we going to create more opportunity? Are we going to create more jobs that pay a living wage and have a decent benefit structure?

I really want to have a patriotic Tax Code that brings our jobs back home, helps us compete overseas, and stands up for America.

I urge my colleagues to pass this important bill.●

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. STEVENS, from the Committee on Appropriations:

Special Report entitled ''Further Revised Allocation To Subcommittees of Budget Totals for Fiscal Year 2005'' (Rept. No. 108–398).

By Mr. McCAIN, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 480. A bill to provide competitive grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes (Rept. No. 108–399).

S. 2280. A bill to establish a coordinated national ocean exploration program within the National Oceanic and Atmospheric Administration (Rept. No. 108–400).

S. 2488. A bill to establish a program within the National Oceanic and Atmospheric Administration and the United States Coast Guard to help identify, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety, in coordination with non-Federal entities, and for other purposes (Rept. No. 108–401).

By Mr. McCAIN, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 2489. A bill to establish a program within the National Oceanic and Atmospheric Administration to integrate Federal coastal and ocean mapping activities (Rept. No. 108–402).

DISCHARGED NOMINATIONS

The Senate Committee on Health, Education, Labor, and Pensions was discharged from further consideration of the following nominations and the nominations were confirmed:

Public Health Service nominations beginning with Timothy D. Mastro and ending with Anthony A. Walker, which nominations were received by the Senate and appeared in the Congressional Record on July 19, 2004.

The Senate Committee on Health, Education, Labor, and Pensions was discharged from further consideration of the following nominations and the nominations were placed on the Executive Calendar:

Milton Aponte, of Florida, to be a Member of the National Council on Disability for a term expiring September 17, 2006.

Dan Arvizu, of Colordo, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

Steven C. Beering, of Indiana, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

Gerald Wayne Clough, of Georgia, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

Kelvin Kay Droegemeier, of Oklahoma, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

Louis J. Lanzerotti, of New Jersey, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

Alan I. Leshner, of Maryland, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

Jon C. Strauss, of California, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

Kathryn D. Sullivan, of Ohio, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010.

The Senate Committee on Governmental Affairs was discharged from further consideration of the following nomination and the nomination was placed on the Executive Calendar:

Gregory E. Jackson, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

The Senate Committee on Finance was discharged from further consideration of the following nomination and the nomination was placed on the Executive Calendar:

Anna Escobedo Cabral, of Virginia, to be Treasurer of the United States.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. HATCH (for himself, Mr. LEVIN, Mr. BIDEN, and Mr. KENNEDY):

S. 2976. A bill to amend the Controlled Substances Act to life the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes; considered and passed.

By Ms. LANDRIEU:

S. 2977. A bill to establish the Office of Community Justice Services within the Department of Justice, and for other purposes; to the Committee on the Judiciary.

By Mr. REID (for himself, Mr. NELSON of Nebraska, Mr. BAUCUS, Mr. BURNS, Mr. STEVENS, and Mr. ENSIGN):

S. 2978. A bill relating to State regulation of access to hunting and fishing; to the Committee on the Judiciary.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 2979. A bill to amend title 5, United States Code, to authorize appropriations for the Administrative conference of the United States for fiscal years 2005, 2006, and 2007, and for other purposes; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mrs. BOXER:

S. Res. 464. A resolution relating to refundable tax credits for municipalities; considered and agreed to.

By Mr. HARKIN:

S. Res. 465. A resolution to instruct conferees to the Agriculture, Rural Development, Food and Drug Administration, and related agencies appropriations bill, 2005 or on a consolidated appropriations measure that includes the substance of that act; considered and agreed to.

By Mr. McCAIN:

S. Res. 466. A resolution celebrating the anniversaries of the International Polar Years (1882–1883 and 1932–1933) and International Geophysical Year (1957–1958) and supporting a continuation of this international science year tradition in 2007–2008; considered and agreed to.

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

S. Res. 467. A resolution extending birthday greetings to Joseph Barbera on the occasion of his 100th birthday and designating March 2005 as ''Animated Family Entertainment Month''; considered and agreed to.

By Ms. MURKOWSKI (for herself, Mr. CAMPBELL, and Mr. INOUYE):

S. Res. 468. A resolution designating November 7, 2004, as ''National Native American Veterans Day'' to honor the service of Native Americans in the United States Armed Forces and the contribution of Native Americans to the defense of the United States; to the Committee on the Judiciary.

By Mr. HARKIN:

S. Con. Res. 144. A concurrent resolution to correct the enrollment of H.R. 4837; considered and agreed to.

ADDITIONAL COSPONSORS

S. 168

At the request of Mrs. FEINSTEIN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 168, a bill to require the Secretary of the Treasury to mint coins in commemoration of the San Francisco Old Mint.

S. 989

At the request of Mr. REID, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 989, a bill to provide death and disability benefits for aerial firefighters who work on a contract basis for a public agency and suffer death or disability in the line of duty, and for other purposes.

S. 2437

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 2437, a bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes.

S. 2571

At the request of Ms. MURKOWSKI, her name was added as a cosponsor of S. 2571, a bill to clarify the loan guarantee authority under title VI of the Native American Housing Assistance and Self-Determination Act of 1996.

S. 2858

At the request of Mr. GREGG, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 2858, a bill to amend the Internal Revenue Code of 1986 to clarify the proper treatment of differential wage payments made to employees called to active duty in the uniformed services, and for other purposes.

S. CON. RES. 136

At the request of Mr. CONRAD, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. Con. Res. 136, a concurrent resolution honoring and memorializing the passengers and crew of United Airlines Flight 93.

S. RES. 458

At the request of Mr. INHOFE, his name was added as a cosponsor of S. Res. 458, a resolution congratulating the SpaceShipOne team for achieving a historic milestone in human space flight.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. LANDRIEU:

S. 2977. A bill to establish the Office of Community Justice Services within the Department of Justice, and for other purposes; to the Committee on the Judiciary.

Ms. LANDRIEU. Mr. President, everyday more than 1,600 prisoners are released from jail and head back to the streets of America's neighborhoods and communities. That is more than 600,000 each year. When they get out, they are often get sent back to same neighborhoods where they got into trouble in the first place and more than two-thirds of them return to a life of crime.

This problem could get worse, if we don't take action. We have the largest prison population than at any other time in our history. Two million people are behind bars, the result of tougher penalties, particularly for drug offenses, and ''three-strikes and you're out laws'' in many States. While the worst offenders will stay behind bars indefinitely, 95 percent of people in jail will get out at some point in time, either on parole, or after completing their sentences.

The challenge for us and our communities is clear: we must find a way to successfully integrate offenders back into society after they get out of prison. The task is daunting. Many offenders face a unique set of personal challenges, legal restrictions, and social barriers that make the transition to productive citizenship extremely difficult for them.

Substance abuse is the most common problem. Eighty percent of all offenders abuse drugs and alcohol, or were under the influence of drugs and alcohol when they committed their crimes. Only about 13 percent of them receive treatment while they are in prison, according to the Office of National Drug Control Policy. Spending for in-prison substance abuse programs has been cut so that States and localities can devote more funding for housing the increased number of prisoners in their corrections systems.

Drug addicted offenders face even bigger challenges when they get out. Corrections agencies are often required to return prisoners to the place where they were convicted. That means released offenders get sent back to economically distressed neighborhoods where drugs are plentiful, but hope is not. These men and women go back to face the same temptations and demons that led to their addictions and their criminal conduct. Resources for treatment in these communities are stretched thin and a lot of former inmates cannot get help.

Another important barrier to success as a citizen is poor education. Offenders are more than twice as likely to have not graduated from high school than the general population. One study found that one-third of inmates could not find an intersection on a map; the same percentage could not explain a billing error or place information on an automobile maintenance form; and only one in 20 could figure out what bus to take from using a schedule.

If you cannot use a map or read a bus schedule, you will not be able to find your way to an office in an unfamiliar part of town to interview for a entry level job as a file clerk. If you cannot explain a billing error to someone, you will not be able to get a job in customer service. There are basic-skilled jobs that do not require a college education available for ex-offenders. But too many of our offenders lack the basic skills to get these jobs and if people are not working, they are more likely to get into trouble.

Studies have shown that unemployment contributes to criminal conduct. The New York State Department of Labor found that 80 percent of offenders who violated probation or parole were unemployed.

To make matters worse, many States exclude felons from holding certain kinds of jobs and obtaining professional licenses. A felon might not be able to get a cosmetology license or certain kinds of drivers' licenses. They may also be denied housing assistance and certain kinds of welfare benefits; 15 to 27 percent of released inmates expect to go to homeless shelters when they get out.

These statistics make it clear why so many of our ex-offenders end up back in trouble with the law. Untreated substance abuse problems, poor education and job skills, and homelessness work to sap offenders of their drive, ambition, and hope. Crime seems like the only option for ex-offenders and they return to a life of crime 67 percent of the time.

Recidivism has its costs. Crime has devastating affects on the neighborhoods that see the most criminal activity. Housing an inmate for one year costs State prison systems $21,000 and costs the Federal system $25,000 per year. But the victims pay the biggest costs in pain, suffering, and fear.

I believe that we can do better than a 67 percent recidivism rate and we can reduce the amount of pain inflicted on victims if we invest in programs that help offenders get over the barriers and the personal difficulties that keep them from becoming productive citizens. Research shows that these kinds of programs can help prepare offenders for life outside of prison. According to one U.S. Department of Education study, participation in correctional vocational and education programs reduces recidivism by 29 percent in State prisoners and 33 percent for Federal prisoners. Substance abuse treatment programs can cut drug use in half and reduce recidivism by 20 percent. In fact every dollar invested in substance abuse programs saves taxpayers $7.46 in other government and social costs according to the Bureau of Justice Statistics.

Today, I am introducing the Protecting Our Communities by Making Returning Offenders Better Citizens Act of 2004. This legislation will establish a $1.5 billion grant program at the Department of Justice to help States and communities develop comprehensive reentry strategies to turn felons into productive citizens. Funding would be available to State and local corrections and offender supervision agencies to a range of services including substance abuse treatment, basic education programs, job skills training, civic education, mentoring services, and family counseling services. The bill encourages these governmental agencies to partner with local non-profits, community organizations, and faith-based organizations to deliver these services to offenders both in and out of jail.

This legislation will also help the families of offenders when an offender returns home. Some 1.5 million children had a parent in a State or Federal prison in 1999 and 7 million children have a parent under some form of correctional supervision. These children are seven times more likely to end up in the criminal justice system. The return of an offender to the home can also produce a great deal of family strife. The adjustment can be very difficult. An unstable home environment only helps to foster criminal behavior.

My legislation will help corrections agencies institute family programs to help keep families close while a parent is incarcerated. Prisons and jails would be able to improve family visitation facilities, provide reduced cost phone service so that inmates can keep in touch with their families, or develop other innovative programs to keep family in the lives of offenders. Parole and probation agencies can work with family support agencies and other government agencies to provide a range of services so that families can successfully adjust to having an offender back home.

The experts are just beginning to examine the important role family services can play in reducing recidivism. One study found that prisoners with no visitors were six times more likely to re-enter prison within the first year of parole than those with three or more visitors.

A variety of family integration programs for offenders have also shown great promise. The La Bodega de la Familia program in New York City and the Michigan Department of Corrections's Project SEEK have produced terrific outcomes, reducing drug use and violent behavior by children. These programs offer an array of services to offenders in addition to family counseling. They serve as focal point for offenders to get substance abuse counseling, job training, and education. We need more programs like this and my legislation will make that possible.

We also need to do more to make offenders understand not only the responsibilities of citizenship, but also its benefits. Certain offenders can be denied the right to vote, public housing benefits, some welfare benefits, and they are legally barred from certain kinds of employment. What they often

do not know, however, is that they can get these rights back under certain circumstances. While we make offenders well aware of what civic rights and benefits they are denied when they get released, they do not receive information on how they can get those rights back.

In order to qualify for a grant, grantees must provide offenders with information on how they can restore their voting rights and any other rights or benefits denied them because of their criminal records. States will not have to change any laws to meet this requirement, they are only required to provide information to offenders. I believe that this will send a powerful message to released offenders that we want them to become full participants in our democracy despite their past mistakes. I believe providing information on how to restore their rights can help motivate offenders to follow a different path and underscores our willingness to give them another chance.

Our communities have done a terrific job protecting the public. The crime rate has fallen 55 percent over the last decade, the lowest level in 30 years. They have succeeded through hard work and the investment of the Federal Government in local law enforcement. We passed tougher criminal penalties, provided funding for equipment and technology, and put 100,000 community policing officers on the streets.

Keeping our streets safe is a constant battle that is far from over. These criminals are coming back. Some will be ready for the challenges of citizenship, many will not. The Federal Government can help again by providing the right resources to corrections and our parole and probation agencies. President Bush announced his support for a $300 million initiative to help offenders with job training, transitional housing, and mentoring with faith-based organizations. The President's program was an excellent start. The Protecting Our Communities by Making Returning Offenders Better Citizens Act will build on this so that every offender gets a second chance to turn themselves from felons into fellow citizens. I urge my colleagues to support this 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:

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Protecting Our Communities by Making Returning Offenders Better Citizens Act of 2004''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.
TITLE I—OFFICE OF COMMUNITY JUSTICE SERVICES
Sec. 101. Establishment of Office of Community Justice Services.
Sec. 102. National Offender Reentry Initiative Clearinghouse.
TITLE II—GRANT PROGRAMS
Sec. 201. Reentry preparation grants.
Sec. 202. Transition to community grants.
Sec. 203. Community-based supervision and support grants.
Sec. 204. Administrative provisions.
TITLE III—CIVIC EDUCATION FOR REENTERING FEDERAL PRISONERS
Sec. 301. Civic education for reentering Federal prisoners.
TITLE IV—GRANTS FOR RESEARCH, TRAINING, AND TECHNICAL ASSISTANCE
Sec. 401. Grants for research, training, and technical assistance.
TITLE V—AUTHORIZATION OF APPROPRIATIONS
Sec. 501. Authorization of appropriations.

SEC. 2. FINDINGS.

Congress finds the following:

(1) More than 2,000,000 people are incarcerated in Federal or State prisons and local jails in the United States.

(2) Of the individuals now in prison, 97 percent will eventually be released back into American communities. More than 630,000 of these inmates are released into the Nation's communities every year.

(3) The Bureau of Justice Statistics has found that 67.5 percent of prisoners released from incarceration in 1994 were rearrested within 3 years.

(4) Many of the men and women who will leave prison and jail each year have a variety of substance abuse disorders, low levels of education and job training, face significant barriers to employment, and lack housing upon their release.

(5) Felony convictions can also disqualify released offenders from voting and other rights. Under some State laws, these disqualifications can be permanent. While many States allow for the restoration of voting and civic rights to ex-offenders, this information is not routinely given to ex-offenders upon their release.

(6) Returning offenders have significant educational needs. Fewer than one-half of released prisoners have a high school education. Studies have found that approximately one-third of prisoners cannot locate an intersection on a street map; one-third cannot explain in writing a billing error; and only 1 in 20 can determine which bus to take from a schedule.

(7) State and local governments have not been able to maintain prison education programs in the face of a prison population that has doubled in the past decade. As a result, according to the National Institute for Literacy, the percentage of prisoners participating in correctional education programs is declining.

(8) The United States Department of Education found that participation in correctional education programs lowers the likelihood of reincarceration by 29 percent, and the Federal Bureau of Prisons found a 33 percent drop in recidivism among Federal prisoners who participate in vocational and apprenticeship training.

(9) According to the National Institute of Justice, 60 percent of formerly incarcerated individuals are unemployed after 1 year of release. Unemployment can contribute to the likelihood of repeating criminal conduct.

(10) Formerly incarcerated individuals face unique barriers in the job market. They may be legally disqualified from certain types of employment and barred by law from obtaining professional licenses in fields such as cosmetology, transportation, and home health care.

(11) Research has found that job training and placement programs for ex-offenders increase the employment of offenders and reduce recidivism.

(12) Drug and alcohol abuse is a persistent concern at every stage of the criminal justice process. Eighty-one percent of State prisoners, 81 percent of Federal prisoners, and 77 percent of local jail inmates have alcohol and drug abuse problems, or were under the influence of alcohol or drugs when they committed their offenses. However, only 13 percent of these inmates receive drug and alcohol treatment while they are incarcerated according to the Office of National Drug Control Policy.

(13) Substance abuse treatment has been proven to reduce drug use, recidivism, unemployment, and homelessness, according to several studies, and every dollar invested in substance abuse treatment saves taxpayers $7.46 in other social costs.

(14) Many offenders are released back into the community without having a place to call home. Several studies have found that many prisoners expect to go to homeless shelters upon release.

(15) A number of barriers exist to offenders getting adequate shelter upon release. Most offenders do not have enough money at the time of release to rent an apartment and landlords typically are reluctant to rent to former offenders. Some ex-offenders are prohibited from living in public housing because of their criminal records.

(16) The Bureau of Justice Statistics estimates that 1,500,000 children in the United States had a parent in a Federal or State prison in 1999. In addition, over 7,000,000 children have a parent under some sort of correctional supervision.

(17) Children of incarcerated parents face social stigma because of their parents' criminal status. This can cause problems in school, low self-esteem, aggressive behavior, and other emotional dysfunction.

(18) The reunification of ex-offenders and their families can cause family stress. In some cases, the ex-offender is not welcome in the home and many ex-offenders have difficulty readjusting to family life.

(19) Studies show that ex-offenders adjust better to family life when their families receive comprehensive support services. These services can also reduce juvenile delinquency, antisocial behavior, and recidivism rates.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) DIRECTOR.—The term ''Director'' means the Director of the Office of Community Justice Services of the Department of Justice, as established under section 101.

(2) NONGOVERNMENTAL ENTITIES.—The term ''nongovernmental entities'' means any nonprofit organizations, community corrections organizations, faith-based organizations, social service organizations, behavioral healthcare agencies, neighborhood or community-based organizations, and other entities that are not part of a State or local government.

(3) PROVEN EFFECTIVENESS.—The term ''proven effectiveness'' means that a program, project, approach, or practice has been shown by a credible analysis of performance and results to make a significant contribution to the accomplishment of the objectives for which it is undertaken, or to have a significant effect in improving the conditions identified with the problem to which it is addressed.

(4) STATE OR LOCAL CORRECTIONS AGENCIES.—The term ''State or local corrections agencies'' means the responsible agencies for the imprisonment or incarceration of offenders, or community corrections supervision, in any State of the United States, the District of Columbia, the Commonwealth of

Puerto Rico, the Virgin Islands, American Samoa, Guam, Indian tribal governments, and the Northern Mariana Islands, or any political subdivision thereof that performs corrections functions, including any agency of the Federal Government that performs corrections functions for the District of Columbia, or any trust territory of the United States.

(5) STATE OR LOCAL PAROLE OR PROBATION AGENCIES.—The term ''State or local parole or probation agencies'' means the responsible agencies for determining or supervising early release of reentering offenders or the supervision of reentering offenders in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Indian tribal governments, and the Northern Mariana Islands, or any political subdivision thereof that performs parole or probation functions, including any agency of the Federal Government that performs these functions for the District of Columbia, or any trust territory of the United States.

TITLE I—OFFICE OF COMMUNITY JUSTICE SERVICES

SEC. 101. ESTABLISHMENT OF OFFICE OF COMMUNITY JUSTICE SERVICES.

(a) IN GENERAL.—There is established within the Department of Justice the Office of Community Justice Services, which shall be headed by a Director appointed by the Attorney General from among persons who have experience in corrections, parole, probation, or related matters, or in providing transitional services to offenders who are returning to their home communities.

(b) DUTIES.—The Director shall—

(1) develop and administer programs for grants to State or local corrections agencies, State or local parole and probation agencies, community corrections agencies, and nongovernmental entities in accordance with this Act, for the purposes of preparing incarcerated persons for reentry into the community, or to assist reentering offenders in their transition back into the community; and

(2) make grants to nongovernmental entities that have experience and expertise in providing such services.

SEC. 102. NATIONAL OFFENDER REENTRY INITIATIVE CLEARINGHOUSE.

(a) GRANT AUTHORIZED.—

(1) IN GENERAL.—The Director of the Office of Community Justice Services may award a grant to an eligible organization to establish a National Offender Reentry Initiative Clearinghouse.

(2) DURATION.—The grant awarded under paragraph (1) shall be for a period not to exceed 5 years.

(b) USE OF FUNDS.—The grant awarded under subsection (a) may be used—

(1) for education, training, and technical assistance on offender reentry for States, units of local government, corrections agencies, parole and probation agencies, and nongovernmental entities;

(2) to collect data on best practices from entities receiving a grant under this Act, and from other agencies and organizations;

(3) to disseminate best practices to States, units of local government, corrections agencies, parole and probation agencies, and nongovernmental entities; and

(4) to assist State and units of local government to identify barriers to successful offender reentry.

(c) APPLICATION.—Each eligible organization desiring the grant under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may reasonably require.

(d) ELIGIBLE ORGANIZATIONS.—A national nonprofit organization may apply for the grant under this section if the organization has experience in providing technical assistance, training, and research on offender reentry programs for States, units of local government, corrections agencies, and parole and probation agencies.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for fiscal years 2005 through 2009 to carry out the provisions of this section.

TITLE II—GRANT PROGRAMS

SEC. 201. REENTRY PREPARATION GRANTS.

(a) IN GENERAL.—The Director shall award grants, for a term of not more than 5 years, to State or local corrections agencies to provide services to incarcerated persons, in accordance with the requirements of this section.

(b) USE OF FUNDS.—Grant funds awarded under subsection (a) may be used for—

(1) education programs, such as high school equivalency degrees, basic literacy training, civic education, and educational diagnostic services for incarcerated persons;

(2) mental health and substance abuse assessment and treatment programs, including anger management programs, for incarcerated persons;

(3) job and vocational skills training for incarcerated persons;

(4) mentoring programs for incarcerated persons;

(5) programs, services, and the construction of facilities to promote healthy family bonds, such as family counseling centers and services, telecommunications services for incarcerated parents to communicate with their children, and family friendly visiting areas;

(6) information programs that meet the requirements of subsection (e); and

(7) any other program or service that is part of a comprehensive offender reentry plan designed to prepare incarcerated persons for their future return to the community-at-large.

(c) PARTNERSHIP APPLICATIONS.—Each State or local corrections agency may apply for a grant in cooperation with, or contract with upon receiving a grant under this section, nonprofit organizations, faith-based organizations, and nongovernmental entities to develop and provide innovative approaches that will allow incarcerated persons access to the services described under paragraphs (1) through (6) of subsection (b).

