I urge my colleagues to support this measure because I believe, while it has many compromises in it, they are reasonable compromises. I am most hopeful that we can have a resounding vote and see this measure signed into law.

I thank the Chair and staff for their courtesies, and I urge a yes vote on the conference report.

Mr. President, I ask for the yeas and nays on this conference report.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the VA–HUD conference report. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

The PRESIDING OFFICER (Mr. INHOFE). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 307 Leg.]

YEAS—96

Abraham	Enzi	Lugar
Akaka	Faircloth	Mack
Allard	Feingold	McCain
Ashcroft	Feinstein	McConnell
Baucus	Ford	Mikulski
Bennett	Frist	Moseley-Braun
Biden	Gorton	Moynihan
Bingaman	Graham	Murkowski
Bond	Gramm	Murray
Boxer	Grams	Nickles
Breaux	Grassley	Reed
Brownback	Gregg	Reid
Bryan	Hagel	Robb
Bumpers	Harkin	Roberts
Burns	Hatch	Rockefeller
Byrd	Hutchinson	Roth
Campbell	Hutchison	Santorum
Chafee	Inhofe	Sarbanes
Cleland	Inouye	Sessions
Coats	Jeffords	Shelby
Cochran	Johnson	Smith (NH)
Collins	Kempthorne	Smith (OR)
Conrad	Kennedy	Snowe
Coverdell	Kerrey	Specter
Craig	Kerry	Stevens
D'Amato	Kohl	Thomas
Daschle	Landrieu	Thompson
DeWine	Lautenberg	Thurmond
Dodd	Leahy	Torricelli
Domenici	Levin	Warner
Dorgan	Lieberman	Wellstone
Durbin	Lott	Wyden

NAYS—1

Kyl

NOT VOTING—3

Glenn	Helms	Hollings

The conference report was agreed to.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

SENATOR GORTON RECEIVES HIS FIFTH GOLDEN GAVEL AWARD

Mr. LOTT. Mr. President, yesterday evening the senior Senator from Washington, Senator GORTON, reached 100 presiding hours in the 105th Congress for his 100 hours of service presiding over the Senate. He will be awarded the Golden Gavel. But there is an interesting point here. This is the fifth Golden Gavel that Senator GORTON has obtained in his years in the Senate—representing 500 hours presiding in the Senate Chamber.

I think most Senators will acknowledge that he does an excellent job when he is the Presiding Officer. He is one we call on quite often on Friday afternoons or late at night. He is always willing to do it. And he dedicates each one of these Golden Gavels to one of his grandchildren. He has seven. This is the fifth one; so he has two more to go.

This is an assignment that takes time and patience. I publicly thank Senator GORTON for achieving this and for the way that he is doing it for his grandchildren.

I ask my colleagues to join in expressing our appreciation.

(Applause.)

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. I do not know that anything else needs to be said, but I certainly want to join with the majority leader in offering my congratulations and my condolences for all of those hours. As one who has only been presented one Golden Gavel in my time in the Senate, I can appreciate the magnitude of the accomplishment just accomplished by the senior Senator from Washington. On behalf of all of our colleagues, I join in congratulating the Senator. I yield the floor.

INTERNET TAX FREEDOM ACT

Mr. MCCAIN. Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:.

A bill (S. 442) to establish national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise Congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, and for other purposes.

Pending:

McCain/Wyden amendment No. 3719, to make changes in the moratorium provision.

The Senate resumed consideration of the bill.

AMENDMENT NO. 3719

Mr. MCCAIN. Mr. President, it is my understanding there is no further debate regarding the consideration of the amendment at the desk. I ask that it be adopted.

The PRESIDING OFFICER. Is there further debate?

If not, without objection, the amendment is agreed to.

The amendment (No. 3719) was agreed to.

AMENDMENT NO. 3711, AS MODIFIED

(Purpose: To define what is meant by the term ''discriminatory tax'' as used in the bill)

Mr. MCCAIN. Mr. President, I call up amendment No. 3711, as modified.

The PRESIDING OFFICER. The clerk will report.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I raise a point of order that this amendment is not germane.

The PRESIDING OFFICER. Would the Senator from Florida suspend for just a moment?

The clerk first will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. WYDEN, proposes an amendment numbered 3711, as modified.

The amendment is as follows:

On page 26, beginning with line 3, strike through line 5 on page 27 and insert the following:

(2) DISCRIMINATORY TAX.—The term ''discriminatory tax'' means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) except with respect to a tax on Internet access that was generally imposed and actually enforced prior to October 1, 1998, the ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

The PRESIDING OFFICER. Is there objection to the amendment being modified?

Mr. GRAHAM. Mr. President, I object to the modification of the amendment and raise a point of order that the amendment is not germane.

AMENDMENT NO. 3711

(Purpose: To define what is meant by the term ''discriminatory tax'' as used in the bill.)

Mr. MCCAIN. Mr. President, I call up amendment No. 3711.

The PRESIDING OFFICER. Does the Senator from Arizona withdraw his previous amendment?

Mr. MCCAIN. I withdraw it and call up amendment No. 3711.

The amendment (No. 3711), as modified, was withdrawn.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. WYDEN, proposes an amendment numbered 3711.

The amendment is as follows:

On page 26, beginning with line 3, strike through line 5 on page 27 and insert the following:

(2) DISCRIMINATORY TAX.—The term ''discriminatory tax'' means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(iv) imposes the obligation to collect or pay the tax on any provider of products or services made available and obtained digitally where the location, business, or residence address of the recipient is not provided as part of the transaction or otherwise is unknown to the provider; or

(v) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) the ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Am I correct that there is not a request to modify this amendment?

The PRESIDING OFFICER. There is a properly filed request to modify the——

Mr. GRAHAM. I object to that request to modify and I raise again the point of order that the amendment is not germane.

The PRESIDING OFFICER. There is no request to modify the pending amendment. There is a duly filed motion to suspend the rules with respect to that amendment. The motion to suspend is debatable.

Is there further debate?

Mr. GRAHAM. Mr. President, point of parliamentary inquiry. Will there be a ruling on the motion of the point of order as to germanity?

The PRESIDING OFFICER. The motion to suspend the rules needs to be resolved.

Mr. GRAHAM. Further point of inquiry.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. What is the position relative to debate on the motion to suspend the rules for the purpose of considering this amendment?

The PRESIDING OFFICER. The Senate is operating under cloture, and the motion will be debatable as under the limitation of the cloture rule.

Mr. MCCAIN. Mr. President, has the Chair ruled?

The PRESIDING OFFICER. The Senator from Arizona.

MOTION TO SUSPEND THE RULES

Mr. MCCAIN. In full accordance with the rules and procedures of the Senate and pursuant to the notice filed yesterday, I move to suspend rule XXII as it applies to the consideration of amendment No. 3711.

And, Mr. President, for the information of my colleagues, I want to explain what will occur here and the significance of this vote.

By the way, as far as the modification is concerned to amendment No. 3711, since it is agreed on both sides, once we dispense with this parliamentary tactic, then obviously we will be able, by unanimous consent, to modify to satisfy a concern that was not included in the amendment.

At some point this morning we will vote to suspend the rules regarding germaneness with respect to the pending amendment. Senator WYDEN and I would have offered this amendment earlier, long before cloture was invoked, but we didn't because we were still negotiating language with other Senators—specifically, the Senator from North Dakota and other Senators—who were involved in this very important piece of legislation. We could have offered it and I am sure we could have passed the amendment, but in the environment of trying to reach overall agreement on language of this legislation we did not do it at that time. We did not propose this amendment in order to accommodate other Senators. As we all know, sometimes there are package agreements involving different parts of the legislation.

The Democratic manager of the bill, Senator DORGAN, Senator WYDEN and myself came to agreement on the language of the amendment. It was at that time, and only at that time, we were notified that a point of order would be raised against the language, even though we have been negotiating with the Senator from Florida and his staff since last August on this package. Doing so obviously is the Senator's right. I don't begrudge any Senator their right to use the rules to his or her advantage. But I do want to make it clear we tried to be fair and accommodate everyone who has left us in this position.

Simply, if we don't succeed in suspending the rules and adopting this amendment, Senator WYDEN and myself will no longer pursue this legislation. It won't pass. Internet tax freedom, at least for this year, will be dead. Because, Mr. President, failure to adopt this amendment will render this bill impotent.

I suspect that may have been the desire of some Members all along, to kill this bill. Let there be no mistake, failure of this bill will hurt the future of electronic commerce and will subject our constituents to new taxes. Yes, a vote against suspending the rules is a vote to kill the bill. Without the language of this amendment being added, the bill is meaningless; it will accomplish nothing. Therefore, we will not pursue the legislation.

But this vote means more than killing the Internet Tax Freedom Act. Adopted to this bill was Senator BRYAN's Children's Online Privacy Act. That is a very important bill that will protect children who use the Internet. It is bipartisan legislation that was passed out of the Commerce Committee by a unanimous vote. If this bill dies today, Senator BRYAN's Children Online Privacy Bill dies today.

Adopted to this bill was Senator COATS' Decency Act. That measure was adopted by a vote of 98–1 yesterday. The Coats amendment is exceedingly important to protect our children from pornography that is proliferating on the world wide web. If this bill dies today, Senator COATS' Decency Act dies today.

Adopted to this bill was Senator DODD's amendment regarding filtering. The Dodd amendment would require Internet service providers making filtering software available to families so that they can screen unwanted and harmful material from appearing on their computer. The Dodd amendment has twice been adopted by the Senate. It is important.

Adopted to this bill was Senator ABRAHAM's Digital Signature bill. This bill was reported by the Commerce Committee with no opposition.

Mr. President, if we cannot suspend the rules and adopt this amendment that is supported by both managers, the Internet tax bill is dead and so is the vital legislation sponsored by our colleagues.

Let me briefly explain why this amendment is needed. The amendment does two things. First, it clarifies what is a discriminatory tax. This is necessary because without this definition the moratorium is rendered meaningless. States and localities do not pass new laws every time a new product appears. They simply interpret existing laws to apply to the products. What we are seeking to do here is clarify that the Internet cannot be singled out for the application of a tax in a discriminatory manner. For example, if an entity has a wicket tax, or a cellular phone tax, or a microwave oven tax, it would not be able to apply such tax in a discriminatory manner solely to the Internet and thereby claim the moratorium does not apply.

Mr. President, if this definition is not included in the bill, then the moratorium is gutted.

The second part of the amendment clarifies that the location of a server or of web pages does not constitute nexus. This is exceedingly important. If an individual in Iowa, sitting at his or her desk is surfing the web and buys a product for his mother in Tennessee from a company in Maine, using a server located in Florida, the fact that the server is located in Florida should not constitute nexus for the purposes of taxation. Neither the purchaser nor the company from which merchandise was purchased, nor the recipient, under this example, lived in Florida.

So, again, this language simply clarifies this matter. We do not state that the appearance of a catalog in someone's mailbox constitutes nexus. This provision simply updates that fact in the age of the Internet.

As technology bypasses us all and the use of the web becomes more and more ubiquitous and seamless, we will need to protect the technology that is fueling our economy. The issues of Quill and of who should and should not have to pay taxes will and should be settled by the Congress and the States. But regardless of that outcome, this technology should not be harmed by onerous, discriminatory, unfair—and in many cases—outdated laws.

To close, adoption of this amendment is vital to the passage of this legislation. This vote is key to its passage. If we fail to muster the 66 votes necessary, this bill will be dead. And as I have noted, some have wanted to kill it all along. We were forced to file cloture on the motion to proceed. We were forced to file cloture on the bill. We did all we could to accommodate all Senators with interests in this bill. We protected the rights of Senators to offer and debate amendments.

We did not have to allow the senior Senator from Arkansas an opportunity to offer non-germane amendments prior to cloture we did. We could have filled the tree or sat in quorum calls awaiting the cloture vote or final vote. But the Senate functions in a spirit of comity. So the Senator from Arkansas had his opportunity and his votes.

The bill has been changed and amended. We have accepted language offered by Senator HUTCHINSON from Arkansas. We accepted language offered by my good friend Senator ENZI. I did not care for those amendments, but I accepted the will of this body and I recognized that we must move forward on this important legislation. Especially on legislation like this, accommodations and concessions have to be made.

This bill does contain amendments which I wish were not in there, but there are 100 Members here. I also agreed to go along with the will of the majority, as did the Senator from North Dakota, as did the Senator from Oregon, and many other Senators who had deep and abiding interests in this legislation.

Again, this vote is exceedingly important if we are going to pass this bill. If we waive the rules for the purpose of this amendment, we can pass the bill and send it to the House. If we waive the rules, we can protect the Internet from unfair and discriminatory taxation, and more importantly, pass legislation that is vitally important to the country.

It is my understanding, and I ask parliamentary clarification, this motion is debatable; is that true?

The PRESIDING OFFICER. The Senator is correct.

Mr. MCCAIN. But there is still a time limit that each individual Senator is allowed under the postcloture proceedings?

The PRESIDING OFFICER. The Senator is correct.

Mr. MCCAIN. Parliamentary inquiry; how much time is remaining to the Senator from Florida?

The PRESIDING OFFICER. The Senator from Florida has 14 minutes remaining.

Mr. MCCAIN. I yield the floor.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. BUMPERS. Mr. President, will the Senator from Oregon yield for a parliamentary inquiry?

Mr. WYDEN. If that is all I am yielding for.

Mr. BUMPERS. How much time do I have remaining on the bill?

The PRESIDING OFFICER. The Senator from Arkansas has 36 minutes remaining.

Mr. BUMPERS. I thank the Chair, and I thank the Senator from Oregon.

Mr. WYDEN. Mr. President, I urge the Senate suspend the rules and pass this important amendment.

First, let's be clear what happens if this amendment is passed. The most important thing is that the grandfather on Internet tax provision that was so central to the States is preserved and preserved completely.

Second, there is a separate section to ensure that all other existing taxes are preserved, and that there is another provision that would ensure that all ongoing liabilities—the matter the Senator from Florida says is important to the State of Connecticut—is also preserved.

