S. Res. 94. A resolution commending the efforts of the Reverend Jesse Jackson to secure the release of the soldiers held by the Federal Republic of Yugoslavia.

By Mr. THURMOND:

S. Res. 95. A resolution designating August 16, 1999, as ''National Airborne Day''; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LUGAR (for himself, Mr. FITZGERALD, and Mr. FEINGOLD):

S. 949. A bill to clarify and enhance the authorities of the Chief Information Officer of the Department of Agriculture; to the Committee on Agriculture, Nutrition, and Forestry.

THE USDA INFORMATION TECHNOLOGY REFORM AND YEAR-2000 COMPLIANCE ACT OF 1999

Mr. LUGAR. Mr. President, today I rise to introduce the USDA Information Technology Reform and Year-2000 Compliance Act of 1999. This legislation aims to centralize all year 2000 computer conversion and other information technology acquisition and management activities within the Office of the Chief Information Office of the Department of Agriculture. Centralization is the most efficient way to manage the complex and important task of ensuring that all critical computer functions at the department are operational on January 1, 2000. It is also a wiser and more cost-effective way to construct an information technology infrastructure to enable USDA's hundreds of computer systems to interoperate, which unfortunately they cannot now do.

The Department of Agriculture is charged with enormous responsibilities and its year 2000 readiness is crucial. It has a diverse portfolio of over 200 Federal programs throughout the Nation and the world. The department delivers about $80 billion in programs. It is the fourth largest Federal agency, with 31 agencies and offices. The department is responsible for the safety of our food supply, nutrition programs that serve the poor, young and old, and the protection of our natural resources. Since more than 40 percent of the non-tax debt owed to the Federal Government is owed to USDA, the department has a responsibility to ensure the financial soundness of taxpayers' investments.

Responsibility for keeping the mission-critical information technology functioning should clearly rest with the Chief Information Officer. The decentralized approach to the year 2000 issue at USDA led to a lack of focus on departmental priorities. Each agency was allowed to determine what services, programs, and activities it deemed important enough to be operational at the end of the millennium. This decentralized approach also led to a lack of guidance, oversight and the development of contingency plans. Efforts to rectify this situation are well underway. I am pleased that Secretary of Agriculture Glickman has pledged his personal commitment to the success of year 2000 compliance and has made it one of the highest priorities for USDA.

In fiscal year 1999, USDA plans to spend more than $1.2 billion on information technology and related information resources management activities, including year 2000 computer compliance. The General Accounting Office has chronicled USDA's long history of problems in managing its substantial information technology investments. The GAO reports that such ineffective planning and management have resulted in USDA's wasting millions of dollars on computer systems.

Last year, I introduced S. 2116, a bill to reform the information technology systems of the Department of Agriculture. It gave the Chief Information Officer control over the planning, development, and acquisition of information technology at the department. Introduction of that bill and similar legislation in 1997 prompted some coordination of information technology among the department's agencies and offices. However, component agencies are still allowed to independently acquire and manage information technology investments solely on the basis of their own parochial interests or needs. This legislation is needed to strengthen that coordination and ensure that centralized information technology management continues in the future.

This legislation further requires that the Chief Information Officer manage the design and implementation of an information technology architecture based on strategic business plans that maximizes the effectiveness and efficiency of USDA's program activities. Included in the bill is authority for the Chief Information Officer to approve expenditures for information resources and for year 2000 compliance purposes, except for minor acquisitions. To accomplish these purposes, the bill requires that each agency transfer up to 10 percent of its information technology budget to the Chief Information Officer's control.

The bill makes the Chief Information Officer responsible for ensuring that the information technology architecture facilitates a flexible common computing environment for the field service centers based on integrated program delivery. The architecture will also provide maximum data sharing with USDA customers and other Federal and state agencies, which is expected to result in a significant reduction in operating costs.

Mr. President, this is a bill whose time has come. Unfortunately, USDA's problems in managing information technology are not unusual among Government agencies, according to the General Accounting Office. I commend the attention of my colleagues to this bill designed to address a portion of the information resource management problems of the Federal Government and ask for their support of it.

Mr. President, I ask that the full text and a summary of the bill be printed in the RECORD.

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

S. 949

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''USDA Information Technology Reform and Year-2000 Compliance Act of 1999''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
Sec. 4. Management of year-2000 compliance at Department.
Sec. 5. Position of Chief Information Officer.
Sec. 6. Duties and authorities of Chief Information Officer.
Sec. 7. Funding approval by Chief Information Officer.
Sec. 8. Availability of agency information technology funds.
Sec. 9. Authority of Chief Information Officer over information technology personnel.
Sec. 10. Annual Comptroller General report on compliance.
Sec. 11. Office of Inspector General.
Sec. 12. Technical amendment.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) United States agriculture, food safety, the health of plants and animals, the economies of rural communities, international commerce in food, and food aid rely on the Department of Agriculture for the effective and timely administration of program activities essential to their success and vitality;

(2) the successful administration of the program activities depends on the ability of the Department to use information technology in as efficient and effective manner as is technologically feasible;

(3) to successfully administer the program activities, the Department relies on information technology that requires comprehensive and Department-wide overview and control to avoid needless duplication and misuse of resources;

(4) to better ensure the continued success and vitality of agricultural producers and rural communities, it is imperative that measures are taken within the Department to coordinate and centrally plan the use of the information technology of the Department;

(5) because production control and subsidy programs are ending, agricultural producers of the United States need the best possible information to make decisions that will maximize profits, satisfy consumer demand, and contribute to the alleviation of hunger in the United States and abroad;

(6) a single authority for Department-wide planning is needed to ensure that the information technology architecture of the Department is based on the strategic business plans, information technology, management goals, and core business process methodology of the Department;

(7) information technology is a strategic resource for the missions and program activities of the Department;

(8) year-2000 compliance is 1 of the most important challenges facing the Federal Government and the private sector;

(9) because the responsibility for ensuring year-2000 compliance at the Department was initially left to individual offices and agencies, no overall priorities have been established, and there is no assurance that the

most important functions of the Department will be operable on January 1, 2000;

(10) it is the responsibility of the Chief Information Officer to provide leadership in—

(A) defining and explaining the importance of achieving year-2000 compliance;

(B) selecting the overall approach for structuring the year-2000 compliance efforts of the Department;

(C) assessing the ability of the information resource management infrastructures of the Department to adequately support the year-2000 compliance efforts; and

(D) mobilizing the resources of the Department to achieve year-2000 compliance;

(11) the failure of the Department to meet the requirement of the Director of the Office of Management and Budget that all mission-critical systems of the Department achieve year-2000 compliance would have serious adverse consequences on the program activities of the Department, the economies of rural communities, the health of the people of the United States, world hunger, and international commerce in agricultural commodities and products;

(12) centralizing the approval authority for planning and investment for information technology in the Office of the Chief Information Officer will—

(A) provide the Department with strong and coordinated leadership and direction;

(B) ensure that the business architecture of an office or agency is based on rigorous core business process methodology;

(C) ensure that the information technology architecture of the Department is based on the strategic business plans of the offices or agencies and the missions of the Department;

(D) ensure that funds will be invested in information technology only after the Chief Information Officer has determined that—

(i) the planning and review of future business requirements of the office or agency are complete; and

(ii) the information technology architecture of the office or agency is based on business requirements and is consistent with the Department-wide information technology architecture; and

(E) cause the Department to act as a single enterprise with respect to information technology, thus eliminating the duplication and inefficiency associated with a single office- or agency-based approach; and

(13) consistent with the Information Technology Management Reform Act of 1996 (40 U.S.C. 1401 et seq.), each office or agency of the Department should achieve at least—

(A) a 5 percent per year decrease in costs incurred for operation and maintenance of information technology; and

(B) a 5 percent per year increase in operational efficiency through improvements in information resource management.

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

(1) to facilitate the successful administration of programs and activities of the Department through the creation of a centralized office, and Chief Information Officer position, in the Department to provide strong and innovative managerial leadership to oversee the planning, funding, acquisition, and management of information technology and information resource management; and

(2) to provide the Chief Information Officer with the authority and funding necessary to correct the year-2000 compliance problem of the Department.

SEC. 3. DEFINITIONS.

In this Act:

(1) CHIEF INFORMATION OFFICER.—The term ''Chief Information Officer'' means the individual appointed by the Secretary to serve as Chief Information Officer (as established by section 5125 of the Information Technology Management Reform Act of 1996 (40 U.S.C. 1425)) for the Department.

(2) DEPARTMENT.—The term ''Department'' means the Department of Agriculture.

(3) INFORMATION RESOURCE MANAGEMENT.—The term ''information resource management'' means the process of managing information resources to accomplish agency missions and to improve agency performance.

(4) INFORMATION TECHNOLOGY.—

(A) IN GENERAL.—The term ''information technology'' means any equipment or interconnected system or subsystem of equipment that is used by an office or agency in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(B) USE OF EQUIPMENT.—For purposes of subparagraph (A), equipment is used by an office or agency if the equipment is used by—

(i) the office or agency directly; or

(ii) a contractor under a contract with the office or agency—

(I) that requires the use of the equipment; or

(II) to a significant extent, that requires the use of the equipment in the performance of a service or the furnishing of a product.

(C) INCLUSIONS.—The term ''information technology'' includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(D) EXCLUSIONS.—The term ''information technology'' does not include any equipment that is acquired by a Federal contractor that is incidental to a Federal contract.

(5) INFORMATION TECHNOLOGY ARCHITECTURE.—The term ''information technology architecture'' means an integrated framework for developing or maintaining existing information technology, and acquiring new information technology, to achieve or effectively use the strategic business plans, information resources, management goals, and core business processes of the Department.

(6) OFFICE OR AGENCY.—The term ''office or agency'' means, as applicable, each—

(A) national, regional, county, or local office or agency of the Department;

(B) county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5));

(C) State committee, State office, or field service center of the Department; and

(D) group of multiple offices and agencies of the Department that are, or will be, connected through common program activities or systems of information technology.

(7) PROGRAM ACTIVITY.—The term ''program activity'' means a specific activity or project of a program that is carried out by 1 or more offices or agencies of the Department.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(9) YEAR-2000 COMPLIANCE.—The term ''year-2000 compliance'', with respect to the Department, means a condition in which information systems are able to accurately process data relating to the 20th and 21st centuries—

(A) within the Department;

(B) between the Department and local and State governments;

(C) between the Department and the private sector;

(D) between the Department and foreign governments; and

(E) between the Department and the international private sector.

SEC. 4. MANAGEMENT OF YEAR-2000 COMPLIANCE AT DEPARTMENT.

(a) FINDING.—Congress finds that the Chief Information Officer of the Department has not been provided the funding and authority necessary to adequately manage the year-2000 compliance problem at the Department.

(b) MANAGEMENT.—The Chief Information Officer shall provide the leadership and innovative management within the Department to—

(1) identify, prioritize, and mobilize the resources needed to achieve year-2000 compliance;

(2) coordinate the renovation of computer systems through conversion, replacement, or retirement of the systems;

(3) develop verification and validation strategies (within the Department and by independent persons) for converted or replaced computer systems;

(4) develop contingency plans for mission-critical systems in the event of a year-2000 compliance system failure;

(5) coordinate outreach between computer systems of the Department and computer systems in—

(A) the domestic private sector;

(B) State and local governments;

(C) foreign governments; and

(D) the international private sector, such as foreign banks;

(6) identify, prioritize, and mobilize the resources needed to correct periodic date problems in computer systems within the Department and between the Department and outside computer systems; and

(7) during the period beginning on the date of enactment of this Act and ending on June 1, 2001, consult, on a quarterly basis, with the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on actions taken to carry out this section.

(c) FUNDING AND AUTHORITIES.—To carry out subsection (b), the Chief Information Officer shall use—

(1) the authorities in sections 7, 8, and 9, particularly the authority to approve the transfer or obligation of funds described in section 7(a) intended for information technology and information resource management; and

(2) the transferred funds targeted by offices and agencies for information technology and information resource management under section 8.

SEC. 5. POSITION OF CHIEF INFORMATION OFFICER.

(a) ESTABLISHMENT.—To ensure the highest quality and most efficient planning, acquisition, administration, and management of information technology within the Department, there is established the position of the Chief Information Officer of the Department.

(b) CONFIRMATION.—

(1) IN GENERAL.—The position of the Chief Information Officer shall be appointed by the President, by and with the advice and consent of the Senate.

(2) SUCCESSION.—An official who is serving as Chief Information Officer on the date of enactment of this Act shall not be required to be reappointed by the President.

(c) REPORT.—The Chief Information Officer shall report directly to the Secretary.

(d) POSITION ON EXECUTIVE INFORMATION TECHNOLOGY INVESTMENT REVIEW BOARD.—The Chief Information Officer shall serve as an officer of the Executive Information Technology Investment Review Board (or its successor).

SEC. 6. DUTIES AND AUTHORITIES OF CHIEF INFORMATION OFFICER.

(a) IN GENERAL.—Notwithstanding any other provision of law (except the Government Performance and Results Act of 1993 (Public Law 103–62), amendments made by that Act, and the Information Technology Management Reform Act of 1996 (40 U.S.C.

1401 et seq.)) and policies and procedures of the Department, in addition to the general authorities provided to the Chief Information Officer by section 5125 of the Information Technology Management Reform Act of 1996 (40 U.S.C. 1425), the Chief Information Officer shall have the authorities and duties within the Department provided in this Act.

