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# House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 14, 2003, at 2 p.m.

# Senate

FRIDAY, FEBRUARY 14, 2003

The Senate met at 10 a.m. and was called to order by the Honorable LINDSEY GRAHAM, a Senator from the State of South Carolina.

## PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Providential Lord of History, we prepare for the forthcoming Presidents' weekend by expressing our gratitude for the way You have raised up great Presidents to lead us in each stage of our progress as a Nation. Today we remember the faith in You that produced the greatness of Washington and Lincoln. Reverently, we recall Washington's confession of faith, ''Providence has at all times been my only dependence,'' he said, ''for all other sources seem to have failed us.'' And we call to mind Lincoln's declaration of dependence, ''I have been driven many times to my knees by the overwhelming conviction that I had nowhere else to go.'' The same affirmation of trust in You has been sounded by dynamic Presidents throughout our Nation's history.

Thank You for Your hand upon President George W. Bush. Bless him as he expresses his trust in You in these strategic days of his Presidency. We praise You for the integrity of authentic faith expressed by the women and men of this Senate. It is with gratitude that we will say ''one Nation under God, indivisible.'' On this day of duct tape, dithers and panic, we turn to You for peace. This is a Nation You have blessed; we will rejoice and be glad to serve in it! Amen.

## PLEDGE OF ALLEGIANCE

The Honorable LINDSEY GRAHAM led the Pledge of Allegiance, as follows:

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

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, February 14, 2003.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable LINDSEY GRAHAM, a Senator from the State of South Carolina, to perform the duties of the Chair.

TED STEVENS,
*President pro tempore.*

Mr. GRAHAM thereupon assumed the chair as Acting President pro tempore.

## RESERVATION OF LEADER TIME

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

## RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The distinguished acting majority leader, the Senator from Utah, is recognized.

## SCHEDULE

Mr. BENNETT. Mr. President, this morning the Senate will resume consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit. Again, if Senators desire an opportunity to speak on the nomination, they are, of course, encouraged to do so. As announced last night by the majority leader, there will be no rollcall votes during today's session.

When the Senate completes its business today, it will stand adjourned for the Presidents Day recess until Monday, February 24. Members should expect the next rollcall vote to occur at 5:30 in the afternoon on Monday, February 24. The majority leader will have more to say regarding the schedule later today prior to today's closing.

## EXECUTIVE SESSION

### NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and resume consideration of Executive Calendar No. 21, which the clerk will report.

The legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia.

The ACTING PRESIDENT pro tempore. The distinguished acting majority leader.

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

Mr. BENNETT. Mr. President, like every Senator, I am sure, I have had the experience this last week and a half of listening to the arguments both for and against Miguel Estrada as we have gone through the first filibuster of this particular session. When we come back on February 24, we will undoubtedly be back into the filibuster. At that time, I would expect the focus perhaps to shift from a discussion of Miguel Estrada's shortcomings or qualifications to a discussion of the obstruction of the business of the Senate by members of the minority.

As I have listened to this debate, I have realized something in what I would consider a larger context than the fight over Miguel Estrada. There is something going on about which, as Members of this institution, we need to stop and think. It is something that is quite significant and potentially a major sea change in the way the Senate does its business—and I hope I am not overdramatizing it—perhaps a major sea change in the institution itself. Like most major changes, it has crept up on us. It is not something that anyone sat down, thought through, proposed, and adopted.

Going back in the Senate's history, I will outline what I see happening. I hope I can put it in context. There was a time—and it was not that long ago—when nominees, be they to executive positions or to the bench, were almost automatically approved by the Senate unless, in the course of the confirmation hearings, something truly disabling was discovered.

The President has the right to nominate. The Senate has the right to consent, or advise and consent, in the language of the Constitution. That meant, historically, that the Senate automatically would approve the nominee unless they found something significantly disabling. Along the way—and I cannot put my finger on who started it or when it started or which party was involved—the idea came: Well, maybe there is nothing disqualifying about this nominee, but for one reason or another—usually partisan considerations or ideological ideas—we just do not like him. So let's start to use our power to examine his record in the confirmation process as a means to blacken his record, as a means to denigrate this individual, in the hope that we can change some votes and perhaps deny this President the opportunity to put in place the people he wants.

As one party would do it and then the power in the Senate would shift with the next election, the other party would say: Well, let's do it, too. Let's do what we can to make this individual look far less qualified. Even though we know he is qualified, let's find something we can argue about, let's find something we can quibble over, and maybe in the process, even though it is damaging to him personally, we can succeed in preventing this President from being able to have his nominee confirmed.

It reached such a point in the nomination of Robert Bork to the Supreme Court that a new verb entered the political vocabulary. There are not very many political leaders who have verbs named after them. One of them is Joe McCarthy, and we now have the phrase ''McCarthyism.'' Everybody knows what it means, even if they have never heard of Joe McCarthy.

When I was an intern in the Senate in the early 1950s, I used to follow Senator McCarthy around. That was my assignment, to follow him around. I would take notes and see how he was really performing as opposed to how the press reported his performance.

I attended every session of the Governmental Affairs Committee, then known as the Government Operations Committee, where Senator McCarthy was presiding as chairman and paid attention to his methods as a chairman. I reported back to my Senator that Senator McCarthy is smarter than the press gives him credit for; he is, when he is not on the issue of communism, a competent chairman, and runs his committee in a legitimate kind of a way.

My Senator wanted to get that flavor because he knew McCarthy personally in other ways but he was not a member of the committee and he just wanted some eyes and ears in the committee to see what was going on.

I have that view of Senator McCarthy, but if I use the term ''McCarthyism'' now, everyone knows what I mean. Senator McCarthy's methods with respect to communism became so extreme that his name entered the world as part of the political lexicon.

Robert Bork, like Senator McCarthy, has been forgotten by anyone who does not have experience with him or with the circumstance, but the word ''Bork'' has entered the political lexicon as a verb. It comes from those who were opposed to Robert Bork's appointment to the Supreme Court, who then said, after they had savaged his reputation, savaged him and his privacy to the point where we actually have what is known as the Bork law, which makes it illegal to check out one's record at a video store. In other words, it is now against the law because of the Bork law to monitor which videos one might check out at Blockbuster video because it is considered an invasion of your privacy. Prior to the Bork law, those who ''Borked'' Robert Bork went so far into his life as to determine which videos he checked out and then made those public and said that any man who would watch these particular videos is obviously not qualified to sit on the Supreme Court.

When we had other nominations come up, those who savaged Robert Bork's reputation used his name as a verb and spoke prospectively of these nominees and said ''we will Bork him'' or ''we will Bork her,'' and everyone knew what they meant. We saw that in the confirmation process of Clarence Thomas.

I suggest to all of my colleagues they read the biography of our colleague from Pennsylvania, Senator SPECTER. He played a pivotal role in both the confirmation fight over Robert Bork and the confirmation fight over Clarence Thomas. He was against Mr. Bork. He was for Justice Thomas. He describes in his book the reasons why. Once you read his book, you find that his reasons for voting against Robert Bork had nothing to do with any videos that Mr. Bork may have checked out, nothing to do with the character assassination campaign that was raised against him, but a genuine concern on the part of Senator SPECTER as to what kind of a Justice Robert Bork would make. When it came to Clarence Thomas, Senator SPECTER applied the same standard and came to the conclusion that Clarence Thomas was qualified to sit on the Supreme Court.

I hope I don't embarrass my colleague from Pennsylvania when I quote one of the lines out of his book, the White House called him and asked him how he felt about Clarence Thomas, and he said: Well, he is no Brandeis, but he will do. And he has subsequently said in his writing—he, Senator SPECTER—that he is satisfied with the job Clarence Thomas is doing on the Supreme Court and feels that Clarence Thomas has grown as a Supreme Court Justice and has a clear understanding of the law and is performing more than adequately in his present assignment.

Clarence Thomas used a phrase that may have been forgotten now but that struck me with great power at the time. He referred to the way he was being treated as a ''high-tech lynching.'' That was very emotional language for many people who come out of the portion of the country where lynchings regrettably used to be a part of the culture. He said this is a high-tech lynching because he was being ''Borked'' on television, he was being ''Borked'' on the cable channels, he was being ''Borked'' on National Public Radio by those journalists who decided because, we do not like his ideology, we will destroy his reputation, besmirch his integrity and turn him into a caricature of the man he really is. An escalation, if you will, once again, of this trend that moved from the old attitude, if he is not incompetent we will automatically vote to confirm him, to the new attitude, if we disagree with him, we will savage him in some way.

After the Clarence Thomas affair, things continued to go forward and escalate. I remember in my campaign when I spoke out against this tendency to savage people. Republicans would come up to me and say we agree with you. You are right. We are going to elect you to the Senate because that is the way you stand on it. And then one Republican said to me, what if Governor Clinton is elected and you are in the Senate and he nominates Mario Cuomo to the Supreme Court, what will you do? This was a question asked of four of us who were running for the Republican nomination. The other three all said: I will fight Mario Cuomo

to the last ounce of my strength. I will use every sinew in my body to see that Mario Cuomo does not get on the Court. I said: I am sorry, I just told you that I deplore this process of savaging individuals. Mario Cuomo is not the person I would appoint to the Supreme Court if I were to be President. Mario Cuomo does not represent the judicial philosophy that I think is right for a member of the Supreme Court, but Mario Cuomo is qualified to be a Supreme Court Justice and if Bill Clinton is elected President and he nominates Mario Cuomo, unless something comes out in the hearings that we do not know, I would vote to confirm him.

Many of my conservative friends were horrified I would say that. But I said: Look, we have to do something to get back to the historic pattern of civility and trust and acceptance of difference of opinions and get away from the process of Borking people, be they Republicans or Democrats.

I was very interested to have an individual come up to me and say: I don't agree with you on a whole series of things but I am going to vote for you for one reason only. And I said: Well, that is fine, I am always glad to get your vote; what's the reason? He said: You are consistent. Your answer, with respect to Mario Cuomo, convinced me that even if I don't agree with you, I can depend on you to do what you will say, even if it is not for your political benefit.

Fortunately in my view, President Clinton never nominated Mario Cuomo for the Supreme Court. But if he had, unless something disqualifying had come out in the confirmation process, I would have voted for him.

We were in a very close Senate, 50–50, with the Vice President breaking the tie with what the voters left us with in the last Senate. Now it is 51–48–1, which is what the voters have left us with in this Senate, a barely workable majority.

We were in the last years of President Clinton's Presidency; in the weekly policy luncheons that we Republicans hold during the same time the Democrats are in their weekly policy lunches, members of our conference would stand up and rail at ORRIN HATCH and say you've got to stop this judge or that judge from going forward. We have to make sure this person doesn't go on the bench.

And ORRIN said:

> I can't hold him up any longer. Fairness requires that they get a hearing and that they get a vote.

Well let's filibuster them. If they get on the floor we can prevent them from passing, we can prevent them from getting 60 votes.

To his credit, Senator HATCH said:

> Let's not even think of going there. Let us not escalate this process to the point where 60 votes are routinely required to put anybody on the bench.

Senator LOTT, the majority leader, said exactly the same thing when Bill Clinton was President, and some of those, perhaps a little more passionate in their ideological purity than the rest of us, were demanding a Republican filibuster against some Democratic judges. ''No,'' said Senator HATCH, the chairman of the Judiciary Committee; ''no,'' said Senator LOTT, the majority leader, ''we will not get there. We should not escalate this to that point.''

Now the decision has been made to escalate it to that point. Miguel Estrada is fully qualified by the standards of everybody who has examined him, from an objective point of view.

We hear that one of his past supervisors has written a letter: I think he was something of an ideologue—no. I made the point before and repeat it here. If that is what he thought, why did he continue to employ him and why did he leave a paper trail of glowing recommendations?

I have been the CEO of a company. I have done annual performance appraisals. I know what you put down on paper, in writing, as to the performance appraisal of that individual is what you have to live with. You better be honest in that appraisal because if you decide to puff that appraisal up and put that in writing just so you don't offend somebody, and then later on you say he is not qualified and you are going to fire him, the lawyer who represents that somebody is going to pull out the file and the record and say:

> If he really wasn't any good, why did you put this down on paper at the time he had his appraisal? You are the one who is not honest, not him, if that is what you have done.

I have that same attitude towards—I believe it is Professor Bender, who now is saying Miguel Estrada is not qualified; that when he had the responsibility, not in a political setting, to lay down Miguel Estrada's qualifications and performance, he in writing said he was absolutely outstanding in every way. So I have little or no sympathy for the current verbal statements of Professor Bender.

I don't know why the Democrats have decided to escalate this historic fight, that has been escalating all these years, to the new level of saying it will now take 60 votes to confirm any judge. They could have picked somebody, I think, a little more sympathetic to their cause as their poster child for this particular decision. But for whatever reason, they have decided they are going to escalate the whole process, set a new standard and a new requirement for the Senate on the issue of Miguel Estrada.

Senators have stood here and held up the copy of the Constitution and told us how much they revere and admire it, and have taken an oath to uphold and defend the Constitution, and they say we are only doing our constitutional duty. The Senate has a constitutional duty which we would abrogate if we do not filibuster this nomination.

There is nothing in the Constitution with respect to a filibuster. The filibuster comes out of the Senate rules, not the Constitution. Furthermore, the Constitution does clearly and specifically assume some circumstances so important that they do, in fact, require a supermajority. The Constitution clearly and specifically says you cannot consent to a treaty without 67 votes. The Constitution clearly and directly says you cannot convict a Federal official, be it the President or a Federal judge who has been impeached by the House, unless you have 67 votes. The Constitution very clearly lays out those areas that are so important that what we refer to as a supermajority is required. Confirming a judge is clearly and specifically not one of those situations. To argue that we have a constitutional duty to change the rules with respect to judges is, in my view, to misunderstand the Constitution. In my view, the Founding Fathers clearly intended the Senate to consent to the President's choices on a majority vote.

I hope over this recess, as we go out and meet our constituents, we discover that they have issues on their mind other than the Senate rules; they are concerned with something different than supermajorities and cloture votes and filibusters. We are going to hear today what the inspectors will say after their latest trip to Iraq. We don't know absolutely what they will say but the preliminary press reports tell us that the inspectors are going to tell us that Iraq remains in material breach of the United Nations resolution and continues to violate all of the instructions the United Nations have given.

Our President has told us on this issue that time is running out. The papers are suggesting that military action in Iraq is not months but perhaps only weeks or maybe even days away. Our constituents are concerned about al-Qaida and the possibility of attacks from the terrorist organization to which the Iraqis have given refuge and significant aid. They are concerned about what will happen to their sons, their daughters, their wives, their nieces and nephews who are in uniform.

When we come back on the 24th of February, I hope we can look at this whole fight over Miguel Estrada in the historical context I have tried to lay down here this morning and say to ourselves it is time to step back a little from what President Clinton called the politics of personal destruction. It is time to step back a little from the escalation that has been going on in both parties for decades over the confirmation fight. It is time, in my view, to accept the historic pattern that somehow got this country through the first 200 years of its existence, that says the Senate does not require a supermajority to confirm a circuit judge and, under those circumstances, be in a more sober and efficient situation that allows us to focus on the concerns on which our constituents and the rest of the world are focused.

I hope after a week of reflection and experience with our constituents, we come to that conclusion and see this

nomination brought to a vote, and those who feel he was not responsive in his answers exercise their constitutional duty and vote against him, and those who think that they should, exercise your constitutional duty and vote for him, and the matter should be resolved in the manner that our Founding Fathers intended, which is by a majority vote on the floor of the Senate and not in the manner that has come as a result of the escalating partisanship of the past few decades.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to be recognized to speak as if in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, first, let me say to my colleague from Utah, Senator BENNETT, whom I respect and work with closely on a number of items, I thought he came to the floor of the Senate this week and made a valuable suggestion. He came to the floor of the Senate and said: Let's break this impasse over Mr. Estrada. If he will produce the legal documents, which Miguel Estrada has written as a member of staff of the Department of Justice, if he will produce those and if he will answer the questions, we can finally bring this to a vote.

He challenged me personally on the floor. He said: What will you do if we produce these documents? My response to him was as honest as could be. If he is honest and cooperate in producing the information and answering the questions, he deserves a vote. That is my personal feeling. I don't speak for any other Senator.

Within hours of that exchange on the floor of the Senate, the White House sent a lengthy letter refusing to disclose any of the legal memoranda of Miguel Estrada saying that, frankly, it was privileged information and that Members of the Senate should not read this man's writings about the law. I was sorry to see that happen.

I thought Senator BENNETT was on to something very good that would have broken what appears to be a partisan impasse and finally put the information before the Senate and before the American people so Miguel Estrada would have moved to a vote.

Incidentally, having said on the floor what I thought about it, I went to a number of Democrats and said: Do you feel as I do? If he will disclose his legal memoranda, and if he will answer the questions that might arise from that, and perhaps a few that he avoided in the course of the hearing, would you vote to give him a vote? The answer was affirmative to a person; because, frankly, then we would know for whom we are voting.

But what we are dealing with here is a pattern of concealment by this nominee. He is not the first. In fact, it has become almost a tradition that judicial nominees come before the Senate—and maybe it harkens back to the Senator's earlier reference to Robert Bork. They are afraid if they tell people what they think and who they are they will get into trouble.

Mr. BENNETT. Mr. President, will the Senator yield for a question?

Mr. DURBIN. I am happy to yield for a question.

Mr. BENNETT. Going back to what happened the other night, as the Senator from Illinois understands, I am not burdened with a legal education. So when I made my suggestion, it was in the spirit of a former CEO trying to resolve a controversy with one of his competitors or suppliers. But I understand, and ask the Senator from Illinois if he could confirm this understanding, I understand that Miguel Estrada is perfectly willing to allow that set of memoranda to which we have referred be made public. But he acted as an attorney advising a client, and it is the client in this case that says for the client's reasons—in this case the Department of Justice—we will not allow the memoranda to come forward.

My question is, Under those circumstances, isn't it appropriate that the attorney is bound not to release the memoranda by himself?

Mr. DURBIN. Let me say, in response to the Senator from Utah, that I don't apologize for not being a lawyer. I am proud to be one. But when the Senator came to the floor with a commonsense solution to this impasse, there is a question about Miguel Estrada and what he believes, who he is, and what his values are, for goodness' sake, let us put that information before the Senate and give the man a vote, which he deserves, that is a commonsense response from everyone—I think lawyer or otherwise. Then the lawyers got involved. And as the Senator mentioned, Miguel Estrada said, I will turn over all of this information, and go ahead, read it; there is nothing I want to hide here. Then the Department of Justice and the White House stepped in and said: No, no, no. We will not release it. This is privileged as attorney-client communication, which is one of the privileges under the law as I recall from law school.

But let me show you this chart.

Mr. BENNETT. If I might pursue just a moment——

Mr. DURBIN. I yield for a question.

Mr. BENNETT. Is it not true that Miguel Estrada is under a professional requirement in those circumstances not to release this information; even though he may want to, his professional ethics prevent him from doing so? And, if I may, the second question is, If that is, indeed, the case, is it fair to attack him for not being responsive when all he is doing is upholding his professional responsibilities?

Mr. DURBIN. In response to the question, let me say that it may be arguable as to whether or not there is an attorney-client privilege which makes this a confidential communication—these legal memoranda that he can't give to the public because his client is not giving approval—that may be the case. But let us argue for a moment that it is the case. Let's say, forget whether or not it is a questionable position. Let's assume it is right; that is, what you say is correct. Under the law, the client can always waive the privilege. If I have hired an attorney to represent me, and that attorney has written legal memoranda inserting a point of law, and then someone asks for that legal memoranda, that client or the attorney says, sorry my client, DURBIN, hasn't given a waiver of this privilege, this is privileged communication between the attorney and client, but I, the attorney, say, will you waive that privilege, will you disclose it, and if I say, yes, I affirmatively waive the privilege, at that point it becomes public.

The obvious question here is, Who was Miguel Estrada's client when these legal memoranda were written? His client was the Department of Justice. His client was the White House. His client was, in fact, the group that has now nominated him to this DC Circuit Court.

And so here you have a curious situation. Miguel Estrada says, I would love to let you see this, but my client won't allow me and won't waive the privilege, and, therefore, I can't.

The client—the White House—is saying, go ahead and approve this man. There is nothing to worry about. But we will not let you see what he has written. He was our attorney. He wrote for us. We will not let you see what he has written.

Would that raise a question in the Senator's mind, in all honesty and good faith? If the Department of Justice won't waive this privilege so we can read these documents, does it raise a question in the Senator's mind as to whether there is something in there that bothers them and worries them?

Mr. BENNETT. If I might respond to my friend from Illinois, it would raise the question that the Senator is concerned about, if indeed the papers were written just for this White House. But the historic fact is that the papers were written for the first Bush administration and for the Clinton administration—specifically for the Solicitors General in those two administrations. The specific Solicitors General who were involved, Democrat as well as Republican, said, don't allow the memoranda to come forward.

So it is not a case of George W. Bush's administration having hired this fellow and gotten information from him and then sent him up here while refusing to allow anything he told them to be made public. It is a different fact situation.

I am persuaded by the fact that every living Solicitor General—Republican or

Democrat, old or young, liberal or conservative, everyone who is still breathing—has said, don't allow this information to come forward. Under those circumstances, I find it difficult to hold Estrada to task for his failure to let this come forward when, in fact, the decision has been made and unanimously supported by every living person who has ever sat in the position of his client.

Mr. DURBIN. Let me respond in this way. If the Senator accepts what the Senator has just argued—that every time we elect a new President every lawsuit filed by the U.S. States Government would have to be refiled because there is a new President, there is a new Attorney General, there is a new Solicitor General—that isn't the case. There is a continuity of government. Presidents come and Presidents go. Senators come and Senators go. Attorneys General come and go. But the U.S. Government continues. For Miguel Estrada to argue that because President Bush's father did not waive the privilege then he can't waive the privilege today, I think is just plain wrong. I think the continuity of government argues otherwise.

Let me show you this chart that might be helpful in understanding what is being asked for is not unusual.

Look at this chart. The Bush administration claims that the request for Mr. Estrada's legal writings is unprecedented, it has never happened, it is a matter of privilege. But the Department of Justice has provided memos by attorneys during the following nominations: When William Bradford Reynolds was nominated to be Associate Attorney General, his legal memoranda were produced by the same Department of Justice which now argues they cannot do it. Robert Bork was nominated to be a Supreme Court Justice, and his legal memoranda were produced by the same Department of Justice which now says we cannot read Miguel Estrada's memoranda.

For Benjamin Civiletti, when he was nominated to be Attorney General, the same ruled applied. The Department of Justice said: Read those so you understand who he is. Now they say: You cannot read what Miguel Estrada wrote when he worked for us. We also have Stephen Trott, for the Court of Appeals for the Ninth Circuit; and Justice William Rehnquist, the Chief Justice of the Supreme Court.

So for the Department of Justice to argue this just is never done, here are five specific examples where the Department of Justice has waived the privilege and produced the writings.

It comes down to the basic point and question before us, What is my responsibility, what is your responsibility, and the responsibility of the Senate when a person seeks a lifetime appointment to the second highest court of the land? Do we have a responsibility to just nod approval, to stamp ''approved'' on them, and move them through or do we have a responsibility to ask basic questions?

Some of them are obvious: Is this person a person of good character? Does this person have a good legal education? Does this person have a good mind and a good temperament?

I would tell you, in each and every one of those categories, I think the answer is affirmative when it comes to Miguel Estrada. This is an impressive man. What he has done with this life, what he has overcome by way of personal challenge and adversity is really inspiring. I say that having met him and sat down with him and read his story. All those things are true.

But we also have a responsibility to ask: What is in your mind? What are your values? What principles will you bring to this job—not next year but 10 years from now if you are still sitting there as a Federal circuit court judge? How will you be motivated to make a decision?

I am not going to ask any judicial nominee to tell me how they will decide a specific case. That is not fair; that is not right. But to ask a judicial nominee basic questions you would ask of a district court judge in Utah and I would in Illinois, that is not unreasonable because we want to try to create a mental picture of who this person is and what they bring to the job.

Miguel Estrada did so well—straight A's—on all the things I mentioned before: honesty, character, personal background, academic achievement, legal achievement as well. All these things, straight A's.

Then we came to the basic question of: In your mind, who are you? How do you view the law? And that is where he failed. That is why his nomination is stopped on the floor of the Senate.

I asked him a question. It is written down here, and I will not recount it because I have already put it in the RECORD. Think about this question for a minute. I said to him: Can you identify any Federal judge, living or dead, whom you admire, whom you would like to emulate if you were appointed to the Federal judiciary? End of question. Not a trick question, no. He said: I would not want to answer that question. I would not want to name a single Federal judge whom I admire or would emulate from the bench.

That troubles me.

Mr. BENNETT. Mr. President, will the Senator yield for one final comment?

Mr. DURBIN. I am happy to yield.

Mr. BENNETT. I promise I will not interrupt the Senator further.

Mr. DURBIN. No, I am happy to yield.

Mr. BENNETT. But before we get too far away from the items on his chart, I simply want to come back again to the fundamental point I am trying to make.

The Senator from Illinois has, indeed, precedent on his side that there are circumstances where the client is willing to waive the privilege. Just because the client has been willing to waive the privilege in other circumstances does not mean the present client is required to waive the privilege in the present circumstance.

Each one of those circumstances is different. They are tied together by the fact that they are nominations and that the Justice Department is involved, but the fact situation in every one of them would be different from the fact situation here. The fact situation here is that Miguel Estrada worked for the Solicitor General, and every single living Solicitor General has said, regardless of what happened with William Rehnquist or Robert Bork, in this circumstance the memoranda should not be disclosed.

Miguel Estrada has a professional responsibility not to disclose, and he is being attacked for his decision to abide by his professional responsibility. If the White House and the Justice Department should be attacked for their refusal to grant the waiver, go to it, but do not take it out on the lawyer who is standing on the basis of his ethics.

That is the only point I wish to make. I shall not belabor it, and I shall not interrupt the Senator from Illinois further. I thank him for his courtesy.

Mr. DURBIN. No. I am happy to have the statement from the Senator from Utah. I do not consider it an interruption.

Let me say as an aside, I think it is healthy for us to have this kind of dialog on the Senate floor, and I have made it a policy both in the House and in the Senate to always yield for questions. I think if this is truly a deliberative body, then opposing points should be expressed on the floor, and there isn't enough of it, there isn't enough real debate on the floor.

I thank the Senator from Utah for coming here in good faith and stating his position. I may disagree with it, but for the sake of the RECORD and for the sake of public debate, I am glad that he is here. I am glad that he asked the question. And I know he feels as I do, he opens himself to questions when he comes to the floor. And I think that is part of our responsibility.

I have been advised by my staff—I did not realize this—that when White House Counsel Alberto Gonzales replied to our request about the documents related to Miguel Estrada, they did not claim a privilege, which surprises me; I thought that was what they would say, that there was some legal privilege here or some executive privilege. Instead, the White House Counsel's Office insists that we already have enough information about this nominee, that they don't need to provide this.

So we had a nice discussion about privilege and whether or not that applies. It appears the White House has said: We are not going to argue that—because they know they have produced this kind of information in the past.

But let me go on for a moment and try to get to the heart of why this is an important debate. This goes way beyond any particular nominee. As I said

earlier, I have no personal animus against this man, Miguel Estrada. I admire him personally. He was an immigrant to the United States. My mother was an immigrant to the United States. I think immigrants bring a great deal to this country. They bring an energy and creativity and a courage that really makes this a great nation.

Miguel Estrada fits that category. He came here as a teenager from Honduras. He learned the English language, went on to be accepted, I believe, at Columbia University, where he distinguished himself as a student. And that is no mean feat for a person who is new to the English language. Then he went on to Harvard Law School, where again he distinguished himself as a law student. So in each and every one of these categories, this is a man whom you would move toward as a good potential nominee for the Federal court.

But despite all of this knowledge and all of this experience, when it came time to ask him who he was, legally what he believed, he just refused to answer. And the question is, at that point, Should the Senate have said: Well, I guess we tried our best; let's put him on the bench for life; let's hope for the best?

We cannot do that. And I will tell you why we cannot do that. Because under the Constitution, which we have sworn to uphold, and which we take very seriously, in article II, section 2, it says:

> The President. . . . shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for. . . .

This tells those who are watching that what is at stake here is not just a discretionary decision by the Senate as to whether or not we will investigate a judicial nominee. We have a constitutional obligation. And if we believe in that investigation that a nominee is wanting, might not be a person suited to serve in the Federal judiciary, I think we are duty bound to vote against him.

Let's look at the record with George W. Bush, a Republican President, and the Senate, which for 16 or 17 months was under Democratic control. What happened? Did the Democratic Senate say to the White House: You cannot have Federal judges? We are Democrats. You are a Republican. Stop sending us Republican nominees? No. No. That did not happen.

In the course of that period of time, 100 judges, nominated by President Bush—Republican nominees—were approved by the Democratic Senate Judiciary Committee. I sat on that committee. I voted on virtually every one of those nominees in committee and on the floor. Those nominees were approved, knowing full well that the President had his right as the President to name his judges.