After we filed this amendment last night, we again reached out to all sides to try to address concerns. I have done this now for a year and a half. The original bill that came out of the Commerce Committee, by the time it came to the floor, had more than 30 major changes. In our efforts here now to be reasonable, we have made at least another 20 changes to try to accommodate the Senator from Florida and others. In fact, the definition of a discriminatory tax—which is what this is all about—is essentially that which was used in the House, and it was agreeable to the Governors and the States when it was debated there in the House. The reason that the Senator from Arizona and I have focused on this issue is that this definition of discrimination is essential to ensure technological neutrality.

What this definition does is straightforward. It ensures that the new technology and the Internet is not discriminated against. It makes sure that a web site is treated like a catalog; catalogs aren't taxed. We don't want web sites to be singled out for selective and discriminatory treatment. The provision also makes sure that Internet service providers are, in effect, treated like the mail. The mail isn't taxed when a product is shipped to your home from a catalog merchant. Similarly, the Internet service provider should not be taxed merely for being the carriers or transmitters of information. In effect, Senator COATS recognized this in his amendment that was adopted yesterday.

So what we have done is, yesterday, we have worked with the Senator from North Dakota, Senator ENZI, and others, to address this discriminatory tax question in a way that we thought would be agreeable to the States. Overnight, we tightened up the language to deal with the grandfathering question. The minority leader, Senator DASCHLE, made some important and, I thought, useful suggestions. We incorporated those this morning to make sure that when we talk about the grandfathering provision, as it relates to South Dakota and North Dakota, the grandfather provision would tightly protect those two States. We have done that.

This Senator finds now that if we do not prevail on this point and the bill goes down, all of these efforts now for a year and a half are going to leave us in a situation where I think we will see, with respect to the Internet and the digital economy, the same problems develop that cropped up with respect to mail order and catalogs. We have had a number of people at the State and local level saying, you know, with respect to the mail-order and catalog issue, we wish we had done what you are bringing about with respect to the Internet.

We know that we have to have sensible policies so we can protect some of

the existing sources of revenue for the States. Some call it the ''old economy''; I don't. I think they are extremely important to the States. We have to respect those, while at the same time writing the ground rules for the digital economy—the economy where the Internet is going to be the infrastructure and when every few months takes us to exciting new fields and increases dramatically in revenue.

So I hope our colleagues will not cause all of the other important work that has been done here to go down. That is Senator DODD's legislation and the important work done by Senator BRYAN. There is a host of good measures that we agreed to accept as part of this legislation in an effort to be bipartisan and to accommodate our colleagues.

But, once again, the goalposts are moving. The definition of discriminatory tax that came up in the House is essentially what we are using. The Governors and the States found that acceptable. And then, after taking that kind of approach, even last night, we moved again, at the request of colleagues—and we thought they were reasonable requests—to tighten up the grandfathering provision. Now is the time to make sure that we do not gut this bill, the definition of a moratorium, and particularly don't gut a concept that we think is acceptable to our colleagues, and that is the concept of technological neutrality.

When you vote for the McCain-Wyden amendment to suspend the rules and pass this, you will be voting for a solid grandfather provision that ensures that all existing taxes are preserved. You will be voting to protect ongoing liabilities, which is what the Senator from Florida said he is concerned about, along with the Senator from Connecticut, and others. You will be voting to make sure, in a separate section, that all other existing taxes other than Internet taxes are preserved, and you will be voting for the principle of technological neutrality.

I think it would be a great mistake to gut this legislation now after all this progress has been made. I represent a State with 100,000 small businesses. These businesses are a big part of the economic future that we all want for our constituents. They cannot afford a crazy quilt of taxes that would be applied by a good chunk of the Nation's 30,000 taxing jurisdictions, based on what we have seen during this debate.

Let's do this job right. Let's do it in a thoughtful and uniform way. I urge our colleagues to support this bipartisan amendment Senator MCCAIN and I have offered. I yield the floor.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, for those here on the floor and those who may be watching this on C-SPAN, I apologize, because we are about to enter some very arcane and not particularly exciting discussion. But it is necessary in order to understand what this amendment does and what it doesn't do. First, what it doesn't do.

Mr. President, this amendment starts by saying on page 26 of the bill that is before us that we will strike lines 3 through line 5 on page 27. So for those of you who have access to the legislation, I ask if you will turn to those pages. If you don't have access to the amendment, I am going to make a statement.

Unfortunately, both of those who have spoken—well, Senator WYDEN is on the floor. I would like him to listen to this statement. If he feels I am misstating—since it is not my intention to have to read all of this language—would he please indicate where I am misstating. But as I read the amendment, with the exception of changing the numeration—that is, what was listed as an (a) in the Senate Finance committee language is listed as a small paragraph letter (i) in the McCain amendment number 3711. With the changes of those numerations, the words in the amendment are almost verbatim to the words that are being stricken from line 3 on page 26 through line 5 on page 27. Is that an accurate statement?

Mr. WYDEN. We are anxious to be responsive to the Senator from Florida, but we are having trouble locating this. Why don't we do this: Continue, if you will, with your address and we will try to get the page numbers right.

Mr. GRAHAM. If there is a difference, I will yield to indicate that. In my reading of the amendment, I cannot find any substantial difference between the language that was in the Finance Committee's draft and the language that is in this amendment. We are striking out on the one hand and reinserting on the other. The difference begins with a new subparagraph added by the amendment, which is subparagraph Roman numeral (iv), beginning on line 16 of page 2 of the amendment through line 22. It is my understanding that paragraph will be deleted.

Mr. WYDEN. We agreed to take that paragraph out yesterday.

Mr. GRAHAM. So that is not an issue of controversy.

And Roman numeral (v), which is the new language under discriminatory tax, is acceptable.

Two-thirds of the amendment that is offered is not in contest, either because it is in existing law—so whether we adopt the amendment or not, it is still going to be in the legislation—or it is acceptable.

All the controversy, therefore, focuses on page 3, lines 5 through 23, which is the language that has been referred to as the ''nexus'' language. This language essentially as presented in this amendment was before the Senate Finance Committee. It was reviewed by the Senate Finance Committee and, on the recommendation of both the majority and minority legal counsel, was stricken from the bill.

What was the basis, Mr. President, that the Finance Committee made such a recommendation to strike what is now the essence of lines 5 through 23 from this bill? These are the arguments that the Finance Committee was persuaded by. It determined that the areas of nexus, which relate to the subject of how much of a presence does an entity such as a business have to have in a State to make it subject to that State's tax authority. It determined that the areas of nexus were sufficiently clear under today's law that it was inappropriate to include such standards in Federal legislation.

The basis of nexus: As the Presiding Officer, who was a distinguished member of the State Senate of the State of Wyoming, knows and from his professional career as a CPA, nexus has traditionally been determined by State law, not by Federal law. Each State determines what is the necessary presence for taxation. There are, of course, limits as to State law under constitutional provision for interstate commerce. But within that standard, the States have been the determinative bodies.

According to the Finance Committee staff, there has only been one other Federal law, and that was passed 40 years ago, in 1959, which relates to the issue of federalization of what those standards of nexus would be.

So the essential position of the Finance Committee was, first, that this is a matter that was being properly dealt with at the State level, and that was not a compelling reason why we should federalize the issue of nexus.

Second, they found that no State is currently attempting to enforce a tax collection obligation on the basis of the circumstances outlined in amendment; therefore, there was no necessity for this federalization, and that it would lead to potentially increased litigation over the nuances of this language. I am going to talk about that in a moment.

Finally, that the enactment of this amendment would create special federalized rules for a very small subset of the retail community. And it is inappropriate—for a bill that is intended to cause a timeout, a pause, a moratorium, on State action to allow a commission to develop recommendations on appropriate rules for taxation—for us now to essentially preempt that whole process by federalizing a significant, albeit very niche, area of commerce.

So those are the reasons that the Senate Finance Committee voted to eliminate this language in the bill. Certainly the Finance Committee was not adverse to the thrust of the bill, because it passed the bill on a 19-to-1 vote. The idea that by failing to include this language we would be ''gutting'' the bill is, in my opinion, an extreme overstatement.

Mr. President, beyond those reasons that were given by the Finance Committee, there is also another set of concerns which have come to light as this

amendment has been increasingly in the public attention. That is the fact that there are States which either are or are potentially in litigation with various providers within the Internet industry over the question of their tax liability to a State. We have been sensitive to that in this legislation by providing a grandfather clause, which essentially protects the right of those States. As presented, this nexus amendment clause is retroactive, as the discriminatory tax definition in this bill is not covered by the general grandfather clause, and would apply to past events.

There is concern that the effect of this legislation would be to tilt the playing field in the courtroom of that litigation by making it more difficult on a retroactive basis for the States to make their arguments about an adequate nexus to the State as the basis of taxation of these Internet providers.

I don't think that this Congress wants to get into the business of intruding itself into ongoing litigation which might involve the State of Mississippi, or the State of North Dakota, or the State of Arizona, or the State of Florida, or any other State. That is not our business—to retroactively insert ourselves into that thicket of litigation.

Mr. President, it is for those reasons that I believe this amendment is defective. This Senate has adopted rules that provide that, after cloture has been invoked, the only amendments that can be considered are those that are germane to the bill.

The very fact that the sponsors of this amendment have filed what is a very unusual motion to suspend the Senate's rules as it relates to germanity is an indication that, first, they don't think it is germane; and, second, that under the rules of the Senate it should not be debatable in this postcloture environment.

As the managers and sponsors of this bill, they have had ample opportunity to get this language included throughout this long and tedious process. They have not done so. Now, in the postcloture environment, they are asking us to waive a fundamental rule of the Senate, which is, after cloture has been invoked, the cloture which was filed by the primary sponsor of the bill, now they want to be able to take up what is tacitly admitted to be a nongermane amendment, an amendment which was rejected after thorough analysis by the Senate Finance Committee, a measure which I think would have the effect of injecting us into litigation and affecting potential litigation between the States and various Internet providers.

Mr. President, I strongly urge my colleagues that we not adopt this motion, that we not change our rules, that we play by the rules that we have all agreed to, and that we play by the rules that have been in effect between States and the Internet industry in the past, and not retroactively reach back and adopt a provision which could interfere with the normal resolution of pending litigation.

Having said all of that, Mr. President, it is my hope that while this discussion has been going on, there have been good-faith efforts made to arrive at a resolution of this issue, and it would be my suggestion to have possibly a brief period by suggesting the absence of a quorum so that we might see if in fact we have arrived at a resolution that would obviate the necessity of the several steps that would be required in order to further pursue this matter. I think that would be in everybody's interest.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ENZI). The clerk will call the role.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent that amendment No. 3711 be withdrawn, and I send to the desk amendment No. 3711, with a modification.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment (No. 3711) was withdrawn.

AMENDMENT NO. 3711, AS MODIFIED

(Purpose: To define what is meant by the term ''discriminatory tax'' as used in the bill.)

The PRESIDING OFFICER. The clerk will report the new amendment as so modified.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. WYDEN, proposes an amendment numbered 3711, as modified.

Mr. MCCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 26, beginning with line 3, strike through line 5 on page 27 and insert the following:

(2) DISCRIMINATORY TAX.—The term ''discriminatory tax'' means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to Oct. 1, 1998, the sole ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online service is deemed to be the agent of a remote seller for determining tax collection obligations solely as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

Mr. MCCAIN. Mr. President, let me say that I intend, after the Senator from Florida and the Senator from Oregon and the Senator from North Dakota and I speak on this, there is no controversy associated with it, that we would ask the amendment be agreed to. I would, at that time, request unanimous consent to withdraw my motion to suspend the rules.

The PRESIDING OFFICER. Is the Senator making that request at this time?

Mr. MCCAIN. I make that request at this time. I ask unanimous consent to withdraw my motion to suspend the rules.

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

The motion was withdrawn.

Mr. MCCAIN. Mr. President, I thank the Senator from Florida. This has been a tough battle. It has been a very difficult set of negotiations. We have disagreed on several issues, but we have reached a compromise. I thank him for his willingness to do that.

I also thank the good offices of the Senator from North Dakota whose calm demeanor has prevailed throughout this entire process we have been through. This amendment represents a compromise—another compromise—that has been made in the process of this legislation among ourselves and the Senator from Florida, and I thank him for it.

After the Senator from Florida and the Senator from Oregon speak, I hope we can adopt the amendment at that time. Then I hope we can go to final passage of this legislation.

Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Dakota.

Mr. DORGAN. Mr. President, the areas that have been most recently discussed with respect to this legislation are arcane, complicated areas dealing with nexus, jurisdiction of tax and so on. There are not a lot of people who understand the nuances of all of those

words and all of the provisions. That is why it was hard to sift through all of this and reach an agreement. But an agreement has been reached that I think is a good agreement, one that accomplishes the purpose of this legislation in a manner that is not injurious to any other interests.

I thank the Senator from Arizona—I would say for his patience, but he is a Senator who is impatient to get things done on the Senate floor. I understand that and accept that, as do others. That is the reason he brings a lot of legislation to the floor and is successful with it.

I thank the Senator from Oregon who has been at this task for a long, long time and has been very determined to help get this legislation through the Senate.

Let me say to the Senator from Florida, one of the admirable qualities of that Senator, among many, is his stubborn determination to make certain that when things are done here, they are done the right way and that he understands it and that the interests affected are protected in a manner that is consistent with what he views as a matter of principle. I know that is frustrating for some, but the Senator from Florida certainly has that right. He contributes to this process by being determined to make certain we understand the consequences of all of this.

I thank him for working with us now in these final moments to reach an agreement that I think is the right agreement. We will pass this legislation, and I think we have accomplished something significant.

Mr. President, let me also indicate that my staff member, Greg Rohde, who has been working on these issues for many, many years with me, has done an outstanding job, as well as have other staff who have helped work through this process. I thank him for his work. I yield the floor.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Florida.

Mr. GRAHAM. Mr. President, I understand I only have 22 seconds. I want to say some positive things. I ask that I may be yielded——

Mr. MCCAIN. I yield the Senator from Florida as much time as he may use from my time.

Mr. GRAHAM. Mr. President, I appreciate that generosity, and I will not overly indulge. Let me say, we have reached an honorable resolution to this issue which, for those who have been listening to this arcane debate, I will summarize by saying a significant issue will be made prospective in its application and not have retroactive application. Reading the language we have agreed to add to the McCain amendment 3711, which makes a portion of the nexus language prospective, in combination with the definition of ''tax on internet access,'' which was agreed to earlier, this amendment should not interfere with litigation between States and internet service providers. With that agreement, that has brought the various parties of interest into concurrence.