(b) INFORMATION TECHNOLOGY ARCHITECTURE.—

(1) IN GENERAL.—To ensure the efficient and effective implementation of program activities of the Department, the Chief Information Officer shall ensure that the information technology architecture of the Department, and each office or agency, is based on the strategic business plans, information resources, goals of information resource management, and core business process methodology of the Department.

(2) DESIGN AND IMPLEMENTATION.—The Chief Information Officer shall manage the design and implementation of an information technology architecture for the Department in a manner that ensures that—

(A) the information technology systems of each office or agency maximize—

(i) the effectiveness and efficiency of program activities of the Department;

(ii) quality per dollar expended; and

(iii) the efficiency and coordination of information resource management among offices or agencies, including the exchange of information between field service centers of the Department and each office or agency;

(B) the planning, transfer or obligation of funds described in section 7(a), and acquisition of information technology, by each office or agency most efficiently satisfies the needs of the office or agency in terms of the customers served, and program activities and employees affected, by the information technology; and

(C) the information technology of each office or agency is designed and managed to coordinate or consolidate similar functions of the missions of the Department and offices or agencies, on a Department-wide basis.

(3) COMPLIANCE WITH RESULTING ARCHITECTURE.—The Chief Information Officer shall—

(A) if determined appropriate by the Chief Information Officer, approve the transfer or obligation of funds described in section 7(a) in connection with information technology architecture for an office or agency; and

(B) be responsible for the development, acquisition, and implementation of information technology by an office or agency in a manner that—

(i) is consistent with the information technology architecture designed under paragraph (2);

(ii) results in the most efficient and effective use of information technology of the office or agency; and

(iii) maximizes the efficient delivery and effectiveness of program activities of the Department.

(4) FIELD SERVICE CENTERS.—The Chief Information Officer shall ensure that the information technology architecture of the Department facilitates the design, acquisition, and deployment of an open, flexible common computing environment for the field service centers of the Department that—

(A) is based on strategic goals, business reengineering, and integrated program delivery;

(B) is flexible enough to accommodate and facilitate future business and organizational changes;

(C) provides maximum data sharing, interoperability, and communications capability with other Department, Federal, and State agencies and customers; and

(D) results in significant reductions in annual operating costs.

(c) EVALUATION OF PROPOSED INFORMATION TECHNOLOGY INVESTMENTS.—

(1) IN GENERAL.—In consultation with the Executive Information Technology Investment Review Board (or its successor), the Chief Information Officer shall adopt criteria to evaluate proposals for information technology investments that are applicable to individual offices or agencies or are applicable Department-wide.

(2) CRITERIA.—The criteria adopted under paragraph (1) shall include consideration of—

(A) whether the function to be supported by the investment should be performed by the private sector, negating the need for the investment;

(B) the Department-wide or Government-wide impacts of the investment;

(C) the costs and risks of the investment;

(D) the consistency of the investment with the information technology architecture;

(E) the interoperability of information technology or information resource management in offices or agencies; and

(F) whether the investment maximizes the efficiency and effectiveness of program activities of the Department.

(3) EVALUATION OF INFORMATION TECHNOLOGY AND INFORMATION RESOURCE MANAGEMENT.—

(A) IN GENERAL.—In consultation with the Executive Information Technology Investment Review Board (or its successor), the Chief Information Officer shall monitor and evaluate the information resource management practices of offices or agencies with respect to the performance and results of the information technology investments made by the offices or agencies.

(B) GUIDELINES FOR EVALUATION.—The Chief Information Officer shall issue Departmental regulations that provide guidelines for—

(i) establishing whether the program activity of an office or agency that is proposed to be supported by the information technology investment should be performed by the private sector;

(ii)(I) analyzing the program activities of the office or agency and the mission of the office or agency; and

(II) based on the analysis, revising the mission-related and administrative processes of the office or agency, as appropriate, before making significant investments in information technology to be used in support of the program activities and mission of the office or agency;

(iii) establishing effective and efficient capital planning for selecting, managing, and evaluating the results of all major investments in information technology by the Department;

(iv) ensuring compliance with governmental and Department-wide policies, regulations, standards, and guidelines that relate to information technology and information resource management;

(v) identifying potential information resource management problem areas that could prevent or delay delivery of program activities of the office or agency;

(vi) validating that information resource management of the office or agency facilitates—

(I) strategic goals of the office or agency;

(II) the mission of the office or agency; and

(III) performance measures established by the office or agency; and

(vii) ensuring that the information security policies, procedures, and practices for the information technology are sufficient.

(d) ELECTRONIC FUND TRANSFERS.—The Chief Information Officer shall ensure that the information technology architecture of the Department complies with the requirement of section 3332 of title 31, United States Code, that certain current, and all future payments after January 1, 1999, be tendered through electronic fund transfer.

(e) DEPARTMENTAL REGULATIONS.—The Chief Information Officer shall issue such Departmental regulations as the Chief Information Officer considers necessary to carry out this Act within all offices and agencies.

(f) REPORT.—Not later than March 1 of each year through March 1, 2003, the Chief Information Officer shall submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate that includes—

(1) an evaluation of the current and future information technology directions and needs of the Department;

(2) an accounting of—

(A) each transfer or obligation of funds described in section 7(a), and each outlay of funds, for information technology or information resource management by each office or agency for the past fiscal year; and

(B) each transfer or obligation of funds described in section 7(a) for information technology or information resource management by each office or agency known or estimated for the current and future fiscal years;

(3) a summary of an evaluation of information technology and information resource management applicable Department-wide or to an office or agency; and

(4) a copy of the annual report to the Secretary by the Chief Information Officer that is required by section 5125(c)(3) of the Information Technology Management Reform Act of 1996 (40 U.S.C. 1425(c)(3)).

SEC. 7. FUNDING APPROVAL BY CHIEF INFORMATION OFFICER.

(a) IN GENERAL.—Notwithstanding any other provision of law, an office or agency, without the prior approval of the Chief Information Officer, shall not—

(1) transfer funds (including appropriated funds, mandatory funds, and funds of the Commodity Credit Corporation or any other corporation within the Department) from 1 account of a fund or office or agency to another account of a fund or office or agency for the purpose of investing in information technology or information resource management involving planning, evaluation, or management, providing services, or leasing or purchasing personal property (including all hardware and software) or services;

(2) obligate funds (including appropriated funds, mandatory funds, and funds of the Commodity Credit Corporation or any other corporation within the Department) for the purpose of investing in information technology or information resource management involving planning, evaluation, or management, providing services, or leasing or purchasing personal property (including all hardware and software) or services; or

(3) obligate funds (including appropriated funds, mandatory funds, and funds of the Commodity Credit Corporation) for the purpose of investing in information technology or information resource management involving planning, evaluation, or management, providing services, or leasing or purchasing personal property (including all hardware and software) or services, obtained through a contract, cooperative agreement, reciprocal agreement, or any other type of agreement with an agency of the Federal Government, a State, the District of Columbia, or any person in the private sector.

(b) DISCRETION OF CHIEF INFORMATION OFFICER.—The Chief Information Officer may, by Departmental regulation, waive the requirement under subsection (a) applicable to, as the Chief Information Officer determines is appropriate for the office or agency—

(1) the transfer or obligation of funds described in subsection (a) in an amount not to exceed $200,000; or

(2) a specific class or category of information technology.

(c) CONDITIONS FOR APPROVAL OF FUNDING.—Under subsection (a), the Chief Information Officer shall not approve the transfer or obligation of funds described in subsection (a) with respect to an office or agency unless the Chief Information Officer determines that—

(1) the proposed transfer or obligation of funds described in subsection (a) is consistent with the information technology architecture of the Department;

(2) the proposed transfer or obligation of funds described in subsection (a) for information technology or information resource management is consistent with and maximizes the achievement of the strategic business plans of the office or agency;

(3) the proposed transfer or obligation of funds described in subsection (a) is consistent with the strategic business plan of the office or agency; and

(4) to the maximum extent practicable, economies of scale are realized through the proposed transfer or obligation of funds described in subsection (a).

(d) CONSULTATION WITH EXECUTIVE INFORMATION TECHNOLOGY INVESTMENT REVIEW BOARD.—To the maximum extent practicable, as determined by the Chief Information Officer, prior to approving a transfer or obligation of funds described in subsection (a) for information technology or information resource management, the Chief Information Officer shall consult with the Executive Information Technology Investment Review Board (or its successor) concerning whether the investment—

(1) meets the objectives of capital planning processes for selecting, managing, and evaluating the results of major investments in information technology or information resource management; and

(2) links the affected strategic plan with the information technology architecture of the Department.

SEC. 8. AVAILABILITY OF AGENCY INFORMATION TECHNOLOGY FUNDS.

(a) TRANSFER.—

(1) IN GENERAL.—Not later than December 1 of each fiscal year, the Secretary shall transfer to the appropriations account of the Chief Information Officer an amount of funds of an office or agency determined under paragraph (2).

(2) AMOUNT.—

(A) IN GENERAL.—Subject to subparagraph (B), the amount of funds of an office or agency for a fiscal year transferred under paragraph (1) may be up to 10 percent of the discretionary funds made available for that fiscal year by the office or agency for information technology or information resource management.

(B) ADJUSTMENT.—Not later than September 30 of each fiscal year, the Secretary shall adjust the amount to be transferred from the funds of an office or agency for the fiscal year to the extent that the estimate for the fiscal year was in excess of, or less than, the amount actually expended by the office or agency for information technology or information resource management.

(b) USE OF FUNDS.—Funds transferred under subsection (a) shall be used by the Chief Information Officer—

(1) to carry out the duties and authorities of the Chief Information Officer under—

(A) this Act;

(B) section 5125 of the Information Technology Management Reform Act of 1996 (40 U.S.C. 1425); and

(C) section 3506 of title 44, United States Code;

(2) to direct and control the planning, transfer or obligation of funds described in section 7(a), and administration of information technology or information resource management by an office or agency;

(3) to meet the requirement of the Director of the Office and Management and Budget that all mission-critical systems achieve year-2000 compliance; or

(4) to pay the salaries and expenses of all personnel and functions of the office of the Chief Information Officer.

(c) AVAILABILITY OF FUNDS.—The Chief Information Officer shall transfer unexpended funds at the end of a fiscal year to the office or agency that made the funds available under subsection (a), to remain available until expended.

(d) NO REDUCTION OF EMPLOYEES OF OFFICES OR AGENCIES.—A transfer of funds under subsection (a) shall not result in a reduction in the number of employees in an office or agency.

(e) TERMINATION OF AUTHORITY.—The authority under this section terminates on September 30, 2004.

SEC. 9. AUTHORITY OF CHIEF INFORMATION OFFICER OVER INFORMATION TECHNOLOGY PERSONNEL.

(a) AGENCY CHIEF INFORMATION OFFICERS.—

(1) ESTABLISHMENT.—Subject to the concurrence of the Chief Information Officer, the head of each office or agency shall establish within the office or agency the position of Agency Chief Information Officer and shall appoint an individual to that position.

(2) RELATIONSHIP TO HEAD OF OFFICE OR AGENCY.—The Agency Chief Information Officer shall—

(A) report to the head of the office or agency; and

(B) regularly update the head of the office or agency on the status of year-2000 compliance and other significant information technology issues.

(3) PERFORMANCE REVIEW.—The Chief Information Officer shall—

(A) provide input for the performance review of an Agency Chief Information Officer of an office or agency;

(B) annually review and assess the information technology functions of the office or agency; and

(C) provide a report on the review and assessment to the Under Secretary or Assistant Secretary for the office or agency.

(4) DUTIES.—The Agency Chief Information Officer of an office or agency shall be responsible for carrying out the policies and procedures established by the Chief Information Officer for that office or agency, the Administrator for the office or agency, and the Under Secretary or Assistant Secretary for the office or agency.

(b) MANAGERS OF MAJOR INFORMATION TECHNOLOGY PROJECTS.—

(1) IN GENERAL.—The assignment, and continued eligibility for the assignment, of an employee of the Department to serve as manager of a major information technology project (as defined by the Chief Information Officer) of an office or agency, shall be subject to the approval of the Chief Information Officer.

(2) PERFORMANCE REVIEW.—The Chief Information Officer shall provide input into the performance review of a manager of a major information technology project.

(c) DETAIL AND ASSIGNMENT OF PERSONNEL.—Notwithstanding any other provision of law, an employee of the Department may be detailed to the Office of the Chief Information Officer for a period of more than 30 days without reimbursement by the Office of the Chief Information Officer to the office or agency from which the employee is detailed.

(d) INFORMATION TECHNOLOGY PROCUREMENT OFFICERS.—A procurement officer of an office or agency shall procure information technology for the office or agency in a manner that is consistent with the Departmental regulations issued by the Chief Information Officer.

SEC. 10. ANNUAL COMPTROLLER GENERAL REPORT ON COMPLIANCE.

(a) REPORT.—Not later than May 15 of each year through May 15, 2003, in coordination with the Inspector General of the Department, the Comptroller General of the United States shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report evaluating the compliance with this Act in the past fiscal year by the Chief Information Officer and each office or agency.