(d) PRIORITY.—Priority in the award of grants shall be given to those State or local correctional agencies that propose partnership applications as described under subsection (c) to develop innovative strategies, as determined by the Director, to deliver the services described under paragraphs (1) through (6) of subsection (b).

(e) INFORMATION.—Each State corrections agency, or State parole or probation agency, receiving a grant under this section shall provide each incarcerated person with written information, in plain and simple wording, on how that person can restore—

(1) voting rights within the State in which the person will be released; and

(2) any other civil or civic rights or public benefits denied to the incarcerated person under the law of the State due to their status as an offender.

SEC. 202. TRANSITION TO COMMUNITY GRANTS.

(a) IN GENERAL.—The Director shall award grants, for a term of not more than 5 years, to consortiums of State or local correctional agencies, and State or local parole or probation agencies, for the purposes of providing services to incarcerated persons, who have not more than 1 year remaining of their sentence, or released offenders, not later than 18 months after being released, that will facilitate the reentry of such persons into the community, in accordance with the requirements of this section.

(b) USE OF FUNDS.—Grants awarded under subsection (a) shall be used for—

(1) education programs, such as high school equivalency degrees, basic literacy training, civic education, and educational diagnostic services;

(2) mentoring programs;

(3) life skills training, including family support services;

(4) mental health and substance abuse assessment and treatment programs, including aftercare programs, intensive case management, and anger management programs;

(5) job and vocational skills training, including paid work experience programs;

(6) information programs that meet the requirements of subsection (e); and

(7) such other services and programs that are part of a comprehensive offender reentry plan designed to assist incarcerated persons or reentering offenders in reentering the community.

(c) PARTNERSHIP APPLICATIONS.—Each applicant for a grant under this section may apply for such grant in cooperation with, or contract with upon receiving a grant, any nongovernmental entities to develop or provide innovative approaches to the services described under paragraphs (1) through (5) of subsection (b).

(d) PRIORITY.—Priority in the award of grants shall be given to those State or local correctional agencies, or State or local parole or probation agencies that propose partnership applications as described under subsection (c) to develop innovative strategies, as determined by the Director, to deliver the services described under paragraphs (1) through (5) of subsection (b).

(e) INFORMATION.—Each recipient of a grant under this section shall provide each incarcerated person or reentering offender with written information, in plain and simple wording, on how that person can restore—

(1) voting rights within the State in which the person will be released; and

(2) any other civil or civic rights or public benefits denied to the incarcerated person under the law of the State due to their status as an offender.

SEC. 203. COMMUNITY-BASED SUPERVISION AND SUPPORT GRANTS.

(a) IN GENERAL.—The Director shall award grants, for a term of not more than 5 years, to State or local parole and probation agencies to provide reentering offenders with services to help such reentering offenders with their transition into the community.

(b) USE OF FUNDS.—Grant funds awarded under this section may be used for—

(1) the development or support of parole and probation programs designed to increase coordination between parole officers and social service providers;

(2) the establishment of parole and probation offices located within areas in which a substantial number of incarcerated persons shall live;

(3) the development of joint parole, probation, and local law enforcement monitoring programs;

(4) the provision of comprehensive family case management services to assist families of reentering offenders;

(5) the funding of research and analysis designed to allow State parole and probation agencies to identify and determine which locations and neighborhoods see the largest number of reentering offenders establishing residency;

(6) the development of programs that encourage collaboration between parole and probation agencies, and job training programs that serve people with criminal

records, including transitional jobs programs;

(7) the development of geographic-based caseload management systems by State parole and probation agencies for monitoring reentering offenders;

(8) information programs that meet the requirements of subsection (f); and

(9) services and programs that have proven effectiveness in helping reentering offenders transition back into life in the community, including transitional housing and mental health and substance abuse treatment services offered as part of a comprehensive offender reentry plan.

(c) PARTNERSHIP APPLICATIONS.—A State or local parole or probation agency applying for a grant under this section may, in order to carry out the purposes of this section, contract or partner with—

(1) nongovernmental entities with expertise in services that can assist reentering offenders in relocating into a community and their families; and

(2) State and local government agencies that administer programs or provide services to released offenders, such as child welfare, workforce development agencies, and community corrections agencies.

(d) PRIORITY.—Priority in the award of grants shall be given to those State or local parole or probation agencies that propose partnership applications as described under subsection (c) to develop innovative strategies, as determined by the Director, to deliver the services described under paragraphs (1) through (7) of subsection (b).

(e) LIMITATION.—To receive a grant under this section, each State parole and probation agency shall demonstrate coordination with Federal or State corrections officials in determining where reentering offenders shall be released.

(f) INFORMATION.—Each recipient of a grant under this section shall provide each reentering offender with written information, in plain and simple wording, on how that person can restore—

(1) voting rights within the State in which the person is being released; and

(2) any other civil or civic rights or public benefits denied to the reentering offender under the law of the State due to their status as an offender.

SEC. 204. ADMINISTRATIVE PROVISIONS.

(a) APPORTIONMENT OF GRANT FUNDING.—Of the amounts appropriated to carry out the purposes of this Act—

(1) not less than 70 percent shall be made available to carry out the purposes of sections 201, 202, and 203; and

(2) up to 30 percent shall be made available to carry out the purposes of subsection (c).

(b) MATCHING FUNDS.—

(1) IN GENERAL.—The Federal share of any program, project, or activity funded by a grant made under section 201, 202, or 203 shall not exceed 75 percent of the total cost of such program, project, or activity.

(2) WAIVER.—The Attorney General may, in the sole discretion of the Attorney General, waive the requirements of paragraph (1) in whole or in part.

(c) DISCRETIONARY GRANTS.—

(1) IN GENERAL.—The Director shall award grants, for a term of not more than 5 years, on a competitive basis, to State or local correctional agencies, State or local parole or probation agencies, and nongovernmental entities for community protection programs.

(2) USE OF FUNDS.—Grant funds awarded under paragraph (1) shall be used to—

(A) fund multiyear demonstration programs designed to reduce recidivism and parole violations, and the recipients of a grant may contract with organizations to conduct any necessary research with respect to the program; and

(B) allow State task forces to conduct an analysis of existing State statutory, regulatory, and practice-based hurdles to the reintegration of a prisoner into the community that—

(i) takes particular note of laws, regulations, rules, and practices that disqualify people with criminal records from obtaining drivers licenses, professional licenses, or other requirements necessary for certain types of employment, and that hinder full civic participation; and

(ii) identifies and recommends for repeal or modification those laws, regulations, rules, or practices that do not demonstrate a rational connection between the existing statutory or regulatory prohibition, the type of conviction, and the risk that the individual may pose to the community.

(3) APPLICATION.—Any State or local correctional agency or State or local parole or probation agency wishing to receive a grant under paragraph (1) shall submit to the Director an application setting forth a description of the planned demonstration program. The Director shall establish guidelines for assessing such applications.

(d) SUBMISSION OF INFORMATION.—Prior to the distribution of grant funds under section 201, 202, or 203, each State shall submit to the Director a description of the activities to be carried out using such grant funds.

(e) NONSUPPLANTING REQUIREMENT.—Funds made available under this title shall not be used to supplant State or local funds, but shall be used to increase the amount of funds that would, in the absence of Federal funds received under this title, be made available from State or local sources.

(f) PERFORMANCE EVALUATIONS.—Selected grant recipients shall be evaluated pursuant to guidelines established by the Director.

(g) REVOCATION OR SUSPENSION OF FUNDING.—If the Director determines that a grant recipient under this title is not in substantial compliance with the terms and requirements of an approved grant application submitted under this title, the Director may revoke or suspend funding of that grant, in whole or in part.

TITLE III—CIVIC EDUCATION FOR REENTERING FEDERAL PRISONERS

SEC. 301. CIVIC EDUCATION FOR REENTERING FEDERAL PRISONERS.

(a) IN GENERAL.—Not later than 3 months after the date of enactment of this Act, the Bureau of Prisons of the Department of Justice shall provide each reentering offender released from Federal prisons information on how the reentering offender can restore voting rights, and other civil or civic rights, denied to the reentering offender based upon their offender status in the State to which that reentering offender shall be returning.

(b) PUBLICATION.—The information required under subsection (a) shall be provided to each reentering offender in writing, and in a language that the reentering offender can understand.

TITLE IV—GRANTS FOR RESEARCH, TRAINING, AND TECHNICAL ASSISTANCE

SEC. 401. GRANTS FOR RESEARCH, TRAINING, AND TECHNICAL ASSISTANCE.

Up to 5 percent of the funds made available under this Act may be used for research, technical assistance, and training carried out or commissioned by the Attorney General in furtherance of the purposes of this Act.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

SEC. 501. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out the purposes of titles II and III of this Act—

(1) $75,000,000 for fiscal year 2005;

(2) $150,000,000 for fiscal year 2006;

(3) $325,000,000 for fiscal year 2007;

(4) $450,000,000 for fiscal year 2008; and

(5) $500,000,000 for fiscal year 2009.

By Mr. REID (for himself, Mr. NELSON of Nebraska, Mr. BAUCUS, Mr. BURNS, Mr. STEVENS, and Mr. ENSIGN):

S. 2978. A bill relating to State regulation of access to hunting and fishing; to the Committee on the Judiciary.

Mr. REID. Mr. President, the legislation I am introducing today explicitly reaffirms each State's right to regulate hunting and fishing.

I am pleased that Senators BEN NELSON, CONRAD BURNS, and TED STEVENS are joining me in sponsoring this important bill.

This is a Nevada issue, but it is also a national issue, as a recent Federal circuit court ruling undermines traditional hunting and fishing laws.

In Conservation Force v. Dennis Manning, the Ninth Circuit Court of Appeals ruled that State laws that distinguish between State residents and non-residents for the purpose of affording hunting and related privileges are constitutionally suspect.

This threatens the conservation of wildlife resources and recreational opportunities.

Although the Ninth Circuit found the purposes of such regulation to be sound, the Court questioned the validity of tag limits for non-resident hunters.

I respect the authority of States to enact laws to protect their legitimate interests in conserving fish and game, as well as providing opportunities for State residents to hunt and fish.

That's what this legislation says—we respect that State right.

Sportsmen are ardent conservationists. They support wildlife conservation not only through the payment of State and local taxes and other fees, but also through local non-profit conservation efforts and by volunteering their time.

For example, in Nevada there are great groups such as Nevada Bighorns Unlimited and the Fraternity of Desert Bighorn. These are dedicated sportsmen who spend countless hours, as well as money, building ''guzzlers'' in the desert, which help provide a reliable source of water for Desert Bighorn Sheep.

Without these efforts it would be extremely hard for the Bighorn Sheep to survive, because many areas of their natural habitat where they used to drink water have been developed.

Today, Southern Nevada is in the 5th year of a 500 year drought, and the work of the groups I mentioned is saving the lives of hundreds of bighorns.

The involvement of local sportsmen in protecting and conserving wildlife is one of the facts that justifies traditional resident/non-resident distinctions, and provides the motivation for our legislation.

The regulation of wildlife is traditionally within a State's purview, and

this legislation simply affirms the traditional role of States in the regulation of fish and game.

This bill is time sensitive.

This bill needs to pass before next year's hunting season begins.

I look forward to working with my colleagues to expedite passage of 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. 2978

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

SECTION 1. STATE REGULATION OF ACCESS TO HUNTING AND FISHING.

(a) DECLARATION OF POLICY.—Congress hereby declares that—

(1) the continued regulation of access to hunting and fishing by the several States is in the public interest; and

(2) silence on the part of Congress shall not be construed to impose any commerce clause barrier to the regulation of such activities by the several States.

(b) STATE REGULATION OF ACCESS TO HUNTING AND FISHING.—The licensing of hunting and fishing, or of other access thereto, and every person engaged in hunting or fishing, shall be subject to the laws of the several States which relate to the regulation of such activities.

(c) CONSTRUCTION.—No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the access to hunting and fishing unless such Act specifically so states.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 464—RELATING TO REFUNDABLE TAX CREDITS FOR MUNICIPALITIES

Mrs. BOXER submitted the following resolution; which was considered and agreed to:

S. RES. 464

Whereas, the Senate today passed a free standing measure which is designed to address tax relief issues relating to Reservists and National Guardsmen;

Whereas, one of the provisions of the package provides tax relief to employers of Reservists and National Guardsmen;

Whereas, the employer provision is targeted to businesses and tax paying entities;

Whereas, State and local governments are facing budgetary pressures, particularly with regard to homeland security;

Whereas, many local first responders have been called to active duty in the National Guards and Reserves, and many state and local governments have continued to pay their salaries, thus increasing the budgetary pressure on state and local governments;

Whereas, the Senate recognized this pressure by including in the FSC–ETI bill a provision to compensate state and local governments for closing the pay gap of first responders who are called to active duty in the National Guards and Reserves: Now, therefore be it

Resolved, That it is the sense of the Senate that:

1. The Senate should reiterate its support for reimbursing state and local governments for closing the pay gap for first responders who are called to active duty in the National Guard and Reserves by considering expanding the employer tax relief provisions to cover state and local governments; and

2. The President should consider including such a proposal in his Fiscal Year 2006 Budget Submission.

SENATE RESOLUTION 465—TO INSTRUCT CONFEREES TO THE AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS BILL, 2005 OR ON A CONSOLIDATED APPROPRIATIONS MEASURE THAT INCLUDES THE SUBSTANCES OF THAT ACT

Mr. HARKIN submitted the following resolution; which was considered and agreed to:

S. RES. 465

Resolved, That—For the purpose of restoring the provisions governing the Conservation Security Program to those enacted in the Farm Security and Rural Investment Act and restoring the practice of treating agricultural disaster assistance as emergency spending, the Senate instructs conferees to Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2005, or a Consolidated Appropriations Measure that includes the substance of that act, to insist that the conference report contain legislative language striking subsections (e) and (f) of section 101 of division B of H.R. 4837, An Act Making Appropriations for Military Construction, Family Housing, and Base Realignment and Closure for the Department of Defense for the Fiscal Year ending September 30, 2005 and for Other Purposes.

SENATE RESOLUTION 466—CELEBRATING THE ANNIVERSARIES OF THE INTERNATIONAL POLAR YEARS (1882–1883 AND 1932–1933) AND INTERNATIONAL GEOPHYSICAL YEAR (1957–1958) AND SUPPORTING A CONTINUATION OF THIS INTERNATIONAL SCIENCE YEAR TRADITION IN 2007–2008

Mr. MCCAIN submitted the following resolution; which was considered and agreed to:

S. RES. 466

Whereas the year 2007 is the 125th anniversary of the first International Polar Year of 1882–1883, the 75th anniversary of the second International Polar Year of 1932–1933, and the 50th anniversary of the International Geophysical Year of 1957–1958;

Whereas the first International Polar Year of 1882–1883, which involved 12 nations, and the second International Polar Year of 1932–1933, which involved 40 nations, set the first precedents for internationally coordinated scientific campaigns;

Whereas the International Geophysical Year, conceived in and promoted by the United States, was the largest cooperative international scientific endeavor undertaken to that date, involving more than 60,000 scientists from 66 nations;

Whereas each of these activities left a legacy of scientific advances, new discoveries, and international goodwill that still benefit us today;

Whereas the International Geophysical Year legacy includes the dedication of an entire continent to cooperative scientific study through the Antarctica Treaty and the inauguration of the global space age through the launching of Sputnik and Vanguard;

Whereas International Geophysical Year cooperation continues as the model and inspiration for contemporary world science and provides a bridge between peoples of the world that has demonstrated the ability to transcend political differences;

Whereas it also would be appropriate to use the international science year format to expand the scope of past years to encompass a broad range of disciplines and to recognize interdisciplinary research that incorporates the physical and social sciences and the humanities in enriching understanding of diverse life on Earth;

Whereas the 35th anniversary of the International Geophysical Year was commemorated by the International Space Year, a globally implemented congressional initiative conceived by the late Senator Spark Matsunaga of Hawaii, that was highlighted by globally coordinated environmental monitoring and research whose ongoing legacy continues to benefit humanity;

Whereas planning for an International Polar Year in 2007–2008 is underway, under the guidance of strong United States leadership and the National Academy of Sciences and in conjunction with the International Council for Science and the World Meteorological Organization, with this envisioned to be an intense, coordinated campaign of observations, research, and analysis that will be multidisciplinary in scope and international in participation;

Whereas an International Polar Year in 2007–2008 will include research on the conditions in both polar regions and recognize the strong links among polar region conditions and the rest of the globe, including the impact on global climate change, as the polar regions have profound significance for the Earth's climate and environments;

Whereas other scientific bodies are planning additional internationally coordinated scientific programs to advance scientific knowledge and observations from the core of the Earth to the farthest reaches of the Cosmos's effects on the Earth;

Whereas it is entirely fitting that Congress takes the lead again, in the same spirit, in promoting global cooperation through worldwide commemoration of the past International Polar Years and the International Geophysical Year with activities reflecting the unity and diversity of life on Earth: Now, therefore, be it

Resolved, That it is the Sense of the Senate that the President should—

(1) endorse the concept of a worldwide campaign of scientific activity for the 2007–2008 timeframe;

(2) direct the Director of the National Science Foundation and the Administrator of the National Aeronautics and Space Administration, in association with the National Academy of Sciences and other relevant governmental and nongovernmental organizations, to continue interagency and international inquiries and discussions that ensure a successful worldwide international science year in the 2007–2008 timeframe, emphasizing activities dedicated to global environmental research, education, and protection; and

(3) submit to Congress at the earliest practical date, but no later than March 15, 2005, a report detailing the steps taken in carrying out paragraphs (1) and (2), including descriptions of possible activities and organizational structures for an international science year in 2007–2008.

SENATE RESOLUTION 467—EXTENDING BIRTHDAY GREETINGS TO JOSEPH BARBERA ON THE OCCASION OF HIS 100TH BIRTHDAY AND DESIGNATING MARCH 2005 AS ''ANIMATED FAMILY ENTERTAINMENT MONTH''

Mr. HATCH (for himself and Mrs. FEINSTEIN) submitted the following resolution; which was considered and agreed to:

S. RES. 467

Whereas Joseph Barbera is one of the pioneers of animated entertainment, having created, with his partner, William Hanna, some of the world's most recognizable and beloved characters, including Tom and Jerry, Huckleberry Hound, The Flintstones, The Jetsons, Scooby-Doo, and Yogi Bear, among many others;

Whereas Joseph Barbera is also one of the most honored figures in animated entertainment, his creations Tom and Jerry having received 7 Academy Awards for their antics, including their groundbreaking dancing appearances with Gene Kelly and Esther Williams in live action films, and having won multiple Emmy Awards, and Joseph Barbera himself having been elected to the Television Academy Hall of Fame;

Whereas in 1960, the team of Joseph Barbera and William Hanna created television's first animated family sitcom, ''The Flintstones'', a series marked by a number of other firsts—the first animated series to air in primetime, the first animated series to go beyond the 6- or 7-minute cartoon format, and the first animated series to feature human characters;

Whereas ''The Flintstones'' ran for 6 years and became the top-ranking animated program in syndication history, with all original 166 episodes currently seen in more than 80 countries worldwide;

Whereas Joseph Barbera cocreated a cowardly Great Dane named Scooby-Doo, who eventually made his own place in television history, for the popular series ''Scooby-Doo, Where Are You?'' remained in production for 17 years, still maintains the title of television's longest-running animated series, and serves as the inspiration for a series of current live-action films;

Whereas in 1981, Hanna-Barbera developed the phenomenally successful ''The Smurfs'', which won 2 Daytime Emmy Awards in 1982 and in 1983 for Outstanding Children's Entertainment Series and a Humanitas Award (an award given to shows that best affirm the dignity of the human person) in 1987;

Whereas at the age of 99, Joseph Barbera continues to work actively in the field, reporting to his office daily and continuing to develop new animated entertainment for the people of the United States and the world to enjoy;

Whereas March 24, 2005, will be Joseph Barbera's 100th birthday; and

Whereas the lives of families across the United States and throughout the world have been enriched by the shared enjoyment of the work of creators like Joseph Barbera: Now, therefore, be it

Resolved, That the Senate—

(1) on behalf of the American people, extends its birthday greetings and best wishes to Joseph Barbera on the occasion of his 100th birthday; and

(2) designates March 2005 as ''Animated Family Entertainment Month'' and encourages the families of the United States to take time to enjoy together the family entertainment created by the Nation's animated storytellers.

SENATE RESOLUTION 468—DESIGNATING NOVEMBER 7, 2004, AS ''NATIONAL NATIVE AMERICAN VETERANS DAY'' TO HONOR THE SERVICE OF NATIVE AMERICANS IN THE UNITED STATES ARMED FORCES AND THE CONTRIBUTION OF NATIVE AMERICANS TO THE DEFENSE OF THE UNITED STATES

Ms. MURKOWSKI (for herself, Mr. CAMPBELL, and Mr. INOUYE) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 468

Whereas Native Americans have served with honor and distinction in the United States Armed Forces and defended the United States of America for more than 200 years;

Whereas Native Americans have served in wars involving the United States from Valley Forge to the hostilities in Afghanistan and Iraq;

Whereas Native Americans have served in the United States Armed Forces with the highest record of military service of any group in the United States;

Whereas the courage, determination, and fighting spirit of Native Americans have strengthened and continue to strengthen the United States, including the United States Armed Forces;

Whereas Native Americans have made the ultimate sacrifice in defense of the United States, even in times when Native Americans were not citizens of the United States;

Whereas the establishment of a National Native American Veterans Day will honor the continuing service and sacrifice of Native Americans in the United States Armed Forces; and

Whereas November 7th, a date that falls within the traditional observance of Native American Indian Heritage Month, would be an appropriate day to establish a National Native American Veterans Day: Now, therefore, be it

Resolved, That the Senate—

(1) honors the service of Native Americans in the United States Armed Forces and the contribution of Native Americans to the defense of the United States;

(2) designates November 7, 2004, as ''National Native American Veterans Day'';

(3) encourages all people in the United States to learn about the history of the service of Native Americans in the United States Armed Forces; and

(4) requests that the President issue a proclamation calling on the people of the United States to observe the day with appropriate programs, ceremonies, and activities to demonstrate support for Native American veterans.