What I want to say, Mr. President, is the three people who have been particularly active on this issue, who are on the floor now—Senator MCCAIN of Arizona, Senator DORGAN of North Dakota, Senator WYDEN of Oregon—are three of the finest people with whom I have had the privilege to serve in public office. If America was going to judge the quality of its public officials, I would be happy to be judged by these three men.

As the Senator from Arizona said, we have had some degree of controversy, but that is the nature of the democratic process. If this were a passive and tranquil process where everybody voted 400 to 0, that would be reminiscent of the way in which the Soviet Union used to operate its parliament, not the U.S. Senate.

I think we have come to not only an appropriate resolution of this specific amendment, but I am proud where we are overall. We have achieved the purpose of having a reasonable period of timeout, with a thoughtful commission to be appointed to study some extremely complicated areas, the intersection of a legal system that is complex in areas of State-Federal relations, telecommunications and a highly complex new set of technologies.

This is an appropriate area for us to stand back and ask for the assistance of some thoughtful citizens who can bring their wisdom and experience to bear and give us the framework of some policy that then will be returned to the Senate and to the House of Representatives for enactment, as well as to the various State legislatures for their consideration.

I think we have, at the end of this process, arrived at exactly what our framers of this Constitution intended the legislative branch to do. I am proud to vote not only for this amendment but for the bill on final passage, and I look forward to the commission's work over the next several months and a return to these subjects in the year 2000 or 2002.

Again, I thank my colleagues for their very significant leadership in bringing us to this position.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Dakota.

PRIVILEGE OF THE FLOOR

Mr. DORGAN. Mr. President, I ask unanimous consent that Tyler Candee be accorded the privilege of the floor for the rest of the day.

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

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I also would like to take this opportunity to thank Mr. Russ Sullivan, who is legislative director in my office, and Kate Mahar, who has worked with him. They have been on a fast learning curve on these issues, fortunately, about 12 hours ahead of myself. I publicly thank them for their contribution to this final conclusion.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Oregon.

Mr. WYDEN. Thank you very much, Mr. President. I think this may well be a historic day. What the U.S. Senate is doing is beginning to write the ground rules for the digital economy. As we have seen just in the last hour again, it is going to be a tough job.

We have had just in the last hour another set of questions that have come up with respect just to the terminology that is used in this new field. For example, some States call an Internet access tax a tax on on-line services.

What we have done now as a result of the agreement among the Senator from Arizona, the Senator from North Dakota, the Senator from Florida and myself, is we have said that we are going to treat those terms the same way when, in fact, they have the same effect. I think that this exercise, while certainly laborious and difficult, is just an indication of the kind of challenges we have to overcome.

I thank particularly the Senator from Florida. He feels very strongly about this issue and has made the case again and again to me that it is important to do this job right, and I share his view. I thank him for his courtesies.

The Senator from North Dakota and I have been debating this legislation now for a year and a half, probably at a much higher decibel level than either of us would have liked.

The chairman of the committee, Chairman MCCAIN, and I have been friends for almost 20 years now. For this freshman Senator—not even a full freshman, an arrival in a special election—to have a chance to team up on this important piece of legislation is a great thrill. I thank him and his staff for all of their courtesies.

Before I make any final comments, I want to thank Ms. Carole Grunberg of our office who again and again, when this legislation simply did not look like it could go forward, persisted. And she, along with Senator DORGAN's staff and Senator MCCAIN's staff, has helped to get us to this exciting day.

I am particularly pleased, Mr. President—I will wrap up with this—for the benefits that this legislation is going to have for people without a lot of political power in America. I think about the 100,000 home-based businesses I have in my State. I think about the disabled folks who are starting little businesses in their homes. For them, the Internet is the great equalizer. It allows people who think of themselves as the little guy to basically be able to compete in the global economy with the big guys.

Unless we come up with some ways to make uniform some of these definitions and terms, which is what we have been trying to do in the last hour—and we have made some real headway and reached a success—those little guys are going to find it hard to compete.

So I look forward to continuing the discussions with our colleagues as we look to other questions with respect to the Internet. This, it seems to me, is just the beginning of the discussion rather than the end.

Mr. President, I urge my colleagues now to support this modified amendment, to support the bill, and I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona.

Mr. MCCAIN. Mr. President, I again thank Senator WYDEN, Senator DORGAN, the Senator from Florida, Senator GRAHAM, and all who were involved in this very difficult and very complex issue. I also thank my staff—all of them, including Mark Buse.

I also would like to add to the comments of the Senator from Florida, Senator GRAHAM, who said this is how the process should work. It has been very tough, very difficult, very time-consuming, but I think the magnitude of the legislation we are considering probably warranted all of that—and perhaps more. So I thank him very much. And as far as the freshman from Oregon is concerned, he has certainly earned his spurs as a member of the Commerce Committee.

By the way, I also thank the Chair for his involvement in this issue. He is probably the most computer literate Member of the U.S. Senate. We obviously value his talent and expertise and look forward to the day when he has his laptop on the floor for its use that so far we have failed to achieve but someday I hope we do.

I also mention one other person, Congressman COX over in the other body, who has also played a key role in the development of their legislation on the other side. He has done a tremendous job, Congressman COX of California.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3711, as modified.

The amendment (No. 3711), as modified, was agreed to.

AMENDMENT NO. 3718, AS FURTHER MODIFIED

Mr. MCCAIN. I send to the desk a modification to amendment No. 3718 and ask unanimous consent that it to be adopted. Mr. President, the situation is that some written language that had been included in that amendment was not legible in the printer, so we had to remodify it.

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

The amendment (No. 3718), previously agreed to, as further modified, follows:

On page 29, beginning with line 20, strike through line 19 on page 30 and insert the following:

(8) TAX.—

(A) IN GENERAL.—The term ''tax'' means—

(i) any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred; or

(ii) the imposition on a seller of an obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity.

(B) EXCEPTION.—Such term does not include any franchise fee or similar fee imposed by a State or local franchising authority, pursuant to section 622 or 653 of the Communications Act of 1934 (47 U.S.C. 542, 573), or any other fee related to obligations or telecommunications carriers under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(9) TELECOMMUNICATIONS SERVICE.—The term ''telecommunications service'' has the meaning given such term in section 3(46) of the Communications Act of 1934 (47 U.S.C. 153(46)) and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986).

(10) TAX ON INTERNET ACCESS.—The term ''tax on Internet access'' means a tax on Internet access, including the enforcement or application of any new or preexisting tax on the sale or use of Internet services; unless such tax was generally imposed and actually enforced prior to October 1, 1998.

Mr. KERRY. I'd like to take a moment to express my strong support for S. 442, the Internet Tax Freedom Act. In my view, S. 442 is a necessary first step to ensure that the Internet remains user-friendly to persons and businesses who seek to use it as a primary forum in which to conduct commerce. Before I begin, I'd like to credit my colleague from Oregon, Senator WYDEN, for his hard work on this legislation and for his longtime and pioneering leadership on Internet issues, both when he was in the House and now as a member of the Commerce Committee in the Senate. I'd also like to thank Senator MCCAIN for his steadfastness and determination in ensuring that this important legislation is considered by the full Senate.

The Internet holds great promise to expand prosperity and bring ever more Americans into the national economy. In the past, to open a store and sell goods to the public, a merchant needed to find a good location for a storefront, build-out the store front, maintain its interior, pay rent and deal with myriad other business and legal concerns. All of these actions consume time and often scarce resources. To many Americans, they present an unreachably high bar to starting or maintaining a business. The Internet will allow millions of Americans to sell goods and services online, and will dispense with many of the burdensome costs involved with starting and maintaining a business. One great impediment, however, to the evolution of commerce over the Internet is the immediate threat of both disparate taxing jurisdictions and inequitable taxation.

A product offered over the Internet can be purchased by anyone with a computer and a modem, regardless of the town or state in which the person lives. Imagine needing to know the tax consequences of selling to each of the thousands of taxing jurisdictions in the country as a prerequisite to starting a business. This problem becomes even more complex if states and localities begin to impose taxes on electronic transactions or transmissions as such, in addition to sales, use and other taxes.

This legislation attempts to reasonably address this concern by imposing a brief moratorium specifically on the inequitable taxation of electronic commerce. It will allow the federal government, the states, the Internet industry and Main Street businesses a brief time-out to rationally discuss the several issues involved in Internet taxation and to develop a reasonable approach to taxation which permits electronic commerce to thrive in America. In my view, the legislation does not seek to deprive states of needed tax revenue. Senators WYDEN and MCCAIN have gone to great lengths to minimize those existing taxes that would be affected. In addition, the bill expressly grandfathers existing state taxes on Internet access. What the bill does, however, is attempt to ensure that the development of the Internet is not hampered by a hodge-podge of confusing state and local taxes.

This bill was carefully negotiated to address competing equities. States and localities certainly have very real and legitimate needs to raise revenue to support vital state and community functions. By the same token, the Internet and the promise it holds for our economy, for schools, for children and families, and for our democracy is also very compelling. It is a wholly new medium whose mechanics, subtleties and nuances few of us really understand. I do not hear any Senator stating that electronic commerce should never be the basis of tax revenue, and I do not believe any Senator is trying to permanently deprive states of inherent privileges. Instead, the bill strives to create a brief period during which we in government and those in business can attempt to better understand this new medium and create a sensible policy that permits the medium to flourish as we all want.

I urge my colleagues to support this bill.

Mr. ROTH. Mr. President, I rise to express my support for the Internet Tax Freedom Act. This legislation imposes a temporary moratorium on taxes relating to the Internet and establishes a Commission to study and make recommendations for international, Federal, state, and local government taxes of the Internet and other comparable sales.

This legislation reflects the exciting times in which we live—a time when commerce between two individuals located a thousand miles apart can take place at the speed of light. Today, names like Netscape, Amazon.com, Yahoo, and America On-Line are household names—each a successful company in a new and exciting global

business community. And they are only a few of literally thousands who provide their goods and services over the Internet.

They compete in a world where technological revolutions take place on a daily basis, and they benefit the lives of families everywhere. Even in America's most remote communities, our children have access to the seven wonders of the world, to metropolitan art museums, electronic encyclopedias, and the world's great music and literature. These companies—and the countless companies like them—are pioneers. And the new frontier is exciting, indeed.

In the new realm of cyberspace, government has three choices: lead, follow, or get out of the way. The legislation we introduce today is a clear indication that government is prepared to lead. It demonstrates that Congress is not going to allow haphazard tax policies, and a lack of foresight to get in the way of the growth and potential of this new and promising medium. It makes it clear that government's interaction with Internet commerce will be well-considered and constructive—beneficial to future prospects of Internet business and the individuals they service.

From the introduction of the Internet Tax Freedom Act, in early 1997, members of the Finance Committee expressed keen interest in considering this legislation. The Finance Committee has clear jurisdiction over state and local taxes—it's also the place for trade issues. And this July, we received a referral of the bill. We conducted a hearing on the issues and listened to witnesses detail the growth and potential of the Internet. Witnesses also articulated the many sides and concerns associated with the tax implications of Internet commerce.

Following our hearing, the Finance Committee held a markup, where we approved an amendment in the nature of a substitute to the original bill reported out of the Commerce Committee. The Finance Committee made significant improvements to the original legislation. We beefed up the trade component of the bill. We directed the USTR to examine and disclose the barriers to electronic commerce in its annual report. And we declared that it is the sense of Congress that international agreements provide that the Internet remain free from tariffs and discriminatory taxation.

The Finance Committee's substitute also shortened the moratorium period on State and local taxes relating to the Internet. We did this with an understanding that the advisory commission, set up in the legislation, would not need the five year period that was set out in the original Commerce bill. At the same time, we streamlined the Advisory Committee and focused its study responsibilities.

We took out any grandfather provision, feeling that as a policy matter, there should not be any taxes on the Internet during the moratorium period—regardless of whether some States had jumped the gun and applied existing taxes to Internet access. The Finance Committee also felt that this bill should be an example to our international negotiating partners—that if we wanted to keep grandfather provisions out of the international agreements, that we should remove them from our domestic taxation.

I recognize that there have been various floor amendments that have changed some of the things we did in the Finance Committee. Despite those amendments, the central thrust of the legislation, which is to call a time-out while a commission assesses the Internet and makes some recommendations about how we should tax electronic commerce, remains. Important international provisions—relating to trade and tariff issues—also remain unchanged.

Mr. President, I support the Internet Tax Freedom Act. It is a demonstration of Congress' understanding of the exciting potential and the opportunities that will be realized in cyberspace. It is a thoughtful approach to a very important issue. It meets current needs, and allows continued growth in this new frontier. I hope my colleagues will join me in supporting it.

Mr. MOYNIHAN. Mr. President, I first want to thank the Chairman of the Finance Committee, Senator ROTH, for his insistence that the Internet Tax Freedom Act be considered by the Finance Committee before any action on this floor. I recognize and applaud all of the effort that has gone into the other proposals dealing with this subject, and in particular we should acknowledge the work of Senators WYDEN, MCCAIN, DORGAN, GRAHAM, LIEBERMAN, and GREGG.

Since June of 1997, the chairman and I sought referral of this legislation to give the Finance Committee the opportunity to consider the important tax and trade issues related to the Internet, which by some estimates will grow to $300 billion of commercial transactions annually by the year 2000. The bill was finally referred to the Finance Committee on July 21st of this year.

That referral to the Finance Committee was consistent with Senate precedents. In recent years, the Finance Committee has had jurisdiction over at least two other pieces of legislation with direct impact on state and local taxes. Both the ''source tax'' bill that was of great interest to Senators BRYAN, REID, and BAUCUS, prohibiting states from taxing the pensions of former residents, and Senator BUMPERS' mail order sales tax proposal, requiring mail order companies to collect and remit sales taxes due on goods shipped across state lines, were referred to the Finance Committee.

The legislation before us today also deals directly with international trade. It requests that the administration continue to seek trade agreements that keep the Internet free from foreign tariffs and other trade barriers. As reported by the Finance Committee, this bill would establish trade objectives designed to guide future negotiations over the regulation of electronic commerce—issues clearly within the Finance Committee's jurisdiction.