(b) CONTENTS OF REPORT.—Each report shall include—

(1) an audit of the transfer or obligation of funds described in section 7(a) and outlays by an office or agency for the fiscal year;

(2) an audit and evaluation of the compliance of the Chief Information Officer with the requirements of section 8(c);

(3) a review and evaluation of the performance of the Chief Information Officer under this Act; and

(4) a review and evaluation of the success of the Department in—

(A) creating a Department-wide information technology architecture; and

(B) complying with the requirement of the Director of the Office of Management and Budget that all mission-critical systems of an office or agency achieve year-2000 compliance.

SEC. 11. OFFICE OF INSPECTOR GENERAL.

(a) IN GENERAL.—The Office of Inspector General of the Department shall be exempt from the requirements of this Act.

(b) REPORT.—The Inspector General of the Department shall semiannually submit a report to the Committee on Agriculture and the Committee on Government Reform and Oversight of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the progress of the Office of Inspector General regarding—

(1) year-2000 compliance; and

(2) the establishment of an information technology architecture for the Office of Inspector General of the Department.

SEC. 12. TECHNICAL AMENDMENT.

Section 13 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714k) is amended in the second sentence by striking ''section 5 or 11'' and inserting ''section 4, 5, or 11''.

SUMMARY OF THE USDA INFORMATION TECHNOLOGY REFORM AND YEAR 2000 COMPLIANCE ACT OF 1999

The bill:

Requires the Chief Information Officer to manage the design and implementation of an information technology architecture, based on strategic business plans, that maximizes the effectiveness and efficiency of USDA's program activities;

requires the Chief Information Officer to approve or disapprove all expenditures for information resources, and allows the Chief Information Officer to waive this authority for expenditures under $200,000;

permits the Secretary of Agriculture to transfer to the Chief Information Officer up to ten percent of each agency's information technology funds for year 2000 compliance, information technology acquisition or information resource management (this authority expires in 2003);

requires the Secretary of Agriculture to ensure the transfer of information technology funds does not result in a reduction in the number of employees in an agency;

requires the Chief Information Officer to manage the year 2000 computing crisis

throughout USDA agencies, between USDA and other federal, state and local agencies and between USDA and private and international partners;

makes the Chief Information Officer a presidential appointee, subject to Senate confirmation, thereby raising the stature of the Chief Information Officer in the department as envisioned by the Clinger-Cohen Act; and

requires an annual report from the Comptroller General regarding USDA's compliance with this act.

By Mr. DOMENICI (for himself, Mr. BINGAMAN, Mr. FRIST, Mr. LIEBERMAN, and Ms. SNOWE):

S. 951. A bill to amend the Internal Revenue Code of 1986 to establish permanent tax incentives for research and development, and for other purposes; to the Committee on Finance.

PRIVATE SECTOR RESEARCH AND DEVELOPMENT INVESTMENT ACT OF 1999

Mr. DOMENICI. Mr. President, today I am joining my cosponsors, Senators BINGAMAN, FRIST, LIEBERMAN, and SNOWE, in introducing the Private Sector Research and Development Investment Act of 1999.

This bill makes the research tax credit permanent and significantly improves the structure of that credit. Many Senators are for this extension, and it is high time, and for the permanentization of this credit.

This also adjusts the credit to today. That credit was put in place many years ago, and much of what it does doesn't fit today's industrial base, including many startup companies that cannot take the right kind of credit.

We have made some changes which will make it cost a little bit more, but I think the Finance Committee should take a look at some of the changes that are in this Domenici-Bingaman bill, because it will make the credit more effective and more available.

In March of 1998, 150 of our Nation's top decisionmakers met at MIT for the first national innovative summit. The summit leaders included CEOs, university presidents, labor leaders, Governors, Members of Congress, and senior administrative officials.

In essence, they conclude that in order to keep the United States of America on the cutting edge of research that can be applied to innovative things for America's future and for our businesses, that we must make this tax permanent, that dollar for dollar it is the best investment in both general research and specific research to keep America strong and competitive in the world.

When those people say dollar for dollar it is the most effective, they are saying it is more effective than programmatic assistance to research, which obviously is very necessary, and we continue to expand upon and have it grow. But if you don't make this permanent, you are losing a lot of research by American businesses, No. 1. If you don't correct it, you will lose the effectiveness among companies that need it the most. And third, you will see to it that more, rather than less, American companies do research overseas.

Research jobs are great jobs. They are just as much a part of America's basic prosperity as are the jobs that come from that research by way of products or activities.

Mr. President, advanced technologies drive a significant part of our nation's economic strength. Our economy and our standard of living depend on a constant influx of new technologies, processes, and products from our industries.

Many countries provide labor at lower costs than the United States. Thus, as any new product matures, competitors using overseas labor frequently find ways to undercut our production costs. We maintain our economic strength only by constantly improving our products through innovation. Maintaining and improving our national ability to innovate is critically important to the nation.

The majority of new products requires industrial research and development to reach the market stage. I want to encourage that research and development to create new products to ensure that our factories stay busy and that our workforce stays fully employed at high salaried jobs.

I want more of our large multi-national companies to select the United States as the location of their R&D. R&D done here creates American jobs. And since frequently the benefits of research in one area apply in another area, I want those spin-off benefits here, too.

Congress created the Research Tax Credit to encourage companies to perform research. But many studies document that the present form of this Tax Credit is not providing as much stimulation to industrial R&D as it could. Today, we're introducing legislation to improve the Research Tax Credit.

In March of 1998, 150 of our nation's top decision makers met at MIT, for the first National Innovation Summit. The Summit included corporate CEO's, university presidents, labor leaders, governors, members of Congress, and Senior Administration officials.

At the Summit, these experts discussed the health of the future national research base. More than three-quarters of them thought that the quality of that base would be no better or worse than it is today, with nearly one third projecting that it would be weaker.

The Summit participants singled out the Research Tax Credit as the policy measure with the greatest potential for a positive near-term impact. The Council on Competitiveness, who co-sponsored that Summit, stated that ''making the [Research] Tax Credit permanent reflected a widely share consensus among leaders whose companies and universities contribute decisively to the nation's economy.''

The single most important change in our bill is to make the Credit permanent. Many studies point out that the temporary nature of the Credit has prevented companies from building careful research strategies.

Many of my colleagues in Congress have also expressed interest in making the Credit permanent. But we're urging them to go beyond that action and, at the same time, address shortcomings that have been identified in the current Credit. I want to use the current enthusiasm for permanence to also craft a Credit that will better serve the nation.

For example, the current Credit references a company's research intensity back to 1984–88. That's too outdated to meet today's dynamic market conditions. Many companies are involved today in products that weren't even invented in 1984.

Our legislation allows a company to base their credit on their research intensity averaged over the preceding eight years. It also allows companies to stay with the current formulation of the Credit if they prefer.

Our bill builds other improvements into the Credit as well. For example, the Alternative Research Credit component has been criticized because it only rewards the maintenance level of a company's research, it does not provide significant motivation to increase research intensity. With our proposed changes, the Alternative Credit now incorporates the same 20 percent motivation for increased research intensity that is found in the regular Credit—this is a major improvement. We also increase the base level of the Alternative Credit significantly.

The current Credit has a provision that severely restricts the ability of start-up companies to fully benefit. Analysis by the Congressional Research Service showed that 5 our of 6 start-up companies received reduced benefits because of a current provision that limits their allowable increase in research expenditures.

I'm concerned when start-up companies aren't receiving full Credit. These are just the companies that drive the innovative cycle in this country; they are the ones that frequently bring out the newest leading-edge products. Our legislation thus drops this limitation and introduces additional help for start-up businesses.

Our legislation addresses several other shortcomings in the current Credit as well. Now there is a ''Basic Research Credit'' allowed, but rarely used. This should be encouraging research conducted at universities.

But that part of the Credit is now defined to include only research that does ''not have a specific commercial objective.'' There aren't many companies that want to support—much less admit to their stockholders that they are supporting—research with no commercial interest. The idea of this clause was to encourage support of long term research, which is a fine idea.

This is the kind of research that benefits far more than just the next product improvement. It can enable a whole

new product or service and we need to encourage it.

Our legislation adds major incentives for basic research by dropping the requirement that only increments above a baseline can be used and by including any research that is done for a consortium of U.S. companies or any research that is destined for open literature publication. We're also allowing this Credit to apply to research done in national labs.

And finally our legislation recognizes the importance of encouraging companies to use research capabilities wherever they exist in the country, whether in other businesses, universities, or national labs. The current credit disallows 35% of all expenses for research performed under an external contract—our legislation allows all such expenses to apply towards the Credit when the research is performed at a university, small business, or national laboratory.

In summary, this bill incorporates all the improvement suggested in other bills that primarily make the credit permanent and provide some increase in the alternative credit. But this bill goes further and corrects weaknesses in the current formulation of the Credit. I want to seize this opportunity to make the Research Tax Credit a tool that will truly meet the goals for which it was established.

The fact that this bill addresses significant shortcomings in the current Credit has not gone unnoticed. Spokesman for several groups that endorse this bill are here with us today. After Senator BINGAMAN speaks, I'll invite representatives from the Council on Competitiveness, the National Association of State Universities and Land Grant Colleges, the National Coalition for Advanced Manufacturing, and the American Association of Engineering Societies to add their perspectives.

With this new bill, we will significantly strengthen incentives for private companies to undertake research that leads to new processes, new services, and new products. The result will be stronger companies that are better positioned for global competition. Those stronger companies will hire people at higher salaries with real benefits to our national economy and workforce.

I ask unanimous consent that the text and a summary of the bill, section by section, be printed in the RECORD.

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

S. 951

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 ''Private Sector Research and Development Investment Act of 1999''.

SEC. 2. PERMANENT EXTENSION OF RESEARCH CREDIT.

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking subsection (h).

(b) CONFORMING AMENDMENT.—Section 45C(b)(1) of the Internal Revenue Code of 1986 is amended by striking subparagraph (D).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after June 30, 1999.

SEC. 3. IMPROVED ALTERNATIVE INCREMENTAL CREDIT.

(a) IN GENERAL.—Section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities), as amended by section 2, is amended by adding at the end the following new subsection:

''(h) ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

''(1) IN GENERAL.—At the election of the taxpayer, the credit under subsection (a)(1) shall be determined under this section by taking into account the modifications provided by this subsection.

''(2) DETERMINATION OF BASE AMOUNT.—

''(A) IN GENERAL.—In computing the base amount under subsection (c)—

''(i) notwithstanding subsection (c)(3), the fixed-base percentage shall be equal to 80 percent of the percentage which the aggregate qualified research expenses of the taxpayer for the base period is of the aggregate gross receipts of the taxpayer for the base period, and

''(ii) the minimum base amount under subsection (c)(2) shall not apply.

''(B) START-UP AND SMALL TAXPAYERS.—In computing the base amount under subsection (c), the gross receipts of a taxpayer for any taxable year in the base period shall be treated as at least equal to $1,000,000.

''(C) BASE PERIOD.—For purposes of this subsection, the base period is the 8-taxable year period preceding the taxable year (or, if shorter, the period the taxpayer (and any predecessor) has been in existence).

''(3) ELECTION.—An election under this subsection shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.''

(b) CONFORMING AMENDMENT.—Section 41(c) of the Internal Revenue Code of 1986 is amended by striking paragraph (4) and by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

SEC. 4. MODIFICATIONS TO CREDIT FOR BASIC RESEARCH.

(a) ELIMINATION OF INCREMENTAL REQUIREMENT.—

(1) IN GENERAL.—Paragraph (1) of section 41(e) of the Internal Revenue Code of 1986 (relating to credit allowable with respect to certain payments to qualified organizations for basic research) is amended to read as follows:

''(1) IN GENERAL.—The amount of basic research payments taken into account under subsection (a)(2) shall be determined in accordance with this subsection.''

(2) CONFORMING AMENDMENTS.—

(A) Section 41(a)(2) of such Code is amended by striking ''determined under subsection (e)(1)(A)'' and inserting ''for the taxable year''.

(B) Section 41(e) of such Code is amended by striking paragraphs (3), (4), and (5) and by redesignating paragraphs (6) and (7) as paragraphs (3) and (4), respectively.

(C) Section 41(e)(4) of such Code, as redesignated by subparagraph (B), is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(D) Clause (i) of section 170(e)(4)(B) of such Code is amended by striking ''section 41(e)(6)'' and inserting ''section 41(e)(3)''.

(b) BASIC RESEARCH.—

(1) SPECIFIC COMMERCIAL OBJECTIVE.—Section 41(e)(4) of the Internal Revenue Code of 1986 (relating to definitions and special rules), as redesignated by subsection (a)(2)(B), is amended by adding at the end the following new subparagraph:

''(E) SPECIFIC COMMERCIAL OBJECTIVE.—For purposes of subparagraph (A), research shall not be treated as having a specific commercial objective if the results of such research are to be published in a timely manner as to be available to the general public prior to their use for a commercial purpose.''

(2) EXCLUSIONS FROM BASIC RESEARCH.—Clause (ii) of section 41(e)(4)(A) of such Code (relating to definitions and special rules), as redesignated by subsection (a), is amended to read as follows:

''(ii) basic research in the arts and humanities.''