How many were rejected? If 100 nominees of the Bush White House were approved, how many were rejected by the Democrats when they were in charge of the Judiciary Committee? Two. One hundred approved; two disapproved—Judge Pickering of Mississippi and Judge Owens of Texas. Of the 100 that were approved, trust me, overwhelmingly, these were people of a conservative political philosophy, people who reflected the President's political philosophy and probably his legal philosophy. We knew it going in. That is the name of the game. The President has that authority. We asked the basic questions, were satisfied with the answers; the nominee moves forward. Two were rejected.

Now Miguel Estrada comes before us. Last Monday three more of President Bush's nominees were approved unanimously by the Senate, but Miguel Estrada still is on the calendar.

The question that has been raised on the Republican side is, why are you asking these difficult questions of Miguel Estrada? It is interesting to look at statements made by Republican Senators who are now arguing on behalf of Miguel Estrada. The first, of course, comes from Senator ORRIN HATCH, a friend of mine, my colleague in the Senate, chairman of the committee. When he led the fight to oppose a Hispanic nominee, Rosemary Barkett, this is what he said:

> I led the fight to oppose [Judge Rosemary Barkett's] confirmation because . . . [her] judicial records indicated that she would be an activist who would legislate from the bench.

Senator HATCH is entitled to that decision whether she is Hispanic or not. But when we ask similar questions today about Miguel Estrada, we are being called unfair. He could ask questions and have doubts in his mind about whether this judicial nominee by President Clinton would be an activist. We are not allowed to ask the same questions about Miguel Estrada without being accused of being unfair to Hispanics. This is by any measure a double standard.

Let me give you another quote from Senator HATCH, who quoted Alexander Hamilton when he said:

> The Senate's task of advise and consent is to advise and to query—ask questions—on the judiciousness and character of nominees.

It isn't just the character, it is the judiciousness, the judicial judging of nominees. That is a reasonable thing to ask. I could see a person with the most outstanding legal credentials, academic credentials and personal integrity, bring a philosophy to the bench which I think would be damaging to the country and our Constitution. Should I ignore it? I can't. I am dutybound because I have sworn to uphold the Constitution, to put men and women on the bench who will uphold it as well, and make decisions which are consistent with our values. Senators may see those values differently, but at a minimum we should be able to ask the questions of the nominees: What do you believe? What is important to you? When we asked those questions of Miguel Estrada, he evaded them completely.

Senator SCHUMER from the State of New York, on the Judiciary Committee, asked him a question similar to the one I referred to earlier, when Miguel Estrada refused to name one single Federal judge living or dead who he admired or would try to emulate. Senator SCHUMER decided to take a different approach. He asked Miguel Estrada to name a Supreme Court decision with which he disagreed. First he asked within the last 40 years and then he said, just in general, any Supreme Court decision you would disagree with?

Miguel Estrada, having served as a law clerk at the Supreme Court, in the Solicitor General's Office in the Department of Justice, with all of his background, having argued cases 15 times before the Supreme Court, refused to name one case in the history of the Court with which he disagreed.

What springs to mind? You don't need to be a lawyer. The Dred Scott decision, decided by the Court in the 1850s, which institutionalized slavery and led to the Civil War. Was that a wrong decision by the Supreme Court? I don't know of anyone who argues it was not. Miguel Estrada, who wants to go to the second highest court in the land, wouldn't name Dred Scott as a wrong decision.

Let's take another, Plessy v. Ferguson. This was a case which said when it came to race relations in the United States, the standard would be separate but equal, leading to a pattern of segregation in America finally broken by Brown v. the Board of Education in the 1950s and the civil rights laws. I don't know of a single person, other than some of the strangest and most radical, who wouldn't argue that Plessy v. Ferguson was a bad decision by the Supreme Court. Miguel Estrada, despite all of his background, wouldn't name Plessy v. Ferguson as a bad decision.

So to those who say the Democrats are nitpicking, you are really holding this man to an impossible standard, think about that.

I failed to add this. The same question about Supreme Court decisions you disagree with is a common question asked of judicial nominees. In fact, Republican Senator SESSIONS of Alabama asked that exact question of a Hispanic nominee, Richard Paez, nominated by President Clinton. When he asked the question, Democrats didn't stand up and say, that is unfair, that is a foul ball, you can't ask that question. Not at all. Paez answered the question, and for his forthrightness and candor before the Republican-controlled Senate Judiciary Committee, his nomination was held up over 4 years before finally a cloture motion was filed and it was brought to the floor.

For those who are following this, the standard being applied to Miguel Estrada is one that has been time tested on both sides. His response, sadly,

does not meet the measure of what we should expect nominees for a lifetime appointment to the Federal bench.

Senator LARRY CRAIG has also commented about this process. He is a conservative Republican. He would be proud of that description. He said:

> Any notion that there is a rebuttable presumption on behalf of a nomination—that the Senate ought to be basically pliant in response to a nomination—is altogether unconstitutional, even anticonstitutional.

These were arguments made by Republican Senators when the nominees came from a Democratic White House. Now with this one nominee being questioned as to whether he is going to answer the basic queries, we are being told we are unfair. Senator CRAIG said to do otherwise is to avoid our constitutional responsibility.

What is this approach we are seeing by judicial nominees where they are unresponsive to questions? It is not new. If you followed the televised hearings involving Clarence Thomas, you can recall when he was asked and replied that he had no opinion on the issue of abortion. Clarence Thomas, no opinion on abortion, this man who had been a Catholic seminarian, who had been a law student when Roe v. Wade was decided, said he had no opinion. He was allowed to get away with that answer. I think we learned a lesson there. We have learned it over and over. If nominees won't be open and honest with us when it comes to their beliefs, it puts us at a disadvantage in terms of trying to understand what they will do on the bench. It was predictable what Clarence Thomas was likely to do on the Supreme Court as a Justice. We have seen that has been borne out in more cases than not. The fact he would say to the Judiciary Committee with a straight face, I have no opinion on the issue of abortion, raises in my mind a question of his candor and a question of the Judiciary Committee's meeting its responsibility.

This is a statement or a quote from the Legal Times newspaper last year. This was Larry Silberman, who is a DC Circuit Court judge. It says:

> President George W. Bush's judicial nominees received some very specific confirmation advice last week: Keep your mouth shut. Scalia called DC Circuit Judge Silberman at one point, the latter recalled, and told him he was about to be questioned about his views on Marbury v. Madison, the nearly 200-year-old case that established the principle of judicial review. ''I told him that as a matter of principle, he shouldn't answer that question either.''

When you start law school, if not the first day, the second day, we study Marbury v. Madison because unless you understand Marbury v. Madison, you don't understand why there is a Federal court system and why it has the power to review legislation passed by Congress. It is so basic. It is like saying, read the Constitution before you come to constitutional law class.

Here we have a man aspiring to sit on the Supreme Court who is being instructed, don't say a word about Marbury v. Madison, a 200-year-old court case. So it is a tactical strategy, used by nominees as often as they can get away with it, to say as little as possible.

Let me also go to the question of Hispanic nominees. Here we have a statement made on the floor that Mr. Estrada should be approved because he is of Hispanic origin. I am proud of the fact that, as a Senator from Illinois, I was able to appoint the second Hispanic district court judge in our district's history to the court in Chicago. He is from Puerto Rico. He has done a great job, and I am sure he will continue to. We have a growing Hispanic population in our Nation, and certainly in my home State. They bring great value to our country and to my State. I think it is reasonable—in fact, advisable—for us to bring to the bench men and women of diverse backgrounds so that when defendants and plaintiffs and their lawyers come before that bench, they see represented in the court the diversity of our Nation. I think that is a good thing to do.

When the White House has decided to act affirmatively to bring Hispanics to the Federal bench, I think they are doing the right thing. I applaud that. I think we should bring as much diversity as we can with qualified individuals to the bench. But the arguments being made that because we have questioned Miguel Estrada in whether or not he has been forthright in his answers has something to do with the Democrats' view of Hispanics' contribution to America doesn't hold up.

One of the Republican Senators said in the Dallas Morning News earlier this year:

> If we deny Estrada a position on the DC Circuit, it would be to shut the door on the American dream of Hispanic Americans everywhere.

But the reality is this. Until last week, Mr. Estrada was the only Latino nominated by President Bush to any of the 42 vacancies that have existed on the 13 courts of appeal. In contrast, President Clinton nominated 11 Latinos to our appellate courts. He nominated 21 Latinos to the district courts. Sadly, when the Republicans controlled the Judiciary Committee, and President Clinton was in the White House, they blocked several well-qualified Latinos from getting hearings, including Enrique Moreno, Jorge Rangel, and Christina Arguello.

I recall the Moreno nomination. Enrique Moreno was born in Juarez, Mexico, under the poorest of circumstances. His family emigrated to El Paso, TX, where they worked as blue-collar workers. He grew up under the toughest of circumstances, but he went on to great distinction in law school. And he was sent before the Judiciary Committee and wasn't even given the dignity of a hearing—without being given a hearing and, certainly, no vote. When asked on the floor, Senator HATCH said that is because the two Republican Senators from Texas didn't approve him. Well, that is their right. Under the blue slip process—an arcane, but important process we have followed in the past—they could stop him, and they did.

I don't recall the hue and cry then from any Republican leaders that somehow it was discriminatory against Hispanics that two Anglo Republican Senators from Texas would stop a well-qualified Hispanic nominee. But they did.

The same thing was true for Jorge Rangel, nominated to the circuit court of appeals, who finally, after waiting and not receiving the approval of the two Senators from Texas, said: I give up, I am throwing in the towel. This is all about politics, and no matter what I say or do, they are not going to approve me.

He walked away from that process. That is an unfortunate example of what can happen.

Mr. Estrada was given a hearing and an opportunity to answer questions, and he has been given repeated opportunities to provide legal writings so we can make a decision on him. I stand before the Senate today, as I have in the past, to say if he is open and honest and cooperative with the committee, he deserves a vote. If we receive the legal memoranda and writings and have a chance to ask questions related to those in some areas he has not answered in the past, and he gives open and honest answers, then his nomination should move forward.

I see my friend and colleague from Ohio, Senator DEWINE, in the Chamber. Not 2 or 3 weeks ago, several nominees from his State came before the Senate Judiciary Committee with Senator HATCH as chairman. Two of them were fairly controversial. The hearing, I am sure Senator DEWINE recalls, went on for 12 hours. It was one of the longest I have ever seen. One nominee, Mr. Sutton, was given a lot of questions by a lot of different members and he answered them. Though I didn't agree with his answers, I have to say in all candor that he didn't avoid the questions, as we have seen with Miguel Estrada under the circumstances. So I think that is an important difference to be made.

### THE DANGER OF EPHEDRA

Mr. DURBIN. Mr. President, I want to touch on one other issue not related to the Estrada nomination before I yield the floor. It will take me about 15 minutes to complete the presentation I am about to make. Then I will be happy to yield the floor. It relates to a decision that was made this week by a county in New York, Suffolk County. They took a historic step to protect the residents of their county from harm, even the dangerous and deadly harm of dietary supplements. You know about these dietary supplements. You cannot walk into any drugstore or turn on the TV or go to a convenience store or a gas station that you don't see someone trying to sell us a pill to make us thin. These dietary supplements, I guess, help some people to lose

weight. Doctors argue back and forth about that.

It turns out that some of these dietary supplements contain a chemical—a naturally occurring chemical—called ephedra, which is dangerous. Suffolk County in Long Island banned the sale of ephedra products because the Suffolk County Department of Health Services determined that ''dietary supplements containing ephedra alkaloid are too dangerous to be sold within the county of Suffolk.''

Last year, the U.S. Army moved to protect service men and women and the employees who use the base by also banning the sale of ephedra products in commissaries across the United States.

Sadly, it would seem that despite these decisions by local and State governments and by some agencies of the Federal Government, our Federal Government, in general, and particularly our Department of Health and Human Services, has consistently refused to take the necessary action to protect America's families and children from products containing ephedra.

Since last August, I have repeatedly called on Secretary Tommy Thompson, and I renew the call today, to ban ephedra products in the United States. The Secretary has the authority to do so. There is no excuse for the delay. I have asked him to use his authority under DSHEA to declare ephedra an imminent hazard and take it off the market, in the same way as it was done in Suffolk County and other cities and counties, and in certain States it was done in our military posts. The Secretary has refused to respond. His responses have not been helpful.

As chairman of the Government Oversight Committee, last year, I held two hearings on this topic, challenging this administration to act. I am not the only one who has done so. Last year, the Canadian Government banned products containing ephedra. They said you cannot sell them there because they are too dangerous. They kill people.

What kind of products am I talking about? Are these weird, remote things you never run across? No. Metabolife—have you ever heard of it? They do a lot of advertising. Metabolife diet pills—an energy supplement, they call it, to help you lose weight. They do sell a product that contains ephedra. This is what I am talking about. These are the drugs that can be a danger to certain people. There are others. One is called Yellow Jackets. I will get to that in a moment because there is a sad and tragic story about these. It says ''built as an extreme energizer.''

I recently went to a junior high school in Springfield, IL, and I asked the boys and girls: How many have heard of Yellow Jackets? Half of the kids raised their hands. Do you know why. You don't need a prescription. You can walk into any convenience store or gas station and you can buy them two or three at a time.

Sadly, these pills taken by kids can kill them—kill them. I will tell you of a sad story where it occurred near my home. I have given this information to Secretary Thompson. He has ignored it. Nothing has happened. There are no excuses now for what we presently face. The best he can give us is, he says these products ought to have stronger warning labels.

What would a warning label say if it was honest about the product ephedra? It would have to say if you are going to take Metabolife, for example, which is known as a dietary supplement and classified as a food under our strange Federal laws, if you were going to take this product, here is the warning label you would have to put on it: Taking this food product will increase your risk of heart attack, stroke, seizure, and death.

Can one think of another food product sold in America where we identify on the label that it can be lethal if you take it? In most cases, in most civilized nations, we would not allow a product that could kill you to be sold as a food product in any circumstance.

Some people argue, you can take enough aspirin to kill you. This is all true, but when it comes to this product, they are selling it to children—this Yellow Jacket product and this product, Metabolife—to virtually anybody who can put money on the counter, with no warning as to the potential of harm.

In reality, how can the Secretary rely on warning labels for a product that is found to be so dangerous? Let me make it clear, the only reasonable step to take is to take these products off the market. If this administration, and particularly Secretary Thompson, continues to delay this decision, sadly he will have to answer the question of how he can account for the numerous people who continue to lose their lives because of these dangerous products.

The Secretary has the power under existing law to take these products off the market. He has failed and refused to do so. As the Department delays, terrible things occur.

I told you I would recount an incident involving this particular product, Yellow Jacket. Last September, in Lincoln, IL, a few miles from where I live, a young man 16 years old, a healthy, athletic, high school student named Sean Riggins was getting ready for a football game. He went to a local convenience store and bought Yellow Jackets, an extreme energizer. You will find them for sale. You are going to find them in North Dakota. You are going to find them as well in Rhode Island. You are going to find them in Ohio. They are everywhere.

This boy bought this product, grabbed a Mountain Dew, which contains caffeine, washed it down, and died. He bought them at a convenience store, washed them down, and died. It is incredible to think this could happen, and the autopsy confirmed this was the reason for his death.

When we say to Secretary Thompson, for God's sake, protect the children from this happening again, he waits, he fails to respond. He says he is thinking about it.

On September 6 last year, because of these Yellow Jackets, Sean Riggins, a healthy, athletic high school student had a massive heart attack and died. When you look around the Senate, you will see pages working on the floor in the Senate. It is a time-honored tradition. These are young men and women of high school age. When you look at them, you are looking at a person of the age of Sean Riggins who thought he was doing the right thing to get ready for a football game. Sadly, he was preparing for a funeral—his own.

He was the only child of Deb and Kevin Riggins from Lincoln, IL. His parents, thank God, have decided to go on a crusade to try to protect other kids. They turned their grief to positive action. They set up the Sean Riggins Foundation for Substance-Free Schools. I commend them for their courage. They are going to coaches, teachers, and parents saying: For goodness sake, talk to your kids about this. We know about marijuana; we know about cocaine; we know about heroin; we have to do our part in telling them how dangerous it can be. We know how dangerous tobacco and alcohol are. We are ignoring the obvious. These are for sale everywhere. They are cheap and kids are buying them. Let me be honest with you; some kids buy these pills and drink beer with them and think this is a brand new high and die as a result—Metabolife, Yellow Jackets, and a variety of other names.

The question before us now is, Should we act? And the answer is obviously yes. Mr. President, did you know the NCAA, the National Football League, and the International Olympic Committee have all moved to protect their athletes by banning ephedra? And yet, Secretary Thompson refuses to protect innocent children who buy this product.

The Rigginses are not alone in their grief. The Suffolk County, NY, ban I mentioned was imposed this week was also as a result of a young person's death. In 1996, Peter Schlendorf of Northport, Long Island, 20 years old, died from taking ephedra. His parents have joined the Rigginses in this sad alliance in the memory of their sons to try to warn parents.

The 7–Eleven stores—we see them all around—used to be one of the stores that sold ephedra products. They decided it is not safe. They will not carry ephedra products anymore.

Think about it; all this action is taking place without the Federal Government stepping in to protect us. That is hard to believe.

There are also lawsuits underway. The trial lawyers of America are convenient whipping boys. People blame them for a lot of things—too many frivolous lawsuits, high insurance rates, and the like. The fact is, if the trial lawyers of America were not suing this industry, changes would not

take place because this Government is not doing its job. This administration is not doing its job.

If we look at the situation, Metabolife is now peddling a product they say is free of ephedra. They want to make it clear you have a choice. They are trying to figure a way to back off the thousands and thousands of bottles of this product they have already sold.

In October, a Federal jury found Metabolife 356, this dietary supplement, containing ephedra that was ''unreasonably dangerous,'' although you can buy it over the counter without a prescription, and awarded four injured Americans $4.1 million to compensate them for their injuries and the wanton bad behavior of the Metabolife Company. Many other cases have been settled with large awards.

The action is in the courts because there is no action in Washington. Secretary Thompson and the Department of Health and Human Services refuses to respond, refuses to act. People die, and their survivors go to court holding these companies responsible. Why isn't this Government holding these companies responsible? Why aren't we banning the sale of these products now?

The medical evidence is overwhelming. In January of this year, researchers from Yale, the University of Texas at Houston, the University of Michigan, the University of Cincinnati, and Brown University reported in the journal Neurology that those taking one-third of the manufacturer's recommended daily dose of these ephedra products increase their risk of hemorrhagic stroke three times. In February, an article in the Annals of Internal Medicine showed that ephedra use associated with a greatly increased risk for adverse reactions compared with other herbs, and the authors suggested its use should be restricted.

This study found ephedra use resulted in a 720-times increase in adverse reactions compared to ginkgo biloba use and in hundredfold more adverse reactions compared to other herbs that were used which they think are safe. Secretary Thompson knows this. The medical evidence is there.

Metabolife, when they were asked to produce information for Congressman WAXMAN and myself, said in 1999, for example, they did not have any instance of anybody taking their pills and having a bad result. But when Congressman WAXMAN and I, as well as the trial lawyers, put them on the spot and made them produce all the information sent to them, we found 100 people before 1999 with serious adverse reactions, including heart attack and stroke.

These companies selling these products have been irresponsible in the marketing of this product. They sell them to children. They know they cause adverse health consequences, and they continue to do so because this Government will not step in and stop them. The burden is on Secretary Thompson and the Bush administration. Do not look the other way. Do not ignore the deaths that are occurring. Do not ignore the fact that 23 States have now moved to restrict the sale of these products because the Federal Government refuses to accept its responsibility.

It is time for us to act and to act now before there are more innocent victims.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Ohio.

TRIBUTE TO JIM MCKEE

Mr. DEWINE. Mr. President, I rise today to pay tribute to a dear and cherished friend, a mentor and a role model, former Yellow Springs, OH, chief of police of 34 years, Jim McKee, who passed away on January 18 of this year at the age of 73.

Raised in Springfield, OH, Jim McKee moved to Yellow Springs when he was 18 years old, fresh out of high school, in search of a job. During his first year in Yellow Springs, Jim held a number of different positions, working in a shoe repair shop and later at Mills Lawn Elementary School.

It was at Mills Lawn Elementary School that I first met my future wife Frances, in first grade, but it was also at Mills Lawn I first met Jim McKee. Jim was the person who kept things going at Mills Lawn. I remember how much respect, love, and admiration the students had for Jim.

I first saw in Jim the ability he had to connect with people. I saw it as a child. I remember he would gather the students together and talk to them about how we needed to keep the place looking good and how important that was. I remember how we looked up to him and how much we respected him.

Eventually, Jim McKee took a job at Wright Patterson Air Force Base near my hometown of Yellow Springs. But by 1957, Jim decided he needed to move on. True to form, Jim saw this change not as a bad thing but really as a new opportunity to do something he had always dreamed of doing, and that was to get involved in law enforcement. This was his chance, his opportunity. Before long, he was realizing that dream. The village of Yellow Springs then hired him as a police officer. He joined a department of two officers and a chief, a small department at the time. Within 2 short years and the recognition of his talent and his hard work, Jim McKee was appointed chief of police.

In this new leadership position, Jim McKee soon found himself dealing with issues he probably did not think he was going to be dealing with, issues of historic importance, because at that time the civil rights movement was beginning to sweep our country. The civil rights movement had reached Yellow Springs, a small community in southwest Ohio, my hometown. It reached Yellow Springs sooner than most other parts of the country.

Jim McKee was one of the few African-American chiefs of police in the State of Ohio. Jim McKee guided my hometown with great skill through a very difficult period of time. As one of the few African-American chiefs of police in the State, really one of the few in the country at the time, Jim McKee faced his own civil rights issues early on in the movement. Everybody in Yellow Springs, a community then and now of great diversity and a community that then and now embodies a person's right to free speech, everybody in Yellow Springs respected and liked Jim McKee. That made all the difference in the world.

Whether Jim realized it or not during this tumultuous era, Jim was in fact playing a part in our American history. Jim McKee kept the peace, maintained order, and all the while respected people's freedom of speech, their right to demonstrate, and their civil rights. He did it in a professional way.

I remember when Dr. Martin Luther King came to Yellow Springs to deliver the commencement address at Antioch College. Chief McKee, of course, provided his security detail. Years later, recalling this experience with Dr. King, Chief McKee had this to say:

> At the time there were rumors they were out to get him. I saw him do his nonviolent teachings. I drove around in the car with him for 2 days. He was a perfect Christian gentleman and I was frightened to death because I was providing his security. We told people he was staying at the Antioch Inn, but in fact he was right across the street from where I live—in the home his wife, Coretta, lived in as a student at Antioch years before. You would think they would have figured it out, with all the police cruisers parked out front. I was never so glad to see a plane take off.

Despite whatever concerns Jim McKee may have had, the chief performed his duties with a great sense of professionalism, with honor and courage. Though he dealt with significant issues on the national stage, Chief McKee dedicated his career to Yellow Springs and to keeping the community he loved so much safe and free from crime.

As Members of the Senate know—or may not know—Yellow Springs is not a large city. It is a village. It is a small village where people know their neighbors and watch out for one another. Even today, I believe there are probably only about eight or so police officers on the force. Chief McKee, as the local police chief, was really an icon in his own community. He was greatly admired and respected as an officer, as a protector, but most of all as a friend.

Though I first met him as an elementary school student, actually in the first grade, I had the opportunity later on to reconnect with him. Our lives came together again when I became assistant county prosecuting attorney and he was by that time the dean of the chiefs of police in Greene County. I knew him then and later when I became the prosecutor of our home county. We worked on a number of cases that arose out of Yellow Springs, several very difficult rape cases. We

worked on several of those cases together. During this time, I learned a great deal about how Chief McKee treated people and how he dealt with some of the most tense situations. Perhaps most importantly, though, I saw his great sense of humanity toward both victims and suspects.

Chief Jim McKee taught me there is much more to police work than arrests and convictions. He taught me about the human component in police work. He taught me about people and about compassion.

I remember one instance in particular when I saw and learned about how Jim McKee dealt with a man who had been in an auto accident. This man was involved in a horrible thing, as many accidents are, but he came out of it. He walked out of the accident, but the other person in the other vehicle did not and the other person died. This particular person was actually a suspect, and he could have been charged. The police were looking at and trying to decide whether to charge him. Actually, later on there was a grand jury that was convened. The grand jury had to make a decision whether this person was going to be charged and have to stand trial. Eventually they decided not to charge him, but Jim did not know that at the time. I saw how Jim dealt with this man and showed this man, who was going through great anguish at the time, a man who was really a suspect, and I saw how Jim worked him through this, talked to him and showed great kindness to him. That is how Jim McKee treated everyone, with great kindness and with great compassion, all the time being a professional, all the time doing his job.

It was this compassion that set Jim McKee apart. He cared deeply about people and just knew how to deal with them.

At the end of Chief McKee's distinguished 36-year career in law enforcement, I had the honor of attending his farewell banquet. I was lieutenant governor at the time and was there to pay tribute to the chief on behalf of the entire State of Ohio, and on behalf of Governor, then-Governor George Voinovich. At this reception and this dinner, I was struck by the sheer outpouring of respect and admiration and appreciation for Chief McKee's work and for his selfless contributions to our community. It was clear at this reception how important Chief McKee was to the people, to the village of Yellow Springs, and to the entire law enforcement community across the State of Ohio. I was proud to be part of this memorable event.

Following his retirement from the force in 1993, Chief McKee remained active in the community until the day he died. He was a key member of the Yellow Springs Men's Group, an organization dedicated to studying issues important to the day-to-day lives of Yellow Springs residents. Through this organization, the James A. McKee scholarship fund was established in 2002 as a tribute both to Jim and to his legacy of community involvement.

In the recent days following Jim's death, a number of newspapers ran articles about his life and his legacy. As I read through these tributes, I was especially taken with a statement from my friend, Paul Ford, who had known Chief McKee since 1949. This is what Mr. Ford said:

> We've lost a good citizen, a good friend, and a humanitarian. Once you met Jim, you were a friend.

Indeed, Jim McKee was my friend and someone for whom I had great affection and admiration. This quote really gets to why Chief McKee was so special to the community of Yellow Springs and to all of us who knew him. He dedicated his life to serving the people of Yellow Springs. He worked to keep his community safe and free from crime.

When I think about Jim McKee and his life's work as a police officer, protector of the community, I am reminded of a Bible passage from Matthew: Blessed are the peacemakers for they shall be called the children of God.

Indeed, Chief Jim McKee was a peacemaker and a protector and just a good and decent hard-working man. He was a kind person, a kind human being who always tried to do the right thing for his family, for his community, and for his Nation.

My wife Fran and I extend our heartfelt sympathy and our prayers for the entire McKee family, for his wife of 54 years, Naomi; his four daughters, Bari McKee-Teamor, Karen McKee, Jean McKee, Sandra McKee-Smith; his son, Jimmy, his five grandchildren, and one great grandson. Jim McKee loved his family. He cared deeply for them. I know they, like all of us, will miss him tremendously.

Thank you, Jim, for all you did for Yellow Springs and for our Nation. You will be remembered always in our minds and in our hearts.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

## FOREIGN POLICY

Mr. DORGAN. Mr. President, I was reading a piece in a newspaper this morning that misquoted remarks I made on the floor of the Senate recently. The journalist got it plain wrong in this case. He indicated that Senator DORGAN feels that Saddam Hussein is not dangerous.

Of course, I have never said that, would not say that, and whoever listened to my remarks previously either chose to reinterpret them in a way that is not accurate or chose to ignore what I said. Let me describe what I said.

I talked about the dangers presented by North Korea. I talked about the importance of prosecuting the war on terrorism, and protecting this country against terrorist attacks. And I said that while Iraq and Saddam Hussein are a problem, we have to face these other issues as well.

If today trucks are backing up to a plant in North Korea and moving fuel rods that will become processed and become part of a nuclear bombmaking process, and a bomb could be sold by North Korea to other countries, and to terrorists, that is a serious problem. That could come back in a year and a half or 2 years into this country in the form of a nuclear bomb possessed by a terrorist. That is serious business.

We are told that the trucks are moving. We are told that is what is happening in North Korea. And yet there does not seem to be the same kind of attention paid to it as is now paid to the country of Iraq.

We are told there is an orange level of alert in our country today, which suggests once again the threat posed by Osama bin Laden and his fellow terrorist, who have not yet been apprehended.

So we are facing terrorist groups, Osama bin Laden, Korea, Saddam Hussein, and Iraq.

My point is not that Saddam Hussein is not dangerous; he indeed is dangerous. We ought to deal with him. Frankly, the credit of having inspectors in Iraq at this point belongs to the President; otherwise they would not have been able to enter Iraq and begin the inspections. If Saddam Hussein does not disarm, he will be disarmed either by this country or this country and other countries acting in concert. That is just a fact.

My point is that is not the only challenge we face and not necessarily the greatest challenge we face. If trucks are moving spent fuel rods in North Korea today, then we better make a judgment to deal with that.

If we have an orange alert in this country today because terrorist groups have mobilized and intelligence suggests that an orange alert is warranted, then we had better be concerned about that. And we had better prosecute that war against terrorism as aggressively as we pursue Saddam Hussein. That is my point.