Ms. MURKOWSKI. Mr. President, I am pleased to be joined by Senators CAMPBELL and INOUYE in submitting a resolution to honor American Indian, Alaska Native, and Native Hawaiian veterans for their service in the Armed Forces of the United States and to designate November 7, 2004 as ''National Native American Veterans Day''.

This is the second consecutive year that such a resolution has been introduced. November 7, 2003 was designated as National Native American Veterans Day in accordance with Senate Resolution 239. I was proud to join with Senator CAMPBELL, our distinguished chairman of the Senate Committee on Indian Affairs and Senator INOUYE, the distinguished vice chairman of the committee, and others of my colleagues in cosponsoring that resolution. As the events of conflict in Iraq continue we all hope and pray for the safe return of the men and women who are overseas, far from home protecting our Nation and others.

We continue to honor the memory of Army Private First Class Lori Piestewa, a Hopi woman, who fought valiantly and bravely to protect her fellow soldiers during the invasion of Iraq. This year we also remember other Native people who lost their lives in Iraq over the past year. Army Sergeant Lee Duane Todacheene, Marine Lance Corporal Quinn A. Keith, Army Private First Class Harry Shondee, Jr, members of the Navajo Nation, and Army Private First Class Sheldon Hawk Eagle, Cheyenne River Sioux, whose Indian name was Wanbli Ohitika, or Brave Eagle. I apologize if I have failed to acknowledge a brave Native person who lost his or her life in Iraq.

Native people, and especially the Native people of my State of Alaska, revere, admire, and respect our veterans and those who continue to serve. They pray for ones still in battle, alongside their fellow Americans, so that they can have a safe journey back to their loving homes and families. They pray for the ones who have fought, and now, continue their journey through life's struggles.

I urge my colleagues to join me in supporting this resolution.

SENATE CONCURRENT RESOLUTION 144—TO CORRECT THE ENROLLMENT OF H.R. 4837

Mr. HARKIN submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 144

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of H.R. 4837, an Act making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes, the Clerk of the House is hereby authorized and directed to strike subsections (e) and (f) of section 101 of division B and insert the following new subsection:

(e) The amounts provided or made available by this section are designated as an emergency requirement pursuant to section 402 of S. Con. Res. 95 (108th Congress), as made applicable to the House of Representatives by H. Res. 649 (108th Congress) and applicable to the Senate by section 14007 of Public Law 108–287.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4058. Mr. SESSIONS (for Mrs. FEINSTEIN) proposed an amendment to the bill S. 1129, to provide for the protection of unaccompanied alien children, and for other purposes.

SA 4059. Mr. SESSIONS (for Mr. ROBERTS (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2386, to authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities

of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

SA 4060. Mr. SESSIONS (for Mr. ROBERTS (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2386, supra.

SA 4061. Ms. LANDRIEU (for herself, Mr. BOND, Mr. JEFFORDS, Mrs. MURRAY, Mr. GRAHAM of South Carolina, Mr. ROCKEFELLER, Mr. SESSIONS, Mr. NELSON of Florida, Mr. WARNER, Mr. DURBIN, Mr. KERRY, Mrs. BOXER, and Ms. MIKULSKI) proposed an amendment to the bill H.R. 1779, to amend the Internal Revenue Code of 1986 to allow penalty-free withdrawals from retirement plans during the period that a military reservist or national guardsman is called to active duty for an extended period, and for other purposes.

SA 4062. Mr. FRIST (for Mr. CONRAD) proposed an amendment to the concurrent resolution S. Con. Res. 136, honoring and memorializing the passengers and crew of United Airlines Flight 93.

SA 4063. Mr. FRIST (for Mr. FITZGERALD) proposed an amendment to the bill S. 2688, to provide for a report of Federal entities without annually audited financial statements.

SA 4064. Mr. FRIST (for Mr. LIEBERMAN) proposed an amendment to the bill S. 2691, to establish the Long Island Sound Stewardship Initiative.

SA 4065. Mr. FRIST (for Mr. SMITH) proposed an amendment to the concurrent resolution S. Con. Res. 113, recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideals of National Tourette Syndrome Awareness Month.

SA 4066. Mr. FRIST (for Mr. SMITH) proposed an amendment to the concurrent resolution S. Con. Res. 113, supra.

SA 4067. Mr. FRIST (for Mr. SMITH) proposed an amendment to the concurrent resolution S. Con. Res. 113, supra.

TEXT OF AMENDMENTS

SA 4058. Mr. SESSIONS (for Mrs. FEINSTEIN) proposed an amendment to the bill S. 1129, to provide for the protection of unaccompanied alien children, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Unaccompanied Alien Child Protection Act of 2004''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION
Sec. 101. Procedures when encountering unaccompanied alien children.
Sec. 102. Family reunification for unaccompanied alien children with relatives in the United States.
Sec. 103. Appropriate conditions for detention of unaccompanied alien children.
Sec. 104. Repatriated unaccompanied alien children.
Sec. 105. Establishing the age of an unaccompanied alien child.
Sec. 106. Effective date.
TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL
Sec. 201. Guardians ad litem.
Sec. 202. Counsel.
Sec. 203. Effective date; applicability.
TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN
Sec. 301. Special immigrant juvenile visa.
Sec. 302. Training for officials and certain private parties who come into contact with unaccompanied alien children.
Sec. 303. Report.
Sec. 304. Effective date.
TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS
Sec. 401. Guidelines for children's asylum claims.
Sec. 402. Unaccompanied refugee children.
Sec. 403. Exceptions for unaccompanied alien children in asylum and refugee-like circumstances.
TITLE V—AUTHORIZATION OF APPROPRIATIONS
Sec. 501. Authorization of appropriations.
TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002
Sec. 601. Additional responsibilities and powers of the Office of Refugee Resettlement with respect to unaccompanied alien children.
Sec. 602. Technical corrections.
Sec. 603. Effective date.

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act:

(1) COMPETENT.—The term ''competent'', in reference to counsel, means an attorney who complies with the duties set forth in this Act and—

(A) is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia;

(B) is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting the attorney in the practice of law; and

(C) is properly qualified to handle matters involving unaccompanied immigrant children or is working under the auspices of a qualified nonprofit organization that is experienced in handling such matters.

(2) DIRECTOR.—The term ''Director'' means the Director of the Office.

(3) DIRECTORATE.—The term ''Directorate'' means the Directorate of Border and Transportation Security established by section 401 of the Homeland Security Act of 2002 (6 U.S.C. 201).

(4) OFFICE.—The term ''Office'' means the Office of Refugee Resettlement as established by section 411 of the Immigration and Nationality Act (8 U.S.C. 1521).

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

(6) UNACCOMPANIED ALIEN CHILD.—The term ''unaccompanied alien child'' has the same meaning as is given the term in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)).

(7) VOLUNTARY AGENCY.—The term ''voluntary agency'' means a private, nonprofit voluntary agency with expertise in meeting the cultural, developmental, or psychological needs of unaccompanied alien children, as certified by the Director of the Office of Refugee Resettlement.

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

''(51) The term 'unaccompanied alien child' means a child who—

''(A) has no lawful immigration status in the United States;

''(B) has not attained the age of 18; and

''(C) with respect to whom—

''(i) there is no parent or legal guardian in the United States; or

''(ii) no parent or legal guardian in the United States is able to provide care and physical custody.

''(52) The term 'unaccompanied refugee children' means persons described in paragraph (42) who—

''(A) have not attained the age of 18; and

''(B) with respect to whom there are no parents or legal guardians available to provide care and physical custody.''.

(c) RULE OF CONSTRUCTION.—A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

SEC. 101. PROCEDURES WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the officer shall—

(A) permit such child to withdraw the child's application for admission pursuant to section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)); and

(B) return such child to the child's country of nationality or country of last habitual residence.

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return and orderly repatriation of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), if a determination is made on a case-by-case basis that—

(i) such child is a national or habitual resident of a country described in subparagraph (A);

(ii) such child does not have a fear of returning to the child's country of nationality or country of last habitual residence owing to a fear of persecution;

(iii) the return of such child to the child's country of nationality or country of last habitual residence would not endanger the life or safety of such child; and

(iv) the child is able to make an independent decision to withdraw the child's application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right to consult with a consular officer from the child's country of nationality or country of last habitual residence prior to repatriation, as well as consult with the Office, telephonically, and such child shall be informed of that right in the child's native language.

(3) RULE FOR APPREHENSIONS AT THE BORDER.—The custody of unaccompanied alien children not described in paragraph (2) who are apprehended at the border of the United States or at a United States port of entry shall be treated in accordance with the provisions of subsection (b).

(b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subparagraphs (B) and (C) and subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Directorate shall retain or assume the custody and care of an unaccompanied alien child if the Secretary has substantial evidence, based on an individualized determination, that such child could personally endanger the national security of the United States.

(D) TRAFFICKING VICTIMS.—For purposes of section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) and this Act, an unaccompanied alien child who is eligible for services authorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386), shall be considered to be in the custody of the Office.

(2) NOTIFICATION.—

(A) IN GENERAL.—The Secretary shall promptly notify the Office upon—

(i) the apprehension of an unaccompanied alien child;

(ii) the discovery that an alien in the custody of the Directorate is an unaccompanied alien child;

(iii) any claim by an alien in the custody of the Directorate that such alien is under the age of 18; or

(iv) any suspicion that an alien in the custody of the Directorate who has claimed to be over the age of 18 is actually under the age of 18.

(B) SPECIAL RULE.—In the case of an alien described in clause (iii) or (iv) of subparagraph (A), the Director shall make an age determination in accordance with section 105 and take whatever other steps are necessary to determine whether or not such alien is eligible for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in subparagraph (B) or (C) of paragraph (1), not later than 72 hours after a determination is made that such child is an unaccompanied alien child;

(ii) in the case of a child whose custody and care has been retained or assumed by the Directorate pursuant to subparagraph (B) or (C) of paragraph (1), immediately following a determination that the child no longer meets the description set forth in such subparagraphs; or

(iii) in the case of a child who was previously released to an individual or entity described in section 102(a)(1), upon a determination by the Director that such individual or entity is no longer able to care for the child.

(B) TRANSFER TO THE DIRECTORATE.—Upon determining that a child in the custody of the Office is described in subparagraph (B) or (C) of paragraph (1), the Director shall transfer the care and custody of such child to the Directorate.

(C) PROMPTNESS OF TRANSFER.—In the event of a need to transfer a child under this paragraph, the sending office shall make prompt arrangements to transfer such child and the receiving office shall make prompt arrangements to receive such child.

(c) AGE DETERMINATIONS.—In any case in which the age of an alien is in question and the resolution of questions about the age of such alien would affect the alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a determination of whether or not such alien meets such age requirements shall be made by the Director in accordance with section 105.

SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) ORDER OF PREFERENCE.—Subject to the discretion of the Director under section 462(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(2)) and under paragraph (4) of this subsection and section 103(a)(2) of this Act, an unaccompanied alien child in the custody of the Office shall be promptly placed with 1 of the following individuals or entities in the following order of preference:

(A) A parent who seeks to establish custody, as described in paragraph (3)(A).

(B) A legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) An adult relative.

(D) An individual or entity designated by the parent or legal guardian that is capable and willing to care for the well-being of the child.

(E) A State-licensed juvenile shelter, group home, or foster care program willing to accept physical custody of the child.

(F) A qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the Office shall decide who is a qualified adult or entity and promulgate regulations in accordance with such decision.

(2) SUITABILITY ASSESSMENT.—Notwithstanding paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid suitability assessment conducted by an agency of the State of the child's proposed residence, by an agency authorized by that State to conduct such an assessment, or by an appropriate voluntary agency contracted with the Office to conduct such assessments has found that the person or entity is capable of providing for the child's physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, but subsequent to that placement a parent or legal guardian seeks to establish custody, the Director shall assess the suitability of placing the child with the parent or legal guardian and shall make a written determination on the child's placement within 30 days.

(B) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(i) supersede obligations under any treaty or other international agreement to which the United States is a party, including The Hague Convention on the Civil Aspects of International Child Abduction, the Vienna Declaration and Program of Action, and the Declaration of the Rights of the Child; or

(ii) limit any right or remedy under such international agreement.

(4) PROTECTION FROM SMUGGLERS AND TRAFFICKERS.—

(A) POLICIES AND PROGRAMS.—

(i) IN GENERAL.—The Director shall establish policies and programs to ensure that unaccompanied alien children are protected from smugglers, traffickers, or other persons seeking to victimize or otherwise engage such children in criminal, harmful, or exploitative activity.

(ii) WITNESS PROTECTION PROGRAMS INCLUDED.—The programs established pursuant to clause (i) may include witness protection programs.

(B) CRIMINAL INVESTIGATIONS AND PROSECUTIONS.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects any individual of being involved in any activity described in subparagraph (A) shall report such individual to Federal or State prosecutors for criminal investigation and prosecution.

(C) DISCIPLINARY ACTION.—Any officer or employee of the Office or the Department of Homeland Security, and any grantee or contractor of the Office, who suspects an attorney of being involved in any activity described in subparagraph (A) shall report the individual to the State bar association of which the attorney is a member, or to other appropriate disciplinary authorities, for appropriate disciplinary action that may include private or public admonition or censure, suspension, or disbarment of the attorney from the practice of law.

(5) GRANTS AND CONTRACTS.—Subject to the availability of appropriations, the Director may make grants to, and enter into contracts with, voluntary agencies to carry out section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or to carry out this section.

(6) REIMBURSEMENT OF STATE EXPENSES.—Subject to the availability of appropriations, the Director may reimburse States for any expenses they incur in providing assistance to unaccompanied alien children who are served pursuant to section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(b) CONFIDENTIALITY.—All information obtained by the Office relating to the immigration status of a person described in subparagraphs (A), (B), and (C) of subsection (a)(1) shall remain confidential and may be used only for the purposes of determining such person's qualifications under subsection (a)(1).

(c) REQUIRED DISCLOSURE.—The Secretary of Health and Human Services or the Secretary of Homeland Security shall provide the information furnished under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(d) PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not

be placed in an adult detention facility or a facility housing delinquent children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to the behavior in a facility appropriate for delinquent children.

(3) STATE LICENSURE.—In the case of a placement of a child with an entity described in section 102(a)(1)(E), the entity must be licensed by an appropriate State agency to provide residential, group, child welfare, or foster care services for dependent children.

(4) CONDITIONS OF DETENTION.—

(A) IN GENERAL.—The Director and the Secretary of Homeland Security shall promulgate regulations incorporating standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment of trauma, physical and sexual violence, or abuse;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters;

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) dietary needs.

(B) NOTIFICATION OF CHILDREN.—Regulations promulgated in accordance with subparagraph (A) shall provide that all children are notified orally and in writing of such standards in the child's native language.

(b) PROHIBITION OF CERTAIN PRACTICES.—The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraints on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least secure setting possible, as defined in the Stipulated Settlement Agreement under Flores v. Reno.

SEC. 104. REPATRIATED UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party, and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(2) ASSESSMENT OF CONDITIONS.—

(A) IN GENERAL.—The Secretary of State shall include each year in the State Department Country Report on Human Rights, an assessment of the degree to which each country protects children from smugglers and traffickers.

(B) FACTORS FOR ASSESSMENT.—The Directorate shall consult the State Department Country Report on Human Rights and the Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report in assessing whether to repatriate an unaccompanied alien child to a particular country.

(b) REPORT ON REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Secretary of Homeland Security shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate on efforts to repatriate unaccompanied alien children.

(2) CONTENTS.—The report submitted under paragraph (1) shall include, at a minimum, the following information:

(A) The number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States.

(B) A description of the type of immigration relief sought and denied to such children.

(C) A statement of the nationalities, ages, and gender of such children.

(D) A description of the procedures used to effect the removal of such children from the United States.

(E) A description of steps taken to ensure that such children were safely and humanely repatriated to their country of origin.

(F) Any information gathered in assessments of country and local conditions pursuant to subsection (a)(2).

SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

(a) IN GENERAL.—The Director shall develop procedures to make a prompt determination of the age of an alien in the custody of the Department of Homeland Security or the Office, when the age of the alien is at issue. Such procedures shall permit the presentation of multiple forms of evidence, including testimony of the child, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention. Such procedures shall allow the appeal of a determination to an immigration judge. The Secretary of Homeland Security shall permit the Office to have reasonable access to aliens in the custody of the Secretary so as to ensure a prompt determination of the age of such alien.

(b) PROHIBITION ON SOLE MEANS OF DETERMINING AGE.—Neither radiographs nor the attestation of an alien shall be used as the sole means of determining age for the purposes of determining an alien's eligibility for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to place the burden of proof in determining the age of an alien on the government.

SEC. 106. EFFECTIVE DATE.

This title shall take effect 90 days after the date of enactment of this Act.

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

SEC. 201. GUARDIANS AD LITEM.

(a) ESTABLISHMENT OF GUARDIAN AD LITEM PROGRAM.—

(1) APPOINTMENT.—The Director may, in the Director's discretion, appoint a guardian ad litem who meets the qualifications described in paragraph (2) for an unaccompanied alien child. The Director is encouraged, wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(2) QUALIFICATIONS OF GUARDIAN AD LITEM.—

(A) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(B) PROHIBITION.—A guardian ad litem shall not be an employee of the Directorate, the Office, or the Executive Office for Immigration Review.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to such child's presence in the United States, including facts and circumstances arising in the country of the child's nationality or last habitual residence and facts and circumstances arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that the best interests of the child are promoted while the child participates in, or is subject to, proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(F) take reasonable steps to ensure that the child understands the nature of the legal proceedings or matters and determinations made by the court, and ensure that all information is conveyed in an age-appropriate manner; and

(G) report factual findings relating to—

(i) information gathered pursuant to subparagraph (B);

(ii) the care and placement of the child during the pendency of the proceedings or matters; and

(iii) any other information gathered pursuant to subparagraph (D).

(4) TERMINATION OF APPOINTMENT.—The guardian ad litem shall carry out the duties described in paragraph (3) until—

(A) those duties are completed;

(B) the child departs the United States;

(C) the child is granted permanent resident status in the United States;

(D) the child attains the age of 18; or

(E) the child is placed in the custody of a parent or legal guardian;

whichever occurs first.

(5) POWERS.—The guardian ad litem—

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

(E) shall be permitted to consult with the child during any hearing or interview involving such child; and

(F) shall be provided at least 24 hours advance notice of a transfer of that child to a different placement, absent compelling and unusual circumstances warranting the transfer of such child prior to notification.

(b) TRAINING.—The Director shall provide professional training for all persons serving as guardians ad litem under this section in the—

(1) circumstances and conditions that unaccompanied alien children face; and

(2) various immigration benefits for which such alien child might be eligible.

(c) PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director shall establish and begin to carry

out a pilot program to test the implementation of subsection (a).

(2) PURPOSE.—The purpose of the pilot program established pursuant to paragraph (1) is to—

(A) study and assess the benefits of providing guardians ad litem to assist unaccompanied alien children involved in immigration proceedings or matters;

(B) assess the most efficient and cost-effective means of implementing the guardian ad litem provisions in this section; and

(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

(3) SCOPE OF PROGRAM.—

(A) SELECTION OF SITE.—The Director shall select 3 sites in which to operate the pilot program established pursuant to paragraph (1).

(B) NUMBER OF CHILDREN.—To the greatest extent possible, each site selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

(4) REPORT TO CONGRESS.—Not later than 1 year after the date on which the first pilot program is established pursuant to paragraph (1), the Director shall report to the Committees on the Judiciary of the Senate and the House of Representatives on subparagraphs (A) through (C) of paragraph (2).

SEC. 202. COUNSEL.

(a) ACCESS TO COUNSEL.—

(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office, or in the custody of the Directorate, who are not described in section 101(a)(2) shall have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall utilize the services of competent pro bono counsel who agree to provide representation to such children without charge. To the maximum extent practicable, the Director shall ensure that placements made under subparagraphs (D), (E), and (F) of section 102(a)(1) are in cities where there is a demonstrated capacity for competent pro bono representation.

(3) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to such children, the Director shall develop the necessary mechanisms to identify entities available to provide such legal assistance and representation and to recruit such entities.

(4) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—The Director shall enter into contracts with or make grants to nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out the responsibilities of this Act, including but not limited to such activities as providing legal orientation, screening cases for referral, recruiting, training, and overseeing pro bono attorneys. Nonprofit agencies may enter into subcontracts with or make grants to private voluntary agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(B) CONSIDERATIONS REGARDING GRANTS AND CONTRACTS.—In making grants and entering into contracts with agencies in accordance with subparagraph (A), the Director shall take into consideration whether the agencies in question are capable of properly administering the services covered by such grants or contracts without an undue conflict of interest.

(5) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

(A) DEVELOPMENT OF GUIDELINES.—The Executive Office for Immigration Review, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(B) PURPOSE OF GUIDELINES.—The guidelines developed in accordance with subparagraph (A) shall be designed to help protect a child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(C) IMPLEMENTATION.—The Executive Office for Immigration Review shall adopt the guidelines developed in accordance with subparagraph (A) and submit them for adoption by national, State, and local bar associations.

(b) DUTIES.—Counsel shall—

(1) represent the unaccompanied alien child in all proceedings and matters relating to the immigration status of the child or other actions involving the Directorate;

(2) appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Directorate; and

(3) owe the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client.

(c) ACCESS TO CHILD.—

(1) IN GENERAL.—Counsel shall have reasonable access to the unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(d) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL.—An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(e) ACCESS TO RECOMMENDATIONS OF GUARDIAN AD LITEM.—Counsel shall be afforded an opportunity to review the recommendation by the guardian ad litem affecting or involving a client who is an unaccompanied alien child.

SEC. 203. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—This title shall take effect 180 days after the date of enactment of this Act.

(b) APPLICABILITY.—The provisions of this title shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this title.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

SEC. 301. SPECIAL IMMIGRANT JUVENILE VISA.

(a) J VISA.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

''(J) an immigrant who is 18 years of age and under on the date of application who is present in the United States—

''(i) who by a court order, which shall be binding on the Secretary of Homeland Security for purposes of adjudications under this subparagraph, was declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State or juvenile court located in the United States, due to abuse, neglect, or abandonment, or a similar basis found under State law;

''(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

''(iii) with respect to a child in Federal custody, for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Director of the Bureau of Citizenship and Immigration Services that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien;

except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;''.

(b) ADJUSTMENT OF STATUS.—Section 245(h)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)(A)) is amended to read as follows:

''(A) paragraphs (4), (5)(A), (6)(A), and (7) of section 212(a) shall not apply; and''.