(c) EXPANSION OF CREDIT TO RESEARCH DONE AT FEDERAL LABORATORIES.—Section 41(e)(3) of the Internal Revenue Code of 1986, as redesignated by subsection (a), is amended by adding at the end the following new subparagraph:

''(E) FEDERAL LABORATORIES.—Any organization which is a Federal laboratory (as defined in section 4(6) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703(6)).''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

SEC. 5. CREDIT FOR EXPENSES ATTRIBUTABLE TO CERTAIN COLLABORATIVE RESEARCH CONSORTIA.

(a) CREDIT FOR EXPENSES ATTRIBUTABLE TO CERTAIN COLLABORATIVE RESEARCH CONSORTIA.—Subsection (a) of section 41 of the Internal Revenue Code of 1986 (relating to credit for increasing research activities) is amended by striking ''and'' at the end of paragraph (1), striking the period at the end of paragraph (2) and inserting '', and '', and by adding at the end the following new paragraph:

''(3) 20 percent of the amounts paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the taxable year (including as contributions) to a qualified research consortium.''

(b) QUALIFIED RESEARCH CONSORTIUM DEFINED.—Subsection (f) of section 41 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(6) QUALIFIED RESEARCH CONSORTIUM.—The term 'qualified research consortium' means any organization—

''(A) which is—

''(i) described in section 501(c)(3) and is exempt from tax under section 501(a) and is organized and operated primarily to conduct scientific or engineering research, or

''(ii) organized and operated primarily to conduct scientific or engineering research in the public interest (within the meaning of section 501(c)(3)),

''(B) which is not a private foundation,

''(C) to which at least 5 unrelated persons paid or incurred during the calendar year in which the taxable year of the organization begins amounts (including as contributions) to such organization for scientific or engineering research, and

''(D) to which no single person paid or incurred (including as contributions) during such calendar year an amount equal to more than 50 percent of the total amounts received by such organization during such calendar year for scientific or engineering research.

All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as related persons for purposes of subparagraph (C) and as a single person for purposes of subparagraph (D).''

(c) CONFORMING AMENDMENT.—Paragraph (3) of section 41(b) of the Internal Revenue Code of 1986 is amended by striking subparagraph (C).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

SEC. 6. IMPROVEMENT TO CREDIT FOR SMALL BUSINESSES AND RESEARCH PARTNERSHIPS.

(a) ASSISTANCE TO SMALL AND START-UP BUSINESSES.—The Secretary of the Treasury or the Secretary's delegate shall take such actions as are appropriate to—

(1) provide assistance to small and start-up businesses in complying with the requirements of section 41 of the Internal Revenue Code of 1986, and

(2) reduce the costs of such compliance.

(b) REPEAL OF LIMITATION ON CONTRACT RESEARCH EXPENSES PAID TO SMALL BUSINESSES, UNIVERSITIES, AND FEDERAL LABORATORIES.—Section 41(b)(3) of the Internal Revenue Code of 1986, as amended by section 5(c), is amended by adding at the end the following new subparagraph:

''(C) AMOUNTS PAID TO ELIGIBLE SMALL BUSINESSES, UNIVERSITIES, AND FEDERAL LABORATORIES.—

''(i) IN GENERAL.—In the case of amounts paid by the taxpayer to an eligible small business, an institution of higher education (as defined in section 3304(f)), or an organization which is a Federal laboratory (as defined in subsection (e)(3)(E)), subparagraph (A) shall be applied by substituting '100 percent' for '65 percent'.

''(ii) ELIGIBLE SMALL BUSINESS.—For purposes of this subparagraph, the term 'eligible small business' means a small business with respect to which the taxpayer does not own (within the meaning of section 318) 50 percent or more of—

''(I) in the case of a corporation, the outstanding stock of the corporation (either by vote or value), and

''(II) in the case of a small business which is not a corporation, the capital and profits interests of the small business.

''(iii) SMALL BUSINESS.—For purposes of this subparagraph—

''(I) IN GENERAL.—The term 'small business' means, with respect to any calendar year, any person if the annual average number of employees employed by such person during either of the 2 preceding calendar years was 500 or fewer. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

''(II) STARTUPS, CONTROLLED GROUPS, AND PREDECESSORS.—Rules similar to the rules of subparagraphs (B) and (D) of section 220(c)(4) shall apply for purposes of this clause.''

(c) CREDIT FOR PATENT FILING FEES.—Section 41(a) of the Internal Revenue Code of 1986, as amended by section 5(a), is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) 20 percent of the patent filing fees paid or incurred by a small business (as defined in subsection (b)(3)(C)(iii)) to the United States or to any foreign government in carrying on any trade or business.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

DOMENICI-BINGAMAN RESEARCH TAX CREDIT BILL

This bill addresses two broad goals: establishes a permanent Credit, and strengthens the formulation of the Credit.

The Bill enhances the Credit received by all users of the regular Research Tax Credit. Thus, all companies benefiting from its current formulation are positively impacted. The changes in the Credit are focused in the Alternative Credit and Basic Research Credit portions of the current Credit legislation and represent significant enhancements to these options.

The Bill addresses several concerns with the existing Credit: base period used for the regular credit, 1984–88, is out-dated; 50% rule precludes most startups from gaining full credit; basic research credit is very difficult to use, and alternative credit provides no strong incentive for increased research intensity.

In addition to permanence, the Bill increases the maintenance level of the alternative credit to 4%. (Thus the Bill meets the goals of some groups who favor simply permanence and 1% additional to the alternative credit). In addition, the bill; establishes a 20% marginal rate for increased intensity for users of the alternative credit; changes the base period for alternative credit users to an 8 year average; eliminates the 50% rule for users of the alternative credit; encourages industrial partnerships with universities and national labs; expands definition of basic research to include all published work; enables basic research at FFRDCs to count toward their basic research credit; qualifies 100% of contract research accomplished at universities, national labs, and small businesses; encourages establishment of research-driven consortia by providing 20% credit for their research expenses; provides a phase-in of credit for start-up businesses, and enables small businesses to count patent filing fees toward research expenses.

With these enhancements, the Domenici-Bingaman Bill provides a permanent Research Tax Credit that address shortcomings in the current formulation of the Credit. Furthermore, the Bill meets the goals of constituents who favor only permanence or only permanence plus an increase in the alternative credit.

SUMMARY

Joint Tax 10-yr evaluations:	
Section II: Make the Credit permanent	$26.3 B
Section III: Improve the Alternative Investment Credit, AIC, by increasing the Credit allowed for the base maintenance level of R&E expenditures, and add an incremental incentive package onto the AIC. Create a floating 8-year base period for the AIC. Drop the ''50%'' rule for the AIC. Insert a transition approach to help startups	3.8
Section IV: Provide a flat credit for basic research expenditures at universities, small businesses, and national labs. Improve definition of basic research	5.0
Section V: Provide flat credit for consortia-based research	0.1
Section VI: Increase the allowance for contract research conducted at universities, small businesses, and national labs from 65% to 100%. Add patent filing expenses as qualified expenditures for small businesses	[1]3??
Total	38.2

[1] Joint Tax did not score Section VI yet. A version of Section VI was in S. 2072 last year, except that it increased the allowance for everybody, including large businesses. They scored that at $4.8B. The score this year ''has to'' be well below $4.8B, I used $3 for talking purposes.

NOTES—TO JOINT TAX SCORES

Section II duplicates Senator BOXER's S. 195 by just making the Credit permanent, Representative SENSENBRENNER has the same version in the House.

Sections II and III together duplicate and extend the approach of the Baucus/Hatch S. 680 with 36 cosponsors and the Johnson/Matsui Bill in the House. These two sections give permanence plus increase the AIC by slightly more than 1%. They also add major enhancements to the AIC by establishing an option for companies to realize a 20% incremental benefit. The Baucus/Hatch version is supported by the R&D Tax Coalition, using their mantra of ''Permanence plus 1%.'' Sections II and III do everything that the R&D Tax Coalition wants and a lot more.

Section IV is expensive at $5 Billion, but gains the strongest possible support from universities. This section changes the definition of basic research, but more important, lets contract research at a university (+SB or lab) be treated as a flat 20% credit, not above an incremental base. This is a tremendous incentive to fund expenditures for basic research at universities.

Section V encourages consortia to fund research. Senator has encouraged consortia formation in other ways, this continues his leadership in this area.

Section VI is a further major incentive for companies to fund research at universities, labs, and small businesses.

Mr. BINGAMAN. Mr. President, I am pleased to join with my co-sponsors, Senators DOMENICI, LIEBERMAN, FRIST, and SNOWE in introducing the Private Sector Research and Development Investment Act of 1999. This bill will finally make the Research and Experimentation Tax Credit permanent, a provision of the federal tax code that was first enacted in 1981, and has been extended 9 times since.

In addition to the provision of permanence, our bill has other improvements that I believe will address many of the shortcomings of existing law, and will bring the code more in synch with the ways industry is performing R&D today. But before I speak to some of those provisions, I would like to spend a little time discussing why I think we need to enact this legislation now.

I think it is fair to say that the nation's economy owes much of its resurgence to the increases in productivity attributable to the infusion of high technology products and services. Our nation is today in the enviable position of not only having the greatest access to these products, but also being the primary provider of these products for the rest of the world.

These capabilities have enabled American businesses to be in a position of world leadership in areas as diverse as medical and bio technologies, microelectronics, and financial services.

In order for us to insure that the economic engine continues to run at peak form, we must assure that there is a continual infusion of new technologies

that will spawn the products and services of the future market. Many economists state that the best way to do this is to create a stable incentive for research investment and an environment where businesses have the flexibility to choose among all the options available to perform the research. A policy which achieves these goals will provide businesses with the long-term incentive to invest in both the research and the people that will create the next generation of commercially successful products.

That is exactly what the ''Private Sector Research and Development Investment Act of 1999'' does. First, it makes Section 41 of the Internal Revenue Code permanent, creating a stable long-term environment for investment. But it goes beyond that.

Present law does not allow all companies to benefit equally from the Tax Credit. Some companies, simply as a result of where they were in the business cycle in the late 80's, find that they cannot attain the full benefit of the credit. And, if the company did not exist at all in the 80's, as is the case with most of the Internet and many of the biotech start-up firms, there is simply no way at all for them to access the full credit rate. This is simply not fair. Our bill proposes to correct that inequity by making the 20% marginal rate available to all companies that are growing their research investment.

With much of the nation's research talent residing in our universities and federal laboratories, we are proposing to extend the full Tax Credit for research investments companies make in those institutions.

I am particularly pleased with the part of this provision that provides a more cost effective way for companies to invest in the education of our future generation of scientists and engineers at our universities. If this bill becomes law, as many as 3000 additional masters and doctoral level engineers and scientists could be produced each year, with up to 1000 of these being women and minorities, all at no additional cost to businesses.

I fully expect that the ''Private Sector Research and Development Investment Act of 1999'' will accelerate business investment in universities, growing the number of trained scientists and engineers even faster. At a time when there has been much debate over providing additional employment visas to foreign engineers, this bill provides one mechanism for educating qualified Americans to fill these high tech jobs.

As the cost of doing research continues to escalate, and companies find it more difficult to go it alone, our bill proposes that the research investments companies make in research consortia with other businesses, universities, and federal laboratories be fully available for the Tax Credit. I have seen firsthand, at places like Sandia and Los Alamos National Laboratories, the results of consortia partnerships between industry and our national labs, and I believe that it is in our nation's best interest to promote these research arrangements.

All of our studies indicate that small businesses are the ''high test'' fuel of the nation's economy, producing more and highly paid jobs. Yet it is this group of companies that have the hardest time in accessing the Tax Credit under existing law. We propose to modify the law so that small businesses have greater benefit in their early years, when the value of the credit can have the greatest impact on a rapidly growing, but often cash-limited, company.

Finally, to assure that these small businesses are truly able to compete in the global market and to protect their intellectual assets, we are proposing that the full value of the Tax Credit be applied to their patent filing fees, both here and abroad.

In speaking with owners of small, high tech businesses in New Mexico, I hear that anything we can do to increase the capital funds available to these businesses as they are starting up is critical to their success. These two special provisions for small businesses are positive steps in that direction.

Mr. President, many of my fellow Senators and Members of the House have already endorsed the concept of a permanent R&D Tax Credit. With that base of enthusiasm already in place, I encourage my colleagues to seize the opportunity to move forward and complete the job. Let's make it permanent, and let's make it right.

Mr. LIEBERMAN. Mr. President, I am pleased to join Senators DOMENICI and BINGAMAN today in supporting the Private Sector Research and Development Investment Act of 1999. This bill recognizes that we are moving toward a New Economy and supports the engine of that New Economy. Let me explain.

In this decade, we have returned to our nation's historic growth rate of 3% plus growth. We haven't seen this in 30 years, but now we are back there again. We know what the last few years of growth feel like—America is starting to feel like an opportunity society again. We are moving toward some fundamental changes in our economic structure, toward a knowledge-based economy and further away from a resource-based economy. Key to these high growth rates has been overall productivity gains that are back in the 2% range, which has enabled the United States to experience real growth and real growth in incomes without significant inflation. A significant part of our productivity gains have come from gains in manufacturing productivity, which has approached 4% in each of the past three years. These manufacturing gains come directly from innovation, and in recent years these are largely driven by innovation in information technology—one of the most amazing results of R&D in this century from the invention of the transistor over 50 years ago to the development of the Internet today. And it looks like we are starting to get noticeable productivity gains in our services sector as well, also driven by information technology. The digital revolution is affecting every sector of our economy. As Andy Grove, Chairman of Intel, said, ''In five years, there will be no Internet companies. Every company will be an Internet company,'' or it won't be in business.