Now I have come to the floor today to speak about a related subject, and that is the subject of energy. We import oil in order to run our country's automobile fleets, stationary engines, and so on. We import 20 million barrels a day. Saudi Arabia is our No. 1 importer—Mexico, Canada, Venezuela, Nigeria—Iraq is No. 6 at 289,000 barrels. Our country is very dependent on energy from a Middle East that is rocked by turmoil. If tonight, God forbid, terrorists were able to interrupt the flow of energy, the flow of oil to our country from Saudi Arabia and Iraq, for example, our economy would be in trouble. That is just a plain fact.

Does it make sense for us to continue to be so dependent on oil coming from that part of the world? I don't think so. So what will we do about that? Let me describe a couple of things.

Yesterday my colleagues from South Dakota, Senator DASCHLE and others, Senator JOHNSON, myself, and Senator

CONRAD, introduced a piece of legislation dealing with ethanol, renewable fuels. Ethanol is a fuel in which you grow a crop in the field, you harvest it, you take a kernel of corn, you extract from the kernel of corn the drop of alcohol and you have the protein feedstock left. You extend America's energy supply, you still have something for cattle to eat, and you grow it year after year after year and you are not dependent on Saudi Arabia or Iraq. It is a renewable fuel that you produce year after year. Here is the way you produce ethanol. You grow a crop such as corn, finely grind it, separate it into component sugars, distill the sugars to make ethanol, and you put it in a vehicle. It is very simple. You are growing crops to produce America's energy. That is what ethanol is about. You can do it with barley. You can do it with sugar beets, start with sugar beets. You can do it with potatoes. You grow your energy.

We import 55 percent of the oil we consume in this country. That is expected to grow to 68 percent by 2025. Nearly all of our cars and trucks run on gasoline. They are the main reasons our country imports so much oil.

I think this chart shows what is happening with respect to energy in our country. We have a demand line that is going up. You will see that the reason for that, by and large, is transportation. Mostly that is vehicles—cars, trucks, other vehicles. This is where the demand is, transportation.

Domestic production of oil, as you can see, is fairly flat. If we were to go up to ANWR in Alaska, as some would like us to do—I don't happen to support it—you would see what would happen as a result of ANWR—almost nothing. Or if we go on into the Gulf of Mexico, which I do support—that will not solve all of our energy needs. We are just not going to solve our problems with those approaches. We have to produce more, and we will produce more—produce more coal, produce more oil, and natural gas. We will do it in ways that protect our environment as much as possible. But that is not enough. We need to do much more than that.

One of the answers, in my judgment, is to have much greater production of ethanol. And so we are introducing legislation, as my colleague from South Dakota, Senator DASCHLE, said yesterday, with a renewable fuels provision. It has been carefully negotiated over many months. Twenty groups—National Corn Growers, the Renewable Fuels Association, the American Farm Bureau, National Farmers Union—have all sent letters supporting this legislation that we have introduced.

We now produce 1.8 billion gallons of pure ethanol. This provision will add 3.2 billion new gallons. So by 2012, we will be producing 5 billion gallons of ethanol.

I think with this provision, the ethanol industry will continue to grow. That translates to a new market, for example, for corn as the feedstock for an ethanol plant—1.2 billion bushels. That is new opportunities to farmers to invest in value-added agriculture, new opportunities to extend America's energy supply, new opportunities to make our country less dependent on Saudi Arabian oil, on oil from Iraq. All of that makes good sense. There are substantial economic benefits available with respect to this, and substantial security benefits for our country that will accrue from our passing this legislation.

So I rise today to say the introduction yesterday by myself, by Senator DASCHLE, and many others with respect to this major piece of legislation dealing with ethanol is a significant step forward. My hope is, on a bipartisan basis, we will be able to move this legislation in this Congress, recognizing that having less dependence on oil from the most troubled region in the world is advisable for this country.

How do you do that? By extending America's energy supply through the production of ethanol, the production of something that is renewable, year after year after year. It is not something that is depleting, it is renewable. That is why this legislation makes such good sense.

There is something else we can and should do. I am going to introduce legislation the day we get back from next week's break. I intended to introduce it yesterday, but for a couple of reasons I have held it, and will continue to refine it just a bit.

I will propose a project that deals with the hydrogen economy and fuel cells. The President mentioned this in his State of the Union Address to the Congress. I commend the President for it. It is exactly the right idea. I have been working on this for some long while.

In fact, the bill that passed the Senate last year, the energy bill, contained a provision I added that said by the year 2020 America should aspire to have 2.5 million fuel cell cars that are using hydrogen—2.5 million fuel cell cars on the road.

Give or take, there are 700 million vehicles in the world. Give or take, there are about 70 million vehicles produced each and every year. Almost all of them are vehicles with carburetors through which you put gasoline and you create power for the engine and you drive off in the automobile. Nothing has changed in a century—nothing at all.

My first car was an antique 1924 Model T Ford. I restored it, then sold it. I put gasoline in that little old antique Model T Ford the same way you put gasoline in a 2003 Ford: You pull up to a pump, put the hose in the tank, and start pumping gas. Nothing has changed in 100 years—nothing.

The question is, Are we going to pole-vault over all these discussions and move to a new day and a new technology? Sure, we are going to discuss ANWR and CAFE standards and all the other issues that dominated debate last year. But if that is all we discuss, then every 25 years we will come back and discuss the same thing, and our policies will be known as ''yesterday forever.''

Why don't we begin discussing new technology and a new day, a new type of energy for this country's future, a hydrogen future with fuel cells for vehicles?

I mentioned our energy security is threatened. We import 55 percent of the oil. That is going to go to 68 percent by 2025. Most of our cars and trucks run on gasoline. That is why we import so much oil. Two-thirds of the 20 million barrels of oil we use each day is used for transportation.

Now let me describe a car that uses fuel cells. This chart shows a vehicle, a Ford Focus. It is a fuel cell vehicle, production-ready prototype, unveiled in autumn 2002. I drove one a couple days ago, drove one last summer. In fact, we have had fuel cell vehicles that drove all the way from Los Angeles to New York.

This is a picture of a hydrogen fueling station at Powertech Labs. Fueling infrastructure is critically important to make hydrogen fuel cars a reality.

Hydrogen cars do not have to be compact. This is a picture of a fuel cell vehicle, a Nissan Xterra, fueled by compressed hydrogen, tested on public roads in California in the year 2001.

Finally, a picture of a more futuristic looking vehicle, the General Motors Hy-Wire Fuel Cell Concept Car, unveiled in August of 2002.

Let me describe what Europe is doing in fuel cells. The European Commission has invested significantly in fuel cell cars, and industry is commending them for it. Herbert Kohler, director of Environmental Affairs at DaimlerChrysler, said political support was vital for the car industry to move to fuel cells. They can do a lot for themselves, but at a certain point they need fuel, and that means involving others.

It means the development of a supply of hydrogen, which is ubiquitous, by the way. Through electrolysis, you can separate the hydrogen and oxygen in water, develop the hydrogen supply, and put water vapor out the tailpipe of the car. You have the tailpipe of a vehicle that emits water vapor. What a great thing for the environment!

The European Commission, the executive body of the Europe Union, has earmarked more than 2.1 billion Euros, $2 billion, for research over 5 years. A central focus will be hydrogen fuel cells.

Let me tell you what Japan is doing. Japanese carmakers are flooring it on fuel cells. Tokyo's fuel cell initiative has all the hallmarks of a far-sighted strategy, Business Week says, and calls to mind Tokyo's blossoming success in hybrids. Americans are snapping up these fuel-efficient, environmentally friendly cars, and fuel cells could turn out to be a bigger, more important chapter in exactly the same book.

I don't think we ought to stand around here and continue to debate

small issues so that every 25 years we can have a repeat of the same debate. I think we ought to debate big issues. I think we ought to have a world view change here, with respect to how we want to power our vehicle fleet. I think we want to convert to hydrogen fuel.

That ought not scare those who produce oil, natural gas, and use coal. In fact, those same companies are some of the companies in the lead, in the forefront of moving to a hydrogen economy.

You can produce hydrogen from fossil fuels. We are always going to need and use fossil fuels. But wouldn't it be great to power our vehicle fleet with hydrogen and fuel cells so that we don't need Middle East oil?

Wouldn't that be a wonderful future for this country and at the same time improve our environment, because we are going to use hydrogen and fuel cells and put only water vapor out of the back of the car through the tailpipe?

That is exactly what we ought to do. How you do you get that done? I have met with representatives of the hydrogen and fuel cell industries. They are anxious. They are engaged in substantial research. But the fact is they cannot do this alone.

The conversion of the vehicle fleet in our country to the big idea of the hydrogen economy and fuel cells will not and cannot happen without the support of the Government. I propose an Apollo-like program. When I say Apollo program, I am talking about the program by which John F. Kennedy said, ''We are going to go to the Moon by the end of the decade.'' I think our country should decide to move to the hydrogen economy and fuel cell vehicles with a big idea and in a big way to help make it happen as public policy. The Europeans and the Japanese are moving in that direction, and we should, too.

As I indicated, last year I put a piece in the energy bill that says we aspire to have a goal of 2.5 million vehicles on the road in 2020 in this country using fuel cells.

Now, the President proposed a $1.2 billion hydrogen fuel cell program. Only half of that is new money. That is not a big idea. It is the right idea. But it is not big and bold.

I propose a $6.5 billion 10-year program that is really going to move this country to say we want to enact change. We want to move to a hydrogen economy and develop fuel cell vehicles to help create the infrastructure for the production of hydrogen and the storage and transportation of hydrogen. We want to provide incentives for people to buy the fuel cell vehicle.

This will be one of the best things this country has done. It will be one of the big ideas of the century. That is why I think it is so important.

We talk about this with the backdrop of a troubled world—substantial problems in the Middle East, Central and Southern Asia, terrorism, North Korea, and Iraq. When you think of the difficulties that exist and the small thread our economy hangs on, making sure that tonight, tomorrow, the next day, and every day of the week and every month we get enough oil into this country from places like Iraq, like Venezuela, like Saudi Arabia, and Algeria in order to power our vehicle fleet, then we ought to understand this economy is held hostage by forces we don't control.

It is dangerous for this economy to be dependent on things we cannot and will not be able to control in the long term. But we can—as we have in many other areas—create incentives and new technology and new opportunities to solve old problems.

That is exactly what I propose with this initiative. I intend to introduce this the day we get back. I expect and hope it will be bipartisan. I have been talking to some Democrats and some Republicans.

The President has said this is a good idea. Good for him. I commend him for it. I think he proposed a step in the right direction. And, frankly, having the Bush administration be supportive of this kind of technology change is excellent. It is good for this country. But the Administration's approach is more timid and less bold than it should be.

I am going to propose an Apollo-type program that says let us really move and get this accomplished. I hope to have substantial bipartisan support as we begin to write an energy bill this year in the Senate.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BENNETT). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## LEGISLATIVE SESSION

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now return to legislative session.

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

## MORNING BUSINESS

Mr. FRIST. I ask unanimous consent that the Senate proceed to a period for morning business.

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

## A TRYING TIME FOR OUR NATION

Mr. FRIST. Mr. President, in a few minutes I will be closing the Senate for our recess break, but I wanted to take this opportunity to speak a few moments on an issue that is on my mind and on the mind of my wife and family, and it is on the minds of most every American today in what I would consider very trying times, from an intellectual standpoint, from an emotional standpoint, a spiritual standpoint. And indeed, this week has been a very trying week for the Nation.

There is much alarm about the increased threat of terrorism. We know we are at a time that is closely approaching the possible use of force to ensure that Saddam Hussein is disarmed of weapons of mass destruction, such as chemical agents and biological agents; and we all feel the stress all across America—not just in this body in Washington, DC, and in New York, where the stress level is high because of the symbolic value of being a potential site for attack. We are concerned for families, we are concerned for friends, we are concerned for neighbors all over America, and we are concerned for the service men and women overseas.

As elected officials in this body, we have taken the opportunity over the last 3 or 4 days, coinciding with the increased alert, to talk about the nature of our duties and responsibilities both to our constituents, as well as to our families as we serve in this body. We, in the Senate, have a great honor to serve in this beautiful Chamber, in this beautiful Capitol Building, and it is indeed the symbol of our Nation's strength and our Nation's purpose. Throughout this week, while fully aware that our enemies, as I speak now and as so many have debated so many issues over the course of the week, are plotting their evil designs. We know that. Yet we continue to carry out our duties as Senators and as citizens. It is truly remarkable.

I could not be prouder of the many fine women and men who make up this institution. Yes, I have mentioned the Senators, but I also include the thousands of individuals who come to this building and surrounding buildings on Capitol Hill to support the activities of what goes on in this body and in this room as we debate and amend and pass legislation. Through very difficult, long, and hard hours so many have demonstrated to this fine city and to the Nation that life must go on in times of threat and increased alert.

Terrorists will have won when they can so intimidate us that we stop performing our most basic duties and responsibilities. Clearly, they have not, nor will they.

Last week Secretary Tom Ridge of the Department of Homeland Security announced the President had determined that the Nation should be moved to that next higher level of alert, a heightened threat level. Attorney General John Ashcroft explained this was done in response to recent reporting that indicates an increased likelihood that al-Qaida may attempt to attack Americans in the United States and/or abroad around the end of the Haj, the Muslim religious period ending mid-February, 2003.

What does this mean? It is confusing to the American people. It is confusing based on what one reads and sees on

television. People see the imagery. It looks like a thermometer going to that orange level, with that orange beginning to pulse. It is confusing to people as to what it means: What does it mean to my spouse and to my children? What does it mean when I drive to work and drive home? What does it mean to my constituents back in Tennessee or the Presiding Officer's constituents in Utah? What does it mean? What should our response be?

As was explained to us, I think very well, from a Government standpoint, an increased threat level captures a response where all Federal agencies focus and work together to reduce the vulnerabilities and increase security, and this, in itself, serves as a deterrent to the terrorist whose goal is to personally terrorize and strike fear. The terrorist wants to kill, but the terrorist really wants to strike fear, to paralyze, and to bring pain and paralysis to America. We see a reduction in vulnerabilities and increased security in this deterrence.

Also, as was explained well, this heightened alert—that is, Federal agencies working together, but at the same time literally tens of thousands of intelligence agencies, public health agencies, hospitals, law enforcement at the State level, at the county level, at the city level, at the community level and, indeed, at the neighborhood level are all activated and begin communicating and coordinating—acts as a deterrent to that would-be terrorist who all of a sudden says: My action—whatever it is—has less chance of being successful.

I wish to also mention the responsibility we have as citizens. I just spoke about government. That is law enforcement and public health. But we also, as individuals, have responsibilities. That is what I think has become confusing to American parents and families. What do we do? How do we respond? What should our efforts be?

Indeed, Secretary Ridge, at the same time we have this activation from above coming down, integrated I think very well today—and that is why I am comfortable with where we are today. We can always do better, we can always be better prepared, but I am very comfortable with where we are today.

Secretary Ridge asked that individual Americans remain alert. We use the words ''remain vigilant.'' All of a sudden, instead of having government working, we have 250 million people out there being the eyes and ears of law enforcement, and that is where the real power is in terms of stopping a potential act of terrorism.

The recommendations that have come out over the last week were picked up and put on television such that, at the end of the week, we were just saying: Duct tape on doors and plastic sheets. All of what I just said, in terms of this huge coordination and communication network of deterrence above and the power of 250 million people being vigilant and picking up on anybody whose behavior might be a little bit different in one's neighborhood, all of a sudden gets symbolized by a piece of duct tape. That is where it gets confusing and vague. The reason I have come to the floor is to try to put that in some perspective.

From the information standpoint, we in Congress are aware of that confusion and that confusing message. People want to go out and say the messenger is not doing a good job. We are all in this together. It is important for us in Congress to make sure we have the very best intelligence coming in to make sure when we go to a threat level, it is made on the best information, and that is the precision of information. But we also have an obligation to help not just to educate but to share the information we have with what individuals can do and families can do, make it understandable and not as confusing or vague as it was after anthrax hit, as it was after September 11, and even over the course of this week: What do we do as individuals?

It is important at this time of heightened awareness and vigilance that we also maintain the right perspective. As I have talked to people throughout Tennessee and family members who are not here in Washington, they have watched on television gas masks being put on, duct tape being put up; they see artillery with the Capitol in the background. I am speaking mainly to families at this standpoint. We have to be very careful because with 24-hour news cycles 7 days a week, every 30 minutes the news cycle being repeated, with the potential use of germs, microbes, bacteria, chemical agents, all of which are new in this arsenal of terrorism—new in terms of the weapons of mass destruction we traditionally think about being nuclear 50, 40 years ago, now we are thinking about little viruses and bacteria—it is easy to overstate, and all of a sudden the pain and paralysis you begin to feel inside, if you are mesmerized by that television set, seeing these images come again and again, we have to be careful. We all know these visual images are put on television to capture your attention. We know this captures our emotion and attention because we have that inner fear that we do not want that little virus to hit us.

Again, we have to be careful as we look at television, as we look at media today, not to let it feed our paralysis and fear. I am a parent. I have two high school boys; they are still children. I do not want them sitting there every day watching what is, yes, real, but in terms of perception, if you just watch television, you say: This risk is huge; that virus or bacteria is going to hit tomorrow; and there is nothing I can do about it. I am helpless, and things are out of control, and I don't know what is going to happen to my parents or kids.

I do think the vigilance is important as we go forth because, as I said just a few minutes ago, there are no better eyes than those of 250 million people who, in driving to work every day, notice something just not quite right, or in your everyday surroundings, there might be somebody just hanging around for the last 3 or 4 days who did not used to be hanging around. That is the sort of vigilance and alertness that becomes a deterrent and also, of course, important information if there is potential terrorist activity.

My perspective for a lot of this has been as a surgeon and a doctor—I have been very involved in viruses, chemical agents, and microbes—and as a Senator because of my participation in a lot of hearings on bioterrorism, the risk of bioterrorism, but also my experience as a husband and a parent who sees the impact this can, indeed, have on families in a very direct way.

Past generations have been affected in many ways, as well, by the threat of nuclear war. When I was very young and the generation before me lived with this accommodation of the image of a nuclear explosion and immediately in schools having exercises of hiding under a desk or seeking cover under a desk, of bomb shelters being built in communities, the same discussion going on in terms of having a supply of water and food for 3 days or 5 days, people converting their basements to bomb shelters—in the same way that situation took a lot of accommodation, learning, and new ways of thinking, indeed, we are having to do that today, 40 years later. We are doing it with the viruses and bacteria and chemical agents. The same way we got through without a major catastrophe in the last 50 years, we need to get through this with an understanding and an increased knowledge that we need to share about chemical agents and microbes. It is a new vocabulary. There is a lot to learn, and that can be overwhelming.

If one is watching this on TV, they know there is a real risk—a tiny risk but a risk—that there is a body of information that we need to get accustomed to understanding, just as we did with nuclear weapons 40 and 50 years ago. The reason I encourage people, no matter who they are, to learn a little bit about the microbes and chemical agents and what one would do if something happened in their neighborhood, is because it is real. The terrorist activity we are talking about is weapons of mass destruction.

We know people such as Saddam Hussein have those weapons of mass destruction, these viruses and bacteria. When we see these linkages to al-Qaida and to terrorist activity, it is incumbent upon us, as Americans, to learn more about these biological agents.

The good news is the Government has responded aggressively in a lot of ways in terms of funding, in terms of organization, in terms of coordination. My message is that families need to respond, too, not with pain and paralysis and increased stress but by taking the

opportunity to learn, to share information, to talk about it over the dinner table and to ask questions.

If someone asks a question of somebody and they do not know, ask it of somebody else. That sharing of information brings down the stress, brings down the potential for pain and paralysis. With that, we will get through this. We will get through it in a comfortable way and everything will be OK.

Our officials at all levels of Government are taking the appropriate steps. I say that as a Government official. I think it is important for Americans to recognize that this body, the House, and the President of the United States has responded to make sure in terms of prevention, in terms of protection, and in terms of response that we have acted and will continue to act.

I will run through several questions that I get all the time. How big is the risk? The risk of biological weapons or chemical weapons, although I think it is higher than nuclear weapons being used in our homeland, is still small. It is tiny. It is real. It is bigger than it was 2 years ago. It is bigger than it was 5 years ago. It is bigger than 10 years ago, but the overall risk of biological and chemical agents being used successfully as agents of mass destruction in this country is small. The threat is real and our response needs to be proportionate to that overall small risk.

There are things that families need to know and be prepared to do. A couple of questions that I get are: What does high alert mean? The alerts, as I said, are the way that the Federal Government responds to increased threats. Typically, these threats are nonspecific. They do not say an attack is going to happen in this city or in this location at a certain time. The intelligence is gathered through a myriad of sources from all over the world, and when they reach a certain threshold where it is clear there is something potentially going on the threat level is raised. Government responds and we, as individuals, need to respond.

I do not think everybody needs a disaster supply kit. It may be that if one lives near a highly visible potential target that they would be more likely to develop that disaster supply kit, and I leave that to individuals to discuss with their family.

What should our response be? Communities need to respond by increasing their vigilance because that increase in vigilance does empower us as part of this war that I would say is an extension of what may well go on in Iraq—it is part of our patriotic responsibilities of being a citizen in America to discuss and learn something about what the biological agents might be, and to remain vigilant.

People ask me all the time while I am in the public, what should I look for? We do not know where terrorists are.

Terrorists are everywhere. The anthrax letters a year ago were first in Florida, not in Washington, DC. It was in New Jersey and, yes, New York and Washington, DC. True, terrorism can be anywhere, although terrorist activity traditionally goes to highly symbolic areas and sites.

It was 10 years ago, by the way, that we had the first big terrorist activity in the United States. We know what happened during that second attack on the World Trade Center. We have seen biological weapons used for the first time in Washington, DC, and in Florida in October, just a month after September 11.

The question of what do I do if I find myself in the middle of an attack, it depends on whether one is inside or outside, and that is the sort of information that can be exchanged with local law enforcement, and public health and emergency responders. If people will go to the Web sites of the Department of Homeland Security, they can see what those responses would be.

I think it is important, as a family, that people talk about communication, what happens if something occurs right now, what telephone number do the children have. I would say to have a number both in State, in the neighborhood, an extra number to call inside, but also out of State. A decision needs to be made where to go. I encourage people, if there were a biological attack or some sort of chemical attack, to have everybody in their family know where would you go.

Let me comment on one last thing and then I will close. This is a time of stress. In talking to my colleagues and their families, I sense that when we go to this high alert—and as a physician I know this—there is a sense of stress that may or may not be talked about or noticed. I have to put my physician hat on for one second, because it can be reflected both physically and emotionally. I think it is important at least to be aware of it.

People do not sleep as well. Some people eat more; some people eat less. Some people develop tummy aches or belly aches. Some people develop back pain. That is sort of the physical and emotional manifestations: irritability, detachment, periods of depression, feeling blue, being on edge, waking up in the middle of the night.

That is normal. The body is remarkable. We are truly remarkable. The fact that we have this response, it is physiologic but it has an emotional component; it has a mental component and a physical component. The important issue is how one deals with it. When we go to these elevated stress levels or heightened threat levels, which correlate with stress levels, it is important to realize that everybody feels it to a certain extent. It is not just you. You are not alone.

There are a lot of things you can do. First and foremost, communicate. Talk to other people. Talk about it over the dinner table. Share. You have to be careful a little bit because if you are anxious and you feel the stress and you want to talk to your children, you might wait and talk an hour later when you have settled down a little bit. The big thing is to talk. Listen, talk, share your concerns.

Two, keep the faith. Some people rely more on drawing strength from traditions, from their synagogue, or their mosque, or their church.

Third, embrace daily routines. Do not stop doing the things that you do every day. Go ahead and continue to do them. In fact, focus on doing them better than you did in the past because you want to feel as if you have more control over your life. If you work hard to do something well, like bake a cake, make sure it is a good cake. Take pride in that cake because it gives you sense of control.

As I mentioned earlier, take a news break. Do not get mesmerized by the television or the newspapers or as you are flipping through the newspaper do not stop on that one article that will scare you to death in terms of what a smallpox virus will do to you. It is real, so you have to be careful, but once you know it you do not need to read it every day as you go through the paper. You do not need to watch the 24-hour news channels where you see those same images of gas masks and what the agents can do to people.

The fifth is, join a group. Participate with others. Do not lock yourself down and worry about this. Some people play cards or play bridge. Take part in something that is larger than yourself. With most people it probably begins with family, doing family activities.

Again, as a doctor—and then I will take my doctor hat off—exercise regularly, eat well, and get a good night's rest. That is enough of the physician end of things. It is a time of heightened anxiety, increased stress and if we do not address each of these head on it does result in pain and paralysis.

We are about to begin a recess that will take us to our home and to our families. I encourage all of our colleagues to engage in a quiet resolve that they have shown on the floor of the Senate in completing the Nation's business.

It has been a hugely successful first 45 days as we look at what has been accomplished in terms of nominations, unemployment insurance, addressing the 11 appropriations left over from the last Congress. It is pivotal. Now we can move on to the agenda which is very exciting for me as we look at jobs, and we look at the economy, and we look at growth and the feeling, the security in our everyday lives, and the health care issues, and the education issues as we go forward.

When we go back home to our constituents, we will be held to a high standard. They want to make absolutely sure and we need to make it very clear to them that we are totally committed to defending them internationally, globally, and here in our homeland. Really, in each of those categories, defending them in this war

against terrorism. We have done it today. We have huge challenges over the coming weeks to continue to do so.

Under President Bush's leadership, we have done a tremendous amount in making America safer from our enemies. We have reorganized Government and created a new Cabinet-level agency that consolidates, coordinates, and maximizes communication in our antiterror efforts. We passed the landmark bipartisan legislation in June 2002 to provide additional funding for our local law enforcement authorities to protect the Nation from public health threats, such as bioterrorism. We included $3.5 billion in the bill we passed—18 hours ago—that will go directly to the first responders. In the event something were to happen, those first responders become the most important people. That is who you will call. They are the people who provide treatment.

The Department of Health and Human Services 2 years ago did not have smallpox vaccine. Right now, because of the hard work and the dedication and leadership of President Bush, we know the Department of Health and Human Services has obtained and procured enough smallpox vaccine for every man, every woman, and every child in the United States.

That is but a part of what Government has done, and will continue to do, as we go forward. But we must also commit to defending ourselves from the terrorists' most dangerous weapon of all, the guts of what my remarks have been, and that is fear. It was one of our greatest Presidents ever, President Franklin Roosevelt, who in an earlier and darker moment in our history, calmed the Nation with the gentle remainder that we have nothing to fear but fear itself. In these days of stress and distress we must never forget the great words of those who have preceded us, and the test that they, over many generations, endured.

At such a moment, I often turn to a favorite piece of Scripture or a passage from an inspirational work. As we in the Congress recess to our homes and families for the coming week, let me offer a closing thought, a passage from Thomas Paine's classic treatise ''The Crisis.''

> Lay your shoulders to the wheel, better have too much force than too little when so great an object is at stake. Let it be told to the future world that in the depth of winter when nothing but hope and virtue could survive, that the city and the country, alarmed at one common danger, came forth to meet and repulse it.

## COMMEMORATING THE 100TH BIRTHDAY OF THE DEPARTMENT OF COMMERCE

Mr. STEVENS. Mr. President, on February 14, 1903, President Theodore Roosevelt signed the bill that established the Department of Commerce. In doing so he authorized the creation of what had been, to date, one of the largest and most complicated departments in the Federal Government. The original Department of Commerce was responsible for an overwhelming set of tasks, including the administration of the census, and the development of foreign and domestic commerce.

Over the past decade the Commerce Department's role has evolved, but it has always kept the vitality of American industry as its core value. My State has a lot at stake in the daily operations of this department; among its original duties was the supervision of the Alaskan fur-seal harvest and our State's salmon fisheries.

When the House debated the Commerce Department's founding in 1903, Congressman Robert Mann of Indiana noted that the Department was possibly the best hope we had of saving the Alaska salmon fisheries from extinction. Alaska assumed control of its salmon fisheries after Statehood, but the Commerce Department is still involved with our fisheries. One hundred years later the people of Alaska work closely with the North Pacific Fishery Management Council and the National Marine Fisheries Service to manage the most productive groundfish fisheries in the world in the Bering Sea and the Gulf of Alaska.

The past century has confirmed what the groups and individuals who originally lobbied for the Department of Commerce knew 100 years ago; ours is a distinctly commercial and industrial nation. The ingenuity of our workers, the dedication of our citizens and the perseverance demonstrated by our entrepreneurs are what make our Nation's economy unique and enduring. However, ingenuity, dedication and perseverance remain untapped resources without leadership and guidance to help them fulfill their potential. For 100 years the Department of Commerce has provided that leadership.

In 1981, Secretary of Commerce Malcolm Baldrige wrote that the Commerce Department's mission was to ''serve the nation, its business community, and its individual citizens.'' That mission lives today in the daily work of the Department and in the leadership of Secretary Don Evans. I have served with seventeen Secretaries of Commerce since I first came to the Senate, and consider many from both parties, including Malcolm Baldrige, Bill Daley, Norm Mineta, and of course Don Evans, to be my good friends.

Today, on behalf of all Alaskans, I congratulate the Department on a century of great achievement.