(c) ELIGIBILITY FOR ASSISTANCE.—A child who has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)), shall be eligible for all funds made available under section 412(d) of that Act (8 U.S.C. 1522(d)) until such time as the child attains the age designated in section 412(d)(2)(B) of that Act (8 U.S.C. 1522(d)(2)(B)), or until the child is placed in a permanent adoptive home, whichever occurs first.

(d) TRANSITION RULE.—Notwithstanding any other provision of law, any child described in section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) who filed an application for a visa before the date of enactment of this Act and who was 19, 20, or 21 years of age on the date such application was filed shall not be denied a visa after the date of enactment of this Act because of such alien's age.

SEC. 302. TRAINING FOR OFFICIALS AND CERTAIN PRIVATE PARTIES WHO COME INTO CONTACT WITH UNACCOMPANIED ALIEN CHILDREN.

(a) TRAINING OF STATE AND LOCAL OFFICIALS AND CERTAIN PRIVATE PARTIES.—The Secretary of Health and Human Services, acting jointly with the Secretary, shall provide appropriate training to be available to State and county officials, child welfare specialists, teachers, public counsel, and juvenile judges who come into contact with unaccompanied alien children. The training shall provide education on the processes pertaining to unaccompanied alien children with pending immigration status and on the forms of relief potentially available. The Director shall be responsible for establishing a

core curriculum that can be incorporated into education, training, or orientation modules or formats that are currently used by these professionals.

(b) TRAINING OF DIRECTORATE PERSONNEL.—The Secretary, acting jointly with the Secretary of Health and Human Services, shall provide specialized training to all personnel of the Directorate who come into contact with unaccompanied alien children. In the case of Border Patrol agents and immigration inspectors, such training shall include specific training on identifying children at the United States borders or at United States ports of entry who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 101(a)(2).

SEC. 303. REPORT.

Not later than 1 year after the date of enactment of this Act and annually thereafter, the Secretary of Health and Human Services shall submit a report for the previous fiscal year to the Committees on the Judiciary of the House of Representatives and the Senate that contains—

(1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);

(2) data regarding the care and placement of children in accordance with this Act;

(3) data regarding the provision of guardian ad litem and counsel services in accordance with this Act; and

(4) any other information that the Director or the Secretary of Health and Human Services determines to be appropriate.

SEC. 304. EFFECTIVE DATE.

The amendment made by section 301 shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

SEC. 401. GUIDELINES FOR CHILDREN'S ASYLUM CLAIMS.

(a) SENSE OF CONGRESS.—Congress commends the Immigration and Naturalization Service for its issuance of its ''Guidelines for Children's Asylum Claims'', dated December 1998, and encourages and supports the implementation of such guidelines by the Immigration and Naturalization Service (and its successor entities) in an effort to facilitate the handling of children's asylum claims. Congress calls upon the Executive Office for Immigration Review of the Department of Justice to adopt the ''Guidelines for Children's Asylum Claims'' in its handling of children's asylum claims before immigration judges and the Board of Immigration Appeals.

(b) TRAINING.—The Secretary shall provide periodic comprehensive training under the ''Guidelines for Children's Asylum Claims'' to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to assist in such training.

SEC. 402. UNACCOMPANIED REFUGEE CHILDREN.

(a) IDENTIFYING UNACCOMPANIED REFUGEE CHILDREN.—Section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following:

''(3) An analysis of the worldwide situation faced by unaccompanied refugee children, by region, which shall include an assessment of—

''(A) the number of unaccompanied refugee children, by region;

''(B) the capacity of the Department of State to identify such refugees;

''(C) the capacity of the international community to care for and protect such refugees;

''(D) the capacity of the voluntary agency community to resettle such refugees in the United States;

''(E) the degree to which the United States plans to resettle such refugees in the United States in the coming fiscal year; and

''(F) the fate that will befall such unaccompanied refugee children for whom resettlement in the United States is not possible.''.

(b) TRAINING ON THE NEEDS OF UNACCOMPANIED REFUGEE CHILDREN.—Section 207(f)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(f)(2)) is amended by—

(1) striking ''and'' after ''countries,''; and

(2) inserting before the period at the end the following: '', and instruction on the needs of unaccompanied refugee children''.

SEC. 403. EXCEPTIONS FOR UNACCOMPANIED ALIEN CHILDREN IN ASYLUM AND REFUGEE-LIKE CIRCUMSTANCES.

(a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any unaccompanied alien child apprehended by the Directorate, except for an unaccompanied alien child subject to exceptions under paragraph (1)(A) or (2) of section (101)(a) of this Act, shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(b) EXCEPTION FROM TIME LIMIT FOR FILING ASYLUM APPLICATION.—Section 208(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(2)) is amended by adding at the end the following:

''(E) APPLICABILITY.—Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child as defined in section 101(a)(51).''.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

SEC. 501. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Department of Homeland Security, the Department of Justice, and the Department of Health and Human Services, such sums as may be necessary to carry out—

(1) section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279); and

(2) this Act.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002

SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) ADDITIONAL RESPONSIBILITIES OF THE DIRECTOR.—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)(1)) is amended—

(1) in subparagraph (K), by striking ''and'' at the end;

(2) in subparagraph (L), by striking the period at the end and inserting '', including regular follow-up visits to such facilities, placements, and other entities, to assess the continued suitability of such placements; and''; and

(3) by adding at the end the following:

''(M) ensuring minimum standards of care for all unaccompanied alien children—

''(i) for whom detention is necessary; and

''(ii) who reside in settings that are alternative to detention.''.

(b) ADDITIONAL POWERS OF THE DIRECTOR.—Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)) is amended by adding at the end the following:

''(4) POWERS.—In carrying out the duties under paragraph (3), the Director shall have the power to—

''(A) contract with service providers to perform the services described in sections 102, 103, 201, and 202 of the Unaccompanied Alien Child Protection Act of 2004; and

''(B) compel compliance with the terms and conditions set forth in section 103 of the Unaccompanied Alien Child Protection Act of 2004, including the power to—

''(i) declare providers to be in breach and seek damages for noncompliance;

''(ii) terminate the contracts of providers that are not in compliance with such conditions; and

''(iii) reassign any unaccompanied alien child to a similar facility that is in compliance with such section.''.

SEC. 602. TECHNICAL CORRECTIONS.

Section 462(b) of the Homeland Security Act of 2002 (6 U.S.C. 279(b)), as amended by section 601, is amended—

(1) in paragraph (3), by striking ''paragraph (1)(G)'' and inserting ''paragraph (1)''; and

(2) by adding at the end the following:

''(5) STATUTORY CONSTRUCTION.—Nothing in paragraph (2)(B) may be construed to require that a bond be posted for unaccompanied alien children who are released to a qualified sponsor.''.

SEC. 603. EFFECTIVE DATE.

The amendments made by this title shall take effect as if enacted as part of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.).

SA 4059. Mr. SESSIONS (for Mr. ROBERTS (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2386, to authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; as follows:

On page 16, strike lines 1 through 16.

SA 4060. Mr. SESSIONS (for Mr. ROBERTS (for himself and Mr. ROCKEFELLER)) proposed an amendment to the bill S. 2386, to authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; as follows:

On page 9, line 16, add at the end the following: ''Such funds shall remain available until September 30, 2005.''.

On page 16, between lines 16 and 17, insert the following:

SEC. 307. INTELLIGENCE ASSESSMENT ON SANCTUARIES FOR TERRORISTS.

(a) ASSESSMENT REQUIRED.—Not later than the date specified in subsection (b), the Director of Central Intelligence shall submit to Congress an intelligence assessment that identifies and describes each country or region that is a sanctuary for terrorists or terrorist organizations. The assessment shall be based on current all-source intelligence.

(b) SUBMITTAL DATE.—The date of the submittal of the intelligence assessment required by subsection (a) shall be the earlier of—

(1) the date that is six months after the date of the enactment of this Act; or

(2) June 1, 2005.

SEC. 308. ADDITIONAL EXTENSION OF DEADLINE FOR FINAL REPORT OF THE NATIONAL COMMISSION FOR THE REVIEW OF THE RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY.

Section 1007(a) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 50 U.S.C. 401 note) is amended by striking ''September 1, 2004'' and inserting ''September 1, 2005''.

SEC. 309. FOUR-YEAR EXTENSION OF PUBLIC INTEREST DECLASSIFICATION BOARD.

Section 710(b) of the Public Interest Declassification Act of 2000 (title VII of Public Law 106–567; 114 Stat. 2856; 50 U.S.C. 435 note) is amended by striking ''4 years'' and inserting ''8 years''.

On page 19, strike lines 7 through 15 and insert the following:

''(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee retirement system for designated employees (and the spouse, former spouses, and survivors of such designated employees). A des-

On page 21, strike line 18 and all that follows through page 22, line 1, and insert the following:

''(iii) in the case of a designated employee who participated in an employee investment retirement system established under paragraph (1) and is converted to coverage under subchapter III of chapter 84 of title 5, United States Code, the Director may transmit any or all amounts of that designated employee in that employee investment retirement system (or similar

On page 22, strike line 24 and all that follows through page 23, line 5, and insert the following:

''(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee health insurance program for designated employees (and the family of such designated employees). A designated employee

On page 25, strike lines 6 through 12 and insert the following:

''(1) IN GENERAL.—The Director may establish and administer a nonofficial cover employee life insurance program for designated employees (and the family of such designated employees). A designated employee may not

On page 27, line 8, strike ''(B)(iii)'' and insert ''(B)(iv)''.

On page 30, strike lines 10 through 16.

SA 4061. Ms. LANDRIEU (for herself, Mr. BOND, Mr. JEFFORDS, Mrs. MURRAY, Mr. GRAHAM of South Carolina, Mr. ROCKEFELLER, Mr. SESSIONS, Mr. NELSON of Florida, Mr. WARNER, Mr. DURBIN, Mr. KERRY, Mrs. BOXER, and Ms. MIKULSKI) proposed an amendment to the bill H.R. 1779, to amend the Internal Revenue Code of 1986 to allow penalty-free withdrawals from retirement plans during the period that a military reservist or national guardsman is called to active duty for an extended period, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Guardsmen and Reservists Financial Relief Act of 2004''.

SEC. 2. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR INDIVIDUALS CALLED TO ACTIVE DUTY FOR AT LEAST 179 DAYS.

(a) IN GENERAL.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new subparagraph:

''(G) DISTRIBUTIONS FROM RETIREMENT PLANS TO INDIVIDUALS CALLED TO ACTIVE DUTY.—

''(i) IN GENERAL.—Any qualified reservist distribution.

''(ii) QUALIFIED RESERVIST DISTRIBUTION.—For purposes of this subparagraph, the term 'qualified reservist distribution' means any distribution to an individual if—

''(I) such distribution is from any qualified retirement plan (as defined in section 4974(c)),

''(II) such individual was (by reason of being a member of a reserve component (as defined in section 101 of title 37, United States Code)), ordered or called to active duty for a period in excess of 179 days or for an indefinite period, and

''(III) such distribution is made during the period beginning on the date of such order or call and ending at the close of the active duty period.

''(iii) APPLICATION OF SUBPARAGRAPH.—This subparagraph applies to individuals ordered or called to active duty after September 11, 2001, and before September 12, 2005.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after September 11, 2001.

SEC. 3. INCOME TAX WITHHOLDING ON DIFFERENTIAL WAGE PAYMENTS.

(a) IN GENERAL.—Section 3401 of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end the following new subsection:

''(i) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.—

''(1) IN GENERAL.—For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

''(2) DIFFERENTIAL WAGE PAYMENT.—For purposes of paragraph (1), the term 'differential wage payment' means any payment which—

''(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services while on active duty for a period of more than 30 days, and

''(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to remuneration paid after December 31, 2004.

SEC. 4. TREATMENT OF DIFFERENTIAL WAGE PAYMENTS FOR RETIREMENT PLAN PURPOSES.

(a) PENSION PLANS.—

(1) IN GENERAL.—Section 414(u) of the Internal Revenue Code of 1986 (relating to special rules relating to veterans' reemployment rights under USERRA) is amended by adding at the end the following new paragraph:

''(11) TREATMENT OF DIFFERENTIAL WAGE PAYMENTS.—

''(A) IN GENERAL.—Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

''(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

''(ii) the differential wage payment shall be treated as compensation, and

''(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution which is based on the differential wage payment.

''(B) SPECIAL RULE FOR DISTRIBUTIONS.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(i)(2)(A).

''(ii) LIMITATION.—If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

''(C) NONDISCRIMINATION REQUIREMENT.—Subparagraph (A)(iii) shall apply only if all employees of an employer performing service in the uniformed services described in section 3401(i)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5), of section 410(b) shall apply.

''(D) DIFFERENTIAL WAGE PAYMENT.—For purposes of this paragraph, the term 'differential wage payment' has the meaning given such term by section 3401(i)(2).''.

(2) CONFORMING AMENDMENT.—The heading for section 414(u) of such Code is amended by inserting ''AND TO DIFFERENTIAL WAGE PAYMENTS TO MEMBERS ON ACTIVE DUTY'' after ''USERRA''.

(b) DIFFERENTIAL WAGE PAYMENTS TREATED AS COMPENSATION FOR INDIVIDUAL RETIREMENT PLANS.—Section 219(f)(1) of the Internal Revenue Code of 1986 (defining compensation) is amended by adding at the end the following new sentence: ''The term 'compensation' includes any differential wage payment (as defined in section 3401(i)(2)).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2004.

(d) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment—

(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i), and

(B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of the Internal Revenue Code of 1986 or the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(2) AMENDMENTS TO WHICH SECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to any amendment made by this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2007.

(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

(ii) such plan or contract amendment applies retroactively for such period.

SEC. 5. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT AND READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.

(a) READY RESERVE-NATIONAL GUARD CREDIT.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits) is amended by inserting after section 45I the following new section:

"SEC. 45J. READY RESERVE-NATIONAL GUARD EMPLOYEE CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible taxpayer, the Ready Reserve-National Guard employee credit determined under this section for any taxable year with respect to each Ready Reserve-National Guard employee of such taxpayer is an amount equal to 50 percent of the lesser of—

''(1) the actual compensation amount with respect to such employee for such taxable year, or

''(2) $30,000.

''(b) DEFINITION OF ACTUAL COMPENSATION AMOUNT.—For purposes of this section, the term 'actual compensation amount' means the amount of compensation paid or incurred by an eligible taxpayer with respect to a Ready Reserve-National Guard employee on any day when the employee was absent from employment for the purpose of performing qualified active duty.

''(c) LIMITATIONS.—No credit shall be allowed with respect to any day that a Ready Reserve-National Guard employee who performs qualified active duty was not scheduled to work (for reason other than to participate in qualified active duty).

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

''(1) ELIGIBLE TAXPAYER.—

''(A) IN GENERAL.—The term 'eligible taxpayer' means a small business employer.

''(B) SMALL BUSINESS EMPLOYER.—

''(i) IN GENERAL.—The term 'small business employer' means, with respect to any taxable year, any employer who employed an average of 50 or fewer employees on business days during such taxable year.

''(ii) CONTROLLED GROUPS.—For purposes of clause (i), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

''(2) QUALIFIED ACTIVE DUTY.—The term 'qualified active duty' means—

''(A) active duty under an order or call for a period in excess of 179 days or for an indefinite period, other than the training duty specified in section 10147 of title 10, United States Code (relating to training requirements for the Ready Reserve), or section 502(a) of title 32, United States Code (relating to required drills and field exercises for the National Guard), in connection with which an employee is entitled to reemployment rights and other benefits or to a leave of absence from employment under chapter 43 of title 38, United States Code, and

''(B) hospitalization incident to such duty.

''(3) COMPENSATION.—The term 'compensation' means any remuneration for employment, whether in cash or in kind, which is paid or incurred by a taxpayer and which is deductible from the taxpayer's gross income under section 162(a)(1).

''(4) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term 'Ready Reserve-National Guard employee' means an employee who is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in sections 10142 and 10101 of title 10, United States Code.

''(5) CERTAIN RULES TO APPLY.—Rules similar to the rules of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply to any amount paid or incurred after December 31, 2005.''.

(2) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of the Internal Revenue Code of 1986 (relating to general business credit) is amended by striking ''plus'' at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting '', plus'', and by adding at the end the following:

''(20) the Ready Reserve-National Guard employee credit determined under section 45J(a).''.

(3) DENIAL OF DOUBLE BENEFIT.—Section 280C(a) of the Internal Revenue Code of 1986 (relating to rule for employment credits) is amended by inserting ''45J(a),'' after ''45A(a),''.

(4) CONFORMING AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 45I the following:

''Sec. 45J. Ready Reserve-National Guard employee credit.''.

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after September 30, 2004, in taxable years ending after such date.

(b) READY RESERVE-NATIONAL GUARD REPLACEMENT EMPLOYEE CREDIT.—

(1) IN GENERAL.—Paragraph (1) of section 51(d) of the Internal Revenue Code of 1986 (relating to members of targeted groups) is amended by striking ''or'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', or'' and by adding at the end the following new subparagraph:

''(I) a qualified replacement employee.''.

(2) QUALIFIED REPLACEMENT EMPLOYEE.—Section 51(d) of the Internal Revenue Code of 1986 is amended by redesignating paragraphs (10), (11), and (12) as paragraphs (11), (12), and (13), respectively, and by inserting after paragraph (9) the following new paragraph:

''(10) QUALIFIED REPLACEMENT EMPLOYEE.—

''(A) IN GENERAL.—The term 'qualified replacement employee' means an individual who is certified by the designated local agency as being hired by an eligible taxpayer to replace a Ready Reserve-National Guard employee of such taxpayer, but only with respect to the period during which such Ready Reserve-National Guard employee participates in qualified active duty, including time spent in travel status.

''(B) GENERAL DEFINITIONS AND SPECIAL RULES.—For purposes of this paragraph—

''(i) ELIGIBLE TAXPAYER.—The term 'eligible taxpayer' means a small business employer.

''(ii) SMALL BUSINESS EMPLOYER.—

''(I) IN GENERAL.—The term 'small business employer' means, with respect to any taxable year, any employer who employed an average of 50 or fewer employees on business days during such taxable year.

''(II) CONTROLLED GROUPS.—For purposes of subclause (I), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

''(iii) READY RESERVE-NATIONAL GUARD EMPLOYEE.—The term 'Ready Reserve-National Guard employee' has the meaning given such term by section 45J(d)(3).

''(iv) QUALIFIED ACTIVE DUTY.—The term 'qualified active duty' has the meaning given such term by section 45J(d)(1).

''(C) DISALLOWANCE FOR FAILURE TO COMPLY WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—No credit shall be allowed under subsection (a) by reason of paragraph (1)(I) to a taxpayer for—

''(i) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

''(ii) the 2 succeeding taxable years.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred to an individual who begins work for the employer after September 30, 2004.

(c) STUDY BY GAO.—

(1) IN GENERAL.—The Comptroller General of the United States shall study the following:

(A) What, if any, problems exist in recruiting individuals for a reserve component of an Armed Force of the United States.

(B) What, if any, problems exist as the result of providing differential wage payments (as defined in section 3401(i)(2) of the Internal Revenue Code of 1986 (as added by this Act)) to individuals described in subparagraph (A) in the recruitment and retention of individuals as regular members of the Armed Forces of the United States.

(C) Whether the credit allowed under section 45J of the Internal Revenue Code of 1986 (as added by this section) is an effective incentive for the hiring and retention of employees who are individuals described in subparagraph (A) and whether there exists any compliance problems in the administration of such credit.

(2) REPORT.—The Comptroller General of the United States shall report on the results of the study required under paragraph (1) to the Committee of Finance of the Senate and the Committee on Ways and Means of the House of Representatives before July 1, 2005.

SEC. 6. PENALTY FREE WITHDRAWALS FROM RETIREMENT PLANS FOR VICTIMS OF FEDERALLY DECLARED NATURAL DISASTERS.

(a) IN GENERAL.—Paragraph (2) of section 72(t) of the Internal Revenue Code of 1986 (relating to 10-percent additional tax on early distributions from qualified retirement plans), as amended by this Act, is amended by adding at the end the following new subparagraph:

''(H) DISTRIBUTIONS FROM RETIREMENT PLANS TO VICTIMS OF FEDERALLY DECLARED NATURAL DISASTERS.—

''(i) IN GENERAL.—Any qualified disaster-relief distribution.

''(ii) QUALIFIED DISASTER-RELIEF DISTRIBUTION.—For purposes of this subparagraph, the term 'qualified disaster-relief distribution' means any distribution to an individual who has sustained a loss in excess of $100 as a result of a major disaster declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act—

''(I) if such distribution is made from any qualified retirement plan (as defined in section 4974(c)) during the 1-year period beginning on the date such declaration is made, and

''(II) to the extent such distribution does not exceed the amount of such loss and is not compensated for by insurance or otherwise.

For purposes of subclause (II), the amount of any loss shall be determined using the greater of the fair market value of the property on the day before the date of such disaster or the adjusted basis of the property as provided in section 1011, less any compensation for such loss that the individual has received as of the date of such distribution and any compensation for such loss that the individual expects to receive, based on a reasonable estimate. Any difference between the

amount of compensation that an individual expects to receive on the basis of such an estimate and actually receives shall not be included in the individual's gross income.''.

(b) EXEMPTION OF DISTRIBUTIONS FROM WITHHOLDING.—Paragraph (4) of section 402(c) of the Internal Revenue Code of 1986 (relating to eligible rollover distribution) is amended by striking ''and'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting '', and'', and by inserting at the end the following new subparagraph:

''(D) any qualified disaster-relief distribution (within the meaning of section 72(t)(2)(H).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 401(k)(2)(B)(i) of the Internal Revenue Code of 1986 is amended by striking ''or'' at the end of subclause (III), by striking ''and'' at the end of subclause (IV) and inserting ''or'', and by inserting after subclause (IV) the following new subclause:

''(V) the date on which a period referred to in section 72(t)(2)(H)(ii)(I) begins (but only to the extent provided in section 72(t)(2)(H)), and''.

(2) Section 403(b)(7)(A)(ii) of such Code is amended by inserting ''sustains a loss as a result of a major disaster declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (but only to the extent provided in section 72(t)(2)(H)),'' before ''or''.

(3) Section 403(b)(11) of such Code is amended by striking ''or'' at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting '', or'', and by inserting after subparagraph (B) the following new subparagraph:

''(C) for distributions to which section 72(t)(2)(H) applies.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions received in taxable years beginning after December 31, 2003.