Some analysts look at the stock market today and compare it to the 1600's Dutch tulip bulbs investment bubble, maybe the largest bubble of all time, and its subsequent crash. The difference is that tulip bulbs did not fundamentally alter the means of communication and increase productivity as the Internet does.

Pharmaceuticals and health care is another area in which our country's investment in R&D has catapulted us above our competitors. A recent study from the Department of Commerce found that the United States is decades ahead of other countries in the pharmaceutical and health related industries directly because of our investment in R&D. In the past 50 years, researchers from U.S. pharmaceutical companies have discovered and developed breakthrough treatments for asthma, heart disease, osteoporosis, HIV/AIDS, stroke, ulcers, and glaucoma. And they have developed vaccines against previously common causes of infant death including polio, rubella, influenza B and whooping cough. Why is the U.S. pharmaceutical industry the number one global innovator in medicine? According to Raymond Gilmartin, Chairman, President and CEO of Merck & Co., because ''The U.S. pharmaceutical industry leads the world in its commitment to research. . .''

There have been at least a dozen major economic studies, including those of Nobel Prize winner Robert Solow, which conclude that technological progress accounts for 50%, and lately considerable more, of our total growth and has twice the impact on economic growth as labor or capital. For the long term health of our economy, we need to invest now in activities that will have a future payoff in innovation and productivity. A one percent increase in our nation's investment in research results in a productivity increase of 0.23%. We need to ensure our future by creating the institutions and incentives to increase R&D investment in the United States. This Act will replace our current, dysfunctional system of on-again, off-again R&D tax credits with a tax credit that is reliably permanent. In the global economy we will have to not only outperform our competitors, but out-innovate them. Giving our industry the tools to support their own innovation is a timely act.

This Act meets the goals of some groups who favor simply making the credit permanent and increasing the alternative credit by one percent, as does

the bill introduced by my esteemed colleague Senator HATCH. I am a cosponsor of Senator HATCH's bill. I believe we need to make the R&D credit permanent. But I feel strongly that we need further changes to the Act to increase its effectiveness, make it more accessible to small and start up businesses, update the credit to account for changes we are seeing in industry and, importantly, to complement the relationship between Federal and private sector research. The bill that Senators DOMENICI, BINGAMAN, FRIST, SNOWE, and myself are introducing makes these important changes, as well as making the R&D tax credit permanent.

Industry research is largely dependent on the basic research undertaken by the Federal government. Because industry itself does not perform basic research—84% of industry research is concentrated on product development, the final stage of R&D—the private sector must draw on government-funded research to develop ideas for new market products. Of all papers cited in U.S. industry patents, 73% are from government and non-profit funded research. This marriage of basic Federal research and applied private research is essential. Yet, as a percent of GDP, Federal investment in R&D has been nearly halved over the last 30 years. We are living off of the fruits of basic research from the mid-1960s. In addition, the national labs and universities are facing a brain drain by the private sector as engineers and scientists are in high demand and increasingly in short supply. The private sector recognizes the importance of work accomplished through Federal funding and knows this is a problem that needs to be addressed. This bill encourages collaboration between private sector research and national labs and universities and offers a financial incentive to use the national labs and universities. Specifically, the Act encourages industry to use the federally funded programs by qualifying 100% of contract research accomplished at universities, national labs, and small businesses. It also enables basic research at Federally Funded R&D Centers to count toward the basic research credit. By expanding the credit to research done in consortia, the Act also recognizes that research today is more often done in collaboration than in isolation.

The fastest method of moving research into the marketplace is often through small, startup companies. The Act updates the tax credit rules to accommodate the special R&D cycles faced by these companies. By supporting the small but crucial R&D efforts of new technology-based firms, the Act nurtures the very companies who contribute disproportionately to our national productivity and employment growth.

The Act also updates our view of R&D. For the alternative credit, it calculates R&D expenditures with respect to a rolling baseline, rather than a fixed 1980's baseline that is increasingly remote and outdated as time passes.

Mr. President, I believe there has been a growing awareness among Senators over the past couple of years that technology has been one of the driving forces behind our fantastic economic growth in this country. Despite that we are finally out of the red on the budget and finally in the black, we know that continued control and restraint must be exercised on the budget and we will have to make difficult choices about what programs to fund and what tax cuts to make. But now that we know that technological progress is responsible for 50% or more of economic growth, I think we owe it to ourselves to encourage such progress whenever possible. It is an investment in our future which we cannot do without.

By Mr. SPECTER:

S. 952. A bill to expand an antitrust exemption applicable to professional sports leagues and to require, as a condition of such an exemption, participation by professional football and major league baseball sports leagues in the financing of certain stadium construction activities, and for other purposes; to the Committee on the Judiciary.

STADIUM FINANCING AND FRANCHISE RELOCATION ACT OF 1999

Mr. SPECTER. Mr. President, I have sought recognition today to introduce legislation, the Stadium Financing and Franchise Relocation Act of 1999, which is designed to respond to the need for stabilizing major league baseball and football franchises located in metropolitan areas of the United States.

I have long been concerned with the pressure put upon communities by baseball and football clubs seeking new playing facilities, where, with the gun to their heads of the team's overt or tacit threat to move to another city, government leaders feel compelled to have taxpayers finance a lion's share of ballpark and stadium construction costs. As those costs rise—a present state-of-the-art new facility goes for close to $300 million—those pressures have intensified.

Professional sports teams are entrusted with a public interest. The movement of the Dodgers from Brooklyn, which broke the hearts of millions of their Flatbush followers, was the start of pirating of sports franchises in America, and should never have been allowed. It was accompanied, of course, by the flight of the Giants from New York to San Francisco.

Since then, the matter has proliferated to an almost absurd degree. It is hard to understand why the taxpayers of Maryland and Baltimore had to be in a bidding contest for the Cleveland Browns, when Baltimore should have had its own team, the Colts, instead of the Colts moving out of Baltimore in the middle of the night to go to Indianapolis.

I have participated in America's love affair with sports since I was a youngster in Wichita, Kansas, reading the box scores in the Wichita Eagle every morning because of my love and passion for baseball. I have been attending Phillies and Eagles games, and, when I can, Pirates and Steelers games, because of my love for each of these sports. They are tremendously exciting.

Basically, it was unfair for the old Browns to have been taken out of Cleveland, but now I am glad to hail the arrival of the new Browns, even though it was at great cost to the taxpayers, and deprived the Eagles of a well-earned first overall draft pick.

The value of sports franchises to their owners has ballooned in recent years. Jeffrey Lurie bought the Philadelphia Eagles in 1995 for a then-high price of $185 million. Last year, the successful bidder for an expansion NFL franchise in Cleveland paid $530 million. The bidding for the Washington Redskins franchise (including Cooke Stadium) has surpassed $800 million. There also seems to be no limit to the amount of money available to club owners when it comes to paying players—witness Mike Piazza's signing last year of a $91 million ten-year contract with the New York Mets.

New ballparks and stadiums clearly provide an enhancement to the culture and tax base of communities. That said, however, there is also no doubt that having a new ballpark or stadium significantly increases the value of a sports franchise for its owner. In December, 1998, Forbes Magazine estimated the net worth of the nation's professional sports teams. Seven of the top ten valued baseball franchises and eight of the top ten valued football franchises were in cities with ballparks and stadiums built or approved to be built since 1990.

In January, 1999, the Philadelphia Inquirer quoted Jeffrey Stein, managing director of McDonald Investments, a Cleveland brokerage house, who said: ''New stadiums, in and of themselves, significantly enhance the value of a team.'' He cited the Cleveland Indians Baseball Club as an example. In the December, 1998, Forbes article, the value of that team, which now plays in beautiful new Jacobs Field, was listed as $322 million, the third highest in baseball. In 1986, the Indians had been purchased for $35 million. In 1993, the last year the Indians played at Cleveland Stadium, the team had revenues of $54.1 million. Its 1997 revenues were $140 million.

The value of these sports franchises to a community is reflected in the astronomical broadcast rights fees the sports leagues command in the U.S. marketplace. Ten years ago, the National Football League received $970 million a year for its network television rights. The NFL now receives three times that amount, through contracts with TV and cable networks that pay the League $17.6 billion for its TV rights over an 8-year period commencing with the 1998 season, an average of $2.2 billion per year, while Major

League Baseball annually derives more than $400 million from this source. These revenues are shared by the clubs and their players.

One would think some of that giant revenue windfall might trickle down and be used to help finance new ballparks and stadiums, which produce greatly enhanced revenues for team owners, yet it seems the more TV money a league makes, the more its clubs demand from local taxpayers to fund the construction of new playing facilities. The irony of this is that none of these huge TV revenues would accrue to the clubs and their players if the leagues did not have the benefit of an antitrust exemption permitting clubs to pool their TV rights.

In the interest of fairness, I believe the leagues should, with a small portion of these TV revenues, assist local communities in the financing of new playing facilities for the leagues' clubs, as a condition of their continuing to receive the antitrust exemption which permits pooling of TV rights.

I also believe the leagues should have an antitrust exemption which permits them to deny a club's request to move, thus minimizing the implied threat to move which has characteristically accompanied demands upon local government for a new ballpark or stadium.

Both these objectives are met by the legislation I am offering today. It will clarify the broadcast antitrust exemption given to sports leagues and give the National Football League and Major League Baseball an opportunity to continue to receive it by agreeing to place 10% of their network TV revenues into a trust fund to be used to help finance construction or renovation of ballparks and stadiums for use by their teams. Trust fund revenues will be restricted to such use and will be excluded from the league's gross receipts which are distributed to clubs and players.

Money from the trust fund will be provided to finance up to one-half the cost of construction or renovation of ballparks and stadiums on a matching fund basis, conditioned upon the local government's agreement to provide at least one dollar of financing for every two dollars to be provided from the trust fund.

Thus, for example, if the cost of constructing a new stadium for the Philadelphia Eagles, or for the Pittsburgh Steelers, were $280 million, the National Football League would be obliged to provide $140 million to each such project, on condition that the city and state, combined, provided at least $70 million. Ideally, the League would pay one-half the cost out of the trust fund and the other half would be financed by the club owner and the local government.

The legislation will also enlarge the antitrust exemption given to baseball, basketball, football, and hockey leagues to permit those leagues to deny a member club's request to move its franchise to a different city.

My bill will take effect on the date of its passage, and will apply to all network TV revenues thereafter received by the leagues, and to all new ballpark and stadium facilities not yet constructed, such as the construction now underway in Cleveland and Pittsburgh.

I have sought recognition today to introduce the Stadium Financing and Franchise Relocation Act of 1999. This legislation would require that the National Football League and Major League Baseball act to provide financing for 50 percent of new stadium construction costs, and that the National Football League be given a limited antitrust exemption to regulate franchise moves.

This legislation is necessary because baseball and football have for too long had a public-be-damned attitude. At the present time, major league sports is out of control on franchise moves for football teams and the demands upon cities and states for exorbitant construction costs is a form of legalized extortion in major league sports.

The National Football League has a multi-year television contract for $17.6 billion which it enjoys by virtue of a special status and antitrust exemption which they have for revenue sharing or else they could not collect television receipts of $17 billion. But, at the same time, when they are asked to step forward and help with stadium construction costs, which are minimal compared to their television receipts, they put one community in competition with another community. A franchise, being what it is, leaves a city like Hartford and a state like Connecticut to offer $375 million to lure the Patriots from Massachusetts to Connecticut.

This is a problem which is particularly acute for my State, Pennsylvania, which is now looking at the construction of four new stadiums. Two are now under construction in western Pennsylvania—Pittsburgh for the Pirates and the Steelers—and two more are being sought in eastern Pennsylvania for the Phillies and for the Eagles. It is a $1 billion price tag which we are looking at now, which is significant for public funding, especially in a context where our schools are under funded, where our housing is in need of assistance, where we need funds for child assistance, where we need funds for transition from welfare to work, where we need funds for highways, and for so many other important matters. But, understandably, a NFL franchise is a very major matter for the prestige of a city and also for the economy of a city. And a major league baseball franchise, similarly, is a major matter for the economy and the prestige of a city.

You have a situation, for example, where the Colts left Baltimore in the middle of the night for Indianapolis. Then there was a bidding war for the Browns, which left Cleveland to go to Baltimore at an enormous cost to the taxpayers of Maryland and Baltimore. Indianapolis ought to have a football team, but they ought not to have Baltimore's football team. Similarly, Cleveland ought to be able to retain the Browns. It has been a matter of great pride for Cleveland for many, many years.

The start occurred in 1958 when the Dodgers left Brooklyn to go to Los Angeles. Brooklyn had no more precious possession than ''Dem Bums,'' the Dodgers. And I recall as a youngster the 1941 World Series, Mickey Owens' famous fumble, dropping of the third strike, and the tremendous tradition that the Dodgers had with Jackie Robinson and Pee Wee Reese in the Pennant races. And off they went to Los Angeles. Los Angeles should have had a baseball team, but not Brooklyn's baseball team. And they had a twofer, they took the Giants out of New York and put them in San Francisco at the same time.