A few comments on the substance of this legislation. I am not entirely persuaded that there is a pressing need for a federal moratorium on the power of state and local governments to impose and collect certain taxes, but it seems clear that such a moratorium does enjoy a great deal of support. The two-year moratorium period in the Finance Committee bill and the three-year period agreed to as a floor amendment during this debate is surely preferable to the six-year provision in the Commerce Committee bill.

There is some question whether such a moratorium is actually necessary. New York is proof that States do not need a directive from Congress to act on this matter: Governor Pataki and the New York State legislature have agreed on a bill exempting Internet access services from State or local sales, use, and telecommunications taxes. The Governor's legislation also makes it clear that out-of-state businesses will not be subject to State or local taxes in New York solely because they advertise on the Internet.

I am pleased that the Finance Committee's bill preserves the right of States or local governments to collect tax with respect to transactions occurring before July 29, 1998 (the date of Finance Committee action). Further, I am pleased that language has been added on the floor that goes beyond the Finance Committee bill and ''grandfathers'' any existing State and local taxes on Internet activity occurring during the period of the moratorium.

With respect to the Advisory Commission on Electronic Commerce established, a membership of 16, almost half of that in the House bill, is manageable and is more likely to lead to meaningful recommendations. An item of particular interest to me is the requirement in that the Commission examine the application of the existing Federal ''communications services'' excise tax to the Internet and Internet access. We need to know more about how and whether that tax should apply to new technology.

This bill is not perfect, but on balance I believe it deserves our support. I urge its adoption and hope it can be enacted this year.

Mr. LOTT. Mr. President, I am pleased to rise in support of the Senate's overwhelming passage today of the Internet Tax Freedom Act. This bill represents several months of thoughtful consideration and discussion among Members on both sides of the aisle to address the tax treatment of this emerging medium of commerce.

Throughout history, innovations in technology have dramatically changed lifestyles. Today, it is the Internet changing lives, and unlike any other

technology to date. It is connecting people all around the world in ways that no one at the Department of Defense ever conceived of when the network was created. It is a true testament to the fact that leadership and entrepreneurial drive is alive and well in America.

This new tool of communication and information is also fast becoming one of the most important and vibrant marketplaces in decades. It holds great promise for businesses, both large and small, to offer their products and services for sale to a worldwide market. This is good news for everyone. It means new jobs, new opportunities and choices for consumers and retailers, and ultimately more revenue for state and local governments.

Mr. President, by its very nature, the Internet does not respect the traditional boundaries of state borders or county lines used to define our tax policies today. With about 30,000 taxing jurisdictions all across America, a myriad of overlapping and burdensome taxes is a legitimate concern for consumers and businesses online. This issue needs to be explored and resolved.

The Internet Tax Freedom Act is about the potential of technology.

It is about taking a necessary and temporary time-out so that a Commission of government and industry representatives can thoroughly study electronic commerce and make sensible recommendations to Congress about a fair, uniform and consistent Internet tax structure. The moratorium will apply to discriminatory and multiple taxes as well as to taxes paid just to access the Internet.

This legislation will treat Internet sales the same as any other type of remote sale. It will not favor the Internet or disadvantage others.

Businesses and consumers using electronic commerce need and deserve some level of assurance and sense of uniformity about how they will be taxed.

Mr. President, over the past several months, I personally heard from governors and groups across the nation who expressed serious concerns about the hindering effect on electronic commerce due to ambiguous and conflicting tax treatment. I also heard from others expressing concerns about raising revenue and providing services to their citizens. Both voiced support for passage of a balanced bill that would represent their views. Adequate time was allowed for the Senate to hear what they had to say, and their concerns are reflected in the amendments and in the final bill.

Internet taxes, like many other issues faced in Congress, is not without controversy. The spirited exchange on the Senate floor during the past several days is evidence of that. I respect the differences that have been debated. I recognize the delicate balance in many of the views expressed, and appreciate the good faith efforts of my colleagues in working together to reach consensus. I know it was not easy.

Passage of this legislation was made possible by the hard work of many people.

First, I commend Senator John MCCAIN, Chairman of the Senate's Commerce Committee, for his diligent leadership and commitment to tackle this complex and contentious issue. He has been steadfast throughout this process, and to him I say thank you.

I also owe a debt of gratitude for the work and contributions of the Chairman of the Senate's Finance Committee, Senator BILL ROTH. He provided a fresh perspective on the issue of electronic commerce.

Clearly, the participation of several Members with diverse interests was integral in moving this bill forward. I am proud to see Senators from both sides of the aisle—Senator BYRON DORGAN, Senator JUDD GREGG, Senator TIM HUTCHINSON, Senator JOE LIEBERMAN, and Senator RON WYDEN—all work together in a respectful manner to get the job done.

Nothing is ever accomplished in the Senate without the dedicated efforts of staff. I want to take a moment to identify those who worked hard to prepare this legislation for consideration. From the Senate Commerce Committee: Mark Buse, Jim Drewry, Carol Grunberg, Paula Ford, Kevin Joseph, John Raidt, Mike Rawson, and Jessica Yoo. From the Finance Committee: Stan Fendley, Keith Hennessey, Jeffrey Kupfer, Brigitta Pari, Frank Polk, and Mark Prater. Other individuals participated on behalf of their Senators: Renee Bennett, Laureen Daly, Richard Glick, Hazen Marshall, Greg Rhode, Mitch Rose, Stan Sokul and Russell Sullivan. I thank them all for their efforts.

Mr. President, the current power of the Internet and its future potential will advance America into the next millennium. Passage of the Internet Tax Freedom Act is a crucial step in recognizing the significance of the Internet in electronic commerce and what it will mean in the lives of every American consumer, to American businesses, and to America's economy.

Mr. LEAHY. Mr. President, I want to add my own support to promoting electronic commerce and keeping it free from new Federal, State or local taxes. I am a cosponsor of the Internet Tax Freedom Act, S. 442.

In ways that are becoming increasingly apparent, the Internet is changing the way we do business. More than 50 million people around the world surf the net—50 million. And more and more of these users turn to the World Wide Web and the Internet to place orders with suppliers or to sell products or services to customers or to communicate with clients.

The Internet market is growing at a tremendous pace. Over the past 2 years, sales generated through the web grew more than 5,000 percent. In fact, in a recent Business Week article, electronic commerce sales are estimated to reach $379 billion by the year 2002, pumping up the Nation's gross domestic sales by $10 to $20 billion every year by 2002.

And I see it in my own State of Vermont. On my home page on the web, I have put together a section called ''Cyber Selling In Vermont.'' It is a step-by-step resource guide for exploring how you can have on-line commerce and other business uses of the Internet. It has links to businesses in Vermont that are already cyberselling.

As of today, this site includes links to web sites of more than 100 Vermont businesses doing business on the Internet. They range from the Quill Bookstore in Manchester Center to Al's Snowmobile Parts Warehouse in Newport.

For the past 3 years, I have held annual workshops on doing business on the Internet in my home State. I have received a tremendous response to these workshops from Vermont businesses of all sizes and customer bases, from Main Street merchants to boutique entrepreneurs.

At my last Doing Business on the Internet Workshop in Vermont, we had these small business owners from all over our State. They told how successful they have been selling on the web. They had such Main Street businesses as a bed and breakfast, or in one case a wool boutique, and a real estate company. One example is Megan Smith of the Vermont Inn in Killington. She attended one of my workshops. Now she is taking reservations over the net, reservations not just from Vermont, but from throughout the country. So cyberselling pays off for Vermonters.

Now Vermont businesses have an opportunity to take advantage of this tremendous growth by selling their goods on line. I have tried to be a missionary for this around our State, because I believe the Internet commerce can help Vermonters ease some of the geographic barriers that historically have limited our access to markets where our products can thrive.

The World Wide Web and Internet businesses can sell their goods all over the world in the blink of an eye, and they can do it any time of the day or night.

As this electronic commerce continues to grow—for even a small State like mine; we can see it all over the country—I hope we in Congress can be leaders in developing tax policy that will nurture this new market. I followed closely the Internet Tax Freedom Act since Senator WYDEN introduced it last summer. I want to commend the senior Senator from Oregon for his leadership on cyber tax policy.

More than 30,000 cities and towns in the United States are able to levy discriminatory sales on electronic commerce. Because of that, we need this national bill to provide the stability necessary if this electronic commerce is going to flourish.

We are not asking for a tax-free zone on the Internet. If sales taxes and

other taxes would apply to traditional sales and services under State or local law, then those taxes would also apply to Internet sales under our bill. But the bill would outlaw taxes that are applied only to Internet sales in a discriminatory manner.

We do not want somebody to kill these businesses before they even begin because they think it is some way they can pluck the money out of the pockets of those who are using the Internet. We should not allow the future of electronic commerce—electronic commerce that can greatly expand the markets of even our Main Street businesses—we should not allow it to be crushed by the weight of multiple taxation. Without this legislation, they would have faced multiple taxation, and a lot of these Internet businesses now creating jobs, now flourishing, now adding to the commerce of our States would have been wiped out of business.

This legislation creates a temporary national commission to study and recommend appropriate rules for international, Federal, State, and local government taxation of transactions over the Internet. This also will help us very, very much.

The commission would submit its findings and recommendations to Congress within the next 18 months. With the help of this commission, Congress should be able to put a tax framework in place to foster electronic commerce and protect the rights of state and local governments when the three-year moratorium ends.

During my time in the Senate, I always tried to protect the rights of Vermont state and local legislators to craft their laws free from interference from Washington. Thus, the imposition of a broad, open-ended moratorium on state and local taxes relating to the Internet in the original bill gave me pause. I certainly agreed with the goal of no new state and local taxation of online commerce, but the means were questionable.

I believe those questions have been fully answered by the changes made to this legislation during its consideration in the Commerce and Finance Committees.

I want to commend Senators BURNS, KERRY, MCCAIN, MOYNIHAN and ROTH for working with Senator WYDEN, the sponsor of the original bill, to craft a substitute bill that protects the free flow of online commerce while accommodating the rights of state and local governments.

Today there are more than 400,000 businesses selling their sales and services on the World Wide Web around the world. This explosion in web growth has led to thousands of new and exciting opportunities for businesses, from Main Street to Wall Street. The Internet Tax Freedom Act will ensure that these businesses, and many others, continue to reap the rewards of electronic commerce.

Mr. President, I am proud to cosponsor the Internet Tax Freedom Act to foster the growth of online commerce and urge my colleagues to support its swift passage into law.

Mr. LIEBERMAN. Mr. President, I want to say how pleased I am that this chamber has finally come to agreement on S. 442, the Internet Tax Freedom Act. First, I would like to thank Senator WYDEN for introducing this bill and his perseverance to see this legislation through. I would like to thank Chairman MCCAIN for his management of this bill, and Senator DORGAN for working so closely with Senator WYDEN to arrive at a compromise. I would like to thank Senator GREGG for his unwavering insistence on what he believes is right. I would like to acknowledge the efforts of Senator BUMPERS and Senator GRAHAM who come to this issue from a different viewpoint but have tried to seek a common ground in what has been a polarizing and difficult negotiation.

I truly believe the most important things accomplished by this bill will be, first, to raise the visibility of the issue of taxation of the Internet. Just having this debate in Congress has stimulated discussion and thought about the future of electronic commerce and the Internet throughout the country. Three states—Texas, South Carolina, and my home State of Connecticut—came forward and said that they did not want their States' taxes to be grandfathered into the tax moratorium, but instead preferred to stop taxing the Internet. This debate has raised the consciousness of public leaders as to the great benefits electronic commerce holds for U.S. business to improve its productivity and reach new customers, and even more importantly, the level playing field the Internet provides for small businesses. At the same time, we have become aware of the enormous problems faced by small businesses which are suddenly, over the net, selling beyond their physical reach and the uncertainties they face in the legal and tax environment in 30,000 taxing jurisdictions.

The second major benefit of this bill will be to slow down the taxation of the Internet. The moratorium in S. 442, while grandfathering in existing State taxes on Internet access, will prevent new taxes from being added.

The third, and I consider the most important, major benefit of this legislation will be the creation of a commission to draft model State legislation creating uniform categories for these new Internet companies and transactions that gives these firms some certainty as to how they will be treated tax-wise in the different States. This is the essence of the bill that Senator GREGG and myself introduced in March, called NETFAIR, S. 1888—to remove the uncertainty under which electronic commerce companies have had to operate in the United States and bring some order into the present business climate. It is our intent that this model State legislation would not preempt the States, but would be adopted by the States, at their choice.

The Senate agreed to expand the duties of the commission beyond that of drafting model State legislation to looking at the States' collection of use taxes on all remote sales. This is a legitimate area of study and of concern to the States and to their revenue base. In opposing this amendment, I was merely voicing my concern that the commission may become bogged down in a debate over the taxation of catalog sales that I fear it will not be able to stay focused on the Internet and accomplish the very useful purpose of helping create a predictable legal environment for electronic commerce. It is my hope that the commission will try to complete the draft State legislation outlined in S. 442 first before turning to this larger debate.

At this point, I want to thank Senators ROTH and MOYNIHAN and the rest of the Finance Committee members for adding the international element to this bill. The Finance Committee reminded us to consider our domestic policies toward the Internet in the context of the international environment. Just as the Internet puts small companies on an equal footing with large companies, it also is creating a new level playing field internationally. Developing countries that have not yet fully industrialized, and countries whose telephone penetration is only a fraction of that in the United States, can leap frog entire stages of technology and move straight into fiber optic and wireless technologies that will carry video, sound, data, and voice.

A number of my colleagues and I have had an opportunity to speak with John Chambers, the President and CEO of Cisco Systems, one of the major suppliers of networking equipment at a breakfast last week. He knows something about electronic commerce since his company accounted for one-third of all electronic commerce last year. I was very impressed when he said that, on his trip through Asia, the political leaders of Singapore, Malaysia, Hong Kong and China wanted to hold substantive one- to two-hour conversations with him because they understand the power on the Internet and understand that information technology will change, not just their country's economy, but the economy of the world. They understand that those countries that embrace the information age will prosper and those who don't will fall behind.