SA 4062. Mr. FRIST (for Mr. CONRAD) proposed an amendment to the concurrent resolution S. Con. Res. 136, honoring and memorializing the passengers and crew of United Airlines Flight 93; as follows:

Beginning on page 2, strike line 10 and all that follows through page 3, line 8, and insert the following:

(3) not later than January 1, 2006, the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate shall select an appropriate memorial that shall be located in the United States Capitol Building and that shall honor the passengers and crew of Flight 93, who saved the United States Capitol Building from destruction; and

(4) the memorial shall state the purpose of the honor and the names of the passengers and crew of Flight 93 on whom the honor is bestowed.

SA 4063. Mr. FRIST (for Mr. FITZGERALD) proposed an amendment to the bill S. 2688, to provide for a report of Federal entities without annually audited financial statements; as follows:

On page 2, line 10, strike ''60 days'' and insert ''120 days''.

On page 3, line 2, insert after ''temporary commissions'' the following: ''in existence at least 12 months''.

On page 3, strike beginning with line 9 through page 4, line 4, and insert the following:

(3) an assessment of the capability of and the costs that would be incurred for Federal entities of the categories listed under paragraphs (1) and (2) to prepare annual financial statements and to have such statements independently audited;

(4) an assessment of how to reduce the costs of preparing the financial statements and performing independent audits for Federal entities of the categories listed under paragraphs (1) and (2); and

(5) an assessment of the benefits of improved financial oversight encompassing the executive branch, including the Federal entities of the categories listed under paragraphs (1) and (2), and an assessment of the feasibility of preparing annual financial statements and independently audited statements for the Federal entities in the categories listed under paragraphs (1) and (2).

SA 4064. Mr. FRIST (for Mr. LIEBERMAN) proposed an amendment to the bill S. 2691, to establish the Long Island Sound Stewardship Initiative; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Long Island Sound Stewardship Act of 2004''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) Long Island Sound is a national treasure of great cultural, environmental, and ecological importance;

(2) 8,000,000 people live within the Long Island Sound watershed and 28,000,000 people (approximately 10 percent of the population of the United States) live within 50 miles of Long Island Sound;

(3) activities that depend on the environmental health of Long Island Sound contribute more than $5,000,000,000 each year to the regional economy;

(4) the portion of the shoreline of Long Island Sound that is accessible to the general public (estimated at less than 20 percent of the total shoreline) is not adequate to serve the needs of the people living in the area;

(5) existing shoreline facilities are in many cases overburdened and underfunded;

(6) large parcels of open space already in public ownership are strained by the effort to balance the demand for recreation with the needs of sensitive natural resources;

(7) approximately ⅓ of the tidal marshes of Long Island Sound have been filled, and much of the remaining marshes have been ditched, dyked, or impounded, reducing the ecological value of the marshes; and

(8) much of the remaining exemplary natural landscape is vulnerable to further development.

(b) PURPOSE.—The purpose of this Act is to establish the Long Island Sound Stewardship Initiative to identify, protect, and enhance sites within the Long Island Sound ecosystem with significant ecological, educational, open space, public access, or recreational value through a bi-State network of sites best exemplifying these values.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADAPTIVE MANAGEMENT.—The term ''adaptive management'' means a scientific process—

(A) for—

(i) developing predictive models;

(ii) making management policy decisions based upon the model outputs;

(iii) revising the management policies as data become available with which to evaluate the policies; and

(iv) acknowledging uncertainty, complexity, and variance in the spatial and temporal aspects of natural systems; and

(B) that requires that management be viewed as experimental.

(2) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(3) COMMITTEE.—The term ''Committee'' means the Long Island Sound Stewardship Advisory Committee established by section 5(a).

(4) REGION.—The term ''Region'' means the Long Island Sound Stewardship Initiative Region established by section 4(a).

(5) STATES.—The term ''States'' means the States of Connecticut and New York.

(6) STEWARDSHIP SITE.—The term ''stewardship site'' means a site that—

(A) qualifies for identification by the Committee under section 8; and

(B) is an area of land or water or a combination of land and water—

(i) that is in the Region; and

(ii) that is—

(I) Federal, State, local, or tribal land or water;

(II) land or water owned by a nonprofit organization; or

(III) privately owned land or water.

(7) SYSTEMATIC SITE SELECTION.—The term ''systematic site selection'' means a process of selecting stewardship sites that—

(A) has explicit goals, methods, and criteria;

(B) produces feasible, repeatable, and defensible results;

(C) provides for consideration of natural, physical, and biological patterns,

(D) addresses reserve size, replication, connectivity, species viability, location, and public recreation values;

(E) uses geographic information systems technology and algorithms to integrate selection criteria; and

(F) will result in achieving the goals of stewardship site selection at the lowest cost.

(8) THREAT.—The term ''threat'' means a threat that is likely to destroy or seriously degrade a conservation target or a recreation area.

SEC. 4. LONG ISLAND SOUND STEWARDSHIP INITIATIVE REGION.

(a) ESTABLISHMENT.—There is established in the States the Long Island Sound Stewardship Initiative Region.

(b) BOUNDARIES.—The Region shall encompass the immediate coastal upland and underwater areas along Long Island Sound, including those portions of the Sound with coastally influenced vegetation, as described on the map entitled the ''Long Island Sound Stewardship Region'' and dated April 21, 2004.

SEC. 5. LONG ISLAND SOUND STEWARDSHIP ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established a committee to be known as the ''Long Island Sound Stewardship Advisory Committee''.

(b) CHAIRPERSON.—The Chairperson of the Committee shall be the Director of the Long Island Sound Office of the Environmental Protection Agency, or a designee of the Director.

(c) MEMBERSHIP.—

(1) COMPOSITION.—

(A) APPOINTMENT OF MEMBERS.—

(i) IN GENERAL.—The Chairperson shall appoint the members of the Committee in accordance with this subsection and section 320(c) of the Federal Water Pollution Control Act (33 U.S.C. 1330(c)).

(ii) ADDITIONAL MEMBERS.—In addition to the requirements described in clause (i), the Committee shall include—

(I) a representative from the Regional Plan Association;

(II) a representative of the marine trade organizations; and

(III) a representative of private landowner interests.

(B) REPRESENTATION.—In appointing members to the Committee, the Chairperson shall consider—

(i) Federal, State, and local government interests;

(ii) the interests of nongovernmental organizations;

(iii) academic interests; and

(iv) private interests.

(2) DATE OF APPOINTMENTS.—Not later than 180 days after the date of enactment of this Act, the appointment of all members of the Committee shall be made.

(d) TERM; VACANCIES.—

(1) TERM.—

(A) IN GENERAL.—A member shall be appointed for a term of 4 years.

(B) MULTIPLE TERMS.—A person may be appointed as a member of the Committee for more than 1 term.

(2) VACANCIES.—A vacancy on the Committee shall—

(A) be filled not later than 90 days after the vacancy occurs;

(B) not affect the powers of the Committee; and

(C) be filled in the same manner as the original appointment was made.

(3) STAFF.—

(A) IN GENERAL.—The Chairperson of the Committee may appoint and terminate personnel as necessary to enable the Committee to perform the duties of the Committee.

(B) PERSONNEL AS FEDERAL EMPLOYEES.—

(i) IN GENERAL.—Any personnel of the Committee who are employees of the Committee shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(ii) MEMBERS OF COMMITTEE.—Clause (i) does not apply to members of the Committee.

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

(f) MEETINGS.—The Committee shall meet at the call of the Chairperson, but no fewer than 4 times each year.

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

SEC. 6. DUTIES OF THE COMMITTEE.

The Committee shall—

(1) consistent with the guidelines described in section 8—

(A) evaluate applications from government or nonprofit organizations qualified to hold conservation easements for funds to purchase land or development rights for stewardship sites;

(B) evaluate applications to develop and implement management plans to address threats;

(C) evaluate applications to act on opportunities to protect and enhance stewardship sites; and

(D) recommend that the Administrator award grants to qualified applicants;

(2) recommend guidelines, criteria, schedules, and due dates for evaluating information to identify stewardship sites;

(3) publish a list of sites that further the purposes of this Act, provided that owners of sites shall be—

(A) notified prior to the publication of the list; and

(B) allowed to decline inclusion on the list;

(4) raise awareness of the values of and threats to these sites; and

(5) leverage additional resources for improved stewardship of the Region.

SEC. 7. POWERS OF THE COMMITTEE.

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

(b) INFORMATION FROM FEDERAL AGENCIES.—

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

(2) PROVISION OF INFORMATION.—

(A) IN GENERAL.—Subject to subparagraph (C), on request of the Chairperson of the Committee, the head of a Federal agency shall provide the information requested by the Chairperson to the Committee.

(B) ADMINISTRATION.—The furnishing of information by a Federal agency to the Committee shall not be considered a waiver of any exemption available to the agency under section 552 of title 5, United States Code.

(C) INFORMATION TO BE KEPT CONFIDENTIAL.—

(i) IN GENERAL.—For purposes of section 1905 of title 18, United States Code—

(I) the Committee shall be considered an agency of the Federal Government; and

(II) any individual employed by an individual, entity, or organization that is a party to a contract with the Committee under this Act shall be considered an employee of the Committee.

(ii) PROHIBITION ON DISCLOSURE.—Information obtained by the Committee, other than information that is available to the public, shall not be disclosed to any person in any manner except to an employee of the Committee as described in clause (i), for the purpose of receiving, reviewing, or processing the information.

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

(d) DONATIONS.—The Committee may accept, use, and dispose of donations of services or property that advance the goals of the Long Island Sound Stewardship Initiative.

SEC. 8. STEWARDSHIP SITES.

(a) INITIAL SITES.—

(1) IDENTIFICATION.—

(A) IN GENERAL.—The Committee shall identify 20 initial Long Island Sound stewardship sites that the Committee has determined—

(i)(I) are natural resource-based recreation areas; or

(II) are exemplary natural areas with ecological value; and

(ii) best promote the purposes of this Act.

(B) EXEMPTION.—Sites described in subparagraph (A) are not subject to the site identification process described in subsection (d).

(2) EQUITABLE DISTRIBUTION OF FUNDS FOR INITIAL SITES.—In identifying initial sites under paragraph (1), the Committee shall exert due diligence to recommend an equitable distribution of funds between the States for the initial sites.

(b) APPLICATION FOR IDENTIFICATION AS A STEWARDSHIP SITE.—Subsequent to the identification of the initial stewardship sites under subsection (a), owners of sites may submit applications to the Committee in accordance with subsection (c) to have the sites identified as stewardship sites.

(c) IDENTIFICATION.—The Committee shall review applications submitted by owners of potential stewardship sites to determine whether the sites shall be identified as exhibiting values consistent with the purposes of this Act.

(d) SITE IDENTIFICATION PROCESS.—

(1) NATURAL RESOURCE-BASED RECREATION AREAS.—The Committee shall identify additional recreation areas with potential as stewardship sites using a selection technique that includes—

(A) public access;

(B) community support;

(C) areas with high population density;

(D) environmental justice (as defined in section 385.3 of title 33, Code of Federal Regulations (or successor regulations));

(E) connectivity to existing protected areas and open spaces;

(F) cultural, historic, and scenic areas; and

(G) other criteria developed by the Committee.

(2) NATURAL AREAS WITH ECOLOGICAL VALUE.—The Committee shall identify additional natural areas with ecological value and potential as stewardship sites—

(A) based on measurable conservation targets for the Region; and

(B) following a process for prioritizing new sites using systematic site selection, which shall include—

(i) ecological uniqueness;

(ii) species viability;

(iii) habitat heterogeneity;

(iv) size;

(v) quality;

(vi) connectivity to existing protected areas and open spaces;

(vii) land cover;

(viii) scientific, research, or educational value;

(ix) threats; and

(x) other criteria developed by the Committee.

(3) PUBLICATION OF LIST.—After completion of the site identification process, the Committee shall—

(A) publish in the Federal Register a list of sites that further the purposes of this Act; and

(B) prior to publication of the list, provide to owners of the sites to be published—

(i) a notification of publication; and

(ii) an opportunity to decline inclusion of the site of the owner on the list.

(4) DEVIATION FROM PROCESS.—

(A) IN GENERAL.—The Committee may identify as a potential stewardship site, a site that does not meet the criteria in paragraph (1) or (2), or reject a site selected under paragraph (1) or (2), if the Committee—

(i) selects a site that makes significant ecological or recreational contributions to the Region;

(ii) publishes the reasons that the Committee decided to deviate from the systematic site selection process; and

(iii) before identifying or rejecting the potential stewardship site, provides to the owners of the site the notification of publication, and the opportunity to decline inclusion of the site on the list published under paragraph (3)(A), described in paragraph (3)(B).

(5) PUBLIC COMMENT.—In identifying potential stewardship sites, the Committee shall consider public comments.

(e) GENERAL GUIDELINES FOR MANAGEMENT.—

(1) IN GENERAL.—The Committee shall use an adaptive management framework to identify the best policy initiatives and actions through—

(A) definition of strategic goals;

(B) definition of policy options for methods to achieve strategic goals;

(C) establishment of measures of success;

(D) identification of uncertainties;

(E) development of informative models of policy implementation;

(F) separation of the landscape into geographic units;

(G) monitoring key responses at different spatial and temporal scales; and

(H) evaluation of outcomes and incorporation into management strategies.

(2) APPLICATION OF ADAPTIVE MANAGEMENT FRAMEWORK.—The Committee shall apply the adaptive management framework to the process for updating the list of recommended stewardship sites.

SEC. 9. REPORTS.

(a) IN GENERAL.—For each of fiscal years 2006 through 2013, the Committee shall submit to the Administrator an annual report that contains—

(1) a detailed statement of the findings and conclusions of the Committee since the last report;

(2) a description of all sites recommended by the Committee to be approved as stewardship sites;

(3) the recommendations of the Committee for such legislation and administrative actions as the Committee considers appropriate; and

(4) in accordance with subsection (b), the recommendations of the Committee for the awarding of grants.

(b) GENERAL GUIDELINES FOR RECOMMENDATIONS.—

(1) IN GENERAL.—The Committee shall recommend that the Administrator award grants to qualified applicants to help to secure and improve the open space, public access, or ecological values of stewardship sites, through—

(A) purchase of the property of the site;

(B) purchase of relevant property rights of the site; or

(C) entering into any other binding legal arrangement that ensures that the values of the site are sustained, including entering into an arrangement with a land manager or owner to develop or implement an approved management plan that is necessary for the conservation of natural resources.

(2) EQUITABLE DISTRIBUTION OF FUNDS.—The Committee shall exert due diligence to recommend an equitable distribution of funds between the States.

(c) ACTION BY THE ADMINISTRATOR.—

(1) IN GENERAL.—Not later than 90 days after receiving a report under subsection (a), the Administrator shall—

(A) review the recommendations of the Committee; and

(B) take actions consistent with the recommendations of the Committee, including the approval of identified stewardship sites and the award of grants, unless the Administrator makes a finding that any recommendation is unwarranted by the facts.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Administrator shall develop and publish a report that—

(A) assesses the current resources of and threats to Long Island Sound;

(B) assesses the role of the Long Island Sound Stewardship Initiative in protecting Long Island Sound;

(C) establishes guidelines, criteria, schedules, and due dates for evaluating information to identify stewardship sites;

(D) includes information about any grants that are available for the purchase of land or property rights to protect stewardship sites;

(E) accounts for funds received and expended during the previous fiscal year;

(F) shall be made available to the public on the Internet and in hardcopy form; and

(G) shall be updated at least every other year, except that information on funding and any new stewardship sites identified shall be published more frequently.

SEC. 10. PRIVATE PROPERTY PROTECTION.

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this Act—

(1) requires any private property owner to allow public access (including Federal, State, or local government access) to the private property; or

(2) modifies any provision of Federal, State, or local law with regard to public access to or use of private property, except as entered into by voluntary agreement of the owner or custodian of the property.

(b) LIABILITY.—Approval of the Long Island Sound Stewardship Initiative Region does not create any liability, or have any effect on any liability under any other law, of any private property owner with respect to any person injured on the private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this Act modifies the authority of Federal, State, or local governments to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS IN THE LONG ISLAND SOUND STEWARDSHIP INITIATIVE REGION.—Nothing in this Act requires the owner of any private property located within the boundaries of the Region to participate in or be associated with the Initiative.

(e) EFFECT OF ESTABLISHMENT.—

(1) IN GENERAL.—The boundaries approved for the Region represent the area within which Federal funds appropriated for the purpose of this Act may be expended.

(2) REGULATORY AUTHORITY.—The establishment of the Region and the boundaries of the Region does not provide any regulatory authority not in existence on the date of enactment of this Act on land use in the Region by any management entity, except for such property rights as may be purchased from or donated by the owner of the property (including the Federal Government or a State or local government, if applicable).

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act $25,000,000 for each of fiscal years 2006 through 2013.

(b) USE OF FUNDS.—For each fiscal year, funds made available under subsection (a) shall be used by the Administrator, after reviewing the recommendations of the Committee submitted under section 9, for—

(1) acquisition of land and interests in land;

(2) development and implementation of site management plans;

(3) site enhancements to reduce threats or promote stewardship; and

(4) administrative expenses of the Committee.

(c) FEDERAL SHARE.—The Federal share of the cost of an activity carried out using any assistance or grant under this Act shall not exceed 75 percent of the total cost of the activity.

SEC. 12. LONG ISLAND SOUND AUTHORIZATION OF APPROPRIATIONS.

Section 119(f) of the Federal Water Pollution Control Act (33 U.S.C. 1269(f)) is amended by striking ''2005'' each place it appears and inserting ''2009''.

SEC. 13. TERMINATION OF COMMITTEE.

The Committee shall terminate on December 31, 2013.

SA 4065. Mr. FRIST (for Mr. SMITH) proposed an amendment to the concurrent resolution S. Con. Res. 113, recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideals of National Tourette Syndrome Awareness Month; as follows:

Strike all after the resolving clause and insert the following:

That Congress—

(1) recognizes the impact that Tourette Syndrome can have on people living with the disorder;

(2) recognizes the importance of an early diagnosis and proper treatment of Tourette Syndrome;

(3) recognizes the need for enhanced public awareness of Tourette Syndrome; and

(4) supports the goals and ideals of National Tourette Syndrome Awareness Month.

SA 4066. Mr. FRIST (for Mr. SMITH) proposed an amendment to the concurrent resolution S. Con. Res. 113, recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideals of National Tourette Syndrome Awareness Month; as follows:

Strike the preamble and insert the following:

Whereas Tourette Syndrome is an inherited neurological disorder characterized by involuntary and sudden movements or repeated vocalizations;

Whereas approximately 200,000 people in the United States have been diagnosed with Tourette Syndrome and many more remain undiagnosed;

Whereas lack of public awareness has increased the social stigma attached to Tourette Syndrome;

Whereas early diagnosis and treatment of Tourette Syndrome can prevent physical and psychological harm;

Whereas there is not known cure for Tourette Syndrome and treatment involves multiple medications and therapies; and

Whereas May 15 through June 15 has been designated as National Tourette Syndrome Awareness Month, the goal of which is to educate the public about the nature and effects of Tourette Syndrome; Now, therefore, be it ...

SA 4067. Mr. FRIST (for Mr. SMITH) proposed an amendment to the concurrent resolution S. Con. Res. 113, recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideals of National Tourette Syndrome Awareness Month; as follows:

Amend the title so as to read ''Recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideas of National Tourette Syndrome Awareness Month.''

ORDER OF BUSINESS

Mr. FRIST. Mr. President, we have had a very long day, a long day yesterday, and a long day the day before—a very, very long day today. We are going to be wrapping up here fairly quickly. But I have a lot of business to go through. So we will go through it, and I will make some comments after that.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR NO. 915

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that on Tuesday, November 16, at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session to consider the following nomination on today's Executive Calendar, Calendar No. 915, the

nomination of Francis Harvey, to be Secretary of the Army.

I further ask unanimous consent that there then be 2 hours for debate under the control of Senator REED of Rhode Island and 1 hour for debate under the control of Chairman WARNER; further, that after the use or expiration of that debate time, the Senate proceed to a vote on the confirmation of the nomination; further that following the vote, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

NOMINATIONS PLACED ON THE CALENDAR

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that the HELP Committee be discharged from the list of nominations that are currently at the desk; and further that they be placed on the calendar.

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

The list is as follows:

NOMINATION REFERENCE AND REPORT

Ordered, That the following nomination be referred to the Committee on Health, Education, Labor, and Pensions:

Milton Aponte, of Florida, to be a Member of the National Council on Disability for a term expiring September 17, 2006. (Reappointment)

Ordered, That the following nomination be referred to the Committee on Health, Education, Labor, and Pensions:

Dan Arvizu, of Colorado, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010, vice Maxine L. Savitz, term expired.

Ordered, That the following nomination be referred to the Committee on Health, Education, Labor, and Pensions:

Steven C. Beering, of Indiana, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010. (Reappointment)

Ordered, That the following nomination be referred to the Committee on Health, Education, Labor, and Pensions:

Gerald Wayne Clough, of Georgia, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010, vice Anita K. Jones, term expired.

Ordered, That the following nomination be referred to the Committee on Health, Education, Labor, and Pensions:

Kelvin Kay Droegemeier, of Oklahoma, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010, vice Robert C. Richardson, term expired.

Ordered, That the following nomination be referred to the Committee on Health, Education, Labor, and Pensions:

Louis J. Lanzerotti, of New Jersey, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010, vice George M. Langford, term expired.

Ordered, That the following nomination be referred to the Committee on Health, Education, Labor, and Pensions:

Alan I. Leshner, of Maryland, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010, vice Luis Sequeira, term expired.

Ordered, That the following nomination be referred to the Committee on Health, Education, Labor, and Pensions:

Jon C. Strauss, of California, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010, vice Joseph A. Miller, Jr., term expired.

Ordered, That the following nomination be referred to the Committee on Health, Education, Labor, and Pensions:

Kathryn D. Sullivan, of Ohio, to be a Member of the National Science Board, National Science Foundation for a term expiring May 10, 2010, vice Pamela A. Ferguson.