Baseball has had an opportunity, to some extent, to control franchise moves because baseball has an unlimited antitrust exemption. And they have it in a very curious, illogical way. Justice Oliver Wendell Holmes ruled in the 1920s that baseball was a sport and not involved in interstate commerce and therefore exempt. That has been an item which has been out of touch with reality for a long time. Justice Blackmun said baseball was a big business, in a Supreme Court decision, and involved in interstate commerce. But since it had been unregulated with the antitrust exemption for so long, it has been left to Congress to make a change.

It may be that we ought to make a change and take away the antitrust exemption from baseball generally. Baseball fiercely resists any contribution to stadium construction costs—fiercely resists with a lobbying campaign, which is now underway, of great intensity. I will not list the cosponsors who have prospectively dropped off this bill because of that lobbying.

I am introducing this bill on behalf of Senator HATCH, chairman of the Judiciary Committee, Senator BIDEN, former chairman of the Judiciary Committee, and myself. We had a hearing in the Antitrust Subcommittee of Judiciary where I serve, and I asked the head of the Antitrust Division of the Department of Justice and the Chairman of the Federal Trade Commission to take a look at revoking baseball's antitrust exemption totally. Baseball has not been responsible in dealing with salary caps and with revenue sharing. So there would be some equality and some parity for cities like Pittsburgh, small cities, where you have the financial power of the New York Yankees dominating the league, buying up all the players; where you have Mr. Murdoch acquiring the Dodgers for a giant price in connection with his satellite ideas and with television revenues and the superstation which Atlanta now has.

Here you have a goose which is laying a golden egg and baseball has not

faced up to fairness in changing its approach to dealing with the realities of the market and has not undertaken the salary caps and the revenue sharing necessary to stabilize baseball.

So this bill goes, to a limited extent, on conditioning baseball's continuation of its antitrust exemption to helping with stadium construction costs. I want them to help build a stadium for the Philadelphia Phillies. I want them to help on the construction costs for the Pittsburgh Pirates. I went them to help on construction costs for new teams, where cities are facing the reality of either spending hundreds of millions of dollars for these new stadiums, or having the teams flee to other cities. That is something baseball ought to face up to, even though it is true that baseball has a different situation from football, because baseball's television revenues are lesser. But there has to be some equality and there has to be some parity. Or if baseball wants to function like any other business, let them do so, but without the antitrust exemption, and let's see what will happen to those giant salaries for the baseball players and those tremendous rates and the way baseball operates, if it does not have an antitrust exemption which is very special and unique.

Football has an antitrust exemption as to revenue sharing. Without that exemption they could not have the $17 billion multi-year television contract. They have plenty of funds to face up to stadium construction costs for the Pittsburgh Steelers and for the Philadelphia Eagles and for other teams. The facts are not yet before the public, but I hear the rumors that football is putting up a very substantial sum to have the Patriots remain in Massachusetts to top the bid of Connecticut. Connecticut is a television market, according to the media, about 24th. Boston, MA, is a media market about 6th. And the National Football League wants to protect its media market so they will put up a substantial sum of money to accomplish that.

It ought to be regularized and they ought to have a specific obligation. And 50 percent is not too much for the leagues to contribute. That would leave the owners with 25 percent and would still leave the public with 25 percent. One of the prospective cosponsors dropped off the bill because he does not want to be associated with even 25 percent for the public. But I suggest when the raiders—I am not talking about the Oakland Raiders; I am talking about the sports franchise raiders coming to his State, which I shall not name—go after his baseball team and go after his football team, watch the scurrying around to pay a lot more than 25 percent unless there is some leveraging and some compulsion.

Baseball and football are not going to face up to a fair allocation of funds if they are left to their own devices. But the Congress of the United States does have control of the antitrust exemption and we can take it away from baseball or we can limit it for baseball. And we can take away, if we choose, the football antitrust exemption on revenue sharing. So I do believe this is a matter which is of significant public interest. When a city like Hartford and a State like Connecticut bids $375 million of funds which could obviously be used better; where Pennsylvania is looking at more than $1 billion in four new stadiums at a time when $17 billion comes to the NFL, and the salaries are astronomical. If the leagues are to have this exemption, if they are to have this special break, they ought to face up to some public responsibility.

The second part of this legislation would grant football a limited antitrust exemption so they could regulate franchise moves. When the Raiders moved from Oakland to Los Angeles, there was a multimillion-dollar lawsuit which the NFL had to pay. So they are reluctant to take a stand on exercising their league rules which require three-fourths approval. But, if they had an antitrust exemption to this limited extent, then they would be in a position to ameliorate the larceny. Maybe it would be petit larceny instead of grand larceny. But I think that kind of antitrust exemption would be worthwhile.

As you can tell, I feel very strongly about this subject. I have been a sports fan since I was 8 years old—perhaps 5 years old when my family, living in Wichita, KS, made a trip to Chicago for the World's Fair and I became a Cubs fan. And I became a Phillies fan when I moved to Philadelphia more than a half century ago. And I am a Pirates fan, too, except when they are playing the Phillies.

If you lived in Wichita, KS, when the morning paper came, the major item of interest would be the sports page and the box scores. And I am an Eagles fan and a Steelers fan and held season tickets as early as 1958. When the Dodgers and Giants moved away from Brooklyn and New York City, I thought that was really a very serious breach. Such moves have a great impact on the public, and we ought to stop this legalized extortion, and we ought to get a fair share for the tremendous antitrust break which baseball and football enjoy.

By Mr. SMITH of New Hampshire:

S. 954. A bill to amend title 18, United States Code, to protect citizens' rights under the second amendment to obtain firearms for legal use, and for other purposes; to the Committee on the Judiciary.

SECOND AMENDMENT PRESERVATION ACT OF 1999

Mr. SMITH of New Hampshire. Mr. President, I rise today to introduce the Second Amendment Preservation Act of 1999.

Mr. President, my bill is intended to address the lawsuits that have been filed by various municipal governments against firearms manufacturers. These lawsuits are premised on the novel theory that manufacturers in full compliance with all of the laws governing the production of their products can nevertheless be held liable for the criminal misuse of those products by individuals who are completely beyond their control. This radical notion is flatly contrary to the principle of individual responsibility on which the tort laws of our Nation are based.

In at least some cases, Mr. President, these lawsuits seem to be intended to subject firearms manufacturers, importers and dealers to legal costs that are so onerous that they may not be able to defend themselves, or indeed be able to remain in business. A majority of firearms manufacturers, importers and dealers are small, privately-owned businesses that cannot afford to bear the legal costs of defending themselves in a large number of judicial forums. Moreover, compared to most firearms manufacturers, importers and dealers, States and local governments are large and relatively wealthy entities that are able to spend large amounts of taxpayers' dollars on wars of attrition against small business.

Mr. President, these lawsuits represent an effort by social activists and trial lawyers to use the Nation's judiciary to secure victories against the firearms industry that they never would be able to achieve through the legislative process. In fact, the firearms industry won't be the last target of these lawsuits. In a January 31, 1999, article in the Washington Post, plaintiffs' attorney John Coale stated ''. . . we are interested in taking a close look at the exorbitant prices of prescription drugs for the elderly, for example.'' ''Unless the courts reject our approach,'' Coale continued, ''we will continue to utilize it to tackle industry bullies.''

Thankfully, Mr. President, the public is not fooled. A December, 1998, survey of 1,008 U.S. adults by DecisionQuest, a jury consulting firm, found that 66.2% of American adults oppose these lawsuits against firearms manufacturers. Only 19.3% of Americans believe that these suits are justified.

Even some anti-gun elements of the media oppose these lawsuits. A March 1, 1999, editorial in the Boston Globe stated that ''. . . guns should be controlled by the legislative process rather than through litigation.'' ''gun makers may be responsible for flaws in their products that lead to injury or death,'' the editorial continued. ''Making manufacturers liable for the actions of others,'' the editorial concluded, ''. . . stretches the boundaries beyond reasonable limits . . . .''

Mr. President, I believe that fairness requires that a unit of government that undertakes an unsuccessful ''fishing expedition'' against a firearms manufacturer, importer or dealer should bear the costs of that business in defending itself against such an frivolous and unwarranted civil action. Fairness also requires that taxpayers not be required to pay millions of dollars to wealthy attorneys, out of

awards that are intended, at least in part, to benefit the victims of crime.

The second amendment to the Constitution of the United States requires that Congress must respond to actions that are intended to, and that would have the effect of, nullifying that provision of the Bill of Rights. Congress has the power under the second amendment, and under the Commerce Clause, to take appropriate action to protect the rights of citizens to obtain and own firearms.

Onr action that Congress may take, Mr. President, is to provide protection from excessive and unwarranted legal fees. The Second Amendment Preservation Act, which I am introducing today, provides that protection. My bill limits attorneys' fees to plaintiffs in civil lawsuits that seek ''to hold a firearms manufacturer, importer, or dealer liable for damages caused by the unlawful or tortuous use of a firearm by a person not employed by or affiliated with the manufacturer, dealer, or importer.'' Under my bill, those fees are limited to the lesser of $150 per hour, plus expenses, or 10% of the amount that the plaintiff is awarded in the action.

Further, my bill provides that in lawsuits in which the defendant is found by the court to be ''not wholly or primarily liable for the damages sought,'' the plaintiff must reimburse the defendant for reasonable attorney's fees and costs.

Finally, Mr. President, my bill provides that if a court strikes down this legislation as unconstitutional, the decision is directly appealable as of right to the Supreme Court of the United States.

Mr. President, I ask unanimous consent that the text of my bill, the Second Amendment Preservation Act, be printed in the RECORD.

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

S. 954

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 ''Second Amendment Preservation Act of 1999''.

SEC. 2. FINDINGS.

Congress finds that—

(1) a number of State and local governments have commenced civil actions, or are considering commencing civil actions, against manufacturers, importers, and dealers of firearms based on the unlawful use of the firearms by a purchaser or other person;

(2) in at least some cases, the intent in bringing the action is to subject manufacturers, importers, and dealers to legal costs that are so onerous that the manufacturers, importers, and dealers may not be able defend themselves, or indeed be able to remain in business;

(3) a majority of manufacturers, importers, and dealers of firearms are small, privately owned businesses that cannot afford to bear the legal costs of defending themselves in a large number of judicial forums;

(4) compared to most manufacturers, importers, and dealers of firearms, States and local governments are large and relatively wealthy entities that are able to spend large amounts of taxpayers' dollars on a war of attrition with small businesses;

(5) fairness requires that—

(A) a unit of government that undertakes an unsuccessful ''fishing expedition'' against a firearm manufacturer, importer, or dealer bear the cost of defending against its frivolous and unwarranted civil action; and

(B) taxpayers not be required to pay millions of dollars to wealthy attorneys, out of awards that are intended, at least in part, to benefit the victims of crime;

(6) the Second Amendment to the Constitution requires that Congress respond to actions that are intended to, and that would have the effect of, nullifying that provision of the Bill of Rights;

(7) Congress has power under the Second Amendment and under the Commerce Clause to take appropriate action to protect the right of citizens to obtain and own firearms; and

(8) one appropriate action that Congress may take is to provide protection from excessive and unwarranted legal fees.

SEC. 3. RULES GOVERNING ACTIONS BROUGHT TO CURTAIL THE SALE OR AVAILABILITY OF FIREARMS FOR LEGAL PURPOSES.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by adding at the end the following:

''§ 926B. Rules governing actions brought to curtail the sale or availability of firearms for legal purposes

''(a) DEFINITIONS.—In this section, the term 'action brought to curtail the sale or availability of firearms for legal purposes' means a civil action brought in Federal or State court that—

''(1) has as a defendant a firearms manufacturer, importer, or dealer in firearms;

''(2) expressly or by implication requests actual damages, punitive damages, or any other form of damages in excess of the lesser of—

''(A) $1,000,000; or

''(B) 50 percent of the net assets of any such defendant; and

''(3) seeks, in whole or in part, to hold a firearms manufacturer, importer, or dealer liable for damages caused by the unlawful or tortious use of a firearm by a person not employed by or affiliated with the manufacturer, dealer, or importer.

''(b) LIMITATION ON ATTORNEY'S FEES AWARDED TO PLAINTIFF.—In a civil action brought to curtail the sale or availability of firearms for legal purposes, notwithstanding any other provision of law or any agreement between any persons to the contrary, amounts paid in plaintiff's attorney's fees in connection with the settlement or adjudication of the action shall not exceed the lesser of—

''(1) an amount equal to $150 per hour for each hour spent productively, plus actual expenses incurred by the attorney in connection with the action; or

''(2) an amount equal to 10 percent of the amount that the plaintiff receives under the action.

''(c) ATTORNEY'S FEES FOR THE DEFENDANT.—In a civil action brought to curtail the sale or availability of firearms for legal purposes, if the court finds that the defendant is not wholly or primarily liable for the damages sought, the court shall require the plaintiff to reimburse the defendant for reasonable attorney's fees and court costs, as determined by the court, incurred in litigating the action, unless the court finds that special circumstances make such a reimbursement unjust.

''(d) POWER OF CONGRESS.—If any court renders a decision in an action brought to curtail the sale or availability of firearms for legal purposes or in any other proceeding that the Constitution does not confer on Congress the power to enact this section, the decision shall be directly appealable as of right to the Supreme Court.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 44 of title 18 is amended by inserting after the item relating to section 926A the following:

''926B. Rules governing actions brought to curtail the sale or availability of firearms for legal purposes.''.