## FISCAL YEAR 2003 OMNIBUS APPROPRIATIONS

Mr. BIDEN. Mr. President, my decision to vote for the omnibus spending bill late last night was a difficult one. It is the largest single spending bill ever passed by Congress. It represents work that should have been completed last fall, and crams into one bill what should have been 11 separate bills, each with its own separate debate and deliberation. This is no way to legislate, and the final product reflects that unfortunate process.

I was gratified that many important obligations received funding, but unfortunately many others did not. At the same time, this massive document contains far too many provisions that were never exposed to the daylight of publicity and debate. My vote in favor of this bill was a very close call.

First, the good news. Unlike an earlier version that I could not support, this bill restored funds for Byrne grants that local law enforcement agencies need in these dangerous times. In addition, I was able to add language that permits local police to use COPS money for the many hours of overtime involved as they meet the demands of homeland defense. Law enforcement projects in my State of Delaware, from State to county to local agencies, will receive $3.5 million in funds from that COPS program.

But the bad news is that $3 billion for first responders was cut out of this legislation. Those are funds to support firefighters and police and local emergency response centers. Another $170 million was cut from the Transportation Security Administration, despite the obvious need for additional protection for our Nation's air, highway, and rail systems. Funds for port security and border security were also cut. The debate over these programs will continue soon, as we begin budget debates for the coming year and a security supplemental spending bill, and I will continue the fight to provide the citizens of this country all of the protection they need.

And we must expose those last-minute, back-room deals that litter the thousands of pages of this legislation. Some are clear wastes of taxpayer money in these critical times. Others weaken important environmental protections, and have no place in these spending bills.

On balance, I concluded that this legislation which allows the Federal Government to continue its important functions narrowly deserves my support. But there is much here that needs to be fixed, so the debate that should have occurred on this huge, complicated bill will continue.

## BLACK HISTORY MONTH

Mr. SMITH. Mr. President, I rise today to speak about the significance of Black History Month. This week, I would like to discuss briefly an issue of great importance in African American history, and one that remains of vital importance still today—the problem of hate in our society and hate crimes.

As most of my colleagues know, Senator KENNEDY and I have introduced hate crimes legislation during the past two Congresses. I think it is important for my colleagues to know just some of the background behind hate crimes

law, and have a full understanding of why expanding current hate crimes law is important today.

We can find instances of hate crime throughout our Nation's history, but they drew increased national attention during the last century. Widespread lynchings in the South, the murders of Emmet Till in 1955, Medgar Evers in 1963, church bombings, and attacks on black protesters all contributed to fear in black communities around the country, and horror among Americans who understood those crimes to be nothing short of domestic acts of terrorism.

Early hate crimes laws stem from such events—laws developed from efforts to prevent Ku Klux Klan violence against Black Americans during the Reconstruction era and then, at the Federal level, in the 60s, during the Civil Rights era. What we have today is a patchwork of state and local laws that have arisen over the years in response to bias crimes, and federal hate crimes law has not kept pace. Because federal law was initially designed to protect only certain special activities, we now have a situation in which the Federal Government's involvement is virtually limited to hate crimes committed in voting booths and national parks. The law is inadequate, and many Americans understand that.

Just a few days ago, I made a statement on the floor of the Senate regarding a hate crime committed against Chad Debnam and others in Northeast Portland, in my home State of Oregon. On January 19, 2003, four young men went on a shooting spree through Northeast Portland because, according to police, they thought the neighborhood was predominantly African American. Shots were fired into cars and homes in that neighborhood, not 50 years ago, but just last month. But, unfortunately, just like 50 years ago, the Federal Government could not help investigate that crime, even if local law enforcement officials asked for it. We saw a similar problem when James Byrd was dragged behind a pick-up truck in Texas just a few years ago.

Each day we are in session I come to the Senate floor to detail a hate crime that occurred somewhere in the country within the past few years. Local law enforcement officers would not have been able to seek Federal help in nearly all of those cases. Crimes against African Americans, Hispanic Americans, Muslim Americans, gay Americans, and others still occur with disturbing frequency today, but our Federal hate crimes law is stuck in the last century. The hate crimes legislation proposed by Senator KENNEDY and myself would finally make it much easier for the Federal Government to respond to hate crimes.

During Black History Month, I think it is important for us to remember that while we have made tremendous progress in many areas of civil rights law, we have a great deal more work to do. There is no more important civil right than the right to be free from violence, and we should remember the importance of expanded hate crimes law as we continue to celebrate Black History Month.

## RECENT RULING OF THE BELGIAN SUPREME COURT

Mr. KYL. Mr. President, I was extremely disappointed to learn of yesterday's ruling by the Supreme Court of Belgium that Prime Minister Sharon of Israel could be tried in the Belgian courts for alleged war crimes once he leaves government service. The ruling also immediately makes retired IDF General Yaron and other eligible to be brought to trial at the convenience of the Belgian lower court.

This action appears to supercede the authority of other national court systems, the International Court of Justice in The Hague, as well as the International Criminal Court which, for better or worse, was established last year with authority to try war crimes. The ruling sets an unwelcome precedent: empowering non-Belgian nationals to bring claims against other non-Belgian nationals in a Belgian court for alleged crimes having no connection to Belgium. The Belgian Supreme Court has now ruled that its lower courts have the right to sit in judgment of people who come from another nation and have allegedly committed a crime in a foreign land against another set of people from yet another foreign land. This is bad law and bad policy.

With this ruling, Belgium has set itself and its legal system above all other nations. Belgium's status should be no different from that of any other sovereign state, entitling it to enact laws and judge its own citizens or anyone who commits crimes against them. But the Belgian legislature and its court has raised its country's justice system above those of every other nation, and is trying to impose its rule on the citizens of countries with no connection to Belgium. Even the Belgian prosecution noted its opposition to pursuing the complainants' petition.

I hope that the Secretaries of State and Defense take note of this action by one of our NATO allies, especially as we prepare to potentially send our young men and women into battle in a land far away. There is no reason why they too, and their commanders, could not be similarly charged and prosecuted. What the Belgian court did was wrong. Our government should call upon them to consult with our Ambassadors to Belgium and NATO and express to the Belgian government an appropriate level of concern.

## THE CORPORATE PATRIOT ENFORCEMENT ACT OF 2003

Mr. LEVIN. Mr. President, I have joined with Senators REID, DURBIN, and KENNEDY in introducing the Corporate Patriot Enforcement Act of 2003.

Over the past several years we have been hearing more and more about U.S. corporations using offshore tax havens to avoid paying their fair share of U.S. taxes. One of the most egregious abuses is when a U.S. corporation reincorporates on paper in a tax haven and establishes a headquarters there when, in reality, its primary offices and production or service facilities remain right here in the United States. By opening shell headquarters in a tax haven like Bermuda, companies that got their start in this country, do most of their work here, and benefit from U.S. roads, banks, patents, computers, law enforcement, fair trade laws, its educated workforce, and much more, avoid contributing their fair share to pay for those benefits. Instead, these companies force the rest of America's taxpayers to shoulder the tax burden they have shed.

This corporate conduct mistreats the average American. It undercuts the U.S. corporations that do pay their taxes. It is unfair, it is founded on a deception, and it is time for Congress to put an end to it. It is time for Congress to say to these companies, if you want benefits, you need to stop avoiding your fiscal responsibility with the sham of appearing to move.

The list of companies that have undertaken the tax haven headquarters pretense now called ''corporate inversions'' is growing. The list currently includes such U.S. born companies as Fruit of the Loom, Ingersoll-Rand, and Tyco, although Tyco shareholders are trying to shame that company's management into giving up its Bermuda shenanigans.

It is likely that this list of corporate inversions will continue to grow unless Congress acts to close the tax loopholes that currently permit U.S. companies to benefit from their gamesmanship and avoid federal taxes at the expense of average taxpayers and good corporate citizens. That is why we are introducing the Corporate Patriot Enforcement Act of 2003, the same bill Representative NEAL introduced in the House last Congress which garnered over 150 co-sponsors.

This bill would deny tax benefits to U.S. companies that invert by continuing to treat them as U.S. companies for tax purposes. This bill would not only level the playing field between these companies and their U.S. competitors, it would also save other U.S. taxpayers from having to pick up an estimated $4 billion in tax revenues over the next 10 years.

U.S. corporations that reincorporate in tax havens typically reduce their U.S. tax liability in at least two ways. First, by setting up headquarters in a tax haven, the company can eliminate its liability for U.S. taxes on passive and other forms of income earned in foreign jurisdictions. For instance, the company no longer would have to pay U.S. tax on the interest, dividends and royalty payments received by its foreign affiliates which would otherwise have been taxed under Subpart F of the U.S. tax code. By creating a new, so-

called ''parent'' company in a tax haven jurisdiction, the company's obligations under Subpart F disappear, and the passive and other forms of income that would otherwise be treated as Subpart F income subject to U.S. taxation is no longer taxed by the United States. Second, companies that pretend to move their headquarters to a tax haven typically also use tax strategies to shelter income actually earned in the United States. By deflecting this income to the shell parent located in a low or no tax jurisdiction, these companies avoid paying U.S. taxes on income earned right here in the U.S.

Unlike other corporate inversion proposals under consideration, our bill would deny all corporate inverters both of these sought-after U.S. tax benefits in their entirety. Corporate inverters would be treated as U.S. companies for U.S. tax purposes, thereby denying them all of the tax benefits sought by their inversion transactions. This approach hopefully will put an end to companies pretending to move to Bermuda or any other tax haven in order to duck corporate taxes at the expense of honest taxpayers left holding the bag.

Under this bill, a company would be deemed to be inverted, and therefore be treated as a U.S. company, if: 80 percent of the shareholders in the previous U.S. company are shareholders of the new company; and the new company acquires substantially all of the property of the old company; or between 50 and 80 percent of the shareholders in the previous U.S. company are shareholders of the new company; the new company acquires substantially all of the property of the old company; the new company conducts no substantial business activity in the new jurisdiction; and the stock is principally traded in the U.S. These rules would apply to inversions that occurred after September 11, 2001.

Rather than let companies that inverted previously enjoy future tax benefits they do not deserve, the amendment would give companies that inverted prior to September 11, 2001 an opportunity to incorporate back in the United States. If a company failed to do so, the U.S. would begin treating it as an inverted company beginning in 2004 and deny it the future tax breaks sought from its inversion.

We should not let companies off the hook that try to avoid paying U.S. taxes by setting up a computer in a tax haven jurisdiction. Now is the time to close this corporate expatriation loophole. I hope my colleagues will join with us in enacting this legislation into law this year.

## ADDITIONAL STATEMENTS

### CONGRATULATIONS TO THE UNIVERSITY OF PORTLAND

● Mr. SMITH. Mr. President, today I pay tribute to a special group of young women, their coaches, and their fans, who show us the value of persistence, determination, and personal sacrifice. In December, the University of Portland women's soccer team gave the Pilots their first ever NCAA championship by beating the defending national champions, Santa Clara University, in double overtime. At 20–4–1, the Pilots were the lowest seed in the Women's College Cup championship series, and their win makes them the lowest seeded team ever to win the national championship.

It has been a long and bittersweet road to victory for the team and the University. The Pilots made it to the semi-finals six times in the last 8 years, coming close to a championship in 1995 only to lose in the finals to Notre Dame in triple overtime. Although never winning a collegiate championship, a number of University of Portland players went on to represent the United States in Olympic Competition, including Tiffeny Milbrett and Shannon MacMillan, who played on the U.S. Olympic gold medal-winning team.

The Pilots' superior accomplishment this year marks the culmination of years of hard work put forth by the women who came before them, and the young women from this year's national champion Pilots, who are the cream of the crop of American youth, will serve as role models for the women who will follow them. It takes more than athletic prowess to succeed at this level. Winning a national championship takes intelligence, teamwork, dedication, and the willingness to rise above adversity and try just a little harder. The Pilots are an inspiration to us all, and they show today's youth how hard work and determination can lead to great successes.

Clive Charles, the Pilots' head coach since 1989, also personifies the finest qualities demonstrated by his team, and it is for good reason that his team dedicated their championship to him. Coach Charles has battled prostate cancer for 2 years, and although his cancer is treatable, it is not curable. He continued weekly chemotherapy treatments throughout the season, and, despite challenges, led his team to the pinnacle of their sport. His next goal along with the returning players is to bring home another cup next year.

NCAA Division 1 head coaches selected Coach Charles as National Coach of the Year, making him the first Western Collegiate Conference coach to earn that title. Sophomore striker Christine Sinclair was named National Player of the Year, becoming the first sophomore ever to be recognized with that honor. But it was all the players and their coaches, working as a team, who brought this honor back to Portland.

I join the University of Portland and its alumni, the city of Portland, and state of Oregon in thanking these young women and their coaches for giving us all something to cheer about. I am pleased that they will be meeting with President Bush at the White House on February 24, and I am very proud to be able to honor the University of Portland women's soccer team today.●

### HONORING LINCOLN'S FIREFIGHTERS

● Mr. NELSON of Nebraska. Mr. President, today at the White House six brave Nebraska firefighters will be honored by the Vice President of the United States for their stirring acts of bravery and heroism during a dangerous and daring rescue in Nebraska.

All Nebraskans are tremendously proud of these men. They showed uncommon bravery when they selflessly risked their lives in service of others and today's honor is but a small payment toward all they have given for their communities.

The Vice President will present Deputy Chief Ron Kennett, Captain Rick Klein, and Firefighters Bob Borer, Jeremy Hosek, Guy Jones, and Mike Wright of the Lincoln Fire Department with Public Safety Officer Medal of Valor awards. The award recognizes the firefighters' role in recovering an accident victim from a television tower in Bassett, NE, on April 22, 2002

During that rescue a man was trapped on a 1,500-foot tall Nebraska Educational Telecommunications, NET, tower. The man, Timothy Culpepper of Meridian, MS, was part of a crew installing a new cable and transmission line on the tower about 15 miles south of Bassett. It is believed Culpepper was killed instantly when a steel cable snapped. His body was about 1,180 feet above ground.

After an air rescue was determined to be impossible due to winds, tower wires and lack of expertise, Lincoln Fire and Rescue was called in. The six-person crew was flown to Bassett in a Nebraska State Patrol aircraft, usually used by the Governor's Office. Deputy Chief Kennett and Captain Klein directed the recovery operation from the ground. The six firefighters climbed for an hour and a half to reach the accident victim. They lowered Mr. Culpepper's body 300 feet at a time, with the descent taking more than 3 hours.

Men and women like these firefighters are our first line of defense whenever tragedy strikes. They are truly an inspiration to us all. I join with my fellow Nebraskans and this entire nation in thanking them for their courage and for making my home State proud.●

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MEASURES READ THE FIRST TIME

The following bills were read the first time:

S. 3. A bill to prohibit the procedures commonly known as partial-birth abortion.

S. 13. A bill to provide financial security to family farm and business owners while ending the unfair practice of taxing someone at death.

S. 414. A bill provide an economic stimulus package, and for other purposes.

## ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, February 14, 2003, she had presented to the President of the United States the following enrolled bill:

S. 141. An act to improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SANTORUM (for himself, Mr. FITZGERALD, Mr. CAMPBELL, Mr. DEWINE, Mr. FRIST, Mr. BROWNBACK, Mr. ENSIGN, Mr. INHOFE, Mr. KYL, Mr. LUGAR, Mr. ALLARD, Mr. MCCAIN, Mr. ROBERTS, Mr. SHELBY, Mr. WARNER, Mr. MCCONNELL, Mr. HATCH, Mr. VOINOVICH, Mr. HAGEL, Mr. BUNNING, Mr. DOMENICI, Mr. SMITH, Mr. GRAHAM of South Carolina, Mr. ENZI, Mr. LOTT, Mrs. DOLE, Mr. ALLEN, Mr. CORNYN, Mr. NICKLES, Mr. GRASSLEY, Mr. TALENT, Mr. BOND, Mr. THOMAS, Mr. CRAIG, Mr. CHAMBLISS, Mr. SESSIONS, Mr. GREGG, Mr. BENNETT, and Mr. COLEMAN):

S. 3. A bill to prohibit the procedure commonly known as partial-birth abortion; read the first time.

By Mr. GREGG (for himself, Mr. FRIST, Mr. MCCONNELL, Mr. SANTORUM, Mr. ALEXANDER, Mr. ENSIGN, and Mr. GRAHAM of South Carolina):

S. 4. A bill to improve access to a quality education for all students; to the Committee on Health, Education, Labor, and Pensions.

By Mr. TALENT (for himself, Mr. CHAMBLISS, Mr. CORNYN, Mr. ENZI, Mr. GRAHAM of South Carolina, Mr. SESSIONS, Mr. SHELBY, Mr. INHOFE, and Mr. SUNUNU):

S. 5. A bill to care for people in need by inspiring personal responsibility through work, family, and community; to the Committee on Finance.

By Mr. KYL:

S. 13. A bill to provide financial security to family farm and small business owners while by ending the unfair practice of taxing someone at death; read the first time.

By Mr. DASCHLE:

S. 414. A bill to provide an economic stimulus package, and for other purposes; read the first time.

By Ms. SNOWE (for herself, Mrs. MURRAY, Ms. LANDRIEU, and Mr. HARKIN):

S. 415. A bill to amend the Public Health Service Act to provide, with respect to research on breast cancer, for the increased involvement of advocates in decisionmaking at the National Cancer Institute; to the Committee on Health, Education, Labor, and Pensions.

By Ms. SNOWE (for herself, Mrs. LINCOLN, Mrs. MURRAY, Ms. LANDRIEU, Mr. HARKIN, Mr. BINGAMAN, Ms. CANTWELL, and Mr. CORZINE):

S. 416. A bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of annual screening pap smear and screening pelvic exams; to the Committee on Finance.

By Ms. SNOWE (for herself, Mr. HARKIN, Mrs. MURRAY, and Ms. LANDRIEU):

S. 417. A bill to amend title 5, United States Code, to ensure that coverage of bone mass measurements is provided under the health benefits program for Federal employees; to the Committee on Governmental Affairs.

By Ms. SNOWE (for herself, Mrs. MURRAY, Ms. LANDRIEU, Mr. BINGAMAN, and Mr. CORZINE):

S. 418. A bill to amend the Civil Rights Act of 1964 to protect breastfeeding by new mothers; to the Committee on Health, Education, Labor, and Pensions.

By Ms. SNOWE (for herself, Mrs. MURRAY, Ms. LANDRIEU, Mr. HARKIN, and Ms. CANTWELL):

S. 419. A bill to amend title XVIII of the Social Security Act to expand coverage of bone mass measurements under part B of the medicare program to all individuals at clinical risk of osteoporosis; to the Committee on Finance.

By Mrs. DOLE:

S. 420. A bill to provide for the acknowledgement of the Lumbee Tribe of North Carolina, and for other purposes; to the Committee on Indian Affairs.

By Ms. CANTWELL (for herself, Mr. SMITH, Mrs. MURRAY, and Mrs. FEINSTEIN):

S. 421. A bill to reauthorize and revise the Renewable Energy Production Incentive program, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BREAUX:

S. 422. A bill to amend the Tariff Act of 1930 to modify the provisions relating to drawback claims, and for other purposes; to the Committee on Finance.

By Ms. COLLINS (for herself and Mr. FEINGOLD):

S. 423. A bill to promote health care coverage parity for individuals participating in legal recreational activities or legal transportation activities; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BINGAMAN (for himself, Mr. INOUYE, Mr. CAMPBELL, and Mr. DASCHLE):

S. 424. A bill to establish, reauthorize, and improve energy programs relating to Indian tribes; to the Committee on Indian Affairs.

By Mr. DASCHLE:

S. 425. A bill to revise the boundary of the Wind Cage National Park in the Sate of South Dakota; to the Committee on Energy and Natural Resources.

By Mr. DASCHLE:

S. 426. A bill to direct the Secretary of the Interior to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the initial stage of the Oahe Unit, James Division, South Dakota, to the Commission of Schools and Public Lands and the Department of Game, Fish, and Parks of the Stat of South Dakota for the purpose of mitigating lost wildlife habitat, on the condition that the current preferential leaseholders shall have an option to purchase the parcels from the Commission, and for other purposes; to the Committee on Energy and Natural Resources.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT (for himself and Mr. DODD):

S. Res. 60. A resolution authorizing expenditures by the Committee on Rules and Administration; to the Committee on Rules and Administration.

## ADDITIONAL COSPONSORS

S. 56

At the request of Mr. JOHNSON, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 56, a bill to restore health care coverage to retired members of the uniformed services.

S. 272

At the request of Mr. SANTORUM, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 272, a bill to provide incentives for charitable contributions by individuals and businesses, to improve the public disclosure of activities of exempt organizations, and to enhance the ability of low income Americans to gain financial security by building assets, and for other purposes.

S. 274

At the request of Mr. GRASSLEY, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 274, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

S. 330

At the request of Mr. CAMPBELL, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 330, a bill to further the protection and recognition of veterans' memorials, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SANTORUM (for himself, Mr. FITZGERALD, Mr. CAMPBELL, Mr. DEWINE, Mr. FRIST, Mr. BROWNBACK, Mr. ENSIGN, Mr. INHOFE, Mr. KYL, Mr. LUGAR, Mr. ALLARD, Mr. MCCAIN, Mr. ROBERTS, Mr. SHELBY, Mr. WARNER, Mr. MCCONNELL, Mr. HATCH, Mr. VOINOVICH, Mr. HAGEL, Mr. BUNNING, Mr. DOMENICI, Mr. SMITH, Mr. GRAHAM of South Carolina, Mr. ENZI, MR. LOTT, Mrs. DOLE, Mr. ALLEN, Mr. CORNYN, Mr. NICKLES, Mr. GRASSLEY, Mr. TALENT, Mr. BOND, Mr. THOMAS, Mr.

CRAIG, Mr. CHAMBLISS, Mr. SESSIONS, Mr. GREGG, Mr. BENNETT, and Mr. COLEMAN):

S. 3. A bill to prohibit the procedure commonly known as partial-birth abortion; read the first time.

Mr. SANTORUM. Mr. President, I rise today to introduce the Partial Birth Abortion Ban Act of 2003. I am joined in introducing this bill by 38 of my colleagues, over a third of the Senate. This bill is written to prohibit one particularly gruesome, inhumane, and medically unaccepted late term abortion method, except when the procedure is necessary to save the life of the mother. Partial birth abortion is a procedure that is performed over a 3-day period in the second or third trimester of pregnancy. In this particular abortion technique, the physician delivers all but the head of a living baby through the birth canal, stab the baby in the base of the skull with curved scissors, and the uses a suction catheter to remove the child's brain. This procedure kills the baby. After collapsing the skull, the doctor completes the procedure. According to Ron Fitzsimmons of the National Coalition of Abortion Providers, this procedure is performed on a healthy mother with a healthy fetus that is 20 weeks or more along in the vast majority of cases.

The American public finds this procedure repugnant. A recent CNN/USA Today/Gallup poll indicated that 70 percent of Americans favored laws making it illegal to perform partial birth abortions, except when necessary to save the life of the mother. This procedure is also unrecognized by the mainstream medical community as a valid abortion procedure. The American Medical Association has said this procedure is ''not good medicine,'' is ''ethically wrong,'' and ''not an accepted 'medical practice'.''

As far back as the 104th Congress, the Senate and the House of Representatives both acted to ban this procedure. Unfortunately, President Clinton vetoed that bill. The House voted to override that veto, but the Senate fell short. Likewise, during the 105th Congress, the House and Senate acted to pass a bill banning this procedure. Again, President Clinton vetoed that bill banning an abortion procedure that occurs as the child is inches from being completely outside the mother. The House subsequently overrode his veto. The Senate failed to override by just three votes. In the 106th Congress as well, the Senate and the House both acted to overwhelmingly pass legislation banning this procedure.

A little over two years ago, the U.S. Supreme Court, in its Stenberg versus Carhart decision, struck down a similar, but not identical, law in the state of Nebraska that banned partial birth abortions. The Stenberg majority opinion voiced concern that the description of the abortion procedure as described in the Nebraska law was vague and might apply to other types of late-term abortions. A second concern was that the law did not provide an exception for those instances when the banned procedure was judged necessary to preserve the health of the mother.

Last year, during the 107th Congress, Representative STEVE CHABOT of Ohio introduced a bill responding to those concerns. This bill passed the House of Representatives by a vote of 274–151. Unfortunately, the Senate was kept from considering this bill.

Today, I introduced a similar bill banning the horrific procedure of partial birth abortion, except when necessary to save the life of a mother. To respond to the Supreme Court's concerns in Stenberg, this bill provides a very precise definition of the partial birth abortion procedure to make it very clear what procedure is meant.

Second, the Court based its decision in Stenberg on the federal district court's factual findings regarding the safety of the partial birth abortion procedure. These findings were highly disputed and inconsistent with the overwhelming weight of authority on the issue—including evidence presented at the Stenberg trial, other trials challenging partial birth abortion bans, and at the extensive Congressional hearings that have been held over the years. Despite the lack of evidence supporting the district court's findings, the Supreme Court was required to accept them because of the ''clearly erroneous'' standard that is applied to lower court factual findings. However, under well-settled Supreme Court jurisprudence, the Congress is not required to accept these ''factual findings,'' but is entitled to reach its own factual findings—findings that the Supreme Court accords great deference—and may enact legislation based on these findings. The bill I introduce today includes a series of findings from congressional hearings held over the years and from expert testimony that demonstrates that a partial birth abortion is never necessary to preserve the health of the mother, poses significant health risks to the woman, and is outside the standard of medical care.

Over the years, during the consideration of this ban, proponents of partial birth abortion have supported their arguments for this procedure with myth and misinformation. When the time comes for the full Senate to consider this bill, I look forward to again countering those untruths with the truth, and I ask my colleagues to vote to ban partial birth abortion.

It is long past time for the U.S. Senate to again pass a bill banning partial birth abortion. I am pleased that the Senate leadership has seen this as a legislative priority for the 108th Congress. The House and Senate have overwhelming supported such a ban time and time again. President Bush has asked us to send him a bill to end the practice of partial birth abortion. The American people clearly believe this is a procedure that should be prohibited. I appreciate the support of so many of my colleagues who have joined me in introducing this bill. And I am hopeful—very hopeful—that the 108th Congress will not end before this bill becomes law, before children in the very process of being born are protected by the laws of this great nation of ours.

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By Mr. DASCHLE:

S.414. A bill to provide an economic stimulus package, and for other purposes; read the first time.

Mr. DASCHLE. 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. 414

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

**SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Economic Recovery Act of 2003''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—

## TITLE I—BROAD-BASED TAX CUT

### SEC. 101. BROAD-BASED TAX CUT.

(a) IN GENERAL.—The Secretary of the Treasury shall pay, out of any money in the Treasury not otherwise appropriated, to each eligible taxpayer an amount equal to 10 percent of the eligible portion of the taxpayer's adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) for a taxable year beginning in 2002.

(b) ELIGIBLE TAXPAYER.—For purposes of this section, the term ''eligible taxpayer'' means any individual other than—

(1) any estate or trust,

(2) any nonresident alien, or

(3) any individual with respect to whom a deduction under section 151 of such Code is allowable to another taxpayer for a taxable year beginning in 2003.

(c) ELIGIBLE PORTION.—For purposes of this section—

(1) IN GENERAL.—With respect to each eligible taxpayer, the eligible portion shall be equal to the sum of—

(A) $3,000 ($6,000 in the case of a taxpayer filing a joint return under section 6013 of such Code), plus

(B) $3,000 for each qualifying child of the taxpayer, not to exceed $6,000.

(2) QUALIFYING CHILD.—The term ''qualifying child'' has the meaning given such term by section 24(c) of such Code.

(d) REMITTANCE OF PAYMENT.—The Secretary of the Treasury shall remit the payment described in subsection (a) to the taxpayer as soon as practicable after the date of the enactment of this section.

## TITLE II—BUSINESS TAX CUT

### SEC. 201. INCREASED BONUS DEPRECIATION.

(a) IN GENERAL.—Subsection (k) of section 168 (relating to accelerated cost recovery system) is amended—

(1) by adding at the end of paragraph (1) the following new flush sentence:

''In the case of any qualified property acquired by the taxpayer pursuant to a written binding contract which was entered into after December 31, 2002, subparagraph (A) shall be applied by substituting '50 percent' for '30 percent'.'',

(2) by striking ''September 11, 2004'' each place it appears and inserting ''January 1, 2004'',

(3) by striking ''SEPTEMBER 11, 2004'' and inserting ''JANUARY 1, 2004'', and

(4) by striking ''PRE-SEPTEMBER 11, 2004'' and inserting ''PRE-JANUARY 1, 2004''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for clause (i) of section 1400L(b)(2)(C) of the Internal Revenue Code of 1986 is amended by striking ''30 PERCENT ADDITIONAL'' and inserting ''ADDITIONAL''.

(2) Section 1400L(b)(2)(D) of such Code is amended by inserting ''(as in effect on the day after the date of the enactment of this section)'' after ''section 168(k)(2)(D)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property acquired after December 31, 2002.