Once again, Mr. President, I want to thank my colleagues and their staffs for the extraordinary effort they made to reach this point where we can finally vote on this bill. Finally, I would like to thank Laureen Daly of my staff who put in an enormous amount of work to assure that Connecticut's constituents, businesses and government will benefit from this legislation.

Mr. WARNER. Mr. President, I rise to restate my strong support for the Internet Tax Freedom Act. I am proud to be a cosponsor of this legislation

and pleased that with end the 105th Congress legislation that brings fairness and equitable tax treatment to hundreds of Virginia Internet and online companies.

It has been a difficult week, but we have succeeded reaching a resolution on this most important issue. This moratorium is critical to the development of an industry that has become a pillar of Virginia's, and our Nation's, economy.

I will ask a resolution passed earlier this year expressing the sense of the General Assembly of Virginia that the Internet should remain free from State and local taxes.

Mr. President, I also wish to commend Governor Jim Gilmore. He has been a tireless advocate and a true leader on this issue. He was one of a handful of governors to recognize the potential of this industry and the irreparable harm that could come to it at the hands of tens of thousands of tax collectors across the Nation. He shares my view that we will remain the leader in the information technology industry only as long as we pursue policies of lower taxes and less regulation—policies that have made Virginia such an attractive home to thousands of high tech companies and their employees.

HOUSE JOINT RESOLUTION NO. 36

Expressing the sense of the General Assembly of Virginia that services which provide access to the international network of computer systems (commonly known as the Internet) and other related electronic communication services, as well as data and software transmitted via such services, should remain free from fees, assessments, or taxes imposed by the Commonwealth or its political subdivisions.

Agreed to by the House of Delegates, February 17, 1998; agreed to by the Senate, March 10, 1998.

Whereas, services which provide access to the international network of computer systems (commonly known as the Internet) and other related electronic communication services, as well as data and software transmitted via such services, have provided immeasurable social, educational, and economic benefits to the citizens of Virginia, the United States, and the world; and

Whereas, technological advancements made by and to the Internet and other related electronic communication services, as well as data and software transmitted via such services, develop at an ever-increasing rate, both qualitatively and quantitatively; and

Whereas, these advancements have been encouraged, in part, by public policies which facilitate technological innovation, research, and development; and

Whereas, companies which provide Internet access services and other related electronic communication services are making substantial capital investments in new plants and equipment; and

Whereas, it has been estimated that consumers, businesses, and others engaging in interstate and foreign commerce through the Internet or other related electronic communication services could be subject to more than 30,000 separate taxing jurisdictions in the United States alone; and

Whereas, multiple and excessive taxation places such investment at risk and discourages increased investment to provide such services, which, in turn, could put such jurisdictions at a long-term social, educational, and economic disadvantage; and

Whereas, the growth and development of electronic communication services should be nurtured and encouraged by appropriate state and federal policies; and

Whereas, the Commonwealth's exercise of its taxation and regulatory powers in relation to electronic communication services would likely impede the future viability and enhancement of Internet access services and other electronic communication services in the Commonwealth, which, in turn, could restrict access to such services, as well as data and software transmitted via such services, for all Virginians; and

Whereas, previous rulings of departments of taxation or revenue in several states have resulted in state taxes being levied on Internet service providers or Internet-related services, and have, in some cases, prompted action by those states' legislatures to overturn such rulings; and

Whereas, a majority of the states that have addressed the issue of taxing Internet-related services have chosen to exercise restraint in taxing Internet service providers and Internet-related services; and

Whereas, Virginia's existing tax code (§58.1–609.5) exempts from retail sales and use tax purchases of services where no tangible personal property is exchanged; and

Whereas, pursuant to §58.1–609.5, the Commissioner of the Department of Taxation has promulgated regulations (Title 23 Virginia Administrative Code 10–210–4040) which provide that charges for services generally are exempt from retail sales and use tax, but that services provided in connection with sales of tangible personal property are taxable; and

Whereas, in interpreting and applying Virginia's tax code and regulations, the Commissioner has ruled that sales of software via the Internet are not subject to Virginia's retail sales and use tax (P.D. 97–405, October 2, 1997); and

Whereas, in further interpreting and applying Virginia's tax code and regulations, the Commissioner has ruled that providers of Internet access services and other electronic communication services are not subject to Virginia's retail sales and use tax (P.D. 97–425, October 21, 1997); and

Whereas, services which provide access to the Internet and other related electronic communication services, as well as data and software transmitted via such services, are not tangible personal property and, therefore, should not be subject to Virginia's retail sales and use tax: now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That Internet access services and other related electronic communication services, as well as data and software transmitted via such services, should remain free from fees, assessments, or taxes imposed by the Commonwealth and its political subdivisions; and, be it

Resolved further, That P.D. 97–405 (October 2, 1997), by which the Commissioner ruled that sales of software via the Internet are not subject to Virginia's retail sales and use tax, correctly reflects the sense of the General Assembly and the law of the Commonwealth regarding this issue; and, be it

Resolved further, That P.D. 97–425 (October 21, 1997), by which the Commissioner ruled that providers of Internet access services and other related electronic communication services are not subject to Virginia's retail sales and use tax, correctly reflects the sense of the General Assembly and the law of the Commonwealth regarding this issue; and, be it

Resolved further, That, to the greatest extent possible, future rulings of the Commissioner reflect the sense of the General Assembly that Internet access services and other related electronic communication services, as well as data and software transmitted via such services, should remain free from fees, assessments, or taxes imposed by the Commonwealth and its political subdivisions; and, be it

Resolved finally, That the Clerk of the House of Delegates transmit a copy of this resolution to the Commissioner of the Department of Taxation that he may be apprised of the sense of the General Assembly in this matter.

Mr. MCCAIN. Mr. President, I ask unanimous consent that no further amendments be in order to S. 442, the Senate proceed immediately to third reading, and final passage then occur, without debate, and I further ask that the final passage vote occur now, and that paragraph 4 of rule XII be waived.

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

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

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

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

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill, as amended, pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

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

The result was announced—yeas 96, nays 2, as follows:

[Rollcall Vote No. 308 Leg.]

YEAS—96

Abraham	Faircloth	Lugar
Akaka	Feingold	Mack
Allard	Feinstein	McCain
Ashcroft	Ford	McConnell
Baucus	Frist	Mikulski
Bennett	Graham	Moseley-Braun
Biden	Gramm	Moynihan
Bingaman	Grams	Murkowski
Bond	Grassley	Murray
Boxer	Gregg	Nickles
Breaux	Hagel	Reed
Brownback	Harkin	Reid
Bryan	Hatch	Robb
Burns	Helms	Roberts
Byrd	Hutchinson	Rockefeller
Campbell	Hutchison	Roth
Chafee	Inhofe	Santorum
Cleland	Inouye	Sarbanes
Coats	Jeffords	Sessions
Cochran	Johnson	Shelby
Collins	Kempthorne	Smith (NH)
Conrad	Kennedy	Smith (OR)
Coverdell	Kerrey	Snowe
Craig	Kerry	Specter
D'Amato	Kohl	Stevens
Daschle	Kyl	Thomas
DeWine	Landrieu	Thompson
Dodd	Lautenberg	Thurmond
Domenici	Leahy	Torricelli
Dorgan	Levin	Warner
Durbin	Lieberman	Wellstone
Enzi	Lott	Wyden

NAYS—2

Bumpers	Gorton

NOT VOTING—2

Glenn Hollings

The bill (S. 442), as amended was passed, as follows:

S. 442

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 ''Internet Tax Freedom Act''.

TITLE I—MORATORIUM ON CERTAIN TAXES

SEC. 101. MORATORIUM.

(a) MORATORIUM.—No State or political subdivision thereof shall impose any of the following taxes during the period beginning on October 1, 1998, and ending 3 years after the date of the enactment of this Act—

(1) taxes on Internet access, unless such tax was generally imposed and actually enforced prior to October 1, 1998; and

(2) multiple or discriminatory taxes on electronic commerce.

(b) PRESERVATION OF STATE AND LOCAL TAXING AUTHORITY.—Except as provided in this section, nothing in this Act shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or superseding of, any State or local law pertaining to taxation that is otherwise permissible by or under the Constitution of the United States or other Federal law and in effect on the date of enactment of this Act.

(c) LIABILITIES AND PENDING CASES.—Nothing in this Act affects liability for taxes accrued and enforced before the date of enactment of this Act, nor does this Act affect ongoing litigation relating to such taxes.

(d) DEFINITION OF GENERALLY IMPOSED AND ACTUALLY ENFORCED.—For purposes of this section, a tax has been generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

(2) a State or political subdivision thereof generally collected such tax on charges for Internet access.

(e) EXCEPTION TO MORATORIUM.—

(1) IN GENERAL.—Subsection (a) shall also not apply in the case of any person or entity who in interstate or foreign commerce is knowingly engaged in the business of selling or transferring, by means of the World Wide Web, material that is harmful to minors unless such person or entity requires the use of a verified credit card, debit account, adult access code, or adult personal identification number, or such other procedures as the Federal Communications Commission may prescribe, in order to restrict access to such material by persons under 17 years of age.

(2) SCOPE OF EXCEPTION.—For purposes of paragraph (1), a person shall not be considered to engaged in the business of selling or transferring material by means of the World Wide Web to the extent that the person is—

(A) a telecommunications carrier engaged in the provision of a telecommunications service;

(B) a person engaged in the business of providing an Internet access service;

(C) a person engaged in the business of providing an Internet information location tool; or

(D) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the communication.

(3) DEFINITIONS.—In this subsection:

(A) BY MEANS OF THE WORLD WIDE WEB.—The term ''by means of the World Wide Web'' means by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol, file transfer protocol, or other similar protocols.

(B) ENGAGED IN THE BUSINESS.—The term ''engaged in the business'' means that the person who sells or transfers or offers to sell or transfer, by means of the World Wide Web, material that is harmful to minors devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income.

(C) INTERNET.—The term ''Internet'' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(D) INTERNET ACCESS SERVICE.—The term ''Internet access service'' means a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

(E) INTERNET INFORMATION LOCATION TOOL.—The term ''Internet information location tool'' means a service that refers or links users to an online location on the World Wide Web. Such term includes directories, indices, references, pointers, and hypertext links.

(F) MATERIAL THAT IS HARMFUL TO MINORS.—The term ''material that is harmful to minors'' means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that—

(i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(G) SEXUAL ACT; SEXUAL CONTACT.—The terms ''sexual act'' and ''sexual contact'' have the meanings given such terms in section 2246 of title 18, United States Code.

(H) TELECOMMUNICATIONS CARRIER; TELECOMMUNICATIONS SERVICE.—The terms ''telecommunications carrier'' and ''telecommunications service'' have the meanings given such terms in section 3 of the Communications Act of 1934 (47 U.S.C. 153).

(f) ADDITIONAL EXCEPTION TO MORATORIUM.—

(1) IN GENERAL.—Subsection (a) shall also not apply with respect to an Internet access provider, unless, at the time of entering into an agreement with a customer for the provision of Internet access services, such provider offers such customer (either for a fee or at no charge) screening software that is designed to permit the customer to limit access to material on the Internet that is harmful to minors.

(2) DEFINITIONS.—In this subsection:

(A) INTERNET ACCESS PROVIDER.—The term 'Internet access provider' means a person engaged in the business of providing a computer and communications facility through which a customer may obtain access to the Internet, but does not include a common carrier to the extent that it provides only telecommunications services.

(B) INTERNET ACCESS SERVICES.—The term 'Internet access services' means the provision of computer and communications services through which a customer using a computer and a modem or other communications device may obtain access to the Internet, but does not include telecommunications services provided by a common carrier.

(C) SCREENING SOFTWARE.—The term ''screening software'' means software that is designed to permit a person to limit access to material on the Internet that is harmful to minors.

(3) APPLICABILITY.—Paragraph (1) shall apply to agreements for the provision of Internet access services entered into on or after the date that is 6 months after the date of enactment of this Act.

SEC. 102. ADVISORY COMMISSION ON ELECTRONIC COMMERCE.

(a) ESTABLISHMENT OF COMMISSION.—There is established a commission to be known as the Advisory Commission on Electronic Commerce (in this title referred to as the ''Commission''). The Commission shall—

(1) be composed of 19 members appointed in accordance with subsection (b), including the chairperson who shall be selected by the members of the Commission from among themselves; and

(2) conduct its business in accordance with the provisions of this title.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commissioners shall serve for the life of the Commission. The membership of the Commission shall be as follows:

(A) 3 representatives from the Federal Government, comprised of the Secretary of Commerce, the Secretary of the Treasury, and the United States Trade Representative (or their respective delegates).

(B) 8 representatives from State and local governments (one such representative shall be from a State or local government that does not impose a sales tax and one representative shall be from a State that does not impose an income tax).

(C) 8 representatives of the electronic commerce industry (including small business), telecommunications carriers, local retail businesses, and consumer groups, comprised of—

(i) 5 individuals appointed by the Majority Leader of the Senate;

(ii) 3 individuals appointed by the Minority Leader of the Senate;

(iii) 5 individuals appointed by the Speaker of the House of Representatives; and

(iv) 3 individuals appointed by the Minority Leader of the House of Representatives.

(2) APPOINTMENTS.—Appointments to the Commission shall be made not later than 45 days after the date of the enactment of this Act. The chairperson shall be selected not later than 60 days after the date of the enactment of this Act.

(3) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(c) ACCEPTANCE OF GIFTS AND GRANTS.—The Commission may accept, use, and dispose of gifts or grants of services or property, both real and personal, for purposes of

aiding or facilitating the work of the Commission. Gifts or grants not used at the expiration of the Commission shall be returned to the donor or grantor.

(d) OTHER RESOURCES.—The Commission shall have reasonable access to materials, resources, data, and other information from the Department of Justice, the Department of Commerce, the Department of State, the Department of the Treasury, and the Office of the United States Trade Representative. The Commission shall also have reasonable access to use the facilities of any such Department or Office for purposes of conducting meetings.

(e) SUNSET.—The Commission shall terminate 18 months after the date of the enactment of this Act.

(f) RULES OF THE COMMISSION.—

(1) QUORUM.—Nine members of the Commission shall constitute a quorum for conducting the business of the Commission.

(2) MEETINGS.—Any meetings held by the Commission shall be duly noticed at least 14 days in advance and shall be open to the public.