(c) EFFECTIVE DATE.—The amendment made by subsection (a)—

(1) takes effect on the date of enactment of this Act; and

(2) applies to any action pending or on appeal on that date or brought after that date.

By Mr. WARNER (for himself, Mr. ROBB, and Mr. MCCONNELL):

S. 955. A bill to allow the National Park Service to acquire certain land for addition to the Wilderness Battlefield in Virginia, as previously authorized by law, by purchase or exchange as well as by donation; to the Committee on Energy and Natural Resources.

LONGSTREET'S FLANK ATTACK

Mr. WARNER. Mr. President, I rise today to introduce legislation which will preserve a site of great historical importance. The legacy of Civil War battlefields must be perpetuated, not only to commemorate those who lost their lives in this tragic epoch, but also to consecrate land upon which some our country's finest strategic maneuvers occurred. On the hallowed land of Wilderness, Virginia occurred one of the greatest tactical stratagems in military history. Snatching the initiative to turn the tide of battle, Lt. General James A. Longstreet, under the command of General Robert E. Lee, forced back Union forces directed by General Ulysses S. Grant, in an advance known as ''Longstreet's Flank Attack''.

Mr. President, this legislation will allow the Park Service to acquire this stretch of land, which will serve to ''complete'' Wilderness Battlefield. The legacy of the Civil War is far-reaching. A war which wrought such destruction has been the source of much fascination for scholars and amateur historians. The Battle of Wilderness is legendary for the tactical skills employed and the caliber of the soldiers who fought. There, among the tangled forests and twisted undergrowth, the Union Army, numerically superior and well supplied, were forced into confrontation with General Lee's hard scrabble Confederate troops. It would be one of the last battles in which Lee's incomparable martial machine would force Grant's Army of the Potomac to withdraw. It is also the site of the wounding of Gen. Longstreet, who, like General Stonewall Jackson, was wounded by friendly fire. Though Longstreet's injury was not mortal, the genius of the cadre of officers under the command of Lee dwindled. Thus would begin the twilight of the Confederacy.

Legislation passed in the 102nd Congress would have allowed the Park

Service to acquire this land by donation. Despite numerous efforts, the Park Service has been unable to accomplish this. The legislation at hand would amend Public Law 102–541 to allow the Park Service to procure the land by purchase or exchange as well as donation. The heritage and history which dwell amongst the interlaced undergrowth of this land deserve our recognition. I look forward to the swift passage of this bill.

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

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

S. 955

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

SECTION 1. ADDITION TO WILDERNESS BATTLEFIELD, VIRGINIA.

(a) REMOVAL OF CONDITION ON BATTLEFIELD ADDITION.—Section 2(a)(2) of Public Law 102–541 (16 U.S.C. 525k note; 106 Stat. 3565) is amended by striking ": *Provided*," and all that follows through "Interior".

(b) AUTHORIZED METHODS OF ACQUISITION.—

(1) ACQUISITION OF CERTAIN LANDS BY DONATION.—Section 3(a) of Public Law 101–214 (16 U.S.C. 425*l*(a)) is amended by adding at the end the following new sentence: "However, the lands designated 'P04–04' on the map referred to in section 2(a) numbered 326–40072E/89/A and dated September 1990 may be acquired only by donation.".

(2) REMOVAL OF RESTRICTION ON ACQUISITION OF ADDITION.—Section 2 of Public Law 102–541 (16 U.S.C. 525k note; 106 Stat. 3565) is amended by striking subsection (b).

(c) TECHNICAL CORRECTION.—Section 2(a) of Public Law 101–214 (16 U.S.C. 425k(a)) is amended by striking "Spotslyvania" and inserting "Spotsylvania".

By Ms. SNOWE (for herself, Mr. HARKIN, and Mr. FRIST):

S. 956. A bill to establish programs regarding early detection, diagnosis, and interventions for newborns and infants with hearing loss; to the Committee on Health, Education, Labor, and Pensions.

NEWBORN AND INFANT HEARING SCREENING AND INTERVENTION ACT OF 1999

• Ms. SNOWE. Mr. President, I rise today to introduce the Newborn and Infant Hearing Screening and Intervention Act of 1999. This bill is a companion bill to H.R. 1193, introduced in the House by Representative JIM WALSH. I am pleased to be joined again this year by my colleague from Iowa, Senator HARKIN, who has long been a champion of the hearing impaired, and my colleague from Tennessee, Senator FRIST.

We usually associate hearing problems with the aging process, and it is true that the largest group of Americans suffering from hearing impairment are those in the 65 to 75 year age range. But at the same time, approximately 1.5 to 3 out of every 1000 children—or as many as 33 children per day—are born with significant hearing problems. According to the National Institute on Deafness and Other Communication Disorders, as many as 12,000 infants are born each year in the United States with some form of hearing impairment.

In recent years, scientists have stressed that the first years of a child's life are crucial to their future development. This makes early detection and intervention of hearing loss a necessity if we are to ensure that all our children get the strong start they deserve. Specialists in speech and language development believe that the crucial period of speech and communication in a child's life can begin as early as six months of age. Unfortunately, though the average age of diagnosis of hearing loss is close to three years of age.

The ability to hear is a major element of one's ability to read and communicate. To the extent that we can help infants and young children overcome disabilities detected early in life, we will improve their ability to function in society, receive an education, obtain meaningful employment, and enjoy a better quality of life. Without early diagnosis and intervention, these children are behind the learning curve—literally—before they have even started. They should not be denied a strong start in life simply for the lack of a simple screening test.

There are many causes of hearing loss, and in many states a newborn child is screened only if the physician is aware of some factor that puts that baby in a risk category. The good news is that over 550 hospitals in 46 states operate universal newborn hearing screening programs. Nine states—Hawaii, Rhode Island, Mississippi, Connecticut, Colorado, Utah, Virginia, West Virginia, and Massachusetts—have passed legislation requiring universal newborn hearing screening. Hawaii, Mississippi, Rhode Island, Utah, and Wyoming have statewide early hearing detection and intervention programs. And scientists across the country are developing and implementing model rural-based infant hearing, screening, follow-up, and intervention programs for children at risk for hearing and language disabilities.

The bad news is that, unfortunately, only about 20 percent of the babies in this country are born in hospitals with universal newborn hearing screening programs, and more than 85 percent of all hospitals do not do a hearing screening before sending the baby home.

Universal screening is not a new idea. As early as 1965, the Advisory Committee on Education of the Deaf, in a report of the Secretary of Health, Education and Welfare, recommended the development and nationwide implementation of "universally applied procedures for early identification." In 1989, former Surgeon General C. Everett Koop used the year 2000 as a goal for identifying 90 percent of children with significant hearing loss before they are one year old.

In 1997, an expert panel at the National Institute of Deafness and Other Communication Disorders recommended that the first hearing screening be carried out before an infant is three months old in order to ensure that treatment can begin before six months of age. The Panel also recommended that the most comprehensive and effective way of ensuring screening before an infant is six months old is to have newborns screened before they sent home from the hospital. But a 1998 report by the Commission on Education of the Deaf estimated that the average age at which a child with congenital hearing loss was identified in the United States was a 2½ to 3 years old, with many children not being identified until five or six years old.

It is time to move beyond the recommendations and achieve the goal of universal screening. In addition to the nine states that require screening, the Bureau of Maternal and Child Health, in conjunction with the Centers for Disease Control, is helping 17 states commit to achieving universal hearing screening by the year 2000. This plan will lead to the screening of more than one million newborns a year, but it still leaves more than half the states without universal screening programs.

The purpose of the bill I am introducing today is to provide the additional assistance necessary to help all the states in implementing programs to ensure that all our newborns are tested and to ensure that those identified with a hearing impairment get help. Specifically, the bill:

(1) Authorizes $5 million in FY 2000 and $8 million in FY 2001 for the Secretary of Health and Human Services to work with the states to develop early detection, diagnosis and intervention networks for the purpose of developing models to ensure testing and to collect data;

(2) Authorizes $5 million in FY 2000 and $7 million in FY 2001 for the Centers for Disease Control to provide technical assistance to State agencies and to conduct applied research related to infant hearing detection, diagnosis and treatment/intervention; and

(3) Authorizes the National Institutes of Health to carry out research on the efficacy of new screening techniques and technology.

A baby born today will be part of this country's future in the 21st century. Surely we owe it to that child to give them a strong start on that future by ensuring that if they do have a hearing impairment it is diagnosed and treatment started well before their first year of life is completed. I urge my colleagues to join me, Senator HARKIN, and Senator FRIST in supporting the Newborn and Infant Hearing Screening and Intervention Act of 1999.

• Mr. HARKIN. Mr. President, I am pleased to introduce, along with my colleagues, Senator SNOWE and Senator FRIST, the Newborn and Infant Hearing Screening and Intervention Act of 1999.

Tne Newborn and Infant Hearing Screening and Intervention Act would help States establish programs to detect and diagnose hearing loss in every

newborn child and to promote appropriate treatment and intervention for newborns with hearing loss. The Act would fund research by the National Institutes of Health to determine the best detection, diagnostic, treatment and intervention techniques and technologies.

Every year, approximately 12,000 children in the United States are born with a hearing impairment. Most of them will not be diagnosed as hearing-impaired until after their second birthday. The consequences of not detecting early hearing impairment are significant, but easily avoidable.

Late detection means that crucial years of stimulating the brain's hearing centers are lost. It may delay speech and language development. Delayed language development can retard a child's educational progress, minimize his or her socialization skills, and as a result, destroy his or her self-esteem and confidence. On top of all that, many children are diagnosed incorrectly as having behavioral or cognitive problems, simply because of their undetected hearing loss.

In 1988, the Commission on Education of the Deaf reported to Congress that early detection, diagnosis and treatment were essential to improving the status of education for people who are deaf in the United States. Based on that report and others, in 1991, when I was chair of the Labor-HHS Subcommittee on Appropriations, we urged the National Institute on Deafness and Other Communication Deisorders—NIDCD—to determine the most effective means of identifying hearing impairments in newborn infants. In 1993, the Labor-HHS Subcommittee supported NIDCD's efforts to sponsor a consensus development conference on early identification of hearing impairment in infants and children. And in 1998, the Subcommittee encouraged NIDCD to pursue research on intervention strategies for infants with hearing impairments, and encouraged HRSA to provide states with the results of the NIH study on the most effective forms of screening infants for hearing loss.

Mr. President, the Act we are introducing today builds on these earlier efforts. The Act would help states develop programs that many of them already are working on; it would not impose a single federal mandate. At least eight states already have mandatory testing programs; many others have legislation pending to establish such programs. Other states have achieved universal newborn testing voluntarily. These programs can work; they deserve federal help.

One of the highlights of my Congressional career, indeed, of my life, has been working on policies and laws to ensure that people with disabilities have an equal opportunity to succeed in our society. This is especially meaningful to me, because my brother Frank became deaf as a child.

I watched Frank grow up, and I saw how few options and support services were available for people who were deaf. I remember the frustrations and challenges Frank faced, and I told myself early on that I would do all I could to break down the barriers in our society that prevented people who were deaf from reaching their potential. By supporting early screening, diagnosis, and treatment programs, this act would go a long way toward accomplishing that goal.

I would like to thank Senators SNOWE and FRIST for their hard work and support of this act, and I hope our colleagues will join us in this worthy effort.●

By Mr. KOHL:

S. 957. A bill to amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, disclosures of discovery information in civil actions, and for other purposes, to the Committee on the Judiciary.

SUNSHINE IN LITIGATION ACT OF 1999

Mr. KOHL. Mr. President, I rise today to offer the Sunshine in Litigation Act of 1999, a measure that addresses the growing abuse of secrecy orders issued by our Federal courts. All too often our Federal courts allow vital information that is discovered in litigation—and which directly bears on public health and safety—to be covered up, to be shielded from mothers, fathers and children whose lives are potentially at stake, and from the public officials we have asked to protect our health and safety.

All this happens because of the use of so-called ''protective orders''—really gag orders issued by courts—that are designed to keep information discovered in the course of litigation secret and undisclosed. Typically, injured victims agree to a defendant's request to keep lawsuit information secret. They agree because defendants threaten that, without secrecy, they will fight every document requested and will refuse to agree to a settlement. Victims cannot afford to take such chances. And while courts in these situations actually have the legal authority to deny requests for secrecy, typically they do not—because both sides have agreed, and judges have other matters to which they prefer to attend. So judges are regularly and frequently entering these protective orders, using the power of the Federal government to keep people in the dark about the dangers they face.

Perhaps the worst offenders are the tobacco companies. They have used protective orders not only to keep incriminating documents away from public view, but also to drive up litigation costs by preventing document sharing, effectively forcing every successive plaintiff to ''reinvent the wheel.'' One tobacco industry official even boasted, ''The aggressive posture we have taken regarding depositions and discovery in general continues to make these cases extremely burdensome and expensive for plaintiffs' lawyers, particularly sole practitioners. To paraphrase General Patton, the way we won these cases was not by spending all of our money, but by making the other S.O.B. spend all his.''

This systematic abuse of secrecy orders is one of the reasons that it took more than four decades of tobacco litigation to achieve a reasonable settlement. In fact, Congress and the public's shift in recent years against Big Tobacco resulted in large part from disclosure of materials that had been concealed under secrecy orders, including materials regarding youth targeting and nicotine manipulation.