### SEC. 202. MODIFICATIONS TO EXPENSING UNDER SECTION 179.

(a) INCREASE OF AMOUNT WHICH MAY BE EXPENSED.—

(1) IN GENERAL.—Paragraph (1) of section 179(b) (relating to dollar limitation) is amended to read as follows:

''(1) DOLLAR LIMITATION.—The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed $25,000 ($75,000 in the case of any taxable year beginning in 2003).''

(2) INCREASE IN PHASEOUT THRESHOLD.—Paragraph (2) of section 179(b) is amended by striking ''$200,000'' and inserting ''$200,000 ($325,000 in the case of any taxable year beginning in 2003)''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service in taxable years beginning after December 31, 2002.

### SEC. 203. CREDIT FOR EMPLOYEE HEALTH INSURANCE EXPENSES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits) is amended by adding at the end the following:

**''SEC. 45G. EMPLOYEE HEALTH INSURANCE EXPENSES.**

''(a) GENERAL RULE.—For purposes of section 38, in the case of a qualified small employer, the employee health insurance expenses credit determined under this section is an amount equal to the applicable percentage of the amount paid by the taxpayer during the taxable year for qualified employee health insurance expenses.

''(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the applicable percentage is equal to—

''(1) 50 percent in the case of an employer with less than 26 qualified employees,

''(2) 40 percent in the case of an employer with more than 25 but less than 36 qualified employees, and

''(3) 30 percent in the case of an employer with more than 35 but less than 51 qualified employees.

''(c) PER EMPLOYEE DOLLAR LIMITATION.—The amount of qualified employee health insurance expenses taken into account under subsection (a) with respect to any qualified employee for any taxable year shall not exceed the maximum employer contribution for self-only coverage or family coverage (as applicable) determined under section 8906(a) of title 5, United States Code, for the calendar year in which such taxable year begins.

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

''(1) QUALIFIED SMALL EMPLOYER.—

''(A) IN GENERAL.—The term 'qualified small employer' means any small employer which provides eligibility for health insurance coverage (after any waiting period (as defined in section 9801(b)(4)) to all qualified employees of the employer.

''(B) SMALL EMPLOYER.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'small employer' means, with respect to any calendar year, any employer if such employer employed an average of not less than 2 and not more than 50 qualified employees on business days during either of the 2 preceding calendar years. For purposes of the preceding sentence, a preceding calendar year may be taken into account only if the employer was in existence throughout such year.

''(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the 1st preceding calendar year, the determination under clause (i) shall be based on the average number of qualified employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(2) QUALIFIED EMPLOYEE HEALTH INSURANCE EXPENSES.—

''(A) IN GENERAL.—The term 'qualified employee health insurance expenses' means any amount paid by an employer for health insurance coverage to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

''(B) EXCEPTION FOR AMOUNTS PAID UNDER SALARY REDUCTION ARRANGEMENTS.—No amount paid or incurred for health insurance coverage pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

''(C) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' has the meaning given such term by paragraph (1) of section 9832(b) (determined by disregarding the last sentence of paragraph (2) of such section).

''(3) QUALIFIED EMPLOYEE.—The term 'qualified employee' means an employee of an employer who, with respect to any period, is not provided health insurance coverage under—

''(A) a health plan of the employee's spouse,

''(B) title XVIII, XIX, or XXI of the Social Security Act,

''(C) chapter 17 of title 38, United States Code,

''(D) chapter 55 of title 10, United States Code,

''(E) chapter 89 of title 5, United States Code, or

''(F) any other provision of law.

''(4) EMPLOYEE—The term 'employee'—

''(A) means any individual, with respect to any calendar year, who is reasonably expected to receive at least $5,000 of compensation from the employer during such year,

''(B) does not include an employee within the meaning of section 401(c)(1), and

''(C) includes a leased employee within the meaning of section 414(n).

''(5) COMPENSATION.—The term 'compensation' means amounts described in section 6051(a)(3).

''(e) CERTAIN RULES MADE APPLICABLE.—For purposes of this section, rules similar to the rules of section 52 shall apply.

''(f) DENIAL OF DOUBLE BENEFIT.—No deduction or credit under any other provision of this chapter shall be allowed with respect to qualified employee health insurance expenses taken into account under subsection (a).

''(g) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 2003.''.

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '', plus'', and by adding at the end the following:

''(16) the employee health insurance expenses credit determined under section 45G.''.

(c) CREDIT ALLOWED AGAINST MINIMUM TAX.—

(1) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

''(3) SPECIAL RULES FOR EMPLOYEE HEALTH INSURANCE CREDIT.—

''(A) IN GENERAL.—In the case of the employee health insurance credit—

''(i) this section and section 39 shall be applied separately with respect to the credit, and

''(ii) in applying paragraph (1) to the credit—

''(I) the amounts in subparagraphs (A) and (B) thereof shall be treated as being zero, and

''(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the employee health insurance credit).

''(B) EMPLOYEE HEALTH INSURANCE CREDIT.—For purposes of this subsection, the term 'employee health insurance credit' means the credit allowable under subsection (a) by reason of section 45G(a).''.

(2) CONFORMING AMENDMENT.—Subclause (II) of section 38(c)(2)(A)(ii) is amended by striking ''(other'' and all that follows through ''credit)'' and inserting ''(other than the empowerment zone employment credit or the employee health insurance credit)''.

(d) NO CARRYBACKS.—Subsection (d) of section 39 (relating to carryback and carryforward of unused credits) is amended by adding at the end the following:

''(11) NO CARRYBACK OF SECTION 45G CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the employee health insurance expenses credit determined under section 45G may be carried back to a taxable year ending before the date of the enactment of section 45G.''.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following:

''Sec. 45G. Employee health insurance expenses.''.

(f) EMPLOYER OUTREACH.—The Internal Revenue Service shall, in conjunction with the Small Business Administration, develop materials and implement an educational program to ensure that business personnel are aware of—

(1) the eligibility criteria for the tax credit provided under section 45G of the Internal Revenue Code of 1986 (as added by this section),

(2) the methods to be used in calculating such credit,

(3) the documentation needed in order to claim such credit, and

(4) any available health plan purchasing alliances established under title II,

so that the maximum number of eligible businesses may claim the tax credit.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2002.

**SEC. 204. BROADBAND INTERNET ACCESS TAX CREDIT.**

(a) IN GENERAL.—Subpart E of part IV of chapter 1 (relating to rules for computing investment credit) is amended by inserting after section 48 the following new section:

**''SEC. 48A. BROADBAND INTERNET ACCESS CREDIT.**

''(a) GENERAL RULE.—For purposes of section 46, the broadband credit for any taxable year is the sum of—

''(1) the current generation broadband credit, plus

''(2) the next generation broadband credit.

''(b) CURRENT GENERATION BROADBAND CREDIT; NEXT GENERATION BROADBAND CREDIT.—For purposes of this section—

''(1) CURRENT GENERATION BROADBAND CREDIT.—The current generation broadband credit for any taxable year is equal to 10 percent of the qualified expenditures incurred with respect to qualified equipment providing current generation broadband services to qualified subscribers and taken into account with respect to such taxable year.

''(2) NEXT GENERATION BROADBAND CREDIT.—The next generation broadband credit for any taxable year is equal to 20 percent of the qualified expenditures incurred with respect to qualified equipment providing next generation broadband services to qualified subscribers and taken into account with respect to such taxable year.

''(c) WHEN EXPENDITURES TAKEN INTO ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—Qualified expenditures with respect to qualified equipment shall be taken into account with respect to the first taxable year in which—

''(A) current generation broadband services are provided through such equipment to qualified subscribers, or

''(B) next generation broadband services are provided through such equipment to qualified subscribers.

''(2) LIMITATION.—

''(A) IN GENERAL.—Qualified expenditures shall be taken into account under paragraph (1) only with respect to qualified equipment—

''(i) the original use of which commences with the taxpayer, and

''(ii) which is placed in service,

after December 31, 2002.

''(B) SALE-LEASEBACKS.—For purposes of subparagraph (A), if property—

''(i) is originally placed in service after December 31, 2002, by a person, and

''(ii) sold and leased back by such person within 3 months after the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback referred to in clause (ii).

''(d) SPECIAL ALLOCATION RULES.—

''(1) CURRENT GENERATION BROADBAND SERVICES.—For purposes of determining the current generation broadband credit under subsection (a)(1) with respect to qualified equipment through which current generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of the number of potential qualified subscribers within the rural areas and the underserved areas which the equipment is capable of serving with current generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with current generation broadband services.

''(2) NEXT GENERATION BROADBAND SERVICES.—For purposes of determining the next generation broadband credit under subsection (a)(2) with respect to qualified equipment through which next generation broadband services are provided, if the qualified equipment is capable of serving both qualified subscribers and other subscribers, the qualified expenditures shall be multiplied by a fraction—

''(A) the numerator of which is the sum of—

''(i) the number of potential qualified subscribers within the rural areas and underserved areas, plus

''(ii) the number of potential qualified subscribers within the area consisting only of residential subscribers not described in clause (i),

which the equipment is capable of serving with next generation broadband services, and

''(B) the denominator of which is the total potential subscriber population of the area which the equipment is capable of serving with next generation broadband services.

''(e) DEFINITIONS.—For purposes of this section—

''(1) ANTENNA.—The term 'antenna' means any device used to transmit or receive signals through the electromagnetic spectrum, including satellite equipment.

''(2) CABLE OPERATOR.—The term 'cable operator' has the meaning given such term by section 602(5) of the Communications Act of 1934 (47 U.S.C. 522(5)).

''(3) COMMERCIAL MOBILE SERVICE CARRIER.—The term 'commercial mobile service carrier' means any person authorized to provide commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations.

''(4) CURRENT GENERATION BROADBAND SERVICE.—The term 'current generation broadband service' means the transmission of signals at a rate of at least 1,000,000 bits per second to the subscriber and at least 128,000 bits per second from the subscriber.

''(5) MULTIPLEXING OR DEMULTIPLEXING.—The term 'multiplexing' means the transmission of 2 or more signals over a single channel, and the term 'demultiplexing' means the separation of 2 or more signals previously combined by compatible multiplexing equipment.

''(6) NEXT GENERATION BROADBAND SERVICE.—The term 'next generation broadband service' means the transmission of signals at a rate of at least 22,000,000 bits per second to the subscriber and at least 5,000,000 bits per second from the subscriber.

''(7) NONRESIDENTIAL SUBSCRIBER.—The term 'nonresidential subscriber' means a person who purchases broadband services which are delivered to the permanent place of business of such person.

''(8) OPEN VIDEO SYSTEM OPERATOR.—The term 'open video system operator' means any person authorized to provide service under section 653 of the Communications Act of 1934 (47 U.S.C. 573).

''(9) OTHER WIRELESS CARRIER.—The term 'other wireless carrier' means any person (other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video system operator, or satellite carrier) providing current generation broadband services or next generation broadband service to subscribers through the wireless transmission of energy through radio or light waves.

''(10) PACKET SWITCHING.—The term 'packet switching' means controlling or routing the path of a digitized transmission signal which is assembled into packets or cells.

''(11) PROVIDER.—The term 'provider' means, with respect to any qualified equipment—

''(A) a cable operator,

''(B) a commercial mobile service carrier,

''(C) an open video system operator,

''(D) a satellite carrier,

''(E) a telecommunications carrier, or

''(F) any other wireless carrier,

providing current generation broadband services or next generation broadband services to subscribers through such qualified equipment.

''(12) PROVISION OF SERVICES.—A provider shall be treated as providing services to a subscriber if—

''(A) a subscriber has been passed by the provider's equipment and can be connected to such equipment for a standard connection fee,

''(B) the provider is physically able to deliver current generation broadband services or next generation broadband services, as applicable, to such subscribers without making more than an insignificant investment with respect to any such subscriber,

''(C) the provider has made reasonable efforts to make such subscribers aware of the availability of such services,

''(D) such services have been purchased by one or more such subscribers, and

''(E) such services are made available to such subscribers at average prices comparable to those at which the provider makes available similar services in any areas in which the provider makes available such services.

''(13) QUALIFIED EQUIPMENT.—

''(A) IN GENERAL.—The term 'qualified equipment' means equipment which provides current generation broadband services or next generation broadband services—

''(i) at least a majority of the time during periods of maximum demand to each subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no credit is allowed under subsection (a)(1).

''(B) ONLY CERTAIN INVESTMENT TAKEN INTO ACCOUNT.—Except as provided in subparagraph (C) or (D), equipment shall be taken into account under subparagraph (A) only to the extent it—

''(i) extends from the last point of switching to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a telecommunications carrier,

''(ii) extends from the customer side of the mobile telephone switching office to a transmission/receive antenna (including such antenna) owned or leased by a subscriber in the case of a commercial mobile service carrier,

''(iii) extends from the customer side of the headend to the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a cable operator or open video system operator, or

''(iv) extends from a transmission/receive antenna (including such antenna) which transmits and receives signals to or from multiple subscribers, to a transmission/receive antenna (including such antenna) on the outside of the unit, building, dwelling, or office owned or leased by a subscriber in the case of a satellite carrier or other wireless carrier, unless such other wireless carrier is also a telecommunications carrier.

''(C) PACKET SWITCHING EQUIPMENT.—Packet switching equipment, regardless of location, shall be taken into account under subparagraph (A) only if it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of packet switching for current generation broadband services or next generation broadband services, but only if such packet switching is the last in a series of such functions performed in the transmission of a signal to a subscriber or the first in a series of such functions performed in the transmission of a signal from a subscriber.

''(D) MULTIPLEXING AND DEMULTIPLEXING EQUIPMENT.—Multiplexing and demultiplexing equipment shall be taken into account under subparagraph (A) only to the extent it is deployed in connection with equipment described in subparagraph (B) and is uniquely designed to perform the function of multiplexing and demultiplexing packets or cells of data and making associated application adaptions, but only if such multiplexing or demultiplexing equipment is located between packet switching equipment described in subparagraph (C) and the subscriber's premises.

''(14) QUALIFIED EXPENDITURE.—

''(A) IN GENERAL.—The term 'qualified expenditure' means any amount—

''(i) chargeable to capital account with respect to the purchase and installation of qualified equipment (including any upgrades thereto) for which depreciation is allowable under section 168, and

''(ii) incurred after December 31, 2002, and before January 1, 2004.

''(B) CERTAIN SATELLITE EXPENDITURES EXCLUDED.—Such term shall not include any expenditure with respect to the launching of any satellite equipment.

''(15) QUALIFIED SUBSCRIBER.—The term 'qualified subscriber' means—

''(A) with respect to the provision of current generation broadband services—

''(i) a nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

''(ii) a residential subscriber residing in a dwelling located in a rural area or underserved area which is not a saturated market, and

''(B) with respect to the provision of next generation broadband services—

''(i) a nonresidential subscriber maintaining a permanent place of business in a rural area or underserved area, or

''(ii) a residential subscriber.

''(16) RESIDENTIAL SUBSCRIBER.—The term 'residential subscriber' means an individual who purchases broadband services which are delivered to such individual's dwelling.

''(17) RURAL AREA.—The term 'rural area' means any census tract which—

''(A) is not within 10 miles of any incorporated or census designated place containing more than 25,000 people, and

''(B) is not within a county or county equivalent which has an overall population density of more than 500 people per square mile of land.

''(18) RURAL SUBSCRIBER.—The term 'rural subscriber' means a residential subscriber residing in a dwelling located in a rural area or nonresidential subscriber maintaining a permanent place of business located in a rural area.

''(19) SATELLITE CARRIER.—The term 'satellite carrier' means any person using the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operating in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of such Code to establish and operate a channel of communications for distribution of signals, and owning or leasing a capacity or service on a satellite in order to provide such distribution.

''(20) SATURATED MARKET.—The term 'saturated market' means any census tract in which, as of the date of the enactment of this section—

''(A) current generation broadband services have been provided by one or more providers to 85 percent or more of the total number of potential residential subscribers residing in dwellings located within such census tract, and

''(B) such services can be utilized—

''(i) at least a majority of the time during periods of maximum demand by each such subscriber who is utilizing such services, and

''(ii) in a manner substantially the same as such services are provided by the provider to subscribers through equipment with respect to which no credit is allowed under subsection (a)(1).

''(21) SUBSCRIBER.—The term 'subscriber' means a person who purchases current generation broadband services or next generation broadband services.

''(22) TELECOMMUNICATIONS CARRIER.—The term 'telecommunications carrier' has the meaning given such term by section 3(44) of the Communications Act of 1934 (47 U.S.C. 153(44)), but—

''(A) includes all members of an affiliated group of which a telecommunications carrier is a member, and

''(B) does not include a commercial mobile service carrier.

''(23) TOTAL POTENTIAL SUBSCRIBER POPULATION.—The term 'total potential subscriber population' means, with respect to any area and based on the most recent census data, the total number of potential residential subscribers residing in dwellings located in such area and potential nonresidential subscribers maintaining permanent places of business located in such area.

''(24) UNDERSERVED AREA.—The term 'underserved area' means any census tract which is located in—

''(A) an empowerment zone or enterprise community designated under section 1391,

''(B) the District of Columbia Enterprise Zone established under section 1400,

''(C) a renewal community designated under section 1400E, or

''(D) a low-income community designated under section 45D.

''(25) UNDERSERVED SUBSCRIBER.—The term 'underserved subscriber' means a residential subscriber residing in a dwelling located in an underserved area or nonresidential subscriber maintaining a permanent place of business located in an underserved area.''.

(b) CREDIT TO BE PART OF INVESTMENT CREDIT.—Section 46 (relating to the amount of investment credit) 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:

''(4) the broadband Internet access credit.''

(c) SPECIAL RULE FOR MUTUAL OR COOPERATIVE TELEPHONE COMPANIES.—Section 501(c)(12)(B) (relating to list of exempt organizations) is amended by striking ''or'' at the end of clause (iii), by striking the period at the end of clause (iv) and inserting '', or'', and by adding at the end the following new clause:

''(v) from the sale of property subject to a lease described in section 48A(c)(2)(B), but only to the extent such income does not in any year exceed an amount equal to the credit for qualified expenditures which would be determined under section 48A for such year if the mutual or cooperative telephone company was not exempt from taxation and was treated as the owner of the property subject to such lease.''.

(d) CONFORMING AMENDMENT.—The table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 48 the following:

''Sec. 48A. Broadband internet access credit.''.

(e) DESIGNATION OF CENSUS TRACTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall, not later than 90 days after the date of the enactment of this Act, designate and publish those census tracts meeting the criteria described in paragraphs (17) and (24) of section 48A(e) of the Internal Revenue Code of 1986 (as added by this section). In making such designations, the Secretary of the Treasury shall consult with such other departments and agencies as the Secretary determines appropriate.

(2) SATURATED MARKET.—

(A) IN GENERAL.—For purposes of designating and publishing those census tracts meeting the criteria described in subsection (e)(20) of such section 48A—

(i) the Secretary of the Treasury shall prescribe not later than 30 days after the date of the enactment of this Act the form upon which any provider which takes the position that it meets such criteria with respect to any census tract shall submit a list of such census tracts (and any other information required by the Secretary) not later than 60 days after the date of the publication of such form, and

(ii) the Secretary of the Treasury shall publish an aggregate list of such census tracts submitted and the applicable providers not later than 30 days after the last date such submissions are allowed under clause (i).

(B) NO SUBSEQUENT LISTS REQUIRED.—The Secretary of the Treasury shall not be required to publish any list of census tracts meeting such criteria subsequent to the list described in subparagraph (A)(ii).

(C) PENALTIES FOR SUBMISSION OF FALSE INFORMATION.—The Secretary of the Treasury shall designate appropriate penalties for knowingly submitting false information on the form described in subparagraph (A)(i).

(f) OTHER REGULATORY MATTERS.—

(1) PROHIBITION.—No Federal or State agency or instrumentality shall adopt regulations or ratemaking procedures that would have the effect of confiscating any credit or portion thereof allowed under section 48A of the Internal Revenue Code of 1986 (as added by this section) or otherwise subverting the purpose of this section.

(2) TREASURY REGULATORY AUTHORITY.—It is the intent of Congress in providing the broadband Internet access credit under section 48A of the Internal Revenue Code of 1986 (as added by this section) to provide incentives for the purchase, installation, and connection of equipment and facilities offering expanded broadband access to the Internet for users in certain low income and rural areas of the United States, as well as to residential users nationwide, in a manner that maintains competitive neutrality among the various classes of providers of broadband services. Accordingly, the Secretary of the Treasury shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 48A of such Code, including—

(A) regulations to determine how and when a taxpayer that incurs qualified expenditures satisfies the requirements of section 48A of such Code to provide broadband services, and

(B) regulations describing the information, records, and data taxpayers are required to provide the Secretary to substantiate compliance with the requirements of section 48A of such Code.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures incurred after December 31, 2002, and before January 1, 2004.

## TITLE III—STATE FISCAL RELIEF

### SEC. 301. GENERAL REVENUE SHARING WITH STATES AND THEIR LOCAL GOVERNMENTS.

(a) APPROPRIATION.—There is authorized to be appropriated and is appropriated to carry out this section $15,000,000,000 for fiscal year 2003.

(b) ALLOTMENTS.—From the amount appropriated under subsection (a) for fiscal year 2003, the Secretary of the Treasury shall, as soon as practicable after the date of the enactment of this Act, allot to each of the States as follows, except that no State shall receive less than ½ of 1 percent of such amount:

(1) STATE LEVEL.—$12,000,000,000 shall be allotted among such States on the basis of the relative population of each such State, as determined by the Secretary on the basis of the most recent satisfactory data.

(2) LOCAL GOVERNMENT LEVEL.—$3,000,000,000 shall be allotted among such States as determined under paragraph (1) for distribution to the various units of general local government within such States on the basis of the relative population of each such unit within each such State, as determined by the Secretary on the basis of the most recent satisfactory data.

(c) DEFINITIONS.—For purposes of this section—

(1) STATE.—The term ''State'' means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) UNIT OF GENERAL LOCAL GOVERNMENT.—

(A) IN GENERAL.—The term ''unit of general local government'' means—

(i) a county, parish, township, city, or political subdivision of a county, parish, township, or city, that is a unit of general local government as determined by the Secretary of Commerce for general statistical purposes; and

(ii) the District of Columbia, the Commonwealth of Puerto Rico, and the recognized governing body of an Indian tribe or Alaskan native village that carries out substantial governmental duties and powers.

(B) TREATMENT OF SUBSUMED AREAS.—For purposes of determining a unit of general local government under this section, the rules under section 6720(c) of title 31, United States Code, shall apply.

### SEC. 302. HOMELAND SECURITY.

(a) SHORT TITLE; PURPOSE.—

(1) SHORT TITLE.—This section may be cited as the ''First Responders Partnership Grant Act of 2003''.

(2) PURPOSE.—The purpose of this section is to support first responders to protect homeland security and prevent and respond to acts of terrorism.

(b) DEFINITIONS.—In this section:

(1) INDIAN TRIBE.—The term ''Indian tribe'' has the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(2) LAW ENFORCEMENT OFFICER.—The term ''law enforcement officer'' means any officer, agent, or employee of a State, unit of local government, public or private college or university, or Indian tribe authorized by law or by a government agency to engage in or supervise the prevention, detection, or investigation of any violation of criminal law, or authorized by law to supervise sentenced criminal offenders.

(3) PUBLIC SAFETY OFFICER.—The term ''public safety officer'' means any person serving a public or private agency with or without compensation as a law enforcement officer, as a firefighter, or as a member of a rescue squad or ambulance crew.

(4) STATE.—The term ''State'' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(5) UNIT OF LOCAL GOVERNMENT.—The term ''unit of local government'' means a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level.

(c) FIRST RESPONDERS PARTNERSHIP GRANT PROGRAM FOR PUBLIC SAFETY OFFICERS.—

(1) IN GENERAL.—The Secretary of Homeland Security (referred to in this section as the ''Secretary'') is authorized to make grants to States, units of local government, and Indian tribes to support public safety officers in their efforts to protect homeland security and prevent and respond to acts of terrorism.

(2) USE OF FUNDS.—Grants awarded under this subsection shall be—

(A) distributed directly to the State, unit of local government, or Indian tribe; and

(B) used to fund personnel expenses, equipment, training, and facilities to support public safety officers in their efforts to protect homeland security and prevent and respond to acts of terrorism.

(3) ALLOCATION AND DISTRIBUTION OF FUNDS.—

(A) SET-ASIDE FOR INDIAN TRIBES.—

(i) IN GENERAL.—The Secretary shall reserve 1 percent of the amount appropriated for grants pursuant to this Act to be used for grants to Indian tribes.

(ii) SELECTION OF INDIAN TRIBES.—

(I) IN GENERAL.—The Secretary shall award grants under this subparagraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria.

(II) RULEMAKING.—The criteria under subclause (I) shall be contained in a regulation promulgated by the Attorney General after notice and public comment.

(B) SET-ASIDE FOR RURAL STATES.—

(i) IN GENERAL.—The Secretary shall reserve 5 percent of the amount appropriated for grants pursuant to this Act to be used for grants to rural States.

(ii) SELECTION OF RURAL STATES.—The Secretary shall award grants under this subparagraph to rural States (as defined in section 1501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796bb(b))).

(C) MINIMUM AMOUNT.—The Secretary shall allocate, from the total amount appropriated for grants to States under this subsection—

(i) not less than 0.75 percent for each State; and

(ii) not less than 0.25 percent for American Samoa, Guam, the Northern Mariana Islands, and the United States Virgin Islands, respectively.

(D) ALLOCATION TO METROPOLITAN CITIES AND URBAN COUNTIES.—

(i) ALLOCATION PERCENTAGE.—The balance of the total amount appropriated for grants to States under this subsection after allocations have been made to Indian tribes, rural States, and the minimum amount to each State pursuant to subparagraphs (A) through (C), shall be allocated by the Secretary to metropolitan cities and urban counties.

(E) COMPUTATION OF AMOUNT ALLOCATED TO METROPOLITAN CITIES.—

(i) COMPUTATION RATIOS.—The Secretary shall determine the amount to be allocated to each metropolitan city, which shall bear the same ratio to the allocation for all metropolitan cities as the weighted average of—

(I) the population of the metropolitan city divided by the population of all metropolitan cities;

(II) the potential chemical security risk of the metropolitan city divided by the potential chemical security risk of all metropolitan cities;

(III) the proximity of the metropolitan city to the nearest operating nuclear power plant

compared to the proximity of all metropolitan cities to the nearest operating nuclear power plant to each such city;

(IV) the proximity of the metropolitan cities to the nearest United States land or water port compared with the proximity of all metropolitan cities to the nearest United States land or water port to each such city;

(V) the proximity of the metropolitan city to the nearest international border compared with the proximity of all metropolitan cities to the nearest international border to each such city; and

(VI) the proximity of the metropolitan city to the nearest Disaster Medical Assistance Team (referred to in this subsection as ''DMAT'') compared with the proximity of all metropolitan cities to the nearest DMAT to each such city.

(ii) CLARIFICATION OF COMPUTATION RATIOS.—

(I) RELATIVE WEIGHT OF FACTOR.—In determining the average of the ratios under clause (i)—

(aa) the ratio involving population shall constitute 50 percent of the formula in calculating the allocation; and

(bb) the remaining factors shall be equally weighted.

(II) POTENTIAL CHEMICAL SECURITY RISK.—If a metropolitan city is within the vulnerable zone of a worst-case chemical release (as specified in the most recent risk management plans filed with the Environmental Protection Agency, or another instrument developed by the Environmental Protection Agency or the Homeland Security Department that captures the same information for the same facilities), the ratio under clause (i)(II) shall be 1 divided by the total number of metropolitan cities that are within such a zone.

(III) PROXIMITY AS IT PERTAINS TO NUCLEAR SECURITY.—If a metropolitan city is located within 50 miles of an operating nuclear power plant (as identified by the Nuclear Regulatory Commission), the ratio under clause (i)(III) shall be 1 divided by the total number of metropolitan cities, not to exceed 100, which are located within 50 miles of an operating nuclear power plant.

(IV) PROXIMITY AS IT PERTAINS TO PORT SECURITY.—If a metropolitan city is located within 50 miles of 1 of the 100 largest United States ports (as stated by the Department of Transportation, Bureau of Transportation Statistics, United States Port Report by All Land Modes), or within 50 miles of 1 of the 30 largest United States water ports by metric tons and value (as stated by the Department of Transportation, Maritime Administration, United States Foreign Waterborne Transportation Statistics), the ratio under clause (i)(IV) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of a United States land or water port.

(V) PROXIMITY TO INTERNATIONAL BORDER.—If a metropolitan city is located within 50 miles of an international border, the ratio under clause (i)(V) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of an international border.

(VI) PROXIMITY TO DISASTER MEDICAL ASSISTANCE TEAM.—If a metropolitan city is located within 50 miles of a DMAT, as organized by the National Disaster Medical System, the ratio under clause (i)(VI) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of a DMAT.