(3) OPPORTUNITIES TO TESTIFY.—The Commission shall provide opportunities for representatives of the general public, taxpayer groups, consumer groups, and State and local government officials to testify.

(4) ADDITIONAL RULES.—The Commission may adopt other rules as needed.

(g) DUTIES OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall conduct a thorough study of Federal, State and local, and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities.

(2) ISSUES TO BE STUDIED.—The Commission may include in the study under subsection (a)—

(A) an examination of—

(i) barriers imposed in foreign markets on United States providers of property, goods, services, or information engaged in electronic commerce and on United States providers of telecommunications services; and

(ii) how the imposition of such barriers will affect United States consumers, the competitiveness of United States citizens providing property, goods, services, or information in foreign markets, and the growth and maturing of the Internet;

(B) an examination of the collection and administration of consumption taxes on electronic commerce in other countries and the United States, and the impact of such collection on the global economy, including an examination of the relationship between the collection and administration of such taxes when the transaction uses the Internet and when it does not;

(C) an examination of the impact of the Internet and Internet access (particularly voice transmission) on the revenue base for taxes imposed under section 4251 of the Internal Revenue Code of 1986;

(D) an examination of model State legislation that—

(i) would provide uniform definitions of categories of property, goods, service, or information subject to or exempt from sales and use taxes; and

(ii) would ensure that Internet access services, online services, and communications and transactions using the Internet, Internet access service, or online services would be treated in a tax and technologically neutral manner relative to other forms of remote sales;

(E) an examination of the effects of taxation, including the absence of taxation, on all interstate sales transactions, including transactions using the Internet, on retail businesses and on State and local governments, which examination may include a review of the efforts of State and local governments to collect sales and use taxes owed on in-State purchases from out-of-State sellers; and

(F) the examination of ways to simplify Federal and State and local taxes imposed on the provision of telecommunications services.

(3) EFFECT ON THE COMMUNICATIONS ACT OF 1934.—Nothing in this section shall include an examination of any fees or charges imposed by the Federal Communications Commission or States related to—

(A) obligations under the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

(B) the implementation of the Telecommunications Act of 1996 (or of amendments made by that Act).

(h) NATIONAL TAX ASSOCIATION COMMUNICATIONS AND ELECTRONIC COMMERCE TAX PROJECT.—The Commission shall, to the extent possible, ensure that its work does not undermine the efforts of the National Tax Association Communications and Electronic Commerce Tax Project.

SEC. 103. REPORT.

Not later than 18 months after the date of the enactment of this Act, the Commission shall transmit to Congress for its consideration a report reflecting the results, including such legislative recommendations as required to address the findings of the Commission's study under this title. Any recommendation agreed to by the Commission shall be tax and technologically neutral and apply to all forms of remote commerce. No finding or recommendation shall be included in the report unless agreed to by at least two-thirds of the members of the Commission serving at the time the finding or recommendation is made.

SEC. 104. DEFINITIONS.

For the purposes of this title:

(1) BIT TAX.—The term ''bit tax'' means any tax on electronic commerce expressly imposed on or measured by the volume of digital information transmitted electronically, or the volume of digital information per unit of time transmitted electronically, but does not include taxes imposed on the provision of telecommunications services.

(2) DISCRIMINATORY TAX.—The term ''discriminatory tax'' means—

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that—

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means;

(iv) establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means; or

(B) any tax imposed by a State or political subdivision thereof, if—

(i) except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998, the sole ability to access a site on a remote seller's out-of-State computer server is considered a factor in determining a remote seller's tax collection obligation; or

(ii) a provider of Internet access service or online services is deemed to be the agent of a remote seller for determining tax collection obligations solely as a result of—

(I) the display of a remote seller's information or content on the out-of-State computer server of a provider of Internet access service or online services; or

(II) the processing of orders through the out-of-State computer server of a provider of Internet access service or online services.

(3) ELECTRONIC COMMERCE.—The term ''electronic commerce'' means any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access.

(4) INTERNET.—The term ''Internet'' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(5) INTERNET ACCESS.—The term ''Internet access'' means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to users. Such term does not include telecommunications services.

(6) MULTIPLE TAX.—

(A) IN GENERAL.—The term ''multiple tax'' means any tax that is imposed by one State or political subdivision thereof on the same or essentially the same electronic commerce that is also subject to another tax imposed by another State or political subdivision thereof (whether or not at the same rate or on the same basis), without a credit (for example, a resale exemption certificate) for taxes paid in other jurisdictions.

(B) EXCEPTION.—Such term shall not include a sales or use tax imposed by a State and 1 or more political subdivisions thereof on the same electronic commerce or a tax on persons engaged in electronic commerce which also may have been subject to a sales or use tax thereon.

(C) SALES OR USE TAX.—For purposes of subparagraph (B), the term ''sales or use tax'' means a tax that is imposed on or incident to the sale, purchase, storage, consumption, distribution, or other use of tangible personal property or services as may be defined by laws imposing such tax and which is measured by the amount of the sales price or other charge for such property or service.

(7) STATE.—The term ''State'' means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(8) TAX.—

(A) IN GENERAL.— The term ''tax'' means—

(i) any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred; or

(ii) the imposition on a seller of an obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity.

(B) EXCEPTION.—Such term does not include any franchise fee or similar fee imposed by a State or local franchising authority, pursuant to section 622 or 653 of the

Communications Act of 1934 (47 U.S.C. 542, 573), or any other fee related to obligations or telecommunications carriers under the Communications Act of 1934 (47 U.S.C. 151 et seq.).

(9) TELECOMMUNICATIONS SERVICE.—The term ''telecommunications service'' has the meaning given such term in section 3(46) of the Communications Act of 1934 (47 U.S.C. 153(46)) and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986).

(10) TAX ON INTERNET ACCESS.—The term ''tax on Internet access'' means a tax on Internet access, including the enforcement or application of any new or preexisting tax on the sale or use of Internet services unless such tax was generally imposed and actually enforced prior to October 1, 1998.

TITLE II—OTHER PROVISIONS

SEC. 201. DECLARATION THAT INTERNET SHOULD BE FREE OF NEW FEDERAL TAXES.

It is the sense of Congress that no new Federal taxes similar to the taxes described in section 101(a) should be enacted with respect to the Internet and Internet access during the moratorium provided in such section.

SEC. 202. NATIONAL TRADE ESTIMATE.

Section 181 of the Trade Act of 1974 (19 U.S.C. 2241) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (A)—

(i) by striking ''and'' at the end of clause (i);

(ii) by inserting ''and'' at the end of clause (ii); and

(iii) by inserting after clause (ii) the following new clause:

''(iii) United States electronic commerce,''; and

(B) in subparagraph (C)—

(i) by striking ''and'' at the end of clause (i);

(ii) by inserting ''and'' at the end of clause (ii);

(iii) by inserting after clause (ii) the following new clause:

''(iii) the value of additional United States electronic commerce,''; and

(iv) by inserting ''or transacted with,'' after ''or invested in'';

(2) in subsection (a)(2)(E)—

(A) by striking ''and'' at the end of clause (i);

(B) by inserting ''and'' at the end of clause (ii); and

(C) by inserting after clause (ii) the following new clause:

''(iii) the value of electronic commerce transacted with,''; and

(3) by adding at the end the following new subsection:

''(d) ELECTRONIC COMMERCE.—For purposes of this section, the term 'electronic commerce' has the meaning given that term in section 104(3) of the Internet Tax Freedom Act.''.

SEC. 203. DECLARATION THAT THE INTERNET SHOULD BE FREE OF FOREIGN TARIFFS, TRADE BARRIERS, AND OTHER RESTRICTIONS.

(a) IN GENERAL.— It is the sense of Congress that the President should seek bilateral, regional, and multilateral agreements to remove barriers to global electronic commerce through the World Trade Organization, the Organization for Economic Cooperation and Development, the Trans-Atlantic Economic Partnership, the Asia Pacific Economic Cooperation forum, the Free Trade Area of the America, the North American Free Trade Agreement, and other appropriate venues.

(b) NEGOTIATING OBJECTIVES.—The negotiating objectives of the United States shall be—

(1) to assure that electronic commerce is free from—

(A) tariff and nontariff barriers;

(B) burdensome and discriminatory regulation and standards; and

(C) discriminatory taxation; and

(2) to accelerate the growth of electronic commerce by expanding market access opportunities for—

(A) the development of telecommunications infrastructure;

(B) the procurement of telecommunications equipment;

(C) the provision of Internet access and telecommunications services; and

(D) the exchange of goods, services, and digitalized information.

(c) ELECTRONIC COMMERCE.—For purposes of this section, the term ''electronic commerce'' has the meaning given that term in section 104(3).

SEC. 204. NO EXPANSION OF TAX AUTHORITY.

Nothing in this Act shall be construed to expand the duty of any person to collect or pay taxes beyond that which existed immediately before the date of the enactment of this Act.

SEC. 205. PRESERVATION OF AUTHORITY.

Nothing in this Act shall limit or otherwise affect the implementation of the Telecommunications Act of 1996 (Public Law 104–104) or the amendments made by such Act.

SEC. 206. SEVERABILITY.

If any provision of this Act, or any amendment made by this Act, or the application of that provision to any person or circumstance, is held by a court of competent jurisdiction to violate any provision of the Constitution of the United States, then the other provisions of that section, and the application of that provision to other persons and circumstances, shall not be affected.

TITLE III—GOVERNMENT PAPERWORK ELIMINATION ACT

SEC. 301. SHORT TITLE.

This title may be cited as the ''Government Paperwork Elimination Act''.

SEC. 302. AUTHORITY OF OMB TO PROVIDE FOR ACQUISITION AND USE OF ALTERNATIVE INFORMATION TECHNOLOGIES BY EXECUTIVE AGENCIES.

Section 3504(a)(1)(B)(vi) of title 44, United States Code, is amended to read as follows:

''(vi) the acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures.''.

SEC. 303. PROCEDURES FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES BY EXECUTIVE AGENCIES.

(a) IN GENERAL.—In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, in consultation with the National Telecommunications and Information Administration and not later than 18 months after the date of enactment of this Act, develop procedures for the use and acceptance of electronic signatures by Executive agencies.

(b) REQUIREMENTS FOR PROCEDURES.—(1) The procedures developed under subsection (a)—

(A) shall be compatible with standards and technology for electronic signatures that are generally used in commerce and industry and by State governments;

(B) may not inappropriately favor one industry or technology;

(C) shall ensure that electronic signatures are as reliable as is appropriate for the purpose in question and keep intact the information submitted;

(D) shall provide for the electronic acknowledgment of electronic forms that are successfully submitted; and

(E) shall, to the extent feasible and appropriate, require an Executive agency that anticipates receipt by electronic means of 50,000 or more submittals of a particular form to take all steps necessary to ensure that multiple methods of electronic signatures are available for the submittal of such form.

(2) The Director shall ensure the compatibility of the procedures under paragraph (1)(A) in consultation with appropriate private bodies and State government entities that set standards for the use and acceptance of electronic signatures.

SEC. 304. DEADLINE FOR IMPLEMENTATION BY EXECUTIVE AGENCIES OF PROCEDURES FOR USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES.

In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall ensure that, commencing not later than five years after the date of enactment of this Act, Executive agencies provide—

(1) for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and

(2) for the use and acceptance of electronic signatures, when practicable.

SEC. 305. ELECTRONIC STORAGE AND FILING OF EMPLOYMENT FORMS.

In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, not later than 18 months after the date of enactment of this Act, develop procedures to permit private employers to store and file electronically with Executive agencies forms containing information pertaining to the employees of such employers.

SEC. 306. STUDY ON USE OF ELECTRONIC SIGNATURES.

(a) ONGOING STUDY REQUIRED.—In order to fulfill the responsibility to administer the functions assigned under chapter 35 of title 44, United States Code, the provisions of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106) and the amendments made by that Act, and the provisions of this title, the Director of the Office of Management and Budget shall, in cooperation with the National Telecommunications and Information Administration, conduct an ongoing study of the use of electronic signatures under this title on—

(1) paperwork reduction and electronic commerce;

(2) individual privacy; and

(3) the security and authenticity of transactions.

(b) REPORTS.—The Director shall submit to Congress on a periodic basis a report describing the results of the study carried out under subsection (a).

SEC. 307. ENFORCEABILITY AND LEGAL EFFECT OF ELECTRONIC RECORDS.

Electronic records submitted or maintained in accordance with procedures developed under this title, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form.

SEC. 308. DISCLOSURE OF INFORMATION.

Except as provided by law, information collected in the provision of electronic signature services for communications with an executive agency, as provided by this title, shall only be used or disclosed by persons who obtain, collect, or maintain such information as a business or government practice, for the purpose of facilitating such communications, or with the prior affirmative consent of the person about whom the information pertains.

SEC. 309. APPLICATION WITH INTERNAL REVENUE LAWS.

No provision of this title shall apply to the Department of the Treasury or the Internal Revenue Service to the extent that such provision—

(1) involves the administration of the internal revenue laws; or

(2) conflicts with any provision of the Internal Revenue Service Restructuring and Reform Act of 1998 or the Internal Revenue Code of 1986.

SEC. 310. DEFINITIONS.

For purposes of this title:

(1) ELECTRONIC SIGNATURE.—The term ''electronic signature'' means a method of signing an electronic message that—

(A) identifies and authenticates a particular person as the source of the electronic message; and

(B) indicates such person's approval of the information contained in the electronic message.

(2) EXECUTIVE AGENCY.—The term ''Executive agency'' has the meaning given that term in section 105 of title 5, United States Code.

TITLE IV—CHILDREN'S ONLINE PRIVACY PROTECTION

SEC. 401. SHORT TITLE.

This title may be cited as the ''Children's Online Privacy Protection Act of 1998''.

SEC. 402. DEFINITIONS.

In this title:

(1) CHILD.—The term ''child'' means an individual under the age of 13.