The problem of excessive secrecy orders in cases involving public health and safety has been apparent for years. The Judiciary Committee first held hearings on this issue in 1990 and again in 1994. In 1990, Arthur Bryant, the executive director of Trial Lawyers for Public Justice, told us, ''The one thing we learned . . . is that this problem is far more egregious than we ever imagined. It goes the length and depth of this country, and the frank truth is that much of civil litigation in this country is taking place in secret.''

Four years later, attorney Gerry Spence told us about 19 cases in which he had been involved where his clients had been required to sign secrecy agreements. They included cases involving defects in a hormonal pregnancy test that caused severe birth defects, a defective braking system on a steamroller, and an improperly manufactured tire rim.

But that's not surprising, because individual examples of this problem abound. For over a decade, Miracle Recreation, a U.S. playground equipment company, marketed a merry-go-round that caused serious injury to scores of small children—including severed fingers and feet. Lawsuits brought against the manufacturer were confidentially settled, preventing the public and the Consumer Products Safety Commission from learning about the hazard. It took more than a decade for regulators to discover the danger and for the company to recall the merry-go-round.

There are yet more cases like these. In 1973, GM allegedly began marketing vehicles with dangerously placed fuel tanks that tended to rupture, burn, and explode on impact more frequently than regular tanks. Soon after these vehicles hit the American road, tragic accidents began occurring, and lawsuits were filed. More than 150 lawsuits were settled confidentially by GM. For years this secrecy prevented the public from learning of the alleged dangers presented by these vehicles—millions of which are still on the road. It wasn't until a 1993 trail that the public learned about sidesaddle gas tanks and some GM crash test data that demonstrated these dangers.

The thrust of our legislation is straightforward. In cases affecting public health and safety, Federal courts would be required to apply a balancing test: they could permit secrecy only if

the need for privacy outweighs the public need to know about potential health or safety hazards. Moreover, all courts—both Federal and state—would be prohibited from issuing protective orders that prevent disclosure to regulatory agencies. In this way, our bill will bring crucial information out of the darkness and into the light.

Although this law may result in some small additional burden on judges, a little extra work seems a tiny price to pay to protect blameless people from danger. Every day, in the course of litigation, judges make tough calls about how to construe the public interest and interpret other laws that Congress passes. I am confident that the courts will administer this law fairly and sensibly. If this requires extra work, then that work is well worth the effort. After all, no one argues that spoiled meat should be allowed on the market because stricter regulations mean more work for FDA meat inspectors.

Having said all this, we must in fairness recognize that there is another side to this problem. Privacy is a cherished possession, and business information is a cherished commodity. For this reason, the courts must, in some cases, keep trade secrets and other business information confidential.

But, in my opinion, today's balance of these interests is entirely inadequate. Our legislation will ensure that courts do not carelessly and automatically sanction secrecy when the health and safety of the American public are at stake. At the same time, this bill will allow defendants to obtain secrecy orders when the need for privacy is significant and substantial.

Indeed, this proposal would simply codify the practices of the most thoughtful Federal judges. As Justice Breyer has said, ''no court can or should stand silent when they see an immediate, serious risk to . . . health or safety.'' Virtually identical legislation received 49 votes on the floor in 1994 and was passed with bipartisan support out of the Judiciary Committee in 1996.

Who knows what other hazards are hidden behind courthouse doors? Do we want to wait four decades for the next ''tobacco'' to be disclosed? We need to take action to prevent the next threat before it's too late.

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

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

S. 957

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

SECTION 1. PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS RELATING TO PUBLIC HEALTH OR SAFETY.

(a) SHORT TITLE.—This section may be cited as the ''Sunshine in Litigation Act of 1999''.

(b) PROTECTIVE ORDERS AND SEALING OF CASES.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following new section:

''§ 1660. Protective orders and sealing of cases and settlements relating to public health or safety

''(a)(1) A court shall enter an order under rule 26(c) of the Federal Rules of Civil Procedure restricting the disclosure of information obtained through discovery, an order approving a settlement agreement that would restrict the disclosure of such information, or an order restricting access to court records in a civil case only after making particularized findings of fact that—

''(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

''(B)(i) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

''(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

''(2) No order entered in accordance with paragraph (1) (other than an order approving a settlement agreement) shall continue in effect after the entry of final judgment, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) (A) or (B) have been met.

''(b) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

''(c)(1) No court of the United States may approve or enforce any provision of an agreement between or among parties to a civil action, or approve or enforce an order subject to subsection (a)(1), that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

''(2) Any such information disclosed to a Federal or State agency shall be confidential to the extent provided by law.''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1659 the following:

''1660. Protective orders and sealing of cases and settlements relating to public health or safety.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 30 days after the date of enactment of this Act and shall apply only to orders entered in civil actions or agreements entered into on or after such date.

By Mr. BENNETT:

S. 958. A bill to amend certain banking and securities laws with respect to financial contracts; to the Committee on Banking, Housing, and Urban Affairs.

FINANCIAL INSTITUTIONS INSOLVENCY IMPROVEMENT ACT OF 1999

Mr. BENNETT. Mr. President, I rise today to introduce the Financial Institutions Insolvency Improvement Act of 1999. Recognizing that the changes to our Nations' banking laws have not kept pace with changes in our capital markets, this bill would strengthen the laws that enforce and protect certain financial agreements and transactions in the event that one of the parties involved becomes insolvent. This legislation would also harmonize the treatment of financial instruments under the bankruptcy code and the banking insolvency laws.

The legislation that I am introducing is based largely on the recommendations made in March of 1998 by the President's Working Group on Financial Markets. This same working group reiterated on April 29th of this year, in their report on hedge fund activity, that Congress should pass this legislation. However, in an effort to keep this legislation free and separate from the ongoing bankruptcy debate, I am only introducing those portions of the proposal which amend banking law. I will be chairing a hearing on this legislation on the Financial Institutions Subcommittee tomorrow morning.

Since the adoption of the Bankruptcy Code in 1978, Congress has recognized that certain financial market transactions qualify for different treatment in the event that one of the parties becomes insolvent. Specifically, many financial instruments are exempted from the automatic stay that is imposed on general commercial contracts during a bankruptcy proceeding. This is largely due to the fact that the Federal Deposit Insurance Corporation (FDIC), by law, becomes a trustee during any bankruptcy proceeding.

Mr. President, the ability to terminate, or close out and ''net'' financial products is an essential and vital part of our capital markets. Congress has recognized that participants in swap transactions should have the ability to terminate and ''net'' their swap agreements. Simply put, netting means that money payments or other obligations owed between parties with multiple contracts can be offset against each other, and one net amount can be paid by one party to the other in settlement. Cross-product netting means that parties can net out different kinds of financial contracts, such as swap agreements being offset with repurchase agreements. By eliminating the need for large fund transfers for each transaction in favor of a smaller net payment, netting allows parties to enter into multiple-transaction relationships with reduced credit and liquidity exposures to a counterparty's insolvency.

Many parties involved in financial transactions have entered into them for hedging purposes. My legislation encourages this type of behavior by clarifying that cross-product close-out netting should be permitted for positions in securities contracts, commodity contracts, forward contracts, repurchase agreements and swaps.

For example, in certain cases, the protections for financial contracts in the bank insolvency laws have not kept pace with market evolution. Assume, for example, that Party A and Party B have two outstanding equity swaps in which the payments are calculated on the basis of an equity securities index. If Party A enter insolvency, it is not entirely clear whether Party B's contractual rights to close-out and net

would be protected by the current ''swap agreement'' definition in the Federal Deposit Insurance Act. If both of the parties are ''financial institutions'' under the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE and the swap agreements are ''netting contracts,'' then Party B might (although it is not entirely clear) be able to exercise its close-out, netting and foreclosure rights.

However, if one of the parties is not a ''financial institution'' or the contract does not constitute a ''netting contract'' (for example, because it is governed by the laws of the United Kingdom), then Party B could be subject, among other things, to the risk of ''cherry-picking''—the risk that Party A's receiver would assume responsibility only for the swap that currently favors Party A, leaving Party B with a potentially sizable claim against Party A (which would be undersecured because of the impairment of netting) and the risk that its foreclosure on any collateral would be blocked indefinitely. This could impair Party B's creditworthiness, which in turn could lead to its default to its counterparties. It is this sort of ''chain reaction'' that can exacerbate systemic risk in the financial markets.

Finally, Mr. President, it is important to recognize that the framework for the bill I am introducing was contained in S. 1301, the bankruptcy bill introduced by Senator GRASSLEY last year which passed the Senate by a vote of 97–1.

ADDITIONAL COSPONSORS

S. 341

At the request of Mr. CRAIG, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 341, a bill to amend the Internal Revenue Code of 1986 to increase the amount allowable for qualified adoption expenses, to permanently extend the credit for adoption expenses, and to adjust the limitations on such credit for inflation, and for other purposes.

S. 376

At the request of Mr. BURNS, the name of the Senator from Maine [Ms. SNOWE] was added as a cosponsor of S. 376, a bill to amend the Communications Satellite Act of 1962 to promote competition and privatization in satellite communications, and for other purposes.

S. 385

At the request of Mr. ENZI, the names of the Senator from Tennessee [Mr. FRIST] and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. 385, a bill to amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes.

S. 434

At the request of Mr. BREAUX, the name of the Senator from Louisiana [Ms. LANDRIEU] was added as a cosponsor of S. 434, a bill to amend the Internal Revenue Code of 1986 to simplify the method of payment of taxes on distilled spirits.

S. 440

At the request of Mr. DURBIN, his name was added as a cosponsor of S. 440, a bill to provide support for certain institutes and schools.

S. 505

At the request of Mr. GRASSLEY, the names of the Senator from South Dakota [Mr. DASCHLE] and the Senator from Montana [Mr. BAUCUS] were added as cosponsors of S. 505, a bill to give gifted and talented students the opportunity to develop their capabilities.

S. 512

At the request of Mr. GORTON, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 512, a bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the Department of Health and Human Services with respect to research on autism.

S. 514

At the request of Mr. COCHRAN, the name of the Senator from Montana [Mr. BAUCUS] was added as a cosponsor of S. 514, a bill to improve the National Writing Project.

S. 625

At the request of Mr. GRASSLEY, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 625, a bill to amend title 11, United States Code, and for other purposes.

S. 710

At the request of Mr. LOTT, the name of the Senator from Louisiana [Ms. LANDRIEU] was added as a cosponsor of S. 710, a bill to authorize the feasibility study on the preservation of certain Civil War battlefields along the Vicksburg Campaign Trail.

S. 774

At the request of Mr. BREAUX, the name of the Senator from Colorado [Mr. CAMPBELL] was added as a cosponsor of S. 774, a bill to amend the Internal Revenue Code of 1986 to increase the deduction for meal and entertainment expenses of small businesses.

S. 784

At the request of Mr. ROCKEFELLER, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 784, a bill to establish a demonstration project to study and provide coverage of routine patient care costs for medicare beneficiaries with cancer who are enrolled in an approved clinical trial program.

S. 882

At the request of Mr. MURKOWSKI, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 882, a bill to strengthen provisions in the Energy Policy Act of 1992 and the Federal Nonnuclear Energy Research and Development Act of 1974 with respect to potential Climate Change.

S. 918

At the request of Mr. KERRY, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 918, A bill to authorize the Small Business Administration to provide financial and business development assistance to military reservists' small business, and for other purposes.

SENATE CONCURRENT RESOLUTION 22

At the request of Mr. DODD, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of Senate Concurrent Resolution 22, a concurrent resolution expressing the sense of the Congress with respect to promoting coverage of individuals under long-term care insurance.

SENATE RESOLUTION 34

At the request of Mr. TORRICELLI, the name of the Senator from Idaho [Mr. CRAPO] was added as a cosponsor of Senate Resolution 34, a resolution designating the week beginning April 30, 1999, as ''National Youth Fitness Week.''

SENATE RESOLUTION 59

At the request of Mr. LAUTENBERG, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of Senate Resolution 59, a resolution designating both July 2, 1999, and July 2, 2000, as ''National Literacy Day.''

SENATE RESOLUTION 71

At the request of Mr. ABRAHAM, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of Senate Resolution 71, a resolution expressing the sense of the Senate rejecting a tax increase on investment income of certain associations.

SENATE RESOLUTION 93—TO RECOGNIZE LINCOLN PARK HIGH SCHOOL FOR ITS EDUCATIONAL EXCELLENCE, CONGRATULATING THE FACULTY AND STAFF OF LINCOLN PARK HIGH SCHOOL FOR THEIR EFFORTS, AND ENCOURAGING THE FACULTY, STAFF, AND STUDENTS OF LINCOLN PARK HIGH SCHOOL TO CONTINUE THEIR GOOD WORK INTO THE NEXT MILLENNIUM

Mr. DURBIN (for himself and Mr. FITZGERALD) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 93

Whereas 1999 marks the centennial anniversary of the establishment of Lincoln Park High School;

Whereas Lincoln Park High School is the oldest continually operated high school building in the Chicago Public School System;

Whereas Lincoln Park High School has been a cornerstone of the community and an educational leader in Chicago for 100 years;

Whereas over 100,000 students have graduated from Lincoln Park High School, with 85 percent of those students pursuing higher education;

Whereas throughout its existence, Lincoln Park High School has created an environment of academic excellence and has produced many Illinois State Scholars and National Merit Scholars;

Whereas Lincoln Park High School has been a leader in education, being the first