Ordered, That the following nominations be referred to the Committee on Health, Education, Labor and Pensions:

The following candidates for personnel action in the regular corps of the Public Health Service subject to qualifications therefor as provided by law and regulations:

To be medical director

Timothy D. Mastro
Stephen C. Redd

To be senior surgeon

David R. Arday
Diane E. Bennett
David B. Canton
Louisa E. Chapman
Isabella A. Danel
Karen M. Farizo
James R. Graham
Stephen G. Kaler
Marcel E. Salive
Gail M. Stennies
Kim M. Willard-Jelks

To be surgeon

John T. Brooks
Elizabeth C. Clark
Rodney W. Cuny
Reuben Granich
Lisa A. Grohskopf
Paul T. Harvey
Daniel B. Jernigan
Amy J. Khan
Matthew J. Kuehnert
Rachel E. Locker
Sharon L. Ludwig
Jeffrey B. Nemhauser
Lisa D. Rotz
Jeffrey C. Salvon-Harman
Laura A. Tillman
Stephen H. Waterman
Cynthia G. Whitney

To be senior assistant surgeon

Roxanne Y. Barrow
Mark E. Beatty
Felicia L. Collins
Sriparna D. Datta
Lisa K. Fitzpatrick
Idalia M. Gonzalez
Shannon L. Hader
James D. Heffelfinger
Terri B. Hyde
David E. Johnson
Sheryl B. Lyss
Lois R. Niska
Kelton H. Oliver
Bernard W. Parker
Farah M. Parvez
Michael D. Ratzlafft
Scott S. Santibanez

To be dental director

Geralyn S. Johnson

To be senior dental surgeon

Joel J. Aimone
Hirofumi Nakatsuchi
William V. Stenberg

To be dental surgeon

Randolph A. Coffey
Mark R. Freese
Arlene M. Lester
James M. Schaeffer

To be senior assistant dental surgeon

Kenneth S. Cho
Cielo C. Doherty
Ronald L. Fuller
Tameka D. Lewis-Baker
Laura J. Lund
Robin G. Scheper
Robert P. Sewell
Anthony Vitali
James H. Webb Jr.

To be senior nurse officer

Marjorie E. Eddinger
Rose A. Jenkins

To be nurse officer

Rosa J. Clark
Philip Jarres
Ivy L. Manning
Joyce A. Prince
Doris L. Raymond
Michael L. Robinson

To be senior assistant nurse officer

Diane M. Aker
Ileane Barreto-Pettit
Kelly L. Barry
Theodora R. Bradley
Frank L. Cordova
William F. Coyner
Derwent O. Daniel
Belinda E. Dean
Jenny Doan
Deanna M. Gephart
John S. Hartford
Erik S. Hierholzer
Eric M. Howser
Chad W. Koratich
Delia Marquez-Ellis
Lisa A. Marunycz
Carolyn J. McKeown
Antonio Palladino
Shelly K. Paynter
Thuyle T. Pham
Phil B. Sargent
Donna K. Strong
Judith B. Sutcliffe
Amy O. Taylor
Nancy L. Tone
Theresa Tsosie-Robledo
Victoria F. Vachon
Dawn L. Will
Zenja D. Woodley

To be assistant nurse officer

Glenn R. Archambault
Joyce T. Davis
Channel R. Mangum
Hung P. Phan
Monica D. Rankins

To be senior engineer officer

Vernon L. Tomanek

To be engineer officer

Danielle Devoney
Kelly B. Leseman
Karl R. Powers
Arthur D. Ronimus III

To be senior assistant engineer officer

Kenneth J. Grant
David E. Harvey
David E. Johnson
Marcus C. Martinez
Andrew M. Meltzer
Jamie D. Natour
Rick A. Rivers
Eric Y. Shih
Jack S. Sorum
Charles H. Weir

To be senior scientist

Pamela L. Ching

To be scientist

Laila H. Ali
Clement J. Welsh

To be senior assistant scientist

Carma S. Ayala

Diana M. Bensyl
Amanda S. Brown
Michael J. Cooper
Karen A. Hennessey
Daphne B. Moffett
Meredith A. Reynolds
Cynthia A. Striley

To be sanitarian

Jan C. Manwaring

To be senior assistant sanitarian

Gary W. Carter
Julia E. Chervoni
Vivian Garcia
Kit C. Grosch
Wayne L. Hall
Brian E. Hroch
Harrichand Rhambarose
Donald B. Williams, Jr.

To be senior veterinary officer

Yvette M. Davis
Stephanie R. Ostrowski
Lowrey L. Rhodes Jr.

To be veterinary officer

Estella Z. Jones-Miller

To be senior assistant veterinary officer

Gregory L. Langham

To be pharmacist director

Diane L. Frankenfield

To be senior pharmacist

Sharon K. Gershon
George A. Lyght
Jo Ann M. Spearmon

To be pharmacist

Michael S. Forman
Pamela M. Schweitzer
Paul N. Shedd
Sharon K. Thoma
Adolph E. Vezza

To be senior assistant pharmacist

Sean J. Belouin
Sean K. Bradley
Rosalind P. Chorak
Carmen C. Clelland
James L. Cobbs
Thomas C. Duran
Jennifer E. Fan
Carol A. Feldotto
Rebecca E. Garner
Patricia N. Garvey
Eugene Hampton Jr.
Clint E. Hinman
Tommy E. Horeis
Kristina M. Joyce
Mariann Kocsis
Yoon J. Kong
Rey V. Marbello
Jeen S. Min
Denise A. Norman
Lisa D. Oliver
Margaret A. Rincon
Amy D. Rubin
Jane J. Russell
Spencer S. Salis
Melissas R. Schweiss
Catherine W. Witte

To be assistant pharmacist

Kristen L. Maves
Paras M. Patel
Emily T. Thakur

To be senior assistant dietitian

Karl R. Blasius
Alexandria M. Cossi
Carol A. Treat
Kirsten M. Warwar

To be senior assistant therapist

Andra F. Battocchio
Cynthia E. Carter
Frederick V. Lief
William H. Pearce Jr.
Tarri Ann Randall
Jeffrey D. Richardson
Joseph B. Strunce
Christa L. Themann

To be health services officer

Malcolm B. Johns
Henry Lopez Jr.
Guy J. Mahoney
George J. Majus
Nicole M. Smith
Lola R. Staples

To be senior assistant health services officer

Jane M. Barnes
Michael A. Candreva
Robert P. Chelberg
David S. De La Cruz
Beth D. Finnson
Gregory J. Flaitz
Arnold L. Howard
Erich Kleinschmidt
Audrey G. Lum
Marsha R. McCrimmon
Daniel H. Reed
Ruben T. Sabater
David C. Staten Jr.
Michael D. Weahkee

To be assistant health services officer

Michelle M. Bleth
Carrie L. Earnheart
Cheryl L. Fajardo
Ryan D. Hill
David J. Lusche
Anthony A. Walker

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Calendar No. 818, and all nominations on the Secretary's desk.

I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations considered and confirmed are as follows:

NOMINATIONS

COAST GUARD

The following named officers for appointment in the United States Coast Guard to the grade indicated under title 14, U.S.C., section 271:

To be rear admiral (lower half)

Capt. Gary T. Blore, 3199
Capt. Craig E. Bone, 6477
Capt. Robert S. Branham, 6546
Capt. John P. Currier, 0852
Capt. Ronald T. Hewitt, 6030
Capt. Joseph L. Nimmich, 9821
Capt. Joel R. Whitehead, 5138

NOMINATIONS PLACED ON THE SECRETARY'S DESK

COAST GUARD

PN1876 COAST GUARD nomination of Kenneth W. Megan, which was received by the Senate and appeared in the Congressional Record of September 7, 2004.

PN1917 COAST GUARD nominations (4) beginning John B. McDermott, and ending David C. Clippinger, which nominations were received by the Senate and appeared in the Congressional Record of September 10, 2004.

PN1918 COAST GUARD nomination of Karen W. Quiachon, which was received by the Senate and appeared in the Congressional Record of September 10, 2004.

PN1919 COAST GUARD nominations (62) beginning Michael H. Anderson, and ending Gordon K. Weeks, which nominations were received by the Senate and appeared in the Congressional Record of September 10, 2004.

PN1953 COAST GUARD nominations (13) beginning Scott B. Beeson, and ending Needham E. Ward, which nominations were received by the Senate and appeared in the Congressional Record of September 13, 2004.

PUBLIC HEALTH SERVICE

PN1827 Public Health Service nominations beginning Timothy D. Mastro, and ending Anthony A. Walker, which nominations were received by the Senate and appeared in the Congressional Record of July 19, 2004.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

NOMINATIONS PLACED ON THE CALENDAR

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that the following committees be discharged from the listed nominations, and further that they be placed on the calendar: from the Finance Committee, Anna Escobedo Cabral, PN1852; from the Governmental Affairs Committee, Gregory E. Jackson, PN971.

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

CELEBRATING THE ANNIVERSARIES OF THE INTERNATIONAL POLAR YEARS AND INTERNATIONAL GEOPHYSICAL YEAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 466, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 466) celebrating the anniversaries of the International Polar Years (1882–1883 and 1932–1933) and International Geophysical Year (1957–1958) and supporting a continuation of this international science year tradition in 2007–2008.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCAIN. Mr. President, I am pleased to support a Senate resolution to celebrate the 125th anniversary of the first International Polar Year, IPY, of 1882–1883, the 75th anniversary of the second IPY of 1932–1933, and the 50th anniversary of the International Geophysical Year, IGY, 1957–1958, in 2007–2008. The resolution would also support the continuation of such international science year traditions, particularly emphasizing activities dedicated to global environmental research, education, and protection.

Mr. President, IPY and IGY have left a legacy of scientific advancements, new discoveries, and international goodwill that continue to benefit societies today. They have made significant contributions to enhancing our

understanding of the processes of environmental change and variability. In order to accurately access and monitor changes in the Earth's climate, environments, and ecosystems, it is imperative that we give adequate attention and resources to understanding these processes. Examining environmental changes in the past will strengthen our abilities to make informed decisions for the future.

IPY, first launched over 125 years ago, set precedents for internationally coordinated scientific campaigns. Accomplishments from past IPY activities include advancements in meterology, atmospheric sciences, geomagnetism, and technology. IPY also fueled the establishment of the first year-round research station inland from the Antarctic coast by the United States. Planning for an IPY in 2007–2008 is currently underway under the United States leadership of the National Academy of Science, in conjunction with the International Council for Science and the World Meterological Organization.

Modeled after IPY, IGY was first launched in 1957–1958 and also has been a model for international science activities. Accomplishments from past IGY activities include the initiation of the global space age and exploration of the upper atmosphere through the launching of Sputnik and Vanguard, the world's first satellites. IGY led to the establishment of more research stations in the Antarctic, and to the ratification of the Antarctic Treaty in 1961, which promoted peaceful international collaboration and scientific exploration in the Antarctic. It is my hope that the same research activities will occur in the Arctic region.

This resolution celebrating the anniversaries of IPY and IGY in 2007–2008 would endorse the concept of a worldwide campaign for scientific activity and expand the scope of past international science activities to promote interdisciplinary research that incorporates the physical and social sciences to enrich the understanding of diversity in life and environmental patterns on Earth. The resolution also would require the President of the United States to submit to Congress a report on steps taken by the National Science Foundation and the National Aeronautics and Space Administration, in association with the National Academy of Sciences and other scientific organizations, to ensure a successful worldwide international science year in 2007–2008.

I urge my colleagues to support this noncontroversial effort to promote continued international scientific collaboration.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 466) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 466

Whereas the year 2007 is the 125th anniversary of the first International Polar Year of 1882–1883, the 75th anniversary of the second International Polar Year of 1932–1933, and the 50th anniversary of the International Geophysical Year of 1957–1958;

Whereas the first International Polar Year of 1882–1883, which involved 12 nations, and the second International Polar Year of 1932–1933, which involved 40 nations, set the first precedents for internationally coordinated scientific campaigns;

Whereas the International Geophysical Year, conceived in and promoted by the United States, was the largest cooperative international scientific endeavor undertaken to that date, involving more than 60,000 scientists from 66 nations;

Whereas each of these activities left a legacy of scientific advances, new discoveries, and international goodwill that still benefit us today;

Whereas the International Geophysical Year legacy includes the dedication of an entire continent to cooperative scientific study through the Antarctica Treaty and the inauguration of the global space age through the launching of Sputnik and Vanguard;

Whereas International Geophysical Year cooperation continues as the model and inspiration for contemporary world science and provides a bridge between peoples of the world that has demonstrated the ability to transcend political differences;

Whereas it also would be appropriate to use the international science year format to expand the scope of past years to encompass a broad range of disciplines and to recognize interdisciplinary research that incorporates the physical and social sciences and the humanities in enriching understanding of diverse life on Earth;

Whereas the 35th anniversary of the International Geophysical Year was commemorated by the International Space Year, a globally implemented congressional initiative conceived by the late Senator Spark Matsunaga of Hawaii, that was highlighted by globally coordinated environmental monitoring and research whose ongoing legacy continues to benefit humanity;

Whereas planning for an International Polar Year in 2007–2008 is underway, under the guidance of strong United States leadership and the National Academy of Sciences and in conjunction with the International Council for Science and the World Meteorological Organization, with this envisioned to be an intense, coordinated campaign of observations, research, and analysis that will be multidisciplinary in scope and international in participation;

Whereas an International Polar Year in 2007–2008 will include research on the conditions in both polar regions and recognize the strong links among polar region conditions and the rest of the globe, including the impact on global climate change, as the polar regions have profound significance for the Earth's climate and environments;

Whereas other scientific bodies are planning additional internationally coordinated scientific programs to advance scientific knowledge and observations from the core of the Earth to the farthest reaches of the Cosmos's effects on the Earth; and

Whereas it is entirely fitting that Congress takes the lead again, in the same spirit, in promoting global cooperation through worldwide commemoration of the past International Polar Years and the International Geophysical Year with activities reflecting the unity and diversity of life on Earth: Now, therefore, be it

Resolved, That it is the Sense of the Senate that the President should—

(1) endorse the concept of a worldwide campaign of scientific activity for the 2007–2008 timeframe;

(2) direct the Director of the National Science Foundation and the Administrator of the National Aeronautics and Space Administration, in association with the National Academy of Sciences and other relevant governmental and nongovernmental organizations, to continue interagency and international inquiries and discussions that ensure a successful worldwide international science year in the 2007–2008 timeframe, emphasizing activities dedicated to global environmental research, education, and protection; and

(3) submit to Congress at the earliest practical date, but no later than March 15, 2005, a report detailing the steps taken in carrying out paragraphs (1) and (2), including descriptions of possible activities and organizational structures for an international science year in 2007–2008.

HONORING AND MEMORIALIZING THE PASSENGERS AND CREW OF UNITED AIRLINES FLIGHT 93

Mr. FRIST. Mr. President, I ask unanimous consent that the Rules Committee be discharged from further consideration of S. Con. Res. 136, and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 136) honoring and memorializing the passengers and crew of United Airlines Flight 93.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the amendment to the concurrent resolution, which is at the desk, be agreed to, the concurrent resolution, as amended, be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, without any intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

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

The amendment (No. 4062) was agreed to, as follows:

(Purpose: To improve the language relating to the memorial)

Beginning on page 2, strike line 10 and all that follows through page 3, line 8, and insert the following:

(3) not later than January 1, 2006, the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate shall select an appropriate memorial that shall be located in the United States Capitol Building and that shall honor the passengers and crew of Flight 93, who saved the United States Capitol Building from destruction; and

(4) the memorial shall state the purpose of the honor and the names of the passengers

and crew of Flight 93 on whom the honor is bestowed.

The concurrent resolution (S. Con. Res. 136), as amended, was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 136

Whereas on September 11, 2001, acts of war involving the hijacking of commercial airplanes were committed against the United States, killing and injuring thousands of innocent people;

Whereas 1 of the hijacked planes, United Airlines Flight 93, crashed in a field in Pennsylvania;

Whereas while Flight 93 was still in the air, the passengers and crew, through cellular phone conversations with loved ones on the ground, learned that other hijacked airplanes had been used to attack the United States;

Whereas during those phone conversations, several of the passengers indicated that there was an agreement among the passengers and crew to try to overpower the hijackers who had taken over Flight 93;

Whereas Congress established the National Commission on Terrorist Attacks Upon the United States (commonly referred to as ''the 9–11 Commission'') to study the September 11, 2001, attacks and how they occurred;

Whereas the 9–11 Commission concluded that ''the nation owes a debt to the passengers of Flight 93. Their actions saved the lives of countless others, and may have saved either the U.S. Capitol or the White House from destruction.''; and

Whereas the crash of Flight 93 resulted in the death of everyone on board: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

(1) the United States owes the passengers and crew of United Airlines Flight 93 deep respect and gratitude for their decisive actions and efforts of bravery;

(2) the United States extends its condolences to the families and friends of the passengers and crew of Flight 93;

(3) not later than January 1, 2006, the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate shall determine a location in the United States Capitol Building (including the Capitol Visitor Center) that shall be named in honor of the passengers and crew of Flight 93, who saved the United States Capitol Building from destruction; and

(4) a memorial plaque shall be placed at the site of the determined location that states the purpose of the honor and the names of the passengers and crew of Flight 93 on whom the honor is bestowed.

AMERICAN VETERANS DISABLED FOR LIFE COMMEMORATIVE COIN ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of Calendar No. 778, S. 1379.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1379) to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Banking, Housing, and Urban Affairs with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike parts shown in black brackets and insert parts shown in italic]

S. 1379

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 ''American Veterans Disabled for Life Commemorative Coin Act''.

[SEC. 2. FINDINGS.

[Congress finds that—

[(1) the armed forces of the United States have answered the call and served with distinction around the world—from hitting the beaches in World War II in the Pacific and Europe, to the cold and difficult terrain in Korea, the steamy jungles of Vietnam, and the desert sands of the Middle East;

[(2) all Americans should commemorate those who come home having survived the ordeal of war, and solemnly honor those who made the ultimate sacrifice in giving their lives for their country;

[(3) all Americans should honor the millions of living disabled veterans who carry the scars of war every day, and who have made enormous personal sacrifices defending the principles of our democracy;

[(4) in 2000, Congress authorized the construction of the American Veterans Disabled for Life Memorial;

[(5) the United States should pay tribute to the Nation's living disabled veterans by minting and issuing a commemorative silver dollar coin; and

[(6) the surcharge proceeds from the sale of a commemorative coin would raise valuable funding for the construction of the American Veterans Disabled for Life Memorial.

[SEC. 3. COIN SPECIFICATIONS.

[(a) $1 SILVER COINS.—The Secretary of the Treasury (hereafter in this Act referred to as the ''Secretary'') shall mint and issue not more than 500,000 $1 coins in commemoration of disabled American veterans, each of which shall—

[(1) weigh 26.73 grams;

[(2) have a diameter of 1.500 inches; and

[(3) contain 90 percent silver and 10 percent copper.

[(b) LEGAL TENDER.—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

[(c) NUMISMATIC ITEMS.—For purposes of section 5134 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

[SEC. 4. SOURCES OF BULLION.

[The Secretary shall obtain silver for minting coins under this Act only from stockpiles established under the Strategic and Critical Materials Stock Piling Act.

[SEC. 5. DESIGN OF COINS.

[(a) DESIGN REQUIREMENTS.—

[(1) IN GENERAL.—The design of the coins minted under this Act shall be emblematic of the design selected by the Disabled Veterans' LIFE Memorial Foundation for the American Veterans Disabled for Life Memorial.

[(2) DESIGNATION AND INSCRIPTIONS.—On each coin minted under this Act, there shall be—

[(A) a designation of the value of the coin;

[(B) an inscription of the year ''2006''; and

[(C) inscriptions of the words ''Liberty'', ''In God We Trust'', ''United States of America'', and ''E Pluribus Unum''.

[(b) SELECTION.—The design for the coins minted under this Act shall be—

[(1) selected by the Secretary, after consultation with the Disabled Veterans' LIFE Memorial Foundation and the Commission of Fine Arts; and

[(2) reviewed by the Citizens Coinage Advisory Committee.

[SEC. 6. ISSUANCE OF COINS.

[(a) QUALITY OF COINS.—Coins minted under this Act shall be issued in uncirculated and proof qualities.

[(b) MINT FACILITY.—Only 1 facility of the United States Mint may be used to strike any particular quality of the coins minted under this Act.

[(c) PERIOD FOR ISSUANCE.—The Secretary may issue coins under this Act only during the calendar year beginning on January 1, 2006.

[SEC. 7. SALE OF COINS.

[(a) SALE PRICE.—The coins issued under this Act shall be sold by the Secretary at a price equal to the sum of—

[(1) the face value of the coins;

[(2) the surcharge provided in subsection (d) with respect to such coins; and

[(3) the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

[(b) SURCHARGES.—All sales of coins issued under this Act shall include a surcharge of $10 per coin.

[(c) BULK SALES.—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

[(d) PREPAID ORDERS.—

[(1) IN GENERAL.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

[(2) DISCOUNT.—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

[SEC. 8. DISTRIBUTION OF SURCHARGES.

[(a) IN GENERAL.—Subject to section 5134(f) of title 31, United States Code, all surcharges received by the Secretary from the sale of coins issued under this Act shall be paid to the Disabled Veterans' LIFE Memorial Foundation for the purpose of establishing an endowment to support the construction of American Veterans' Disabled for Life Memorial in Washington, D.C.

[(b) AUDITS.—The Comptroller General of the United States shall have the right to examine such books, records, documents, and other data of the Disabled Veterans' LIFE Memorial Foundation as may be related to the expenditures of amounts paid under subsection (a).

[SEC. 9. FINANCIAL ASSURANCES.

[(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take such actions as may be necessary to ensure that minting and issuing coins under this Act will not result in any net cost to the United States Government.

[(b) PAYMENT FOR COINS.—A coin shall not be issued under this Act unless the Secretary has received—

[(1) full payment for the coin;

[(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

[(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''American Veterans Disabled for Life Commemorative Coin Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Armed Forces of the United States have answered the call and served with distinction around the world—from hitting the beaches in World War II in the Pacific and Europe, to the cold and difficult terrain in Korea, the steamy jungles of Vietnam, and the desert sands of the Middle East;

(2) all Americans should commemorate those who come home having survived the ordeal of war, and solemnly honor those who made the ultimate sacrifice in giving their lives for their country;

(3) all Americans should honor the millions of living disabled veterans who carry the scars of war every day, and who have made enormous personal sacrifices defending the principles of our democracy;

(4) in 2000, Congress authorized the construction of the American Veterans Disabled for Life Memorial;

(5) the United States should pay tribute to the Nation's living disabled veterans by minting and issuing a commemorative silver dollar coin; and

(6) the surcharge proceeds from the sale of a commemorative coin would raise valuable funding for the construction of the American Veterans Disabled for Life Memorial.