(F) COMPUTATION OF AMOUNT ALLOCATED TO URBAN COUNTIES.—

(i) COMPUTATION RATIOS.—The Secretary shall determine the amount to be allocated to each urban county, which shall bear the same ratio to the allocation for all urban counties as the weighted average of—

(I) the population of the urban county divided by the population of all urban counties;

(II) the potential chemical security risk of the urban county divided by the potential chemical security risk of all urban counties;

(III) the proximity of the urban county to the nearest operating nuclear power plant compared to the proximity of all urban counties to the nearest operating nuclear power plant to each such city;

(IV) the proximity of the urban counties to the nearest United States land or water port compared with the proximity of all urban counties to the nearest United States land or water port to each such city;

(V) the proximity of the urban county to the nearest international border compared with the proximity of all urban counties to the nearest international border to each such city; and

(VI) the proximity of the urban county to the nearest Disaster Medical Assistance Team (referred to in this subsection as ''DMAT'') compared with the proximity of all urban counties to the nearest DMAT to each such city.

(ii) CLARIFICATION OF COMPUTATION RATIOS.—

(I) RELATIVE WEIGHT OF FACTOR.—In determining the average of the ratios under clause (i)—

(aa) the ratio involving population shall constitute 50 percent of the formula in calculating the allocation; and

(bb) the remaining factors shall be equally weighted.

(II) POTENTIAL CHEMICAL SECURITY RISK.—If an urban county is within the vulnerable zone of a worst-case chemical release (as specified in the most recent risk management plans filed with the Environmental Protection Agency, or another instrument developed by the Environmental Protection Agency or the Homeland Security Department that captures the same information for the same facilities), the ratio under clause (i)(II) shall be 1 divided by the total number of urban counties that are within such a zone.

(III) PROXIMITY AS IT PERTAINS TO NUCLEAR SECURITY.—If an urban county is located within 50 miles of an operating nuclear power plant (as identified by the Nuclear Regulatory Commission), the ratio under clause (i)(III) shall be 1 divided by the total number of urban counties, not to exceed 100, which are located within 50 miles of an operating nuclear power plant.

(IV) PROXIMITY AS IT PERTAINS TO PORT SECURITY.—If an urban county is located within 50 miles of 1 of the 100 largest United States ports (as stated by the Department of Transportation, Bureau of Transportation Statistics, United States Port Report by All Land Modes), or within 50 miles of 1 of the 30 largest United States water ports by metric tons and value (as stated by the Department of Transportation, Maritime Administration, United States Foreign Waterborne Transportation Statistics), the ratio under clause (i)(IV) shall be 1 divided by the total number of urban counties that are located within 50 miles of a United States land or water port.

(V) PROXIMITY TO INTERNATIONAL BORDER.—If an urban county is located within 50 miles of an international border, the ratio under clause (i)(V) shall be 1 divided by the total number of urban counties that are located within 50 miles of an international border.

(VI) PROXIMITY TO DISASTER MEDICAL ASSISTANCE TEAM.—If an urban county is located within 50 miles of a DMAT, as organized by the National Disaster Medical System, the ratio under clause (i)(VI) shall be 1 divided by the total number of urban counties that are located within 50 miles of a DMAT.

(G) EXCLUSIONS.—

(i) IN GENERAL.—In computing amounts or exclusions under subparagraph (F) with respect to any urban county, units of general local government located in the county shall be excluded if the populations of such units are not counted to determine the eligibility of the urban county to receive a grant under this subsection.

(ii) INDEPENDENT CITIES.—

(I) IN GENERAL.—In computing amounts under clause (i), there shall be included any independent city (as defined by the Bureau of the Census) which—

(aa) is not part of any county;

(bb) is not eligible for a grant;

(cc) is contiguous to the urban county;

(dd) has entered into cooperation agreements with the urban county which provide that the urban county is to undertake or to assist in the undertaking of essential community development and housing assistance activities with respect to such independent city; and

(ee) is not included as a part of any other unit of general local government for purposes of this subsection.

(II) LIMITATION.—Any independent city that is included in the computation under this clause (i) shall not be eligible to receive assistance under this subsection for the fiscal year for which such computation is used to allocate such assistance.

(H) INCLUSION.—

(i) LOCAL GOVERNMENT STRADDLING COUNTY LINE.—In computing amounts or exclusions under subparagraph (F) with respect to any urban county, all of the area of any unit of local government shall be included, which is part of, but is not located entirely within the boundaries of, such urban county if—

(I) the part of such unit of local government that is within the boundaries of such urban county would otherwise be included in computing the amount for such urban county under this paragraph; and

(II) the part of such unit of local government that is not within the boundaries of such urban county is not included as a part of any other unit of local government for the purpose of this paragraph.

(ii) USE OF GRANT FUNDS OUTSIDE URBAN COUNTY.—Any amount received under this subsection by an urban county described under clause (i) may be used with respect to the part of such unit of local government that is outside the boundaries of such urban county.

(I) POPULATION.—

(i) EFFECT OF CONSOLIDATION.—Where data are available, the amount to be allocated to a metropolitan city that has been formed by the consolidation of 1 or more metropolitan cities within an urban county shall be equal to the sum of the amounts that would have been allocated to the urban county or cities and the balance of the consolidated government if such consolidation had not occurred.

(ii) LIMITATION.—Clause (i) shall apply only to a consolidation that—

(I) included all metropolitan cities that received grants under this subsection for the fiscal year preceding such consolidation and that were located within the urban county;

(II) included the entire urban county that received a grant under this subsection for the fiscal year preceding such consolidation; and

(III) took place on or after January 1, 2003

(iii) GROWTH RATE.—The population growth rate of all metropolitan cities defined in this subsection shall be based on the population of—

(I) metropolitan cities other than consolidated governments the grant for which is determined under this paragraph; and

(II) cities that were metropolitan cities before their incorporation into consolidated governments.

(4) MAXIMUM AMOUNT PER GRANTEE.—

(A) IN GENERAL.—A qualifying State, unit of local government, or Indian tribe may not receive more than 5 percent of the total amount appropriated for grants under this section.

(B) AGGREGATE AMOUNT PER STATE.—A State, together with the grantees within the State may not receive more than 20 percent of the total amount appropriated for grants under this section.

(5) MATCHING FUNDS.—

(A) IN GENERAL.—The portion of the costs of a program provided by a grant under paragraph (1) may not exceed 90 percent.

(B) WAIVER.—If the Secretary determines that a grantee is experiencing fiscal hardship, the Secretary may waive, in whole or in part, the matching requirement under subparagraph (A).

(C) EXCEPTION.—Any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of a matching requirement under subparagraph (A).

(d) APPLICATIONS.—

(1) IN GENERAL.—To request a grant under this section, the chief executive of a State, unit of local government, or Indian tribe shall submit an application to the Secretary of the Bureau of Justice Assistance in such form and containing such information as the Secretary may reasonably require.

(2) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement this section (including the information that must be included and the requirements that the States, units of local government, and Indian tribes must meet) in submitting the applications required under this section.

(e) AUTHORIZATION AND APPROPRIATIONS.—There are authorized to be appropriated and are appropriated $5,000,000,000 for fiscal year 2003 to carry out this section.

**SEC. 303. FUNDING FOR EDUCATION.**

(a) BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES.—In addition to amounts appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2003, the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for carrying out part A of title I of the Elementary and Secondary Education Act of 1965, $4,250,000,000. The Secretary of Education shall reserve 1 percent of such amount for the Secretary of the Interior for programs under part B of title I of such Act in schools operated or funded by the Bureau of Indian Affairs.

(b) HIGH QUALITY TEACHERS AND PRINCIPALS.—In addition to amounts appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2003, the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for carrying out part A of title II (other than subpart 5) of the Elementary and Secondary Education Act of 1965, $550,000,000. The Secretary of Education shall reserve 1 percent of such amount for the Secretary of the Interior for programs under such part A in schools operated or funded by the Bureau of Indian Affairs.

(c) LANGUAGE INSTRUCTION FOR LIMITED ENGLISH PROFICIENT AND IMMIGRANT STUDENTS.—In addition to amounts appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2003, the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for carrying out title III (other than subpart 4 of part B) of the Elementary and Secondary Education Act of 1965, $410,000,000. The Secretary of Education shall reserve 1 percent of such amount for payment of entities under section 3112(a) of such Act.

(d) 21ST CENTURY COMMUNITY LEARNING CENTERS.—In addition to amounts appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2003, the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for carrying out part B of title IV of the Elementary and Secondary Education Act of 1965, $500,000,000.The Secretary of Education shall reserve 1 percent of such amount for payments to the Bureau of Indian Affairs to enable the Bureau to carry out the purposes of such part B.

(e) RURAL EDUCATION INITIATIVE.—In addition to amounts appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2003, the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for carrying out part B of title VI of the Elementary and Secondary Education Act of 1965, $131,000,000.

(f) STUDENT FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—In addition to amounts appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2003, the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, for carrying out subpart 1 of part A of title IV of the Higher Education Act of 1965, $200,000,000.

(2) MAXIMUM PELL GRANT.—The maximum Pell Grant for which a student shall be eligible during award year 2003–2004 shall be $4,100.

**SEC. 304. TEMPORARY STATE FMAP RELIEF.**

(a) PERMITTING MAINTENANCE OF FISCAL YEAR 2002 FMAP FOR LAST 3 CALENDAR QUARTERS OF FISCAL YEAR 2003.—Notwithstanding any other provision of law, but subject to subsection (e), if the FMAP determined without regard to this subsection for a State for fiscal year 2003 is less than the FMAP as so determined for fiscal year 2002, the FMAP for the State for fiscal year 2002 shall be substituted for the State's FMAP for the second, third, and fourth calendar quarters of fiscal year 2003, before the application of this section.

(b) PERMITTING MAINTENANCE OF FISCAL YEAR 2003 FMAP FOR FIRST CALENDAR QUARTER OF FISCAL YEAR 2004.—Notwithstanding any other provision of law, but subject to subsection (e), if the FMAP determined without regard to this subsection for a State for fiscal year 2004 is less than the FMAP as so determined for fiscal year 2003, the FMAP for the State for fiscal year 2003 shall be substituted for the State's FMAP for the first calendar quarter of fiscal year 2004, before the application of this section.

(c) GENERAL 3.76 PERCENTAGE POINTS INCREASE FOR LAST 3 CALENDAR QUARTERS OF FISCAL YEAR 2003 AND FIRST CALENDAR QUARTER OF FISCAL YEAR 2004.—Notwithstanding any other provision of law, but subject to subsections (e) and (f), for each State for the second, third, and fourth calendar quarters of fiscal year 2003 and the first calendar quarter of fiscal year 2004, the FMAP (taking into account the application of subsections (a) and (b)) shall be increased by 3.76 percentage points.

(d) INCREASE IN CAP ON MEDICAID PAYMENTS TO TERRITORIES.—Notwithstanding any other provision of law, but subject to subsection (f), with respect to the second, third, and fourth calendar quarters of fiscal year 2003 and the first calendar quarter of fiscal year 2004, the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under subsections (f) and (g) of section 1108 of the Social Security Act (42 U.S.C. 1308) shall each be increased by an amount equal to 7.52 percent of such amounts.

(e) SCOPE OF APPLICATION.—The increases in the FMAP for a State under this section shall apply only for purposes of title XIX of the Social Security Act and shall not apply with respect to—

(1) disproportionate share hospital payments described in section 1923 of such Act (42 U.S.C. 1396r–4);

(2) payments under title IV or XXI of such Act (42 U.S.C. 601 et seq. and 1397aa et seq.); or

(3) the percentage described in the third sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) (relating to amounts expended as medical assistance for services received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 4 of the Indian Health Care Improvement Act)).

(f) STATE ELIGIBILITY.—

(1) IN GENERAL.—Subject to paragraph (2), a State is eligible for an increase in its FMAP under subsection (c) or an increase in a cap amount under subsection (d) only if the eligibility under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) is no more restrictive than the eligibility under such plan (or waiver) as in effect on July 1, 2003.

(2) STATE REINSTATEMENT OF ELIGIBILITY PERMITTED.—A State that has restricted eligibility under its State plan under title XIX of the Social Security Act (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)) after July 1, 2003, but prior to the date of enactment of this Act is eligible for an increase in its FMAP under subsection (c) or an increase in a cap amount under subsection (d) in the first calendar quarter (and any subsequent calendar quarters) in which the State has reinstated eligibility that is no more restrictive than the eligibility under such plan (or waiver) as in effect on July 1, 2003.

(3) RULE OF CONSTRUCTION.—Nothing in paragraph (1) or (2) shall be construed as affecting a State's flexibility with respect to benefits offered under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver under such title or under section 1115 of such Act (42 U.S.C. 1315)).

(g) DEFINITIONS.—In this section:

(1) FMAP.—The term ''FMAP'' means the Federal medical assistance percentage, as defined in section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)).

(2) STATE.—The term ''State'' has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(h) REPEAL.—Effective as of January 1, 2004, this section is repealed.

**SEC. 305. FUNDING FOR TRANSPORTATION INFRASTRUCTURE.**

(a) HIGHWAY PROGRAMS.—

(1) APPROPRIATIONS.—Subject to subsection (d), in addition to amounts appropriated

under the Department of Transportation and Related Agencies Appropriations Act, 2003, there are appropriated to the Secretary of Transportation, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003—

(A) $2,480,000,000—

(i) to be apportioned among the States in accordance with the formula specified in section 104(b)(3) of title 23, United States Code; and

(ii) to be used for projects eligible under section 133 of that title, without regard to section 133(d) of that title;

(B) $80,000,000, to be used by the Secretary in the same manner as funds are used under section 118(c) of that title, except that section 118(c)(2)(A) of that title shall not apply to funds appropriated under this subparagraph;

(C) $80,000,000, to be used by the Secretary in the same manner as funds are used under section 144(g)(2) of that title;

(D) $80,000,000, to be used by the Secretary in the same manner as funds are used under subsections (a) through (c) and (e) of section 202 of that title;

(E) $80,000,000, to be used by the Secretary in the same manner as funds are used under section 202(d) of that title; and

(F) $80,000,000, to be used by the Secretary in the same manner as funds are used under sections 1118 and 1119 of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note; 112 Stat. 161).

(2) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Funds made available under paragraph (1)(A) that are not obligated within 180 days after the date of enactment of this Act shall be redistributed in the manner described in section 1102(d) of the Transportation Equity Act for the 21st Century (23 U.S.C. 104 note; 112 Stat. 117).

(b) TRANSIT PROGRAM.—

(1) APPROPRIATIONS.—Subject to subsection (d)(1), in addition to amounts appropriated under the Department of Transportation and Related Agencies Appropriations Act, 2003, there are appropriated to the Secretary of Transportation, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2003, $720,000,000—

(A) to be distributed between and used for projects eligible under sections 5307 and 5311 of title 49, United States Code, in the same ratio as funds were distributed under section 5338 of that title for fiscal years 1998 through 2003; and

(B) to be apportioned among the States in accordance with the formulas specified in sections 5307 and 5311 of title 49, United States Code.

(2) REDISTRIBUTION OF UNUSED OBLIGATION AUTHORITY.—Funds made available under paragraph (1) that are not obligated within 180 days after the date of enactment of this Act shall be redistributed among the States giving priority to those States having large unobligated balances of funds apportioned under sections 5307 and 5311 of title 49, United States Code.

(c) AIRPORT PROGRAMS.—Subject to subsection (d), in addition to any amounts appropriated for fiscal year 2003, there is appropriated $400,000,000 out of any money in the Treasury not otherwise appropriated for the fiscal year ending September 30, 2003, to the Secretary of Transportation as discretionary funds to be used by the Secretary for grants to make safety and security improvements at airports in the same manner as funds are used under subtitle VII of title 49, United States Code, except that none of the funds may be used to expedite a letter of intent in effect on the date of enactment of this Act.

(d) GENERAL PROVISIONS.—Notwithstanding any other provision of law—

(1) the Federal share of the cost of a project carried out with funds made available under this section shall be 100 percent; and

(2) funds made available under subparagraphs (B) through (F) of subsection (a)(1) and under subsection (c) shall be—

(A) obligated not later than 180 days after the date of enactment of this Act; and

(B) expended as expeditiously as practicable.

## TITLE IV—UNEMPLOYMENT ASSISTANCE

### Subtitle A—Additional Weeks of Temporary Extended Unemployment Compensation

#### SEC. 401. ENTITLEMENT TO ADDITIONAL WEEKS OF TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION.

(a) ENTITLEMENT TO ADDITIONAL WEEKS.—

(1) IN GENERAL.—Paragraph (1) of section 203(b) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 28) is amended—

(A) in subparagraph (A), by striking ''50 percent'' and inserting ''100 percent''; and

(B) in subparagraph (B), by striking ''13 times'' and inserting ''26 times''.

(2) REPEAL OF RESTRICTION ON AUGMENTATION DURING TRANSITIONAL PERIOD.—Section 208(b) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147), as amended by Public Law 108–1 (117 Stat. 3), is amended—

(A) in paragraph (1)—

(i) by striking ''paragraphs (2) and (3)'' and inserting ''paragraph (2)''; and

(ii) by inserting before the period at the end the following: '', including such compensation by reason of amounts deposited in such account after such date pursuant to the application of subsection (c) of such section'';

(B) by striking paragraph (2); and

(C) by redesignating paragraph (3) as paragraph (2).

(3) EXTENSION OF TRANSITION LIMITATION.—Section 208(b)(2) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147), as amended by Public Law 108–1 (117 Stat. 3) and as redesignated by paragraph (2), is amended by striking ''August 30, 2003'' and inserting ''December 31, 2003''.

(4) CONFORMING AMENDMENT FOR AUGMENTED BENEFITS.—Section 203(c)(1) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 28) is amended by striking ''the amount originally established in such account (as determined under subsection (b)(1))'' and inserting ''7 times the individual's average weekly benefit amount for the benefit year''.

(b) EFFECTIVE DATE AND APPLICATION.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply with respect to weeks of unemployment beginning on or after the date of enactment this Act.

(2) TEUC–X AMOUNTS DEPOSITED IN ACCOUNT PRIOR TO DATE OF ENACTMENT DEEMED TO BE THE ADDITIONAL TEUC AMOUNTS PROVIDED BY THIS SECTION.—In applying the amendments made by subsection (a) under the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 26), the Secretary of Labor shall deem any amounts deposited into an individual's temporary extended unemployment compensation account by reason of section 203(c) of such Act (commonly known as ''TEUC–X amounts'') prior to the date of enactment of this Act to be amounts deposited in such account by reason of section 203(b) of such Act, as amended by subsection (a) (commonly known as ''TEUC amounts'').

(3) APPLICATION TO EXHAUSTEES AND CURRENT BENEFICIARIES.—

(A) EXHAUSTEES.—In the case of any individual—

(i) to whom any temporary extended unemployment compensation was payable for any week beginning before the date of enactment of this Act; and

(ii) who exhausted such individual's rights to such compensation (by reason of the payment of all amounts in such individual's temporary extended unemployment compensation account) before such date,

such individual's eligibility for any additional weeks of temporary extended unemployment compensation by reason of the amendments made by subsection (a) shall apply with respect to weeks of unemployment beginning on or after the date of enactment of this Act.

(B) CURRENT BENEFICIARIES.—In the case of any individual—

(i) to whom any temporary extended unemployment compensation was payable for any week beginning before the date of enactment of this Act; and

(ii) as to whom the condition described in subparagraph (A)(ii) does not apply,

such individual shall be eligible for temporary extended unemployment compensation (in accordance with the provisions of the Temporary Extended Unemployment Compensation Act of 2002, as amended by subsection (a)) with respect to weeks of unemployment beginning on or after the date of enactment of this Act.

(4) REDETERMINATION OF ELIGIBILITY FOR AUGMENTED AMOUNTS FOR INDIVIDUALS FOR WHOM SUCH A DETERMINATION WAS MADE PRIOR TO THE DATE OF ENACTMENT.—Any determination of whether the individual's State is in an extended benefit period under section 203(c) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 28) made prior to the date of enactment of this Act shall be disregarded and the determination under such section shall be made as follows:

(A) INDIVIDUALS WHO EXHAUSTED 13 TEUC AND 13 TEUX–X WEEKS PRIOR TO THE DATE OF ENACTMENT.—In the case of an individual who, prior to the date of enactment of this Act, received 26 times the individual's average weekly benefit amount through an account established under section 203 of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 28) (by reason of augmentation under subsection (c) of such section), the determination shall be made as of the date of enactment of this Act.

(B) ALL OTHER INDIVIDUALS.—In the case of an individual who is not described in subparagraph (A), the determination shall be made at the time that the individual's account established under such section 203, as amended by subsection (a), is exhausted.

### Subtitle B—Temporary Enhanced Regular Unemployment Compensation

#### SEC. 411. FEDERAL-STATE AGREEMENTS.

(a) IN GENERAL.—Any State which desires to do so may enter into and participate in an agreement under this title with the Secretary of Labor (in this title referred to as the ''Secretary''). Any State which is a party to an agreement under this title may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) PROVISIONS OF AGREEMENT.—

(1) IN GENERAL.—Subject to paragraph (3), any agreement under subsection (a) shall provide that the State agency of the State, in addition to any amounts of regular compensation to which an individual may be entitled under the State law, shall make payments of temporary enhanced regular unemployment compensation to an individual in an amount and to the extent that the individual would be entitled to regular compensation if the State law were applied with the modifications described in paragraph (2).

(2) MODIFICATIONS DESCRIBED.—The modifications described in this paragraph are as follows:

(A) In the case of an individual who is not eligible for regular compensation under the State law because of the use of a definition of base period that does not count wages earned in the most recently completed calendar quarter, then eligibility for compensation shall be determined by applying a base period ending at the close of the most recently completed calendar quarter.

(B) In the case of an individual who is not eligible for regular compensation under the State law because such individual does not meet requirements relating to availability for work, active search for work, or refusal to accept work, because such individual is seeking, or is available for, less than full-time work, then compensation shall not be denied by such State to an otherwise eligible individual who seeks less than full-time work or fails to accept full-time work.

(3) REDUCTION OF AMOUNTS OF REGULAR COMPENSATION AVAILABLE FOR INDIVIDUALS WHO SOUGHT PART-TIME WORK OR FAILED TO ACCEPT FULL-TIME WORK.—Any agreement under subsection (a) shall provide that the State agency of the State shall reduce the amount of regular compensation available to an individual who has received temporary enhanced regular unemployment compensation as a result of the application of the modification described in paragraph (2)(B) by the amount of such temporary enhanced regular unemployment compensation.

(c) COORDINATION RULE.—The modifications described in subsection (b)(2) shall also apply in determining the amount of benefits payable under any Federal law to the extent that those benefits are determined by reference to regular compensation payable under the State law of the State involved.

**SEC. 412. PAYMENTS TO STATES HAVING AGREEMENTS UNDER THIS TITLE.**

(a) GENERAL RULE.—There shall be paid to each State which has entered into an agreement under this title an amount equal to—

(1) 100 percent of any temporary enhanced regular unemployment compensation; and

(2) 100 percent of any regular compensation which is paid to individuals by such State by reason of the fact that its State law contains provisions comparable to the modifications described in subparagraphs (A) and (B) of section 411(b)(2), but only to the extent that those amounts would, if such amounts were instead payable by virtue of the State law's being deemed to be so modified pursuant to section 411(b)(1), have been reimbursable under paragraph (1).

(b) DETERMINATION OF AMOUNT.—Sums under subsection (a) payable to any State by reason of such State having an agreement under this title shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

**SEC. 413. FINANCING PROVISIONS.**

(a) IN GENERAL.—Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a))), and the Federal unemployment account (as established by section 904(g) of such Act (42 U.S.C. 1104(g))), of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a))) shall be used for the making of payments to States having agreements entered into under this title.

(b) CERTIFICATION.—The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums which are payable to such State under this title. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification by transfers from the extended unemployment compensation account (as so established), or, to the extent that there are insufficient funds in that account, from the Federal unemployment account, to the account of such State in the Unemployment Trust Fund (as so established).

(c) ASSISTANCE TO STATES.—There are appropriated out of the employment security administration account of the Unemployment Trust Fund (as established by section 901(a) of the Social Security Act (42 U.S.C. 1101(a))) $500,000,000 to reimburse States for the costs of the administration of agreements under this title (including any improvements in technology in connection therewith) and to provide reemployment services to unemployment compensation claimants in States having agreements under this title. Each State's share of the amount appropriated by the preceding sentence shall be determined by the Secretary according to the factors described in section 302(a) of the Social Security Act (42 U.S.C. 502(a)) and certified by the Secretary to the Secretary of the Treasury.

(d) APPROPRIATIONS FOR CERTAIN PAYMENTS.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, to the extended unemployment compensation account (as so established) of the Unemployment Trust Fund (as so established) such sums as the Secretary estimates to be necessary to make the payments under this section in respect of—

(1) compensation payable under chapter 85 of title 5, United States Code; and

(2) compensation payable on the basis of services to which section 3309(a)(1) of the Internal Revenue Code of 1986 applies.

Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

**SEC. 414. DEFINITIONS.**

For purposes of this title, the terms ''compensation'', ''base period'', ''regular compensation'', ''State'', ''State agency'', ''State law'', and ''week'' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

**SEC. 415. APPLICABILITY.**

(a) IN GENERAL.—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

(1) beginning after the date on which such agreement is entered into; and

(2) ending before July 1, 2004.

(b) PHASE-OUT OF TERUC.—

(1) IN GENERAL.—Subject to paragraph (2), in the case of an individual who has established eligibility for temporary enhanced regular unemployment compensation, but who has not exhausted all rights to such compensation, as of the last day of the week ending before July 1, 2004, such compensation shall continue to be payable to such individual for any week beginning after such date for which the individual meets the eligibility requirements of this title.

(2) LIMITATION.—No compensation shall be payable by reason of paragraph (1) for any week beginning after December 31, 2004.

**SEC. 416. COORDINATION WITH THE TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 2002.**

(a) IN GENERAL.—The Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 30) is amended—

(1) in section 202(b)(1), by inserting '', and who have exhausted all rights to temporary enhanced regular unemployment compensation'' before the semicolon at the end;

(2) in section 202(b)(2), by inserting '', temporary enhanced regular unemployment compensation,'' after ''regular compensation'';

(3) in section 202(c), by inserting ''(or, as the case may be, such individual's rights to temporary enhanced regular unemployment compensation)'' after ''State law'' in the matter preceding paragraph (1);

(4) in section 202(c)(1), by inserting ''and no payments of temporary enhanced regular unemployment compensation can be made'' after ''under such law'';

(5) in section 202(d)(1), by inserting ''or the amount of any temporary enhanced regular unemployment compensation (including dependents' allowances) payable to such individual for such a week,'' after ''total unemployment'';

(6) in section 202(d)(2)(A), by inserting '', or, as the case may be, to temporary enhanced regular unemployment compensation,'' after ''State law'';

(7) in section 203(b)(1)(A), by inserting ''plus the amount of any temporary enhanced regular unemployment compensation payable to such individual for such week,'' after ''under such law''; and

(8) in section 203(b)(2), by inserting ''or the amount of any temporary enhanced regular unemployment compensation payable to such individual for such week,'' after ''total unemployment''.

(b) AMOUNT OF TEUC OFFSET BY AMOUNT OF TERUC.—Section 203(b)(1) of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 28) is amended—

(1) in subparagraph (B), by striking the period at the end and inserting a comma; and

(2) by adding at the end the following:

''minus the number of weeks in which the individual was entitled to temporary enhanced regular unemployment compensation as a result of the application of the modification described in section 411(b)(2)(A) of the Economic Recovery Act of 2003 (relating to the alternative base period) multiplied by the individual's average weekly benefit amount for the benefit year.''.

(c) TEMPORARY ENHANCED REGULAR UNEMPLOYMENT COMPENSATION DEFINED.—Section 207 of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 116 Stat. 30) is amended to read as follows:

**''SEC. 207. DEFINITIONS.**

''In this title:

''(1) GENERAL DEFINITIONS.—The terms 'compensation', 'regular compensation', 'extended compensation', 'additional compensation', 'benefit year', 'base period', 'State', 'State agency', 'State law', and 'week' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

''(2) TEMPORARY ENHANCED REGULAR UNEMPLOYMENT COMPENSATION.—The term 'temporary enhanced regular unemployment compensation' means temporary enhanced regular unemployment benefits payable under title IV of the Economic Recovery Act of 2003.''.

## TITLE V—LONG-TERM FISCAL DISCIPLINE

### Subtitle A—Provisions Designed To Curtail Tax Shelters

**SEC. 501. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.**

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

''(1) GENERAL RULES.—

''(A) IN GENERAL.—In applying the economic substance doctrine, the determination of whether a transaction has economic substance shall be made as provided in this paragraph.

''(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

''(i) IN GENERAL.—A transaction has economic substance only if—

''(I) the transaction changes in a meaningful way (apart from Federal tax effects and, if there is any Federal tax effects, also apart from any foreign, State, or local tax effects) the taxpayer's economic position, and

''(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

''(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

''(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

''(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

''(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

''(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

''(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

''(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

''(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party's economic income or gain, or

''(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

''(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

''(A) ECONOMIC SUBSTANCE DOCTRINE.—The term 'economic substance doctrine' means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

''(B) TAX-INDIFFERENT PARTY.—The term 'tax-indifferent party' means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person's liability under subtitle A.

''(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

''(D) TREATMENT OF LESSORS.—In applying subclause (I) of paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease, the expected net tax benefits shall not include the benefits of depreciation, or any tax credit, with respect to the leased property and subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

''(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

''(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after February 15, 2004.