(2) OPERATOR.—The term ''operator''—

(A) means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce—

(i) among the several States or with 1 or more foreign nations;

(ii) in any territory of the United States or in the District of Columbia, or between any such territory and—

(I) another such territory; or

(II) any State or foreign nation; or

(iii) between the District of Columbia and any State, territory, or foreign nation; but

(B) does not include any nonprofit entity that would otherwise be exempt from coverage under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(3) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(4) DISCLOSURE.—The term ''disclosure'' means, with respect to personal information—

(A) the release of personal information collected from a child in identifiable form by an operator for any purpose, except where such information is provided to a person other than the operator who provides support for the internal operations of the website and does not disclose or use that information for any other purpose; and

(B) making personal information collected from a child by a website or online service directed to children or with actual knowledge that such information was collected from a child, publicly available in identifiable form, by any means including by a public posting, through the Internet, or through—

(i) a home page of a website;

(ii) a pen pal service;

(iii) an electronic mail service;

(iv) a message board; or

(v) a chat room.

(5) FEDERAL AGENCY.—The term ''Federal agency'' means an agency, as that term is defined in section 551(1) of title 5, United States Code.

(6) INTERNET.—The term ''Internet'' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(7) PARENT.—The term ''parent'' includes a legal guardian.

(8) PERSONAL INFORMATION.—The term ''personal information'' means individually identifiable information about an individual collected online, including—

(A) a first and last name;

(B) a home or other physical address including street name and name of a city or town;

(C) an e-mail address;

(D) a telephone number;

(E) a Social Security number;

(F) any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or

(G) information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this paragraph.

(9) VERIFIABLE PARENTAL CONSENT.—The term ''verifiable parental consent'' means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the operator's personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child.

(10) WEBSITE OR ONLINE SERVICE DIRECTED TO CHILDREN.—

(A) IN GENERAL.—The term ''website or online service directed to children'' means—

(i) a commercial website or online service that is targeted to children; or

(ii) that portion of a commercial website or online service that is targeted to children.

(B) LIMITATION.—A commercial website or online service, or a portion of a commercial website or online service, shall not be deemed directed to children solely for referring or linking to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

(11) PERSON.—The term ''person'' means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

(12) ONLINE CONTACT INFORMATION.—The term ''online contact information'' means an e-mail address or another substantially similar identifier that permits direct contact with a person online.

SEC. 403. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE COLLECTION AND USE OF PERSONAL INFORMATION FROM AND ABOUT CHILDREN ON THE INTERNET.

(a) ACTS PROHIBITED.—

(1) IN GENERAL.—It is unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under subsection (b).

(2) DISCLOSURE TO PARENT PROTECTED.—Notwithstanding paragraph (1), neither an operator of such a website or online service nor the operator's agent shall be held to be liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under subsection (b)(1)(B)(iii) to the parent of a child.

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Commission shall promulgate under section 553 of title 5, United States Code, regulations that—

(A) require the operator of any website or online service directed to children that collects personal information from children or the operator of a website or online service that has actual knowledge that it is collecting personal information from a child—

(i) to provide notice on the website of what information is collected from children by the operator, how the operator uses such information, and the operator's disclosure practices for such information; and

(ii) to obtain verifiable parental consent for the collection, use, or disclosure of personal information from children;

(B) require the operator to provide, upon request of a parent under this subparagraph whose child has provided personal information to that website or online service, upon proper identification of that parent, to such parent—

(i) a description of the specific types of personal information collected from the child by that operator;

(ii) the opportunity at any time to refuse to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child; and

(iii) notwithstanding any other provision of law, a means that is reasonable under the circumstances for the parent to obtain any personal information collected from that child;

(C) prohibit conditioning a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity; and

(D) require the operator of such a website or online service to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

(2) WHEN CONSENT NOT REQUIRED.—The regulations shall provide that verifiable parental consent under paragraph (1)(A)(ii) is not required in the case of—

(A) online contact information collected from a child that is used only to respond directly on a one-time basis to a specific request from the child and is not used to recontact the child and is not maintained in retrievable form by the operator;

(B) a request for the name or online contact information of a parent or child that is used for the sole purpose of obtaining parental consent or providing notice under this section and where such information is not maintained in retrievable form by the operator if parental consent is not obtained after a reasonable time;

(C) online contact information collected from a child that is used only to respond more than once directly to a specific request from the child and is not used to recontact the child beyond the scope of that request—

(i) if, before any additional response after the initial response to the child, the operator uses reasonable efforts to provide a parent notice of the online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(ii) without notice to the parent in such circumstances as the Commission may determine are appropriate, taking into consideration the benefits to the child of access to information and services, and risks to the security and privacy of the child, in regulations promulgated under this subsection;

(D) the name of the child and online contact information (to the extent reasonably necessary to protect the safety of a child participant on the site)—

(i) used only for the purpose of protecting such safety;

(ii) not used to recontact the child or for any other purpose; and

(iii) not disclosed on the site,

if the operator uses reasonable efforts to provide a parent notice of the name and online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(E) the collection, use, or dissemination of such information by the operator of such a website or online service necessary—

(i) to protect the security or integrity of its website;

(ii) to take precautions against liability;

(iii) to respond to judicial process; or

(iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety.

(3) TERMINATION OF SERVICE.—The regulations shall permit the operator of a website or an online service to terminate service provided to a child whose parent has refused, under the regulations prescribed under paragraph (1)(B)(ii), to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child.

(c) ENFORCEMENT.—Subject to sections 404 and 406, a violation of a regulation prescribed under subsection (a) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(d) INCONSISTENT STATE LAW.—No State or local government may impose any liability for commercial activities or actions by operators in interstate or foreign commerce in connection with an activity or action described in this title that is inconsistent with the treatment of those activities or actions under this section.

SEC. 404. SAFE HARBORS.

(a) GUIDELINES.—An operator may satisfy the requirements of regulations issued under section 403(b) by following a set of self-regulatory guidelines, issued by representatives of the marketing or online industries, or by other persons, approved under subsection (b).

(b) INCENTIVES.—

(1) SELF-REGULATORY INCENTIVES.—In prescribing regulations under section 403, the Commission shall provide incentives for self-regulation by operators to implement the protections afforded children under the regulatory requirements described in subsection (b) of that section.

(2) DEEMED COMPLIANCE.—Such incentives shall include provisions for ensuring that a person will be deemed to be in compliance with the requirements of the regulations under section 403 if that person complies with guidelines that, after notice and comment, are approved by the Commission upon making a determination that the guidelines meet the requirements of the regulations issued under section 403.

(3) EXPEDITED RESPONSE TO REQUESTS.—The Commission shall act upon requests for safe harbor treatment within 180 days of the filing of the request, and shall set forth in writing its conclusions with regard to such requests.

(c) APPEALS.—Final action by the Commission on a request for approval of guidelines, or the failure to act within 180 days on a request for approval of guidelines, submitted under subsection (b) may be appealed to a district court of the United States of appropriate jurisdiction as provided for in section 706 of title 5, United States Code.

SEC. 405. ACTIONS BY STATES.

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that violates any regulation of the Commission prescribed under section 403(b), the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with the regulation;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

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

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) EXEMPTION.—

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

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

(b) INTERVENTION.—

(1) IN GENERAL.—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(3) AMICUS CURIAE.—Upon application to the court, a person whose self-regulatory guidelines have been approved by the Commission and are relied upon as a defense by any defendant to a proceeding under this section may file amicus curiae in that proceeding.

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

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for violation of any regulation prescribed under section 403, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that regulation.

(e) VENUE; SERVICE OF PROCESS.—

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

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

(A) is an inhabitant; or

(B) may be found.

SEC. 406. ADMINISTRATION AND APPLICABILITY OF ACT.

(a) IN GENERAL.—Except as otherwise provided, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) PROVISIONS.—Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et. seq.), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any Federal credit union;

(4) part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et. seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 403 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title. Any entity that violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this title.

(e) EFFECT ON OTHER LAWS.—Nothing contained in the Act shall be construed to limit the authority of the Commission under any other provisions of law.

SEC. 407. REVIEW.

Not later than 5 years after the effective date of the regulations initially issued under section 403, the Commission shall—

(1) review the implementation of this title, including the effect of the implementation of this title on practices relating to the collection and disclosure of information relating to children, children's ability to obtain access to information of their choice online, and on the availability of websites directed to children; and

(2) prepare and submit to Congress a report on the results of the review under paragraph (1).

SEC. 408. EFFECTIVE DATE.

Sections 403(a), 405, and 406 of this title take effect on the later of—

(1) the date that is 18 months after the date of enactment of this Act; or

(2) the date on which the Commission rules on the first application filed for safe harbor treatment under section 404 if the Commission does not rule on the first such application within one year after the date of enactment of this Act, but in no case later than the date that is 30 months after the date of enactment of this Act.

TITLE V—OREGON INSTITUTE OF PUBLIC SERVICE AND CONSTITUTIONAL STUDIES

SEC. 501. DEFINITIONS.

In this title:

(1) ENDOWMENT FUND.—The term ''endowment fund'' means a fund established by Portland State University for the purpose of generating income for the support of the Institute.

(2) INSTITUTE.—The term ''Institute'' means the Oregon Institute of Public Service and Constitutional Studies established under this title.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

SEC. 502. OREGON INSTITUTE OF PUBLIC SERVICE AND CONSTITUTIONAL STUDIES.

From the funds appropriated under section 506, the Secretary is authorized to award a grant to Portland State University at Portland, Oregon, for the establishment of an endowment fund to support the Oregon Institute of Public Service and Constitutional Studies at the Mark O. Hatfield School of Government at Portland State University.

SEC. 503. DUTIES.

In order to receive a grant under this title the Portland State University shall establish the Institute. The Institute shall have the following duties:

(1) To generate resources, improve teaching, enhance curriculum development, and further the knowledge and understanding of students of all ages about public service, the United States Government, and the Constitution of the United States of America.

(2) To increase the awareness of the importance of public service, to foster among the youth of the United States greater recognition of the role of public service in the development of the United States, and to promote public service as a career choice.

(3) To establish a Mark O. Hatfield Fellows program for students of government, public policy, public health, education, or law who have demonstrated a commitment to public service through volunteer activities, research projects, or employment.

(4) To create library and research facilities for the collection and compilation of research materials for use in carrying out programs of the Institute.

(5) To support the professional development of elected officials at all levels of government.

SEC. 504. ADMINISTRATION.

(a) LEADERSHIP COUNCIL.—

(1) IN GENERAL.—In order to receive a grant under this title Portland State University shall ensure that the Institute operates under the direction of a Leadership Council (in this title referred to as the ''Leadership Council'') that—

''(A) consists of 15 individuals appointed by the President of Portland State University; and

''(B) is established in accordance with this section.

(2) APPOINTMENTS.—Of the individuals appointed under paragraph (1)(A)—

(A) Portland State University, Willamette University, the Constitution Project, George Fox University, Warner Pacific University, and Oregon Health Sciences University shall each have a representative;

(B) at least 1 shall represent Mark O. Hatfield, his family, or a designee thereof;

(C) at least 1 shall have expertise in elementary and secondary school social sciences or governmental studies;

(D) at least 2 shall be representative of business or government and reside outside of Oregon;

(E) at least 1 shall be an elected official; and

(F) at least 3 shall be leaders in the private sector.

(3) EX-OFFICIO MEMBER.—The Director of the Mark O. Hatfield School of Government at Portland State University shall serve as an ex officio member of the Leadership Council.

(b) CHAIRPERSON.—

(1) IN GENERAL.—The President of Portland State University shall designate 1 of the individuals first appointed to the Leadership Council under subsection (a) as the Chairperson of the Leadership Council. The individual so designated shall serve as Chairperson for 1 year.

(2) REQUIREMENT.—Upon the expiration of the term of the Chairperson of the individual designated as Chairperson under paragraph (1), or the term of the Chairperson elected under this paragraph, the members of the Leadership Council shall elect a Chairperson of the Leadership Council from among the members of the Leadership Council.

SEC. 505. ENDOWMENT FUND.

(a) MANAGEMENT.—The endowment fund shall be managed in accordance with the standard endowment policies established by the Oregon University System.

(b) USE OF INTEREST AND INVESTMENT INCOME.—Interest and other investment income earned (on or after the date of enactment of this subsection) from the endowment fund may be used to carry out the duties of the Institute under section 503.

(c) DISTRIBUTION OF INTEREST AND INVESTMENT INCOME.—Funds realized from interest and other investment income earned (on or after the date of enactment of this subsection) shall be spent by Portland State University in collaboration with Willamette University, George Fox University, the Constitution Project, Warner Pacific University, Oregon Health Sciences University, and other appropriate educational institutions or community-based organizations. In expending such funds, the Leadership Council shall encourage programs to establish partnerships, to leverage private funds, and to match expenditures from the endowment fund.

SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $3,000,000 for fiscal year 1999.

TITLE VI—PAUL SIMON PUBLIC POLICY INSTITUTE

SEC. 601. DEFINITIONS.

In this title:

(1) ENDOWMENT FUND.—The term ''endowment fund'' means a fund established by the University for the purpose of generating income for the support of the Institute.

(2) ENDOWMENT FUND CORPUS.—The term ''endowment fund corpus'' means an amount equal to the grant or grants awarded under this title plus an amount equal to the matching funds required under section 602(d).

(3) ENDOWMENT FUND INCOME.—The term ''endowment fund income'' means an amount equal to the total value of the endowment fund minus the endowment fund corpus.

(4) INSTITUTE.—The term ''Institute'' means the Paul Simon Public Policy Institute described in section 602.

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

(6) UNIVERSITY.—The term ''University'' means Southern Illinois University at Carbondale, Illinois.

SEC. 602. PROGRAM AUTHORIZED.

(a) GRANTS.—From the funds appropriated under section 606, the Secretary is authorized to award a grant to Southern Illinois University for the establishment of an endowment fund to support the Paul Simon Public Policy Institute. The Secretary may enter into agreements with the University and include in any agreement made pursuant to this title such provisions as are determined necessary by the Secretary to carry out this title.

(b) DUTIES.—In order to receive a grant under this title, the University shall establish the Institute. The Institute, in addition to recognizing more than 40 years of public service to Illinois, to the Nation, and to the world, shall engage in research, analysis, debate, and policy recommendations affecting world hunger, mass media, foreign policy, education, and employment.

(c) DEPOSIT INTO ENDOWMENT FUND.—The University shall deposit the proceeds of any

grant received under this section into the endowment fund.