SEC. 3. COIN SPECIFICATIONS.

(a) $1 SILVER COINS.—The Secretary of the Treasury (hereafter in this Act referred to as the ''Secretary'') shall mint and issue not more than 500,000 $1 coins in commemoration of disabled American veterans, each of which shall—

(1) weigh 26.73 grams;

(2) have a diameter of 1.500 inches; and

(3) contain 90 percent silver and 10 percent copper.

(b) LEGAL TENDER.—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

(c) NUMISMATIC ITEMS.—For purposes of section 5134 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

SEC. 4. DESIGN OF COINS.

(a) DESIGN REQUIREMENTS.—

(1) IN GENERAL.—The design of the coins minted under this Act shall be emblematic of the design selected by the Disabled Veterans' LIFE Memorial Foundation for the American Veterans Disabled for Life Memorial.

(2) DESIGNATION AND INSCRIPTIONS.—On each coin minted under this Act, there shall be—

(A) a designation of the value of the coin;

(B) an inscription of the year ''2006''; and

(C) inscriptions of the words ''Liberty'', ''In God We Trust'', ''United States of America'', and ''E Pluribus Unum''.

(b) SELECTION.—The design for the coins minted under this Act shall be—

(1) selected by the Secretary, after consultation with the Disabled Veterans' LIFE Memorial Foundation and the Commission of Fine Arts; and

(2) reviewed by the Citizens Coinage Advisory Committee.

SEC. 5. ISSUANCE OF COINS.

(a) QUALITY OF COINS.—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) MINT FACILITY.—Only 1 facility of the United States Mint may be used to strike any particular quality of the coins minted under this Act.

(c) PERIOD FOR ISSUANCE.—The Secretary may issue coins under this Act only during the calendar year beginning on January 1, 2006.

SEC. 6. SALE OF COINS.

(a) SALE PRICE.—The coins issued under this Act shall be sold by the Secretary at a price equal to the sum of—

(1) the face value of the coins;

(2) the surcharge provided in subsection (b) with respect to such coins; and

(3) the cost of designing and issuing the coins (including labor, materials, dies, use of machinery, overhead expenses, marketing, and shipping).

(b) SURCHARGES.—All sales of coins issued under this Act shall include a surcharge of $10 per coin.

(c) BULK SALES.—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

(d) PREPAID ORDERS.—

(1) IN GENERAL.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) DISCOUNT.—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

SEC. 7. DISTRIBUTION OF SURCHARGES.

(a) IN GENERAL.—Subject to section 5134(f) of title 31, United States Code, all surcharges received by the Secretary from the sale of coins issued under this Act shall be paid to the Disabled Veterans' LIFE Memorial Foundation for the purpose of establishing an endowment to support the construction of the American Veterans' Disabled for Life Memorial in Washington, D.C.

(b) AUDITS.—The Comptroller General of the United States shall have the right to examine such books, records, documents, and other data of the Disabled Veterans' LIFE Memorial Foundation as may be related to the expenditures of amounts paid under subsection (a).

SEC. 8. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take such actions as may be necessary to ensure that minting and issuing coins under this Act will not result in any net cost to the United States Government.

(b) PAYMENT FOR COINS.—A coin shall not be issued under this Act unless the Secretary has received—

(1) full payment for the coin;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.

Mr. FRIST. I ask unanimous consent that the committee substitute amendment be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table en bloc, and any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1379), as amended, was read the third time and passed.

ASTHMATIC SCHOOLCHILDREN'S TREATMENT AND HEALTH MANAGEMENT ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2023 which was received from the House and is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2023) to give a preference regarding States that require schools to allow students to self-administer medication to treat that student's asthma or anaphylaxis, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read three times, passed, the motion to reconsider be laid upon the table, and any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The bill (H.R. 2023) was read the third time and passed.

NATIONAL ESTUARY PROGRAM

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4731 which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4731) to amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 4731) was read the third time and passed.

FEDERAL REGULATORY IMPROVEMENT ACT OF 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4917 which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4917) to amend title 5, United States Code, to authorize appropriations for the Administrative Conference of the United States for fiscal years 2005, 2006, and 2007, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read a third time, passed, the motion to reconsider be laid upon the table with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 4917) was read the third time and passed.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION EFFICIENCY ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of H.R. 3478 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3478) to amend title 44, United States Code, to improve the efficiency of operations by the National Archives and Records Administration and to reauthorize the National Historical Publications and Records Commission.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 3478) was read the third time and passed.

EXECUTIVE BRANCH FINANCIAL ACCOUNTABILITY REPORTING ACT OF 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 757, S. 2688.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2688) to provide for a report of Federal entities without annually audited financial statements.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the amendments at the desk be agreed to, the bill, as amended, be read the third time, passed, and the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 4063) was agreed to, as follows:

AMENDMENT NO. 4063

On page 2, line 10, strike ''60 days'' and insert ''120 days''.

On page 3, line 2, insert after ''temporary commissions'' the following: ''in existence at least 12 months''.

On page 3, strike beginning with line 9 through page 4, line 4, and insert the following:

(3) an assessment of the capability of and the costs that would be incurred for Federal entities of the categories listed under paragraphs (1) and (2) to prepare annual financial statements and to have such statements independently audited;

(4) an assessment of how to reduce the costs of preparing the financial statements and performing independent audits for Federal entities of the categories listed under paragraphs (1) and (2); and

(5) an assessment of the benefits of improved financial oversight encompassing the executive branch, including the Federal entities of the categories listed under paragraphs (1) and (2), and an assessment of the feasibility of preparing annual financial statements and independently audited statements for the Federal entities in the categories listed under paragraphs (1) and (2).

The bill (S. 2688), as amended, was read the third time and passed.

(The bill will be printed in a future edition of the RECORD.)

LONG ISLAND SOUND STEWARDSHIP ACT OF 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of S. 2691, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2691) to establish the Long Island Sound Stewardship Initiative.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the Lieberman amendment at the desk be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements related to the bill be printed in the RECORD.

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

The amendment (No. 4064) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (S. 2691), as amended, was read the third time and passed.

WATER RESOURCES ACT OF 1984 REAUTHORIZATION

Mr. FRIST. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of S. 2847 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2847) to reauthorize the Water Resources Act of 1984.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 2847) was read the third time and passed, as follows:

S. 2847

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

SECTION 1. WATER RESOURCES RESEARCH.

(a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—Section 104(f)(1) of the Water Resources Research Act of 1984 (42 U.S.C. 10303(f)(1)) is amended by striking ''$9,000,000 for fiscal year 2001, $10,000,000 for each of fiscal years 2002 and 2003, and $12,000,000 for each of fiscal years 2004 and 2005'' and inserting ''$12,000,000 for the period of fiscal years 2005 through 2008 and $13,000,000 for the period of fiscal years 2009 and 2010''.

(b) APPROPRIATIONS FOR RESEARCH FOCUSED ON WATER PROBLEMS OF INTERSTATE NATURE.—Section 104(g)(1) of the Water Resources Research Act of 1984 (42 U.S.C. 10303(g)(1)) is amended by striking ''$3,000,000 for fiscal year 2001, $4,000,000 for fiscal years 2002 and 2003, and $6,000,000 for fiscal years 2004 and 2005'' and inserting ''$6,000,000 for the period of fiscal years 2005 through 2008 and $7,000,000 for the period of fiscal years 2009 and 2010''.

CLARIFYING THE BOUNDARIES OF THE JOHN H. CHAFEE COAST BARRIER RESOURCES SYSTEM

Mr. FRIST. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of H.R. 3056, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3056) to clarify the boundaries of the John H. Chafee Coast Barrier Resources System Cedar Keys Unit P25 on Otherwise Protected Area P25P.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements related to the bill be printed in the RECORD.

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

FOR THE RELIEF OF RICHI JAMES LESLEY—H.R. 712

FOR THE RELIEF OF ROCCO A. TRECOSTA OF FORT LAUDERDALE, FLORIDA—S. 2042

Mr. FRIST. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 712 and S. 2042, en bloc, and the Senate proceed to their immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the bills by title.

The legislative clerk read as follows:

A bill (H.R. 712) for the relief of Richi James Lesley.

A bill (S. 2042) for the relief of Rocco A. Trecosta of Fort Lauderdale, Florida.

There being no objection, the Senate proceeded to consider the bills.

Mr. FRIST. Mr. President, I ask unanimous consent that the bills be read the third time and passed, en bloc, that the motions to reconsider be laid upon the table, and that any statements relating to the bills be printed in the RECORD.

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

The bill (H.R. 712), was read the third time and passed.

The bill (S. 2042), was read the third time and passed, as follows:

S. 2042

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

SECTION 1. COMPENSATION OF BACK PAY.

(a) IN GENERAL.—The Secretary of the Treasury shall pay, out of any money in the

Treasury not otherwise appropriated, to Mr. Rocco A. Trecosta of Fort Lauderdale, Florida, the sum of $10,000 for compensation for back pay not received as an employee of the Department of Defense Overseas Dependent Schools for service performed during the period beginning April 14, 1966, through June 30, 1975. Payment under this subsection is made after the transmission of the applicable report of the United States Court of Federal Claims under section 2509 of title 28, United States Code.

(b) NO INFERENCE OF LIABILITY.—Nothing in this section shall be construed as an inference of liability on the part of the United States.

(c) FULL SATISFACTION OF CLAIMS.—The payment authorized under subsection (a) shall be in full satisfaction of all claims of Rocco A. Trecosta against the United States for back pay in connection with his service in the Department of Defense Overseas Dependent Schools.

(d) LIMITATION ON AGENTS AND ATTORNEYS FEES.—No more than 10 percent of the payment authorized by this Act may be paid to or received by any agent or attorney for services rendered in connection with obtaining such payment, any contract to the contrary notwithstanding. Any person who violates this subsection shall be guilty of a misdemeanor and shall be subject to a fine in the amount provided in title 18, United States Code.

THE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar Nos. 761, 762, 764, 765, 767, 768, 769, and 776 en bloc, that the bills be read a third time and passed, and the motions to reconsider be laid upon the table en bloc.

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

FOR THE RELIEF OF DENES AND GYORGYI FULOP

The bill (S. 353) for the relief of Denes and Gyorgyi Fulop was considered, read the third time, and passed; as follows:

S. 353

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

SECTION 1. PERMANENT RESIDENT STATUS FOR DENES AND GYORGYI FULOP.

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Denes and Gyorgyi Fulop shall be eligible for issuance of immigrant visas or for adjustment of status to that of aliens lawfully admitted for permanent residence upon filing an application for issuance of immigrant visas under section 204 of such Act or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Denes Fulop or Gyorgyi Fulop enters the United States before the filing deadline specified in subsection (c), the alien shall be considered to have entered and remained lawfully and shall, if otherwise eligible, be eligible for adjustment of status under section 245 of the Immigration and Nationality Act as of the date of enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of immigrant visas or the application for adjustment of status are filed with appropriate fees within 2 years after the date of enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of immigrant visas or permanent residence to Denes and Gyorgyi Fulop, the Secretary of State shall instruct the proper officer to reduce by the appropriate number, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 202(e) of such Act.

FOR THE RELIEF OF TCHISOU THO

The bill (S. 1042) for the relief of Tchisou Tho, was considered, read the third time, and passed; as follows:

S. 1042

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

SECTION 1. PERMANENT RESIDENT STATUS FOR TCHISOU THO.

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Tchisou Tho shall be eligible for the issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of that Act or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Tchisou Tho enters the United States before the filing deadline specified in subsection (c), Tchisou Tho shall be considered to have entered and remained lawfully and shall be eligible for adjustment of status under section 245 of the Immigration and Nationality Act as of the date of enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status are filed with appropriate fees within 2 years after the date of enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of an immigrant visa or permanent residence to Tchisou Tho, the Secretary of State shall instruct the proper officer to reduce by 1, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 202(e) of that Act.

FOR THE RELIEF OF LUAY LUFTI HADAD

The bill (S. 2012) for the relief of Luay Lufti Hadad, was considered, read the third time, and passed; as follows:

S. 2012

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

SECTION 1. PERMANENT RESIDENT STATUS FOR LUAY LUFTI HADAD.

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Luay Lufti Hadad shall be eligible for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of that Act or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Luay Lufti Hadad enters the United States before the filing deadline specified in subsection (c), Luay Lufti Hadad shall be considered to have entered and remained lawfully and shall be eligible for adjustment of status under section 245 of the Immigration and Nationality Act as of the date of enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of an immigrant visa or permanent residence to Luay Lufti Hadad, the Secretary of State shall instruct the proper officer to reduce by 1, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of birth of Luay Lufti Hadad under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of birth of Luay Lufti Hadad under section 202(e) of that Act.

FOR THE RELIEF OF ALEMSEGHED MUSSIE TESFAMICAL

The bill (S. 2044) for the relief of Alemseghed Mussie Tesfamical, was considered, read the third time, and passed; as follows:

S. 2044

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

SECTION 1. PERMANENT RESIDENCE.

Notwithstanding any other provision of law, for purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Alemseghed Mussie Tesfamical shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of enactment of this Act upon payment of the required visa fees.

SEC. 2. REDUCTION OF NUMBER OF AVAILABLE VISAS.

Upon the granting of permanent residence to Alemseghed Mussie Tesfamical, the Secretary of State shall instruct the proper officer to reduce by 1, during the current fiscal year, the total number of immigrant visas available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)).

FOR THE RELIEF OF NABIL RAJA DANDAN, KETTY DANDAN, SOUZI DANDAN, RAJA NABIL DANDAN AND SANDRA DANDAN

The bill (S. 2314) for the relief of Nabil Raja Dandan, Ketty Dandan, Souzi Dandan, Raja Nabil Dandan, and Sandra Dandan, was considered, read the third time, and passed; as follows:

S. 2314

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

SECTION 1. PERMANENT RESIDENT STATUS FOR NABIL RAJA DANDAN, KETTY DANDAN, SOUZI DANDAN, RAJA NABIL DANDAN, AND SANDRA DANDAN.

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Nabil Raja Dandan, Ketty Dandan, Souzi Dandan, Raja Nabil Dandan, and Sandra Dandan shall each be eligible for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of such Act or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Nabil Raja Dandan, Ketty Dandan, Souzi Dandan, Raja Nabil Dandan, and Sandra Dandan enter the United States before the filing deadline specified in subsection (c), Nabil Raja Dandan, Ketty Dandan, Souzi Dandan, Raja Nabil Dandan, and Sandra Dandan shall each be considered to have entered and remained lawfully and shall be eligible for adjustment of status under section 245 of the Immigration and Nationality Act as of the date of the enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of the enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBER.—Upon the granting of an immigrant visa or permanent residence to Nabil Raja Dandan, Ketty Dandan, Souzi Dandan, Raja Nabil Dandan, and Sandra Dandan, the Secretary of State shall instruct the proper officer to reduce by 5, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 202(e) of such Act.

FOR THE RELIEF OF FERESHTEH SANI

The bill (S. 2331) for the relief of Fereshteh Sani, was considered, read the third time, and passed; as follows:

S. 2331

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

SECTION 1. PERMANENT RESIDENT STATUS FOR FERESHTEH SANI.

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Fereshteh Sani shall be eligible for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of that Act or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Fereshteh Sani enters the United States before the filing deadline specified in subsection (c), Fereshteh Sani shall be considered to have entered and remained lawfully and shall be eligible for adjustment of status under section 245 of the Immigration and Nationality Act as of the date of enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of an immigrant visa or permanent residence to Fereshteh Sani, the Secretary of State shall instruct the proper officer to reduce by 1, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of birth of Fereshteh Sani under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of birth of Fereshteh Sani under section 202(e) of that Act.

FOR THE RELIEF OF DURRESHAHWAR DURRESHAHWAR, NIDA HASAN, ASNA HASAN, ANUM HASAN, AND IQRA HASAN

The bill (H.R. 867) for the relief of Durreshahwar Durreshahwar, Nida Hasan, Asna Hasan, Anum Hasan, and Iqra Hasan, was considered, ordered to a third reading, read the third time, and passed.

H.R. 867

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

SECTION 1. PERMANENT RESIDENT STATUS FOR DURRESHAHWAR DURRESHAHWAR, NIDA HASAN, ASNA HASAN, ANUM HASAN, AND IQRA HASAN.

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Durreshahwar Durreshahwar, Nida Hasan, Asna Hasan, Anum Hasan, and Iqra Hasan shall each be eligible for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of such Act or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Durreshahwar Durreshahwar, Nida Hasan, Asna Hasan, Anum Hasan, or Iqra Hasan enters the United States before the filing deadline specified in subsection (c), she shall be considered to have entered and remained lawfully and shall, if otherwise eligible, be eligible for adjustment of status under section 245 of the Immigration and Nationality Act as of the date of the enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of the enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBER.—Upon the granting of an immigrant visa or permanent residence to Durreshahwar Durreshahwar, Nida Hasan, Asna Hasan, Anum Hasan, and Iqra Hasan, the Secretary of State shall instruct the proper officer to reduce by 5, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 202(e) of such Act.

(e) DENIAL OF PREFERENTIAL IMMIGRATION TREATMENT FOR CERTAIN RELATIVES.—The natural parents, brothers, and sisters of Durreshahwar Durreshahwar, Nida Hasan, Asna Hasan, Anum Hasan, and Iqra Hasan shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

FOR THE RELIEF OF GRISELDA LOPEZ NEGRETE

The bill (S. 2668) for the relief of Griselda Lopez Negrete was considered, read the third time, and passed, as follows:

S. 2668

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

SECTION 1. PERMANENT RESIDENCE.

Notwithstanding any other provision of law, for purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Griselda Lopez Negrete shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of enactment of this Act upon payment of the required visa fees.

SEC. 2. REDUCTION OF NUMBER OF AVAILABLE VISAS.

Upon the granting of permanent residence to Griselda Lopez Negrete, as provided in section 1, the Secretary of State shall instruct the proper officer to reduce by the appropriate number during the current fiscal year the total number of immigrant visas available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)).

RECOGNIZING THE IMPORTANCE OF EARLY DIAGNOSIS OF TOURETTE SYNDROME

Mr. FRIST. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Con. Res. 113 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 113) recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideals of National Tourette Syndrome Awareness Month.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the Smith amendments that are at the desk be agreed to, the resolution, as amended, be agreed to, the preamble, as amended, be agreed to, the title amendment be agreed to, the motions to reconsider be laid upon the table, and that any statements relating to the resolution be printed in the RECORD.

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

The amendments (Nos. 4065, 4066 and 4067) were agreed to, as follows:

AMENDMENT NO. 4065

Strike all after the resolving clause and insert the following:

That Congress—

(1) recognizes the impact that Tourette Syndrome can have on people living with the disorder;

(2) recognizes the importance of an early diagnosis and proper treatment of Tourette Syndrome;

(3) recognizes the need for enhanced public awareness of Tourette Syndrome; and

(4) supports the goals and ideals of National Tourette Syndrome Awareness Month.

AMENDMENT NO. 4066

Strike the preamble and insert the following:

Whereas Tourette Syndrome is an inherited neurological disorder characterized by involuntary and sudden movements or repeated vocalizations;

Whereas approximately 200,000 people in the United States have been diagnosed with Tourette Syndrome and many more remain undiagnosed;

Whereas lack of public awareness has increased the social stigma attached to Tourette Syndrome;

Whereas early diagnosis and treatment of Tourette Syndrome can prevent physical and psychological harm;

Whereas there is no known cure for Tourette Syndrome and treatment involves multiple medications and therapies; and

Whereas May 15 through June 15 has been designated as National Tourette Syndrome Awareness Month, the goal of which is to educate the public about the nature and effects of Tourette Syndrome: Now, therefore, be it

AMENDMENT NO. 4067

(Purpose: To amend the title)

Amend the title so as to read ''Recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideals of National Tourette Syndrome Awareness Month.''

The concurrent resolution (S. Con. Res. 113), as amended, was agreed to.

The preamble, as amended, was agreed to.

The concurrent resolution, as amended, with its preamble, as amended, reads as follows:

(The bill will be printed in a future edition of the RECORD.)

BIRTHDAY GREETINGS TO JOSEPH BARBERA ON HIS 100TH BIRTHDAY

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 467, which was submitted earlier today by Senator HATCH.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 467) extending birthday greetings to Joseph Barbera on the occasion of his 100th birthday and designating March 2005 as Animated Family Entertainment Month.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The resolution (S. Res. 467) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 467

Whereas Joseph Barbera is one of the pioneers of animated entertainment, having created, with his partner, William Hanna, some of the world's most recognizable and beloved characters, including Tom and Jerry, Huckleberry Hound, The Flintstones, The Jetsons, Scooby-Doo, and Yogi Bear, among many others;

Whereas Joseph Barbera is also one of the most honored figures in animated entertainment, his creations Tom and Jerry having received 7 Academy Awards for their antics, including their groundbreaking dancing appearances with Gene Kelly and Esther Williams in live action films, and having won multiple Emmy Awards, and Joseph Barbera himself having been elected to the Television Academy Hall of Fame;

Whereas in 1960, the team of Joseph Barbera and William Hanna created television's first animated family sitcom, ''The Flintstones'', a series marked by a number of other firsts—the first animated series to air in primetime, the first animated series to go beyond the 6- or 7-minute cartoon format, and the first animated series to feature human characters;

Whereas ''The Flintstones'' ran for 6 years and became the top-ranking animated program in syndication history, with all original 166 episodes currently seen in more than 80 countries worldwide;

Whereas Joseph Barbera cocreated a cowardly Great Dane named Scooby-Doo, who eventually made his own place in television history, for the popular series ''Scooby-Doo, Where Are You?'' remained in production for 17 years, still maintains the title of television's longest-running animated series, and serves as the inspiration for a series of current live-action films;

Whereas in 1981, Hanna-Barbera developed the phenomenally successful ''The Smurfs'', which won 2 Daytime Emmy Awards in 1982 and in 1983 for Outstanding Children's Entertainment Series and a Humanitas Award (an award given to shows that best affirm the dignity of the human person) in 1987;

Whereas at the age of 99, Joseph Barbera continues to work actively in the field, reporting to his office daily and continuing to develop new animated entertainment for the people of the United States and the world to enjoy;

Whereas March 24, 2005, will be Joseph Barbera's 100th birthday; and

Whereas the lives of families across the United States and throughout the world have been enriched by the shared enjoyment of the work of creators like Joseph Barbera: Now, therefore, be it

Resolved, That the Senate—

(1) on behalf of the American people, extends its birthday greetings and best wishes to Joseph Barbera on the occasion of his 100th birthday; and

(2) designates March 2005 as ''Animated Family Entertainment Month'' and encourages the families of the United States to take time to enjoy together the family entertainment created by the Nation's animated storytellers.