**SEC. 502. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.**

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

**''SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.**

''(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be $50,000.

''(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be $100,000.

''(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

''(A) IN GENERAL.—In the case of a failure under subsection (a) by—

''(i) a large entity, or

''(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

''(B) LARGE ENTITY.—For purposes of subparagraph (A), the term 'large entity' means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of $10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

''(C) HIGH NET WORTH INDIVIDUAL.—The term 'high net worth individual' means, with respect to a transaction, a natural person whose net worth exceeds $2,000,000 immediately before the transaction.

''(c) DEFINITIONS.—For purposes of this section—

''(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

''(2) LISTED TRANSACTION.—Except as provided in regulations, the term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

''(d) AUTHORITY TO RESCIND PENALTY.—

''(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

''(A) the violation is with respect to a reportable transaction other than a listed transaction,

''(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

''(C) it is shown that the violation is due to an unintentional mistake of fact;

''(D) imposing the penalty would be against equity and good conscience, and

''(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

''(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole discretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner's sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

''(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

''(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

''(A) the facts and circumstances of the transaction,

''(B) the reasons for the rescission, and

''(C) the amount of the penalty rescinded.

''(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

''(B) a description of each penalty rescinded under this subsection and the reasons therefor.

''(e) PENALTY REPORTED TO SEC.—In the case of a person—

''(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

''(2) which—

''(A) is required to pay a penalty under this section with respect to a listed transaction,

''(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

''(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

''(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.''

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

''Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

**SEC. 503. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.**

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

**''SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.**

''(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

''(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'reportable transaction understatement' means the sum of—

''(A) the product of—

''(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and

''(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

''(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

''(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

''(A) any listed transaction, and

''(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

''(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

''(1) IN GENERAL.—Subsection (a) shall be applied by substituting '30 percent' for '20 percent' with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

''(2) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(A) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which paragraph (1) applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

''(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

''(e) SPECIAL RULES.—

''(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

''(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

''(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

''(2) COORDINATION WITH OTHER PENALTIES.—

''(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

''(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

''(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

''(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term 'noneconomic substance transaction understatement' has the meaning given such term by section 6662B(c).

''(5) CROSS REFERENCE.—

**''For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).''**

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

''The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.''

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

''(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

''(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

''(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

''(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

''(B) there is or was substantial authority for such treatment, and

''(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

''(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

''(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

''(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

''(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

''(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

''(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

''(I) the tax advisor is described in clause (ii), or

''(II) the opinion is described in clause (iii).

''(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

''(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

''(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

''(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

''(IV) as determined under regulations prescribed by the Secretary, has a continuing financial interest with respect to the transaction.

''(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

''(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

''(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

''(III) does not identify and consider all relevant facts, or

''(IV) fails to meet any other requirement as the Secretary may prescribe.''

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended

by inserting ''FOR UNDERPAYMENTS'' after ''EXCEPTION''.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking ''(as defined in section 6662(d)(2)(C)(iii))'' in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

''(C) TAX SHELTER.—For purposes of subparagraph (B), the term 'tax shelter' means—

''(i) a partnership or other entity,

''(ii) any investment plan or arrangement, or

''(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.''

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking ''this part'' and inserting ''section 6662 or 6663''.

(5) Subsection (b) of section 7525 is amended by striking ''section 6662(d)(2)(C)(iii)'' and inserting ''section 1274(b)(3)(C)''.

(6)(A) The heading for section 6662 is amended to read as follows:

**''SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.''**

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

''Sec. 6662. Imposition of accuracy-related penalty on underpayments.

''Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

**SEC. 504. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.**

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

**''SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.**

''(a) IMPOSITION OF PENALTY.—If a taxpayer has an noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

''(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

''(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

''(1) IN GENERAL.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A applies.

''(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term 'noneconomic substance transaction' means any transaction if—

''(A) there is a lack of economic substance (within the meaning of section 7701(m)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(m)(2), or

''(B) the transaction fails to meet the requirements of any similar rule of law.

''(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

''(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

''(2) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

''(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

''(f) CROSS REFERENCES.—

**''(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).**

**''(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).''**

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

''Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after February 15, 2004.

**SEC. 505. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.**

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

''(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

''(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or

''(ii) $10,000,000.''

(b) REDUCTION FOR UNDERSTATEMENT OF TAXPAYER DUE TO POSITION OF TAXPAYER OR DISCLOSED ITEM.—

(1) IN GENERAL.—Section 6662(d)(2)(B)(i) (relating to substantial authority) is amended to read as follows:

''(i) the tax treatment of any item by the taxpayer if the taxpayer had reasonable belief that the tax treatment was more likely than not the proper treatment, or''.

(2) CONFORMING AMENDMENT.—Section 6662(d) is amended by adding at the end the following new paragraph:

''(3) SECRETARIAL LIST.—For purposes of this subsection, section 6664(d)(2), and section 6694(a)(1), the Secretary may prescribe a list of positions for which the Secretary believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SEC. 506. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.**

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

''(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

''(1) between a federally authorized tax practitioner and—

''(A) any person,

''(B) any director, officer, employee, agent, or representative of the person, or

''(C) any other person holding a capital or profits interest in the person, and

''(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 1274(b)(3)(C)).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

**SEC. 507. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

**''SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.**

''(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) information identifying and describing the transaction,

''(2) information describing any potential tax benefits expected to result from the transaction, and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

''(b) DEFINITIONS.—For purposes of this section—

''(1) MATERIAL ADVISOR.—

''(A) IN GENERAL.—The term 'material advisor' means any person—

''(i) who provides any material aid, assistance, or advice with respect to organizing, promoting, selling, implementing, or carrying out any reportable transaction, and

''(ii) who directly or indirectly derives gross income in excess of the threshold amount for such advice or assistance.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

''(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

''(ii) $250,000 in any other case.

''(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

''(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

''(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6111. Disclosure of reportable transactions.''

(2)(A) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

**''SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES.**

''(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall maintain, in such manner as the Secretary may by regulations prescribe, a list—

''(1) identifying each person with respect to whom such advisor acted as such a material advisor with respect to such transaction, and

''(2) containing such other information as the Secretary may by regulations require.

This section shall apply without regard to whether a material advisor is required to file a return under section 6111 with respect to such transaction.''

(B) Section 6112 is amended by redesignating subsection (c) as subsection (b).

(C) Section 6112(b), as redesignated by subparagraph (B), is amended—

(i) by inserting ''written'' before ''request'' in paragraph (1)(A), and

(ii) by striking ''shall prescribe'' in paragraph (2) and inserting ''may prescribe''.

(D) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

''Sec. 6112. Material advisors of reportable transactions must keep lists of advisees.''

(3)(A) The heading for section 6708 is amended to read as follows:

**''SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS.''**

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

''Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

**SEC. 508. MODIFICATIONS TO PENALTY FOR FAILURE TO REGISTER TAX SHELTERS.**

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

**''SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.**

''(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

''(1) fails to file such return on or before the date prescribed therefor, or

''(2) files false or incomplete information with the Secretary with respect to such transaction,

such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

''(b) AMOUNT OF PENALTY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

''(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

''(A) $200,000, or

''(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the reportable transaction before the date the return including the transaction is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

''(c) RESCISSION AUTHORITY.—The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) shall apply to any penalty imposed under this section.

''(d) REPORTABLE AND LISTED TRANSACTIONS.—The terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).''.

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''tax shelters'' and inserting ''reportable transactions''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

**SEC. 509. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.**

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

''(a) IMPOSITION OF PENALTY.—

''(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b)(1)(A) within 20 business days after the date of the Secretary's request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

''(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

**SEC. 510. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.**

(a) IN GENERAL.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

''(a) AUTHORITY TO SEEK INJUNCTION.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

''(b) ADJUDICATION AND DECREE.—In any action under subsection (a), if the court finds—

''(1) that the person has engaged in any specified conduct, and

''(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

''(c) SPECIFIED CONDUCT.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, subject to penalty under section 6700, 6701, 6707, or 6708.''

(b) CONFORMING AMENDMENTS.—

(1) The heading for section 7408 is amended to read as follows:

**''SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.''**

(2) The table of sections for subchapter A of chapter 67 is amended by striking the item relating to section 7408 and inserting the following new item:

''Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.''

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

**SEC. 511. UNDERSTATEMENT OF TAXPAYER'S LIABILITY BY INCOME TAX RETURN PREPARER.**

(a) STANDARDS CONFORMED TO TAXPAYER STANDARDS.—Section 6694(a) (relating to understatements due to unrealistic positions) is amended—

(1) by striking ''realistic possibility of being sustained on its merits'' in paragraph (1) and inserting ''reasonable belief that the tax treatment in such position was more likely than not the proper treatment'',

(2) by striking ''or was frivolous'' in paragraph (3) and inserting ''or there was no reasonable basis for the tax treatment of such position'', and

(3) by striking ''UNREALISTIC'' in the heading and inserting ''IMPROPER''.

(b) AMOUNT OF PENALTY.—Section 6694 is amended—

(1) by striking ''$250'' in subsection (a) and inserting ''$1,000'', and

(2) by striking ''$1,000'' in subsection (b) and inserting ''$5,000''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to documents prepared after the date of the enactment of this Act.

**SEC. 512. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.**

(a) IN GENERAL.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

''(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

''(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

''(B) AMOUNT OF PENALTY.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $5,000.

''(ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

''(I) such violation was due to reasonable cause, and

''(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

''(C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

''(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

''(I) $25,000, or

''(II) the amount (not exceeding $100,000) determined under subparagraph (D), and

''(ii) subparagraph (B)(ii) shall not apply.

''(D) AMOUNT.—The amount determined under this subparagraph is—

''(i) in the case of a violation involving a transaction, the amount of the transaction, or

''(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

**SEC. 513. FRIVOLOUS TAX SUBMISSIONS.**

(a) CIVIL PENALTIES.—Section 6702 is amended to read as follows:

**''SEC. 6702. FRIVOLOUS TAX SUBMISSIONS.**

''(a) CIVIL PENALTY FOR FRIVOLOUS TAX RETURNS.—A person shall pay a penalty of $5,000 if—

''(1) such person files what purports to be a return of a tax imposed by this title but which—

''(A) does not contain information on which the substantial correctness of the self-assessment may be judged, or

''(B) contains information that on its face indicates that the self-assessment is substantially incorrect; and

''(2) the conduct referred to in paragraph (1)—

''(A) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(B) reflects a desire to delay or impede the administration of Federal tax laws.

''(b) CIVIL PENALTY FOR SPECIFIED FRIVOLOUS SUBMISSIONS.—

''(1) IMPOSITION OF PENALTY.—Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of $5,000.

''(2) SPECIFIED FRIVOLOUS SUBMISSION.—For purposes of this section—

''(A) SPECIFIED FRIVOLOUS SUBMISSION.—The term 'specified frivolous submission' means a specified submission if any portion of such submission—

''(i) is based on a position which the Secretary has identified as frivolous under subsection (c), or

''(ii) reflects a desire to delay or impede the administration of Federal tax laws.

''(B) SPECIFIED SUBMISSION.—The term 'specified submission' means—

''(i) a request for a hearing under—

''(I) section 6320 (relating to notice and opportunity for hearing upon filing of notice of lien), or

''(II) section 6330 (relating to notice and opportunity for hearing before levy), and

''(ii) an application under—

''(I) section 6159 (relating to agreements for payment of tax liability in installments),

''(II) section 7122 (relating to compromises), or

''(III) section 7811 (relating to taxpayer assistance orders).

''(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person with notice that a submission is a specified frivolous submission and such person withdraws such submission within 30 days after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

''(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the requirement of section 6662(d)(2)(B)(ii)(II).

''(d) REDUCTION OF PENALTY.—The Secretary may reduce the amount of any penalty imposed under this section if the Secretary determines that such reduction would promote compliance with and administration of the Federal tax laws.

''(e) PENALTIES IN ADDITION TO OTHER PENALTIES.—The penalties imposed by this section shall be in addition to any other penalty provided by law.''

(b) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS BEFORE LEVY.—

(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportunity for hearing before levy) is amended by adding at the end the following new subsection:

''(g) FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of a request for a hearing under this section or section 6320 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''

(2) PRECLUSION FROM RAISING FRIVOLOUS ISSUES AT HEARING.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting ''(A)(i)'';

(B) by striking ''(B)'' and inserting ''(ii)'';

(C) by striking the period at the end of the first sentence and inserting ''; or''; and

(D) by inserting after subparagraph (A)(ii) (as so redesignated) the following:

''(B) the issue meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A).''

(3) STATEMENT OF GROUNDS.—Section 6330(b)(1) is amended by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing''.

(c) TREATMENT OF FRIVOLOUS REQUESTS FOR HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6320 is amended—

(1) in subsection (b)(1), by striking ''under subsection (a)(3)(B)'' and inserting ''in writing under subsection (a)(3)(B) and states the grounds for the requested hearing'', and

(2) in subsection (c), by striking ''and (e)'' and inserting ''(e), and (g)''.

(d) TREATMENT OF FRIVOLOUS APPLICATIONS FOR OFFERS-IN-COMPROMISE AND INSTALLMENT AGREEMENTS.—Section 7122 is amended by adding at the end the following new subsection:

''(e) FRIVOLOUS SUBMISSIONS, ETC.—Notwithstanding any other provision of this section, if the Secretary determines that any portion of an application for an offer-in-compromise or installment agreement submitted under this section or section 6159 meets the requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat such portion as if it were never submitted and such portion shall not be subject to any further administrative or judicial review.''

(e) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6702 and inserting the following new item:

''Sec. 6702. Frivolous tax submissions.''

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to submissions made and issues raised after the date on which the Secretary first prescribes a list under section 6702(c) of the Internal Revenue Code of 1986, as amended by subsection (a).

**SEC. 514. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.**

(a) CENSURE; IMPOSITION OF PENALTY.—

(1) IN GENERAL.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting '', or censure,'' after ''Department'', and

(B) by adding at the end the following new flush sentence:

''The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure.''

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) TAX SHELTER OPINIONS, ETC.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

''(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.''

**SEC. 515. PENALTY ON PROMOTERS OF TAX SHELTERS.**

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: ''Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

**SEC. 516. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH LISTED TRANSACTIONS NOT REPORTED.**

(a) IN GENERAL.—Section 6501(e)(1) (relating to substantial omission of items for income taxes) is amended by adding at the end the following new subparagraph:

''(C) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the tax for such taxable year may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within 6 years after the time the return is filed. This subparagraph shall not apply to any taxable year if the time for assessment or beginning the proceeding in court has expired before the time a transaction is treated as a listed transaction under section 6011.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

**SEC. 517. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE AND NONECONOMIC SUBSTANCE TRANSACTIONS.**

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS AND NONECONOMIC SUBSTANCE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to—

''(1) the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met, or

''(2) any noneconomic substance transaction understatement (as defined in section 6662B(c)).''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

**SEC. 518. AUTHORIZATION OF APPROPRIATIONS FOR TAX LAW ENFORCEMENT.**

There is authorized to be appropriated $300,000,000 for each fiscal year beginning after September 30, 2002, for the purpose of carrying out tax law enforcement to combat tax avoidance transactions and other tax shelters, including the use of offshore financial accounts to conceal taxable income.

**Subtitle B—Other Provisions**

**SEC. 521. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.**

(a) IN GENERAL.—Section 1502 (relating to consolidated return regulations) is amended by adding at the end the following new sentence: ''In prescribing such regulations, the Secretary may prescribe rules applicable to corporations filing consolidated returns under section 1501 that are different from other provisions of this title that would apply if such corporations filed separate returns.''

(b) RESULT NOT OVERTURNED.—Notwithstanding subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury regulation §1.1502–20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the type of factual situation in 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—The provisions of this section shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

**SEC. 522. SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICER.**

(a) IN GENERAL.—Section 6062 (relating to signing of corporation returns) is amended by striking the first sentence and inserting the following new sentence: ''The return of a corporation with respect to income shall be signed by the chief executive officer of such corporation (or other such officer of the corporation as the Secretary may designate if the corporation does not have a chief executive officer). The preceding sentence shall not apply to any return of a regulated investment company (within the meaning of section 851).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns filed after the date of the enactment of this Act.

**SEC. 523. DISCLOSURE OF TAX SHELTERS TO CORPORATE AUDIT COMMITTEE.**

(a) IN GENERAL.—Subchapter B of chapter 61 (relating to information and returns) is amended by inserting after section 6111 the following new section:

**''SEC. 6111A. DISCLOSURE OF REPORTABLE TRANSACTIONS TO CORPORATE AUDIT COMMITTEE.**

''If a corporation is required under section 6011 to include on any return or statement any information with respect to a reportable transaction (as defined in section 6707A(c)), the chief executive officer of such corporation (or other such officer of the corporation as the Secretary may designate if the corporation does not have a chief executive officer) shall disclose such information in a statement to the audit committee of the board of directors of such corporation or any similar committee or entity performing auditing functions on behalf of such corporation.''.

(b) PENALTY FOR FAILURE TO DISCLOSE.—Section 6707A(a) (relating to penalty for failure to include reportable transaction information with return or statement) is amended by inserting '', or fails to file a statement required under section 6111A,'' before ''shall pay''.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 61 is amended by inserting after the item relating to section 6111 the following new item:

''Sec. 6111A. Disclosure of reportable transactions to corporate audit committee.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

**Subtitle C—Budget Points of Order**

**SEC. 531. EXTENSION OF PAY-AS-YOU-GO ENFORCEMENT IN THE SENATE.**

Section 2 of Senate Resolution 304 (107th Congress) is amended—

(1) in subsection (a)(1), by striking ''April 15, 2003'' and inserting ''the end of the 108th Congress''; and

(2) in subsection (b)(1)(B), by striking ''April 15, 2003'' and inserting ''at the end of the 108th Congress''.

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By Mrs. DOLE:

S. 420. A bill to provide for the acknowledgment of the Lumbee Tribe of North Carolina, and for other purposes; to the Committee on Indian Affairs.

Mrs. DOLE. Mr. President, I ask unanimous consent that the text of the attached legislation ''Lumbee Acknowledgment Act of 2003,'' be printed in the RECORD.

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

S. 420

*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 ''Lumbee Acknowledgment Act of 2003''.

**SEC. 2. LUMBEE ACKNOWLEDGMENT.**

The Act of June 7, 1956 (70 Stat. 254, chapter 375), is amended to read as follows:

**''SECTION 1. SHORT TITLE.**

''This Act may be cited as the 'Lumbee Acknowledgment Act'.

**''SEC. 2. FINDINGS.**

''Congress finds that—

''(1) many Indians living in Robeson County, North Carolina, and adjoining counties in the State are descendants of a once large and prosperous tribe that occupied the land along the Lumbee River at the time when the earliest European settlements were established in the area;

''(2) when the members of that tribe first made contact with the settlers, the members were a well-established and distinctive people living in European-style houses, tilling the soil, owning slaves and livestock, and practicing many of the arts and crafts of European civilization;

''(3) tribal legend, a distinctive appearance and manner of speech, and the frequent recurrence among tribal members of family names (such as Bullard, Chavis, Drinkwater, Locklear, Lowery, Oxendine, and Sampson) that were found on the roster of the earliest English settlements, provide evidence that the Indians now living in the area may trace their ancestry back to both—

''(A) European settlers; and

''(B) certain coastal tribes of Indians in the State, principally the Cheraw Tribe;

''(4) the Lumbee Tribe has remained a distinct Indian community since European settlers first made contact with the community;

''(5) the members of the Tribe—

''(A) are naturally and understandably proud of their heritage; and

''(B) seek to establish their social status and preserve their ancestry;

''(6) the State has acknowledged the Lumbee Indians as an Indian tribe since 1885;

''(7) in 1956, Congress acknowledged the Lumbee Indians as an Indian tribe but withheld from the Tribe the benefits, privileges, and immunities to which the Tribe and members of the Tribe would have been entitled by virtue of status as an acknowledged Indian tribe; and

''(8)(A) the Tribe is entitled to full Federal acknowledgment; and

''(B) the programs, services, and benefits that accompany that status should be extended to the Tribe and members of the Tribe.

**''SEC. 3. DEFINITIONS.**

''In this Act:

''(1) ACKNOWLEDGMENT.—The term 'acknowledgment' means acknowledgment by the United States that—

''(A) an Indian group is an Indian tribe; and

''(B) the members of the Indian group are eligible for the programs, services, and benefits (including privileges and immunities) provided by the United States to members of Indian tribes because of the status of those members as Indians.

''(2) INDIAN.—The term 'Indian' means a member of an Indian tribe or Indian group.

''(3) INDIAN GROUP.—The term 'Indian group' means any Indian band, pueblo, village, or community that is not acknowledged.

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

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

''(6) SERVICE POPULATION.—The term 'service population' means the population of the Tribe eligible to receive the programs, services, and benefits described in section 5(a), as determined by the Secretary under section 5(c).

''(7) STATE.—The term 'State' means the State of North Carolina.

''(8) TRIBAL ROLL.—The term 'tribal roll' means a list of individuals who have been determined by the Tribe to meet the membership requirements of the Tribe established in the constitution of the Tribe adopted November 11, 2000.

''(9) TRIBE.—The term 'Tribe' means the Lumbee Tribe of North Carolina, located in Robeson County, North Carolina, and adjoining counties in the State.

**''SEC. 4. ACKNOWLEDGMENT OF LUMBEE TRIBE.**

''(a) ACKNOWLEDGMENT.—

''(1) IN GENERAL.—The Tribe is acknowledged.

''(2) APPLICABLE LAW.—All laws (including regulations) of the United States of general applicability to Indians and Indian tribes shall apply to the Tribe and members of the Tribe.

''(b) PETITION.—Any Indian group located in Robeson County, North Carolina (or any adjoining county), the members of which are not members of the Tribe as determined by the Secretary under section 5(c), may submit to the Secretary a petition in accordance with part 83 of title 25, Code of Federal Regulations (or a successor regulation), for acknowledgement.

**''SEC. 5. SERVICES.**

''(a) IN GENERAL.—Beginning on the date of enactment of this section, the Tribe and members of the Tribe are eligible for all programs, services, and benefits (including

privileges and immunities) provided by the Federal Government to Indian tribes and members of Indian tribes.

''(b) RESERVATION.—

''(1) PROGRAMS, SERVICES, AND BENEFITS.—For the purpose of providing any program, service, or benefit described in subsection (a) to the Tribe or a member of the Tribe, the Tribe, and any member of the Tribe residing in the county of Robeson, Cumberland, Hoke, or Scotland in the State, shall be considered to be residing on or near an Indian reservation.

''(2) FEDERAL LAW.—Beginning on the date of enactment of this section, Robeson County, North Carolina, shall be considered to be the reservation of the Tribe for the purpose of any Federal law applicable to the Tribe.

''(3) NO EFFECT ON FEE OWNERSHIP.—Nothing in this subsection affects the ownership status of any fee land within the State, or the status of any right or easement in the State, in existence as of the date of enactment of this section.

''(c) DETERMINATION OF SERVICE POPULATION.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall—

''(A) using the tribal roll in existence as of the date of enactment of this section, verify the population of the Tribe; and

''(B) determine the population of the Tribe eligible to receive the programs, services, and benefits described in subsection (a).

''(2) VERIFICATION.—The Secretary shall base a verification under paragraph (1)(A) only on a confirmation of compliance of members of the Tribe with membership criteria established in the constitution of the Tribe adopted November 11, 2000.

''(d) NEEDS OF TRIBE.—

''(1) IN GENERAL.—On determination of the service population, the Secretary and the Secretary of Health and Human Services shall develop, in consultation with the Tribe—

''(A) a determination of the needs of the Tribe; and

''(B) a recommended budget required to serve the Tribe.

''(2) SUBMISSION OF BUDGET REQUEST.—For each fiscal year after determination of the service population, the Secretary or the Secretary of Health and Human Services, as appropriate, shall submit to the President a recommended budget for programs, services, and benefits provided by the United States to members of the Tribe because of the status of those members as Indians (including funding recommendations for the Tribe that are based on the determination and budget described in paragraph (1)) for inclusion in the annual budget submitted by the President to Congress in accordance with section 1108 of title 31, United States Code.

**''SEC. 6. JURISDICTION.**

''(a) IN GENERAL.—Except as provided in subsection (b), the State shall exercise jurisdiction over all criminal offenses that are committed on, and all civil actions that arise on, land located in the State that is owned by, or held in trust by the United States for the benefit of, the Tribe or any member of the Tribe.

''(b) TRANSFER OF JURISDICTION.—

''(1) IN GENERAL.—After consultation with the Attorney General, the Secretary may accept, on behalf of the United States, any transfer by the State to the United States of all or any portion of the jurisdiction of the State described in subsection (a).

''(2) AGREEMENT.—A transfer of jurisdiction under paragraph (1)—

''(A) shall be subject to an agreement entered into by the Tribe and the State relating to the transfer; and

''(B) shall not take effect until at least 2 years after the date on which the agreement is entered into.

''(c) NO EFFECT ON INDIAN CHILD WELFARE ACT AGREEMENTS.—Nothing in this section affects the application of section 109 of the Indian Child Welfare Act of 1978 (25 U.S.C. 1919).

**''SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated such sums as are necessary to carry out this Act.''.

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By Ms. CANTWELL (for herself, Mr. SMITH, Mrs. MURRAY, and Mrs. FEINSTEIN):

S. 421. A bill to reauthorize and revise the Renewable Energy Production Incentive program, and for other purposes; to the Committee on Energy and Natural Resources.

Ms. CANTWELL. Mr. President, I rise today to introduce—along with my colleagues Senators SMITH, MURRAY and FEINSTEIN—the Renewable Energy Production Incentive, REPI, Reform Act.

This bill reauthorizes the REPI program, which was created as part of the 1992 National Energy Policy Act to foster greater renewable energy production and level the playing field for public power utilities, which do not qualify for renewable energy tax credits. The REPI program provides direct payments to publicly- and cooperatively-owned utilities at a rate of 1.5 cents/kWh, indexed for inflation, for electricity generated from wind, solar, certain geothermal and biomass sources.

As some of my colleagues may recall, the Senator from Oregon and I introduced a very similar bill last session, which was subsequently included in the energy bill that passed the Senate last spring. While conferees were ultimately unable to reach agreement on the broader energy bill, reauthorizing the REPI program must remain a priority as we again contemplate energy legislation during the 108th Congress.

Since this program's creation, REPI has become an important incentive for locally-owned, not-for-profit utilities to become involved in the effort to diversify our Nation's generation sources to include clean, sustainable sources of power. Since 1995, more than 36 projects in 17 States have received more than $21 million in REPI incentives and produced more than 3,000 megawatt-hours of electricity per year.

In my home State of Washington, where 55 percent of the overall energy load is served by public power, the REPI program had already helped support wood-waste and landfill gas projects, and promises to help locally-owned utilities tap into our tremendous wind resources. Already, the hills south of Kennewick, WA are home to the Nine Canyon Wind project—a 48-megawatt wind farm consisting of 37 turbines—producing enough energy to serve 12,000 households. This bill will provide continued support for these innovative projects.

The Renewable Energy Production Incentive Reform Act that my colleagues and I have introduced today will do three simple things. It will: reauthorize the program for another 10 years; direct the Department of Energy, which runs the program, to allocate funds on a more equitable basis in years in which the demand for REPI dollars far outpaces available appropriations; and clarifies that landfill gas projects and tribal governments are eligible to receive REPI funding.

One of the key challenges in developing a 21st century energy policy for this Nation is putting in place the proper incentives to add new and sustainable sources of power to the grid. My colleagues and I from the Northwest have learned this lesson well over the past few years, during which prolonged droughts have stretched to the limit the hydroelectric system that has—since the 1930s—formed the basis for our region's economic growth. The new clean energy projects the REPI program supports help relieve some of the stress on our hydro system and position my state and region for the next cycle of innovation in energy technology.

I look forward to working with my cosponsors during this session to ensure this small but important program is reauthorized—whether as stand-alone legislation or part of a broader energy bill. I believe we as a Nation now stand on the cusp of a revolution in clean energy technology. The Renewable Energy Production Incentive program is key in helping public power systems participate, as we work to put in place an energy policy that will meet the needs of our 21st Century economy.

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By Mr. BREAUX:

S. 422. A bill to amend the Tariff Act of 1930 to modify the provisions relating to drawback claims, and for other purposes; to the Committee on Finance.

Mr. BREAUX. Mr. President, I would like to clarify a provision of the omnibus appropriations bill that was included as a result of legislation I have been working on since the last Congress. In the transportation section of the omnibus, language was included to help provide for tighter restrictions on the waiver process currently in place at the Transportation Security Administration. Specifically, with this language I was seeking to make sure that venues, events and stadiums across the country are safe for the thousands in attendance. However, there are certain airships which are particularly well suited to assist law enforcement in providing sustained airborne surveillance over and around stadium or other events. It was my intention when crafting this language that blimps operating in this capacity should not be prevented from applying for a waiver from TSA. In fact, under the legislation, the Secretary may grant a waiver for blimps which are being operated for event safety or security, including those which are capable of providing

immediate on-call airborne security camera surveillance services at the stadium or event. It was never my intention to prevent this type of security enhancement from being utilized because these types of airships can and do provide significant security protections for large venue events. I am in possession of a letter from the city of Anaheim which states that these air operations ''were a major component of the security plan'' as they hosted the 2002 World Series. I ask unanimous consent that this be printed in the RECORD.