(d) MATCHING FUNDS REQUIREMENT.—The University may receive a grant under this section only if the University has deposited in the endowment fund established under this title an amount equal to one-third of such grant and has provided adequate assurances to the Secretary that the University will administer the endowment fund in accordance with the requirements of this title. The source of the funds for the University match shall be derived from State, private foundation, corporate, or individual gifts or bequests, but may not include Federal funds or funds derived from any other federally supported fund.

(e) DURATION; CORPUS RULE.—The period of any grant awarded under this section shall not exceed 20 years, and during such period the University shall not withdraw or expend any of the endowment fund corpus. Upon expiration of the grant period, the University may use the endowment fund corpus, plus any endowment fund income for any educational purpose of the University.

SEC. 603. INVESTMENTS.

(a) IN GENERAL.—The University shall invest the endowment fund corpus and endowment fund income in those low-risk instruments and securities in which a regulated insurance company may invest under the laws of the State of Illinois, such as federally insured bank savings accounts or comparable interest bearing accounts, certificates of deposit, money market funds, or obligations of the United States.

(b) JUDGMENT AND CARE.—The University, in investing the endowment fund corpus and endowment fund income, shall exercise the judgment and care, under circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of the person's own business affairs.

SEC. 604. WITHDRAWALS AND EXPENDITURES.

(a) IN GENERAL.—The University may withdraw and expend the endowment fund income to defray any expenses necessary to the operation of the Institute, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, technical assistance, and research. No endowment fund income or endowment fund corpus may be used for any type of support of the executive officers of the University or for any commercial enterprise or endeavor. Except as provided in subsection (b), the University shall not, in the aggregate, withdraw or expend more than 50 percent of the total aggregate endowment fund income earned prior to the time of withdrawal or expenditure.

(b) SPECIAL RULE.—The Secretary is authorized to permit the University to withdraw or expend more than 50 percent of the total aggregate endowment fund income whenever the University demonstrates such withdrawal or expenditure is necessary because of—

(1) a financial emergency, such as a pending insolvency or temporary liquidity problem;

(2) a life-threatening situation occasioned by a natural disaster or arson; or

(3) another unusual occurrence or exigent circumstance.

(c) REPAYMENT.—

(1) INCOME.—If the University withdraws or expends more than the endowment fund income authorized by this section, the University shall repay the Secretary an amount equal to one-third of the amount improperly expended (representing the Federal share thereof).

(2) CORPUS.—Except as provided in section 602(e)—

(A) the University shall not withdraw or expend any endowment fund corpus; and

(B) if the University withdraws or expends any endowment fund corpus, the University shall repay the Secretary an amount equal to one-third of the amount withdrawn or expended (representing the Federal share thereof) plus any endowment fund income earned thereon.

SEC. 605. ENFORCEMENT.

(a) IN GENERAL.—After notice and an opportunity for a hearing, the Secretary is authorized to terminate a grant and recover any grant funds awarded under this section if the University—

(1) withdraws or expends any endowment fund corpus, or any endowment fund income in excess of the amount authorized by section 604, except as provided in section 602(e);

(2) fails to invest the endowment fund corpus or endowment fund income in accordance with the investment requirements described in section 603; or

(3) fails to account properly to the Secretary, or the General Accounting Office if properly designated by the Secretary to conduct an audit of funds made available under this title, pursuant to such rules and regulations as may be proscribed by the Comptroller General of the United States, concerning investments and expenditures of the endowment fund corpus or endowment fund income.

(b) TERMINATION.—If the Secretary terminates a grant under subsection (a), the University shall return to the Treasury of the United States an amount equal to the sum of the original grant or grants under this title, plus any endowment fund income earned thereon. The Secretary may direct the University to take such other appropriate measures to remedy any violation of this title and to protect the financial interest of the United States.

SEC. 606. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $3,000,000 for fiscal year 1999. Funds appropriated under this section shall remain available until expended.

TITLE VII—HOWARD BAKER SCHOOL OF GOVERNMENT

SEC. 701. DEFINITIONS.

In this title:

(1) BOARD.—The term ''Board'' means the Board of Advisors established under section 704.

(2) ENDOWMENT FUND.—The term ''endowment fund'' means a fund established by the University of Tennessee in Knoxville, Tennessee, for the purpose of generating income for the support of the School.

(3) SCHOOL.—The term ''School'' means the Howard Baker School of Government established under this title.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(5) UNIVERSITY.—The term ''University'' means the University of Tennessee in Knoxville, Tennessee.

SEC. 702. HOWARD BAKER SCHOOL OF GOVERNMENT.

From the funds authorized to be appropriated under section 706, the Secretary is authorized to award a grant to the University for the establishment of an endowment fund to support the Howard Baker School of Government at the University of Tennessee in Knoxville, Tennessee.

SEC. 703. DUTIES.

In order to receive a grant under this title, the University shall establish the School. The School shall have the following duties:

(1) To establish a professorship to improve teaching and research related to, enhance the curriculum of, and further the knowledge and understanding of, the study of democratic institutions, including aspects of regional planning, public administration, and public policy.

(2) To establish a lecture series to increase the knowledge and awareness of the major public issues of the day in order to enhance informed citizen participation in public affairs.

(3) To establish a fellowship program for students of government, planning, public administration, or public policy who have demonstrated a commitment and an interest in pursuing a career in public affairs.

(4) To provide appropriate library materials and appropriate research and instructional equipment for use in carrying out academic and public service programs, and to enhance the existing United States Presidential and public official manuscript collections.

(5) To support the professional development of elected officials at all levels of government.

SEC. 704. ADMINISTRATION.

(a) BOARD OF ADVISORS.—

(1) IN GENERAL.—The School shall operate with the advice and guidance of a Board of Advisors consisting of 13 individuals appointed by the Vice Chancellor for Academic Affairs of the University.

(2) APPOINTMENTS.—Of the individuals appointed under paragraph (1)—

(A) 5 shall represent the University;

(B) 2 shall represent Howard Baker, his family, or a designee thereof;

(C) 5 shall be representative of business or government; and

(D) 1 shall be the Governor of Tennessee, or the Governor's designee.

(3) EX OFFICIO MEMBERS.—The Vice Chancellor for Academic Affairs and the Dean of the College of Arts and Sciences at the University shall serve as an ex officio member of the Board.

(b) CHAIRPERSON.—

(1) IN GENERAL.—The Chancellor, with the concurrence of the Vice Chancellor for Academic Affairs, of the University shall designate 1 of the individuals first appointed to the Board under subsection (a) as the Chairperson of the Board. The individual so designated shall serve as Chairperson for 1 year.

(2) REQUIREMENTS.—Upon the expiration of the term of the Chairperson of the individual designated as Chairperson under paragraph (1) or the term of the Chairperson elected under this paragraph, the members of the Board shall elect a Chairperson of the Board from among the members of the Board.

SEC. 705. ENDOWMENT FUND.

(a) MANAGEMENT.—The endowment fund shall be managed in accordance with the standard endowment policies established by the University of Tennessee System.

(b) USE OF INTEREST AND INVESTMENT INCOME.—Interest and other investment income earned (on or after the date of enactment of this subsection) from the endowment fund may be used to carry out the duties of the School under section 703.

(c) DISTRIBUTION OF INTEREST AND INVESTMENT INCOME.—Funds realized from interest and other investment income earned (on or after the date of enactment of this subsection) shall be available for expenditure by the University for purposes consistent with section 703, as recommended by the Board. The Board shall encourage programs to establish partnerships, to leverage private funds, and to match expenditures from the endowment fund.

SEC. 706. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $10,000,000 for fiscal year 2000.

TITLE VIII—JOHN GLENN INSTITUTE FOR PUBLIC SERVICE AND PUBLIC POLICY

SEC. 801. DEFINITIONS.

In this title:

(1) ENDOWMENT FUND.—The term ''endowment fund'' means a fund established by the University for the purpose of generating income for the support of the Institute.

(2) ENDOWMENT FUND CORPUS.—The term ''endowment fund corpus'' means an amount equal to the grant or grants awarded under this title plus an amount equal to the matching funds required under section 802(d).

(3) ENDOWMENT FUND INCOME.—The term ''endowment fund income'' means an amount equal to the total value of the endowment fund minus the endowment fund corpus.

(4) INSTITUTE.—The term ''Institute'' means the John Glenn Institute for Public Service and Public Policy described in section 802.

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

(6) UNIVERSITY.—The term ''University'' means the Ohio State University at Columbus, Ohio.

SEC. 802. PROGRAM AUTHORIZED.

(a) GRANTS.—From the funds appropriated under section 806, the Secretary is authorized to award a grant to the Ohio State University for the establishment of an endowment fund to support the John Glenn Institute for Public Service and Public Policy. The Secretary may enter into agreements with the University and include in any agreement made pursuant to this title such provisions as are determined necessary by the Secretary to carry out this title.

(b) PURPOSES.—The Institute shall have the following purposes:

(1) To sponsor classes, internships, community service activities, and research projects to stimulate student participation in public service, in order to foster America's next generation of leaders.

(2) To conduct scholarly research in conjunction with public officials on significant issues facing society and to share the results of such research with decisionmakers and legislators as the decisionmakers and legislators address such issues.

(3) To offer opportunities to attend seminars on such topics as budgeting and finance, ethics, personnel management, policy evaluations, and regulatory issues that are designed to assist public officials in learning more about the political process and to expand the organizational skills and policymaking abilities of such officials.

(4) To educate the general public by sponsoring national conferences, seminars, publications, and forums on important public issues.

(5) To provide access to Senator John Glenn's extensive collection of papers, policy decisions, and memorabilia, enabling scholars at all levels to study the Senator's work.

(c) DEPOSIT INTO ENDOWMENT FUND.—The University shall deposit the proceeds of any grant received under this section into the endowment fund.

(d) MATCHING FUNDS REQUIREMENT.—The University may receive a grant under this section only if the University has deposited in the endowment fund established under this title an amount equal to one-third of such grant and has provided adequate assurances to the Secretary that the University will administer the endowment fund in accordance with the requirements of this title. The source of the funds for the University match shall be derived from State, private foundation, corporate, or individual gifts or bequests, but may not include Federal funds or funds derived from any other federally supported fund.

(e) DURATION; CORPUS RULE.—The period of any grant awarded under this section shall not exceed 20 years, and during such period the University shall not withdraw or expend any of the endowment fund corpus. Upon expiration of the grant period, the University may use the endowment fund corpus, plus any endowment fund income for any educational purpose of the University.

SEC. 803. INVESTMENTS.

(a) IN GENERAL.—The University shall invest the endowment fund corpus and endowment fund income in accordance with the University's investment policy approved by the Ohio State University Board of Trustees.

(b) JUDGMENT AND CARE.—The University, in investing the endowment fund corpus and endowment fund income, shall exercise the judgment and care, under circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of the person's own business affairs.

SEC. 804. WITHDRAWALS AND EXPENDITURES.

(a) IN GENERAL.—The University may withdraw and expend the endowment fund income to defray any expenses necessary to the operation of the Institute, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, technical assistance, and research. No endowment fund income or endowment fund corpus may be used for any type of support of the executive officers of the University or for any commercial enterprise or endeavor. Except as provided in subsection (b), the University shall not, in the aggregate, withdraw or expend more than 50 percent of the total aggregate endowment fund income earned prior to the time of withdrawal or expenditure.

(b) SPECIAL RULE.—The Secretary is authorized to permit the University to withdraw or expend more than 50 percent of the total aggregate endowment fund income whenever the University demonstrates such withdrawal or expenditure is necessary because of—

(1) a financial emergency, such as a pending insolvency or temporary liquidity problem;

(2) a life-threatening situation occasioned by a natural disaster or arson; or

(3) another unusual occurrence or exigent circumstance.

(c) REPAYMENT.—

(1) INCOME.—If the University withdraws or expends more than the endowment fund income authorized by this section, the University shall repay the Secretary an amount equal to one-third of the amount improperly expended (representing the Federal share thereof).

(2) CORPUS.—Except as provided in section 802(e)—

(A) the University shall not withdraw or expend any endowment fund corpus; and

(B) if the University withdraws or expends any endowment fund corpus, the University shall repay the Secretary an amount equal to one-third of the amount withdrawn or expended (representing the Federal share thereof) plus any endowment fund income earned thereon.

SEC. 805. ENFORCEMENT.

(a) IN GENERAL.—After notice and an opportunity for a hearing, the Secretary is authorized to terminate a grant and recover any grant funds awarded under this section if the University—

(1) withdraws or expends any endowment fund corpus, or any endowment fund income in excess of the amount authorized by section 804, except as provided in section 802(e);

(2) fails to invest the endowment fund corpus or endowment fund income in accordance with the investment requirements described in section 803; or

(3) fails to account properly to the Secretary, or the General Accounting Office if properly designated by the Secretary to conduct an audit of funds made available under this title, pursuant to such rules and regulations as may be prescribed by the Comptroller General of the United States, concerning investments and expenditures of the endowment fund corpus or endowment fund income.

(b) TERMINATION.—If the Secretary terminates a grant under subsection (a), the University shall return to the Treasury of the United States an amount equal to the sum of the original grant or grants under this title, plus any endowment fund income earned thereon. The Secretary may direct the University to take such other appropriate measures to remedy any violation of this title and to protect the financial interest of the United States.

SEC. 806. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $6,000,000 for fiscal year 2000. Funds appropriated under this section shall remain available until expended.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, pursuant to agreement of October 7, I ask the Senate proceed to the consideration of the conference report to accompany S. 2206, the human services reauthorization bill.

I further ask that immediately following adoption of the conference report, the Senate proceed to executive session, and pursuant to the consent agreement of October 6, that the nomination of William A. Fletcher of California to be United States Circuit Judge for the Ninth Circuit, be considered.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LOTT. For the information of all Senators, there will be about 25 minutes or so on the human services reauthorization bill—without a recorded vote. It will be a voice vote. Then we will go to the Fletcher nomination.

Therefore, the next recorded vote would be at approximately 2:30.

I yield the floor.

COATS HUMAN SERVICES REAUTHORIZATION ACT OF 1998—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the conference report to accompany S. 2206, which the clerk will report.

The legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 2206), have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

(The conference report is printed in the House proceedings of the RECORD of October 6, 1998.)

Mr. JEFFORDS. Mr. President, the conference report on the Coats Human Services Reauthorization Act of 1998 includes the Head Start program, the