AMENDING UNITED STATES CODE TO AUTHORIZE APPROPRIATIONS FOR ADMINISTRATIVE CONFERENCE OF UNITED STATES

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2979 which was introduced earlier today.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2979) to amend title 5, United States Code, to authorize appropriations for the Administrative Conference of the United States for fiscal years 2005, 2006, and 2007, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statement relating to the matter be printed in the RECORD.

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

The bill (S. 2979) was read the third time and passed, as follows:

S. 2979

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 Regulatory Improvement Act of 2004''.

SEC. 2. PURPOSES.

(a) PURPOSES.—Section 591 of title 5, United States Code, is amended to read as follows:

''§ 591 Purposes

''The purposes of this subchapter are—

''(1) to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest;

''(2) to promote more effective public participation and efficiency in the rulemaking process;

''(3) to reduce unnecessary litigation in the regulatory process;

''(4) to improve the use of science in the regulatory process; and

''(5) to improve the effectiveness of laws applicable to the regulatory process.''.

(b) CONFORMING AMENDMENTS.—Title 5 of the United States Code is amended—

(1) in section 594 by striking ''purpose'' and inserting ''purposes''; and

(2) in the table of sections of chapter 5 of part I by amending the item relating to section 591 to read as follows:

''591. Purposes''.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 596 of title 5, United States Code, is amended to read as follows:

''§ 596. Authorization of appropriations

''There are authorized to be appropriated to carry out this subchapter not more than $3,000,000 for fiscal year 2005, $3,100,000 for fiscal year 2006, and $3,200,000 for fiscal year 2007. Of any amounts appropriated under this section, not more than $2,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.''.

PROVIDING FOR CONVEYANCE OF PARCELS OF NATIONAL FOREST SYSTEM LAND IN APALACHICOLA NATIONAL FOREST

Mr. FRIST. I ask unanimous consent that the Agriculture Committee be discharged from further consideration of

H.R. 3217, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3217) to provide for the conveyance of several small parcels of National Forest System land in the Apalachicola National Forest, Florida, to resolve boundary discrepancies involving the Mt. Trial Primitive Baptist Church of Wakulla County, Florida, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent that the bill be read a time and passed, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The bill (H.R. 3217) was read the third time and passed.

LIMITING TRANSFER OF CERTAIN COMMODITY CREDIT CORPORATION FUNDS

Mr. FRIST. I ask unanimous consent that the Agriculture Committee be discharged from further consideration of S. 2856, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2856) to limit the transfer of certain Commodity Credit Corporation funds between conservation programs for technical assistance for other programs.

There being no objection, the Senate proceeded to consider the bill.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. LEAHY. Mr. President, I am pleased to support the passage of S. 2856, legislation that will restore the conservation funding commitment Congress and the administration made to farmers and ranchers in the 2002 farm bill. I applaud the leadership of Agriculture Committee Chairman COCHRAN and Ranking Member HARKIN for their leadership to correct the shortfall in conservation technical assistance funding. For the last 2 years I have worked to correct this problem and am pleased to join my colleagues in this effort.

Despite historic funding conservation levels in the 2002 farm bill, family farmers and ranchers offering to restore wetlands, or offering to change the way they farm to improve air and water quality continue to be rejected when they seek USDA conservation assistance. Producers are being turned away due to the Department of Agriculture's decision to divert over $200 million from working lands conservation programs to pay for the cost of administering the Conservation Reserve Program, CRP, and the Wetlands Reserve Program, WRP, over the last 2 years. In particular, USDA diverted significant funds from the Environmental Quality Incentives Program, EQIP, the Farmland and Ranchland Protection Program, FRPP, the Grasslands Reserve Program, and the Wildlife Habitat Incentives Program, WHIP, to pay for CRP and WRP technical assistance.

The 2002 farm bill clearly intended USDA to use mandatory funds from the Commodity Credit Corporation, CCC, to pay for conservation technical assistance. The plain language of the statute, the General Accounting Office, and every Member of Congress who had a hand in writing the farm bill support this interpretation of the farm bill.

Our legislation would override USDA's decision and prevent funds from working lands incentive programs like EQIP and WHIP from being used to pay for the technical assistance costs of CRP. The House Agriculture Subcommittee on Conservation has already approved similar legislation, H.R. 1907, requiring each program to pay for its own technical assistance needs. Our legislation parallels that effort. Simply put our amendment would require the administration to honor the 2002 farm bill and mandate that technical assistance for each program is derived from funds provided for that program.

By providing more than $6.5 billion for working lands programs like EQIP and WHIP in the 2002 farm bill, Congress dramatically increased funds to help farmers manage working lands to produce food and fiber and simultaneously enhance water quality and wildlife habitat. For example, EQIP helps share the cost of a broad range of land management practices that help the environment, include more efficient use of fertilizers and pesticides, and innovative technologies to store and reuse animal waste. In combination, these working lands programs will provide farmers the tools and incentives they need to help meet our major environmental challenges.

Full funding for working lands incentive programs like EQIP and WHIP is vital not only in helping farmers and ranchers improve their farm management, but also in meeting America's most pressing environmental challenges. Because 70 percent of the American landscape is private land, farming dramatically affects the health of America's rivers, lakes and bays and the fate of America's rare species. Most rare species depend upon private lands for the survival, and many will become extinct without help from private landowners. When farmers and ranchers take steps to help improve air and water quality or assist rare species, they can face new costs, new risks, or loss of income. Conservation programs help share these costs, underwrite these risks, or offset these losses of income. Unless Congress provides adequate resources for these programs, there is little reason to hope that our farmers and ranchers will be able to help to meet these environmental challenges.

In addition, USDA conservation programs promote regional equity in farm spending. More than 90 percent of USDA spending flows to a handful of large farmers in 15 mid-western and southern States. As a result, many farmers and ranchers who are not eligible for traditional subsidies, including dairy farmers, ranchers, and fruit and vegetable farmers, rely upon conservation programs to boost farm and ranch income and to ease the cost of environmental compliance. Unlike commodity subsidies, conservation payments flow to all farmers and all regions. But, the farmers and ranchers who depend upon these programs, farmers, and ranchers who already receive a disproportionately small share of USDA funds, have faced a disproportionately large cut in spending.

By passing this legislation Congress and the administration will correct the shortfall in conservation technical assistance funding by directing USDA to use CCC funds to provide technical assistance to USDA conservation program. This legislation restores the clear intent of the authors of the 2002 farm bill relating to the payment of conservation technical assistance.•

Mr. FRIST. I ask unanimous consent that the bill be read a third timed and passed, the motion to reconsider be laid upon the table, and any statements relating to this matter be printed in the RECORD.

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

The bill (S. 2856) was read the third time and passed, as follows:

S. 2856

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

SECTION 1. TECHNICAL ASSISTANCE.

(a) IN GENERAL.—Section 1241 of the Food Security Act of 1985 (16 U.S.C. 3841) is amended by striking subsection (b) and inserting the following:

''(b) TECHNICAL ASSISTANCE.—Effective for fiscal year 2005 and each subsequent fiscal year, Commodity Credit Corporation funds made available for each of the programs specified in paragraphs (1) through (7) of subsection (a)—

''(1) shall be available for the provision of technical assistance for the programs for which funds are made available; and

''(2) shall not be available for the provision of technical assistance for conservation programs specified in subsection (a) other than the program for which the funds were made available.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 2004.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2005

Mr. FRIST. I ask unanimous consent the Intelligence Committee be discharged from further consideration of H.R. 4548, the intelligence reauthorization bill, and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4548) to authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent all after the enacting clause be stricken and the text of S. 2386, as passed, be inserted in lieu thereof, the bill, as amended, be read a third time and passed, and the motions to reconsider be laid on the table, the Senate insist upon its amendment and request a conference with the House on the disagreeing votes of the two Houses, and the Chair be authorized to appoint conferees on behalf of the Senate consisting of the entire committee.

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

The bill (H.R. 4548), as amended, was read the third time and passed.

The PRESIDING OFFICER (Mr. SESSIONS) appointed Mr. ROBERTS, Mr. HATCH, Mr. DEWINE, Mr. BOND, Mr. LOTT, Ms. SNOWE, Mr. HAGEL, Mr. CHAMBLISS, Mr. WARNER, Mr. ROCKEFELLER, Mr. LEVIN, Mrs. FEINSTEIN, Mr. WYDEN, Mr. DURBIN, Mr. BAYH, Mr. EDWARDS, and Ms. MIKULSKI conferees on the part of the Senate.

AUTHORIZATION TO SIGN BILLS AND RESOLUTIONS

Mr. FRIST. I ask unanimous consent that during the adjournment of the Senate, the majority leader, the junior Senator from Alabama, and the senior Senator from Virginia be authorized to sign duly enrolled bills on joint resolutions.

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

AUTHORITY FOR COMMITTEES TO REPORT

Mr. FRIST. I ask unanimous consent that notwithstanding the Senate's adjournment, committees be authorized to report legislative and executive matters on November 10, from 10 a.m. to 12 noon.

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

AUTHORIZING THE PRESIDENT OF THE SENATE, THE PRESIDENT PRO TEMPORE, AND THE MAJORITY AND MINORITY LEADERS TO MAKE APPOINTMENTS

Mr. FRIST. Mr. President, I ask unanimous consent that notwithstanding the upcoming recess or adjournment of the Senate, the President of the Senate, the President pro tempore, and the majority and minority leaders be authorized to make appointments to commissions, committees, boards, conferences, or interparliamentary conferences authorized by law, by concurrent action of the two Houses, or by order of the Senate.

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

ORDER THAT ALL NOMINATIONS TO REMAIN STATUS QUO

Mr. FRIST. As in executive session I ask unanimous consent that during the upcoming adjournment of the Senate, all nominations remain status quo.

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

AMENDING THE AGRICULTURAL ADJUSTMENT ACT

Mr. FRIST. I ask unanimous consent the Senate now proceed to consideration of H.R. 2984, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2984) to amend the Agricultural Adjustment Act to remove the requirement that processors be members of an agency administering a marketing order applicable to pears.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. I ask unanimous consent the bill be read a third time and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The bill (H.R. 2984) was read the third time and passed.

PENDING NOMINATIONS

Mr. FRIST. Mr. President, we are on our final stretch. Before we leave for our adjournment prior to the election, I do want to take a couple of minutes to talk about the pending nominations.

The pending nominations have become an issue because it has gotten longer and longer and longer, in terms of the list. I am very disappointed. We have had a hugely successful session. The last 6 weeks and the last 3 days have been tremendously productive, but I am very disappointed that we leave here today stranding about, I believe it is 153 pending nominations that are on the Executive Calendar today. All of us have noted the calendar gets thicker and thicker, and it is because there are 153 nominations that are being held up.

For my colleagues, all of them know, but for others listening, these nominations have all been received from the President. The President has made the nominations. All of them have gone through the committee process. All are now available for Senate consideration.

That is our responsibility. But now in the last few moments before we finished our business—I am not going to go through the details why, I am not going to rehash why. But we find ourselves in a stalled position with 153 nominees right here who are being obstructed. Some on the other side of the aisle have said they have nominations which they want considered and until that happens everybody is going to be held up. Indeed, that is what has happened. It is a scorched-earth-type policy which should not be tolerated. I am troubled by it. I hear such words as, Well, if I can't have my person or the White House is not sending up the person that I asked for, I am going to punish everybody. That is what has happened.

We have 153 people who are on the calendar who are ready and available to go. Many of them have put their lives on hold. They have dedicated themselves to public service. They have gone all the way through the system and they came to this point—to the floor right here—and they are obstructed.

On the calendar, ready and available to go are ambassadorships, critical ambassadorships, for example, to Qatar, Estonia, they are representatives to the United Nations who are being held up, nominations to the Department of Housing and Urban Development positions, various positions at the Environmental Protection Agency, to the Chemical Safety and Hazard Investigation Board, to the Department of Education nominations, the Veterans Affairs Assistant Secretary being held up, and nominations to African Development being held up. There are more than 25 pages of nominations being held up.

These are real people. These are not just names on the calendar. These are real people. They have subjected themselves to the process. They said, Yes, I am willing to serve, but they are being obstructed. Most of these nominations have gone all the way through the system without any opposition and for most there is absolutely no controversy with their particular nomination. But they are being held hostage. They are being held hostage, I believe unreasonably, and it should not be tolerated. It is within a Senator's right to do that, but to me it is just wrong. These are people committed to public service. There is no controversy about them as individuals. They are being held hostage.

I understand this is not the first time we failed to act on nominations or the first time nominations have been held up to unrelated issues.

But I am disappointed that there are Members in this body who have taken to such an extreme position—25 pages of nominations.

This whole concept of putting blanket holds on everybody and holding everybody hostage simply is not appropriate and I believe is a disservice to the country. But that is what is happening. To me it is not responsible. It is not legislating responsibly.

Senators do have those individual rights, and, boy, we have seen individual rights being used today and yesterday and the day before. Those are the rules of the Senate.

But again, I plea that people respect this process and be reasonable and allow these nominations to be considered and taken up in a way which allows us to act on these deserving people in a reasonable way—a way that would allow us to proceed with our constitutional duties.

The Senate has to approve these individuals with advice and consent. We can't give advice and consent if there is this wholesale obstruction.

Again, I wanted to make sure everybody is heard in the nomination process. But the obstruction of not being able to consider them is unreasonable.

With all that said—I said I wasn't going to rehash the why's—I am very disturbed by the process and disappointed by Senate colleagues.

With that said, we will return in November. I hope that once past the election—if that is why there is this wholesale hostage holding, if that is why it is, once we get past the election being settled—we will be able to focus our attention on the calendar.

I hope we can return to the regular order and allow the Senate to act on these nominees. These are people who believe in public service. I believe public service and their consideration of public service is a noble cause. Let's not leave them on hold indefinitely. Many of them are listening to the fact that they will not get through to me right now.

COLUMBUS DAY

Mr. FRIST. Mr. President, today is Columbus Day. When we look back on the history of Columbus Day and the history in this body, it was October 12 of 1492, the sailor onboard the Pinta landed, and the next day Christopher Columbus and his three ships landed at the Bahamian Island, ending a nearly 10-week journey across the Atlantic.

Today, as we have been working here all day, people have been celebrating Columbus Day all over the United States. It is the day to honor Christopher Columbus's sense of bravery, his curiosity, his dream in making that dream come true, all of which are concepts that are still very much alive and well today in the spirit of Americans.

The first recorded celebration of Columbus Day took place on October 12, 1792. That was to commemorate the 300th anniversary of Columbus's landing. A century later, the first official celebration occurred when President Benjamin Harrison issued a proclamation urging Americans to mark the day. And over the next decades, the Knights of Columbus, a Roman Catholic fraternal order, lobbied State legislatures to declare October 12 an official holiday. Colorado was the first to so in 1907, followed by New York in 1909. The Federal Government declared Columbus Day an official holiday in 1971.

As we have been working today and as we bring things to a close, we see all of the country marching in parades in our cities and towns, coming together to enjoy families and friends. When I finish, I will celebrate the birthday of my son, which has been put on hold until we adjourn, which will be shortly. It causes us to reflect a little bit about dreaming, curiosity, of the bravery that took place over 500 years ago.

SPACESHIPONE

Mr. FRIST. Mr. President, last week, *SpaceShipOne* completed its third successful flight into space. Burt Rutan, Brian Binnie, Michael Melvill, and their colleagues on the Tier One Project team deserve a place on the honor roll of our Nation's greatest explorers and innovators. Their bravery, ingenuity, and hard work have launched the age of commercial space flight. I also commend the men and women who had the vision to establish the Ansari X Prize. They all had dreams—and they, with American spirit, captured their dream.

America has always been on the cutting edge of space travel. We landed the first people on the moon, performed the first docking in space, made the first successful soft landings on Mars, and built the world's first fleet of reusable spacecraft. We have explored eight of the nine planets and returned a treasure trove of information about our moon, asteroids, and comets.

As I speak, our spacecraft beam back scientific data from Mars, Saturn, and the orbit of our own planet. Soon, a spacecraft will begin to send data from Mercury and another will return from a close encounter with a comet.

Through NASA's Discovery Program, universities and research labs work in partnership with Washington policy makers to return valuable information about asteroids and our sun. And last, but not least, we have spearheaded the 16-nation effort to build and crew the International Space Station.

America will continue to push the outer reaches of space exploration. We will return the space shuttle to flight, finish the International Space Station, continue our efforts to explore the Moon, Mars, comets, asteroids, and outer planets. We will also send more humans into space. In doing this, we will achieve the President's goal to ''extend human presence across the solar system.''

The successful launch of *SpaceShipOne* shows that the private sector can achieve spectacular successes. In the future, entrepreneurs will launch many of the routine spaceflight activities in low earth orbit.

In time, privately financed, privately directed innovators will press forward with the exploration of the Moon and Mars. Space offers extraordinary potential for commerce and adventure, for new innovations and new tests of will. As Americans, we can't help but reach for the stars. It's our nature. It's our destiny.

The President's Centennial Challenges program encourages the private sector's efforts to fulfill this dream. His program is providing incentives for inventors and entrepreneurs to develop less expensive spacecraft, improve robotic technology, and encourage future astronauts.

The President supports a vigorous role for government in exploring places beyond our planet. He believes in the promise of space exploration. And he believes, as I do, that, in time, private citizens and entrepreneurs will lead humankind to the stars.

APPOINTMENT OF CONFEREES—S. 2845

The PRESIDING OFFICER. Pursuant to the order of October 10, the Chair appoints the following conferees on S. 2845:

The Presiding Officer (Mr. SESSIONS) appointed Ms. COLLINS, Mr. LOTT, Mr. DEWINE, Mr. ROBERTS, Mr. VOINOVICH, Mr. SUNUNU, Mr. COLEMAN, Mr. LIEBERMAN, Mr. LEVIN, Mr. DURBIN, Mr. ROCKEFELLER, Mr. GRAHAM of Florida, and Mr. LAUTENBERG conferees on the part of the Senate.

ORDERS FOR TUESDAY, NOVEMBER 16, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment under the provisions of H. Con. Res. 518 until 12 o'clock noon on Tuesday, November 16; I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and there then be a period of morning business until the hour of 12:30, with Senators to speak for up to 5 minutes each.

I further ask consent that the Senate recess from the hours of 12:30 to 2:15 for the weekly policy luncheon; provided further that at 2:15 the Senate begin executive session for the consideration of Executive Calendar No. 915, Francis Harvey, to be Secretary of the Army as provided under the previous order.

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

PROGRAM

Mr. FRIST. Mr. President, in a moment we will be adjourning until November 16. As always, the adjournment resolution provides for both Houses of Congress to be called back into session if the public interest shall warrant it. If it were necessary for the Senate to reconvene prior to this November 16 date, certainly Senators would be given ample time to make arrangements.

If not called back, we would reconvene on that Tuesday, November 16. During that week, the Senate will try

to finish up any remaining work prior to the official sine die adjournment.

In addition, both parties will be conducting their respective leadership elections in the early part of that week as well as the orientation program for newly elected Members. Thus, the next rollcall vote will occur on Tuesday, November 16, around 5:15, if all debate is necessary, and that vote will be on the nomination to the position of Secretary of the Army.

Again we have further business that week, including the remaining appropriations process. I do wish everyone a safe and hopefully restful few weeks. Many of our colleagues will be campaigning across the country and most have departed and started that process now. Hopefully, everyone in the Chamber will have well-deserved time to spend with family and with friends. We have had, as I said again and again, a very productive 6 weeks, and an unusual weekend and holiday session in order to complete our business.

I will not review the bills we passed today, but the long list of bills that we passed today, the business we went through very quickly over the last 15 or 20 minutes, again, represents substantial work, thousands and thousands of person-hours of work with legislation that is to the benefit of men and women and families all over America.

I thank the staff. Viewers can see us here now, but behind us are hundreds of people still here at this late hour. They have been here all day today and over the last 2 days, well into each evening. I thank them. I thank the police officers who protect us every day, and I thank the cloakroom staff, the doorkeepers, the legislative clerks, the reporters who were here throughout the weekend and today and tonight, especially the pages who are with us from early every morning from the time before we get here and stay until after we leave—really, everyone. The list goes on and on around the Capitol complex to keep this place running.

I thank the Presiding Officer. I have been here a lot over the last 2 or 3 days and he has been here equal to me. Every time I am here, I see him here as well. I thank the Presiding Officer because we have run on probably about 3 hours after any Members anticipated.

Very important comments needed to be made and I know we have inconvenienced a lot of people in staying around to allow everyone to speak what they felt to be important.

ADJOURNMENT UNTIL TUESDAY, NOVEMBER 16, 2004

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the provisions of H. Con. Res. 518.

There being no objection, the Senate, at 6:58 p.m., adjourned until Tuesday, November 16, 2004, at 12 noon.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 11, 2004:

IN THE COAST GUARD

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES COAST GUARD TO THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 271:

To be rear admiral (lower half)

CAPT. GARY T. BLORE
CAPT. CRAIG E. BONE
CAPT. ROBERT S. BRANHAM
CAPT. JOHN P. CURRIER
CAPT. RONALD T. HEWITT
CAPT. JOSEPH L. NIMMICH
CAPT. JOEL R. WHITEHEAD

COAST GUARD NOMINATION OF KENNETH W. MEGAN.

COAST GUARD NOMINATIONS BEGINNING JOHN B. MCDERMOTT AND ENDING DAVID C. CLIPPINGER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 10, 2004.

COAST GUARD NOMINATION OF KAREN W. QUIACHON.

COAST GUARD NOMINATIONS BEGINNING MICHAEL H ANDERSON AND ENDING GORDON K WEEKS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 10, 2004.

COAST GUARD NOMINATIONS BEGINNING SCOTT B. BEESON AND ENDING NEEDHAM E. WARD, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 13, 2004.

PUBLIC HEALTH SERVICE NOMINATIONS BEGINNING TIMOTHY D. MASTRO AND ENDING ANTHONY A. WALKER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JULY 19, 2004.