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

ANAHEIM POLICE DEPARTMENT,
*Anaheim, CA, November 19, 2002.*

JAMES HILTON,
*Director of Operations, The Lightship Group, Orlando, FL.*

DEAR MR. HILTON: As you know, the City of Anaheim hosted the 2002 Major League Baseball World Series and the Anaheim Police Department was charged with providing security during the games.

Air operations were a major component of the security plan. Carl Harbuck, Chief Pilot for the Saturn airship, facilitated a joint aerial plan with our helicopter pilots. Carl arranged for one of our pilots to fly in your airship during each of the four games played in Anaheim. Having one Anaheim officer in your airship, along with the officers in our helicopter, proved to be an effective combination. The Anahiem officer in the airship was able to make observations and convey them to our helicopter crewmembers and officers on the ground in a timely, effective manner. Each of our pilots assigned to your crew during the games had the highest praise for the members of your airship operations team. The members were very professional and informative on how they conduct operations. As you know, having insight in another work mission facilitates a smooth and safe environment for all participants.

Please convey my sincere appreciation to Carl and Pilot Jeff Capek, as well as all your team members, for their hospitality. Let me extend an invitation to your pilots to observe our air operations. They are welcome any time.

Sincerely,

ROGER A. BAKER,
*Chief of Police.*

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By Ms. COLLINS (for herself and Mr. FEINGOLD):

S. 423. A bill to promote health care coverage parity for individuals participating in legal recreational activities or legal transportation activities; to the Committee on Health, Education, Labor, and Pensions.

Ms. COLLINS. Mr. President, I am pleased to join with my colleague from Wisconsin, Senator FEINGOLD, in introducing legislation to prohibit health insurers from denying benefits to plan participants if they are injured while engaging in legal recreational activities like skiing or horseback riding.

Among the many rules that were issued at the end of the Clinton Administration was one that was intended to ensure non-discrimination in health coverage in the group market. This rule was issued jointly on January 8, 2001, by the Department of Labor, the Internal Revenue Service and the Health Care Financing Administration—now the Centers for Medicare and Medicaid Services—in accordance with the Health Insurance Portability and Accountability Act, HIPAA, of 1996.

While I was pleased that the rule prohibits health plans and issuers from denying coverage to individuals who engage in certain types of recreational activities, such as skiing, horseback riding, snowmobiling or motorcycling, I am extremely concerned that it would allow insurers to deny health benefits for an otherwise covered injury that results from participation in these activities.

The rule states that: ''While a person cannot be excluded from a plan for engaging in certain recreational activities, benefits for a particular injury can, in some cases, be excluded based on the source of the injury.'' A plan could, for example, include a general exclusion for injuries sustained while doing a specified list of recreational activities, even though treatment for those injuries, a broken arm for instance, would have been covered under the plan if the individual had tripped and fallen.

Because of this loophole, an individual who was injured while skiing or running could be denied health care coverage, while someone who is injured while drinking and driving a car would be protected.

This clearly is contrary to Congressional intent. One of the purposes of HIPAA was to prohibit plans and issuers from establishing eligibility rules for health coverage based on certain health-related factors, including evidence of insurability. To underscore that point, the conference report language stated that ''the inclusion of evidence of insurability in the definition of health status is intended to ensure, among other things, that individuals are not excluded from health care coverage due to their participation in activities such as motorcycling, snowmobiling, all-terrain vehicle riding, horseback riding, skiing and other similar activities.'' The conference report also states that ''this provision is meant to prohibit insurers or employers from excluding employees in a group from coverage or charging them higher premiums based on their health status and other related factors that could lead to higher health costs.''

Millions of Americans participate in these legal and common recreational activities which, if practiced with appropriate precautions, do not significantly increase the likelihood of serious injury. Moreover, in enacting HIPAA, Congress simply did not intend that people would be allowed to purchase health insurance only to find out, after the fact, that they have no coverage for an injury resulting from a common recreational activity. If this rule is allowed to stand, millions of Americans will be forced to forgo recreational activities that they currently enjoy lest they have an accident and find out that they are not covered for needed care resulting from that accident.

The legislation that we are introducing today will clarify that individuals participating in activities routinely enjoyed by millions of Americans cannot be denied access to health care coverage or health benefits as a result of their activities, and I urge all of our colleagues to join us as cosponsors.

Mr. FEINGOLD. Mr. President, I rise today with my colleague from Maine to introduce legislation to promote health care parity for individuals participating in legal transportation and recreational activities. This legislation addresses concerns that I have been hearing from a wide range of Wisconsinites about a loophole caused by the Department of Health and Human Services' ruling that makes it possible for health care coverage to be denied to those who are injured while participating in these kinds of legal activities.

In January of 2001, the Health Care Finance administration released regulations governing the Health Care Insurance Accountability Act of 1996, also known as HIPAA. As part of this act, Congress intended to ban health insurance discrimination against those participating in legal transportation or recreational activities. Ironically, it appears that the rules written in response to this legislation may have had precisely the opposite effect.

These new regulations at first state that an employer cannot refuse health care coverage to an employee on the basis of participation in recreational activities. But they then go on to say that health care benefits can be denied for injuries sustained in connection with those recreational activities.

Not only does this ruling make little sense, it flies in the face of what Congress intended. In a colloquy between Senators Moseley-Braun and Kassebaum, Senator Mosely-Braun stated, ''As I understand it, this formulation is intended to ensure that, among other things, participants and beneficiaries are not excluded from health care coverage because they participate in activities such as motorcycling, skiing, horseback riding, snowmobiling, or other similar activities.''

And Senator Kassebaum simply said ''The Senator from Illinois is correct.''

But the bureaucrats turned around and permitted the denial of benefits for any injury sustained while participating in these legal activities. This ruling makes no sense. Because of this loophole, someone who participates in motorcycling, snowmobiling, running or walking could be denied health care coverage, while someone who is injured while drinking and driving a car would be protected.

Congress voted 98–0 in favor of the HIPAA legislation that included this language. We must close the loophole that the interpretation of this provision has created.

From riding Harley Davidson motorcycles to the visiting the Snowmobile Hall of Fame in St. Germain, these activities are part of Wisconsin's heritage and economy. It makes no sense that they would be singled out for this unfair treatment.

Millions of Americans rely on motorcycles for their transportation to work. Individuals should not singled out just because they choose a different mode of transportation to go to work.

I urge my colleagues to cosponsor this legislation and provide health care parity for individuals participating in legal transportation and recreational activities.

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By Mr. BINGAMAN (for himself, Mr. INOUYE, Mr. CAMPBELL, and Mr. DASCHLE):

S. 424. A bill to establish, reauthorize, and improve energy programs relating to Indian tribes; to the Committee on Indian Affairs.

Mr. BINGAMAN. Mr. President, today I am introducing a bipartisan bill to address the energy needs of Native Americans in this country. In doing so, I hope to build upon the widespread support for these provisions that was evident during the energy bill debate in the 107th Congress. That support continues as I am pleased to note that Senators INOUYE, CAMPBELL and DASCHLE are original cosponsors of this measure. I'd like to specifically recognize the work of Senator INOUYE and his staff in putting together this bill. I appreciate their significant contribution to its content.

Energy matters concerning Native Americans raise two different issues that warrant attention. First, tribal lands contain significant and diverse energy resources and therefore have a role to play in the area of national energy policy. Second, there continues to be a lack of basic energy infrastructure on a number of reservations.

With respect to the first issue, a significant share of domestic energy resources are located on Indian lands. Over the last 20 years, Indian lands have contributed approximately 11 percent of the Nation's onshore oil and natural gas production, and 11 percent of its coal production. This level of contribution could increase in the future given available supplies of fossil energy resources and the potential development of significant renewable energy resources. The Bureau of Indian Affairs estimates that there are almost 90 reservations with energy resource potential, including oil and gas, coal and coal bed methane, wind, and geothermal resources. Developing these resources, particularly those such as wind power that have the capability to enable tribes to generate electricity on-reservation, requires dealing with current obstacles such as limited transmission capacity.

As for on-reservation energy needs, there is much to be done. A recent Department of Energy report estimated that 14.2 percent of all Native American homes on reservations have no access to electricity compared to just 1.4 percent of all U.S. households. The situation is especially acute on the Navajo Reservation where approximately 37 percent of Navajo homes do not have electricity. Moreover, the average Indian household spends 4 percent of its income on electricity, twice that of the average for all U.S. households. The high cost of energy is particularly harmful to reservation communities, where unemployment averages 43 percent. Another 33 percent who live in and around those communities earn wages below the poverty level. Given these statistics, it is clear that Indian tribes with substantial energy resources and high unemployment rates have a critical interest in enhancing their participation in the development of energy resources as well as providing electrical services to their reservation communities.

The bill being introduced today is a comprehensive approach to the energy issues facing Native Americans. I believe it will assist tribes to develop and utilize available energy supplies, thereby improving on-reservation quality of life while also assisting tribes as they continue to move towards economic self-sufficiency. I look forward to working with my colleagues on this bill and am hopeful that this important legislation can be enacted this year.

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

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

S. 424

*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 ''Tribal Energy Self-Sufficiency Act''.

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



**SEC. 2. DEFINITION OF SECRETARY.**

In this Act, the term ''Secretary'' means the Secretary of Energy.

**TITLE I—INDIAN ENERGY**

**SEC. 101. COMPREHENSIVE INDIAN ENERGY PROGRAM.**

Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) is amended by adding after section 2606 the following:

**''SEC. 2607. COMPREHENSIVE INDIAN ENERGY PROGRAM.**

''(a) DEFINITIONS.—In this section:

''(1) DIRECTOR.—The term 'Director' means the Director of the Office of Indian Energy Policy and Programs of the Department of Energy.

''(2) INDIAN LAND.—The term 'Indian land' means—

''(A) any land within the limits of an Indian reservation, pueblo, or rancheria;

''(B) any land not within the limits of an Indian reservation, pueblo, or rancheria, title to which is held—

''(i) in trust by the United States for the benefit of an Indian tribe;

''(ii) by an Indian tribe subject to restriction by the United States against alienation; or

''(iii) by a dependent Indian community; and

''(C) land conveyed to an Alaska Native corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

''(b) INDIAN ENERGY EDUCATION PLANNING AND MANAGEMENT ASSISTANCE.—

''(1) IN GENERAL.—The Director shall establish programs within the Office of Indian Energy Policy and Programs to assist Indian tribes in meeting energy education, research and development, planning, and management needs.

''(2) GRANTS.—In carrying out this section, the Director may provide grants, on a competitive basis, to an Indian tribe for use in carrying out—

''(A) renewable energy, nonrenewable energy, energy efficiency, and energy conservation programs;

''(B) studies and other activities supporting tribal acquisition of energy supplies, services, and facilities;

''(C) planning, construction, development, operation, maintenance, and improvement of tribal electrical generation, transmission, and distribution facilities located on Indian land; and

''(D) development, construction, and interconnection of electric power transmission facilities located on Indian land with other electric transmission facilities.

''(3) FORMULA.—

''(A) IN GENERAL.—The Director may develop, in consultation with Indian tribes, a formula for providing grants under this section.

''(B) CONSIDERATIONS.—In developing a formula under subparagraph (A), the Director may take into account—

''(i) the number of acres of Indian land owned by an Indian tribe;

''(ii) the number of households on the Indian land of an Indian tribe;

''(iii) the number of households on the Indian land of an Indian tribe that have no electric service or are underserved; and

''(iv) financial or other assets available to the Indian tribe from any source.

''(4) PRIORITY.—In providing a grant under this subsection, the Director shall give priority to an application received from an Indian tribe with inadequate electric service (as determined by the Director).

''(5) REGULATIONS.—The Secretary may promulgate such regulations as the Secretary determines are necessary to carry out this subsection.

''(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the

Secretary to carry out this section $20,000,000 for each of fiscal years 2003 through 2010.

''(c) LOAN GUARANTEE PROGRAM.—

''(1) AUTHORITY.—Subject to paragraph (3), the Secretary may provide loan guarantees (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a) for not more than 90 percent of the unpaid principal and interest due on any loan made to any Indian tribe for—

''(A) energy development (including the planning, development, construction, and maintenance of electrical generation plants); and

''(B) for transmission and delivery mechanisms for electricity produced on Indian land.

''(2) LENDERS.—A loan guaranteed under this subsection shall be made by—

''(A) a financial institution subject to examination by the Secretary; or

''(B) an Indian tribe, from funds of the Indian tribe.

''(3) LIMITATION ON AMOUNT.—The aggregate outstanding amount guaranteed by the Secretary of Energy at any time under this subsection shall not exceed $2,000,000,000.

''(4) REGULATIONS.—The Secretary may promulgate such regulations as the Secretary determines are necessary to carry out this subsection.

''(5) FUNDING.—

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

''(B) AVAILABILITY.—Funds made available under subparagraph (A) shall remain available until expended.

''(d) INDIAN ENERGY PREFERENCE.—

''(1) IN GENERAL.—A Federal agency or department may give, in the purchase of electricity, oil, gas, coal, or any other energy product or byproduct, preference in the purchase to an energy and resource production enterprise, partnership, corporation, or other type of business organization the majority of the interest in which is owned and controlled by an Indian tribe.

''(2) PRICE OF PRODUCTS.—In carrying out this subsection, a Federal agency or department shall—

''(A) pay not more than the prevailing market price for an energy product or byproduct; and

''(B) shall obtain not less than existing market terms and conditions.''.

**SEC. 102. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.**

(a) IN GENERAL.—Title II of the Department of Energy Organization Act (7 U.S.C. 7131 et seq.) is amended by adding at the end the following:

**''SEC. 217. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.**

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the 'Office').

''(2) DIRECTOR.—The Office shall be headed by a Director, who shall be—

''(A) appointed by the Secretary; and

''(B) compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(b) DUTIES OF DIRECTOR.—The Director shall—

''(1) in accordance with Federal policies for the promotion of tribal sovereignty and self-determination, provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that—

''(A) promote tribal energy efficiency and use;

''(B) modernize and develop, for the benefit of Indian tribes, tribal energy and economic infrastructure relating to natural resource development and electrification;

''(C) lower or stabilize energy costs; and

''(D) electrify tribal land and the homes of tribal members; and

''(2) carry out the duties assigned to the Secretary or the Director under title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.).''.

(b) CONFORMING AMENDMENTS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—Section 2603 of the Energy Policy Act of 1992 (25 U.S.C. 3503) is amended by striking subsection (c) and inserting the following:

''(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section $10,000,000 for each of fiscal years 2003 through 2010.''.

(2) TABLE OF CONTENTS.—The table of contents of the Department of Energy Organization Act (42 U.S.C. prec. 7101) is amended—

(A) in the item relating to section 209, by striking ''Section'' and inserting ''Sec.''; and

(B) by striking the items relating to sections 213 through 216 and inserting the following:

''Sec. 213. Establishment of policy for National Nuclear Security Administration.
''Sec. 214. Establishment of security, counterintelligence, and intelligence policies.
''Sec. 215. Office of Counterintelligence.
''Sec. 216. Office of Intelligence.
''Sec. 217. Office of Indian Energy Policy and Programs.''.

(3) EXECUTIVE SCHEDULE.—Section 5315 of title 5, United States Code, is amended by inserting ''Director, Office of Indian Energy Policy and Programs, Department of Energy.'' after ''Inspector General, Department of Energy.''.

**SEC. 103. SITING OF ENERGY FACILITIES ON TRIBAL LAND.**

(a) DEFINITIONS.—In this section:

(1) INDIAN TRIBE.—

(A) IN GENERAL.—The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(B) EXCLUSIONS.—The term ''Indian tribe'' does not include any Regional Corporation or Native Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)).

(2) INTERESTED PARTY.—The term ''interested party'' means a State or other person the interests of which could be adversely affected by a decision of an Indian tribe to grant a lease or right-of-way in accordance with to this section.

(3) PETITION.—The term ''petition'' means a written request submitted to the Secretary for the review of an action (including inaction) of an Indian tribe that is claimed to be in violation of tribal regulations approved under subsection (f).

(4) RESERVATION.—The term ''reservation'' means—

(A) with respect to a reservation in a State other than the State of Oklahoma, all land that has been set aside or that has been acknowledged as having been set aside by the United States for the use of an Indian tribe, the exterior boundaries of which are more particularly defined in a final tribal treaty, agreement, executive order, Federal statute, secretarial order, or judicial determination; and

(B) with respect to a reservation in the State of Oklahoma, all land that is—

(i) within the jurisdictional area of an Indian tribe; and

(ii) within the boundaries of the last reservation of the Indian tribe that was established by treaty, executive order, or secretarial order.

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

(6) TRIBAL LAND.—The term 'tribal land' means any—

(A) tribal trust land; or

(B) other land owned by an Indian tribe that is located within the reservation of the Indian tribe.

(b) LEASES INVOLVING ELECTRIC GENERATION, TRANSMISSION, DISTRIBUTION, OR PROCESSING FACILITIES.—

(1) IN GENERAL.—An Indian tribe may grant a lease of tribal land for—

(A) an electric generation, transmission, or distribution facility; or

(B) a facility to refine or otherwise process renewable or nonrenewable energy resources developed on tribal land.

(2) APPROVAL NOT REQUIRED.—A lease described in paragraph (1) shall not require the approval of the Secretary if—

(A) the lease is executed under tribal regulations approved by the Secretary under this subsection; and

(B) the term of the lease does not exceed 30 years.

(c) RIGHTS-OF-WAY FOR ELECTRIC GENERATION, TRANSMISSION, DISTRIBUTION, OR PROCESSING FACILITIES.—An Indian tribe may grant a right-of-way over tribal land for a pipeline or an electric transmission or distribution line without separate approval by the Secretary if—

(1) the right-of-way is executed under and complies with tribal regulations approved by the Secretary;

(2) the term of the right-of-way does not exceed 30 years; and

(3) the pipeline or electric transmission or distribution line serves—

(A) an electric generation, transmission or distribution facility located on tribal land; or

(B) a facility located on tribal land that refines or otherwise processes renewable or nonrenewable energy resources developed on tribal land.

(d) VALIDITY OF LEASES AND RIGHTS-OF-WAY.—No lease or right-of-way granted under this section shall be valid unless authorized in compliance with applicable tribal regulations approved under subsection (f).

(e) RENEWALS.—Leases or rights-of-way entered into under this section may be renewed at the discretion of the Indian tribe making the grant of the lease or right-of-way in accordance with this section.

(f) TRIBAL REGULATION REQUIREMENTS.—

(1) IN GENERAL.—The Secretary shall approve or disapprove tribal regulations required under this subsection.

(2) CONDITIONS FOR APPROVAL.—The Secretary shall approve tribal regulations described in paragraph (1) if the Secretary determines that the regulations—

(A) are comprehensive in nature;

(B) include provisions that address—

(i) securing necessary information from the lessee or right-of-way applicant;

(ii) the term of any conveyance;

(iii) amendments and renewals;

(iv) consideration for a lease or right-of-way;

(v) technical or other relevant requirements;

(vi) requirements for environmental review as described in paragraph (3);

(vii) requirements for complying with all applicable environmental laws;

(viii) the identification of final approval authority; and

(ix) the provision of public notification of final approvals; and

(C) establish a process for consultation with any affected States concerning potential off-reservation impacts associated with

a lease or right-of-way proposed to be granted.

(3) ENVIRONMENTAL REVIEW PROCESS.—An Indian tribe shall establish an environmental review process that includes—

(A) an identification and evaluation of all significant environmental impacts of the proposed action as compared to a no action alternative;

(B) identification of proposed mitigation;

(C) a process for ensuring that the public is informed of and has an opportunity to comment on the proposed action prior to tribal approval of the lease or right-of-way; and

(D) sufficient administrative support and technical capability to carry out the environmental review process.

(4) PERIOD FOR APPROVAL OR DISAPPROVAL.—

(A) IN GENERAL.—Not later than 270 days after the date of submission by an Indian tribe to the Secretary of tribal regulations under this subsection, the Secretary—

(i) may provide notice and an opportunity for public comment on the regulations; and

(ii) shall approve or disapprove the regulations.

(B) FORM OF DISAPPROVAL.—Any disapproval by the Secretary of tribal regulations described in subparagraph (A) shall be accompanied by—

(i) written documentation that describes the basis for the disapproval; and

(ii) a description of changes or other actions required to address concerns of the Secretary.

(C) EXTENSION.—The Secretary may extend the deadline specified in subparagraph (A) for an Indian tribe after consultation with the Indian tribe.

(5) DUTIES OF INDIAN TRIBE.—If an Indian tribe executes a lease or right-of-way in accordance with tribal regulations required under this subsection, the Indian tribe shall provide to the Secretary—

(A) a copy of the lease or right-of-way document (including all amendments and renewals to the lease or document); and

(B) in the case of tribal regulations or a lease or right-of-way that permits payment to be made directly to the Indian tribe, documentation of the payments sufficient to enable the Secretary to discharge the trust responsibility of the United States as appropriate under applicable law.

(6) NO LIABILITY FOR LOSSES.—The United States shall not be liable for any loss sustained by any party (including any Indian tribe or member of an Indian tribe) to a lease executed in accordance with tribal regulations under this subsection.

(7) VIOLATIONS.—

(A) PETITIONS.—

(i) IN GENERAL.—An interested party may, after exhaustion of tribal remedies, submit to the Secretary, in a timely manner, a petition for the review of compliance of an Indian tribe with any tribal regulations approved under this subsection.

(ii) DEADLINE FOR CONDUCT OF REVIEW.—The Secretary shall conduct any such review under clause (i) as the Secretary determines to be necessary not later than 90 days after the date of receipt of a petition described in clause (i).

(B) DETERMINATION OF VIOLATION.—If, on completion of a review of tribal regulations under subparagraph (A), the Secretary determines that the regulations were violated, the Secretary may take such action as the Secretary determines to be necessary to remedy the violation, including—

(i) rescinding or holding any applicable lease or right-of-way in abeyance until the violation is cured; and

(ii)(I) rescinding the approval of the tribal regulations; and

(II) reassuming responsibility for approval of leases or rights-of-way associated with the facilities covered by those leases or rights-of-way.

(C) ACTIONS OF SECRETARY.—If the Secretary seeks to remedy a violation described in subparagraph (A), the Secretary shall—

(i) make a written determination with respect to the regulations that have been violated;

(ii) provide to the applicable Indian tribe a written notice of the violation and a copy of the written determination described in clause (i); and

(iii) prior to the exercise of any remedy or the rescission of the approval of the regulations involved and reassumption of responsibility for approval of any lease or right-of-way, provide for the Indian tribe a hearing and a reasonable opportunity to cure the alleged violation.

(D) APPEAL.—An Indian tribe that is determined by the Secretary under this paragraph to have violated tribal regulations under this subsection shall retain all rights to appeal as provided by regulations promulgated by the Secretary.

(g) AGREEMENTS.—

(1) IN GENERAL.—An agreement between an Indian tribe and a business entity that is directly associated with the development of an electric generation, transmission, or distribution facility, or a facility to refine or otherwise process renewable or nonrenewable energy resources developed on tribal land, shall not require the separate approval of the Secretary in accordance with section 2103 of the Revised Statutes (25 U.S.C. 81) if the activity that is the subject of the agreement has been the subject of an environmental review process under subsection (f)(3).

(2) NO LIABILITY FOR LOSS.—The United States shall not be liable for any loss sustained by any party (including any Indian tribe or member of an Indian tribe) associated with an agreement entered into under this subsection.

(h) NO EFFECT ON OTHER LAW.—Nothing in this section modifies or otherwise affects the applicability of any provision of—

(1) the Act of May 11, 1938 (commonly known as the ''Indian Mineral Leasing Act of 1938'') (25 U.S.C. 396a et seq.);

(2) the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.);

(3) the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); or

(4) any environmental law of the United States.

**SEC. 104. INDIAN MINERAL DEVELOPMENT REVIEW.**

(a) IN GENERAL.—The Secretary of the Interior shall conduct a review of the activities that, as of the date of enactment of this Act, have been carried out by governments of Indian tribes under the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Interior shall submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes—

(1) the results of the review;

(2) recommendations to ensure that Indian tribes have the opportunity to develop nonrenewable energy resources; and

(3) an analysis of the barriers to the development of energy resources on Indian land, including Federal policies and regulations and recommendations regarding the removal of those barriers.

(c) CONSULTATION.—In developing the report and recommendations under this section, the Secretary of the Interior shall consult with Indian tribes on a government-to-government basis.

**SEC. 105. RENEWABLE ENERGY STUDY.**

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, and once every 2 years thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources and the Committee on Indian Affairs of the Senate and the Committee on Energy and Commerce and the Committee on Resources of the House of Representatives a report that—

(1) describes energy consumption and renewable energy development potential on Indian land;

(2) identifies barriers to the development of renewable energy by Indian tribes, including Federal policies and regulations; and

(3) makes recommendations regarding the removal of those barriers.

(b) CONSULTATION.—In developing the report and recommendations under this section, the Secretary shall consult with Indian tribes on a government-to-government basis.

**SEC. 106. FEDERAL POWER MARKETING ADMINISTRATIONS.**

Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) (as amended by section 101) is amended by adding at the end the following:

**''SEC. 2608. FEDERAL POWER MARKETING ADMINISTRATIONS.**

''(a) DEFINITIONS.—In this section:

''(1) ADMINISTRATOR.—The term 'Administrator' means—

''(A) the Administrator of the Bonneville Power Administration; and

''(B) the Administrator of the Western Area Power Administration.

''(2) POWER MARKETING ADMINISTRATION.—The term 'power marketing administration' means—

''(A) the Bonneville Power Administration;

''(B) the Western Area Power Administration; and

''(C) any other power administration the power allocation of which is used by or for the benefit of an Indian tribe located in the service area of the administration.

''(b) ENCOURAGEMENT OF INDIAN TRIBAL ENERGY DEVELOPMENT.—Each Administrator shall encourage Indian tribal energy development by taking such actions as are appropriate, including administration of programs of the Bonneville Power Administration and the Western Area Power Administration, in accordance with this section.

''(c) ACTION BY THE ADMINISTRATOR.—In carrying out this section—

''(1) each Administrator shall consider the unique relationship that exists between the Federal Government and Indian tribes;

''(2) power allocations from the Western Area Power Administration to Indian tribes may be used to firm Indian-owned renewable energy projects for delivery of loads located on Indian land; and

''(3) the Administrator of the Western Area Power Administration may purchase renewable or nonrenewable power from Indian tribes to meet the firming requirements of the Western Area Power Administration.

''(d) ASSISTANCE FOR TRANSMISSION SYSTEM USE.—

''(1) IN GENERAL.—An Administrator may provide technical assistance to Indian tribes seeking to use the high-voltage transmission system for delivery of electric power.

''(2) COSTS.—The costs of technical assistance provided under paragraph (1) shall be funded—

''(A) by the Administrator using nonreimbursable funds appropriated for that purpose; or

''(B) by the applicable Indian tribes.

''(3) PRIORITY FOR ASSISTANCE FOR TRANSMISSION STUDIES.—In providing discretionary

assistance to Indian tribes under paragraph (1), each Administrator shall give priority in funding to Indian tribes that have limited financial capability to acquire that assistance.

''(e) POWER ALLOCATION STUDY.—

''(1) IN GENERAL.—Not later than 2 years after the date of enactment of this section, the Secretary of Energy shall submit to the Committee on Energy and Natural Resources and the Committee on Indian Affairs of the Senate and the Committee on Energy and Commerce and the Committee on Resources of the House of Representatives a report that—

''(A) describes the use by Indian tribes of Federal power allocations of the Western Area Power Administration (or power sold by the Southwestern Power Administration) and the Bonneville Power Administration to or for the benefit of Indian tribes in service areas of those administrations; and

''(B) identifies—

''(i) the quantity of power allocated to Indian tribes by the Western Area Power Administration;

''(ii) the quantity of power sold to Indian tribes by other power marketing administrations; and

''(iii) barriers that impede tribal access to and use of Federal power, including an assessment of opportunities—

''(I) to remove those barriers; and

''(II) improve the ability of power marketing administrations to facilitate the use of Federal power by Indian tribes.

''(2) CONSULTATION.—In developing the report under paragraph (1), each power marketing administration shall consult with Indian tribes on a government-to-government basis.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Energy to carry out this section $750,000 for each of fiscal years 2003 through 2013.''.

**SEC. 107. FEASIBILITY STUDY FOR COMBINED WIND AND HYDROPOWER DEMONSTRATION PROJECT.**

(a) STUDY.—The Secretary, in coordination with the Secretary of the Army and the Secretary of the Interior, shall conduct a study of the cost and feasibility of developing a demonstration project that would use wind energy generated by Indian tribes and hydropower generated by the Army Corps of Engineers on the Missouri River to supply firming power to the Western Area Power Administration.

(b) SCOPE OF STUDY.—The study shall—

(1) determine the feasibility of the blending of wind energy and hydropower generated from the Missouri River dams operated by the Army Corps of Engineers;

(2) review historical purchase requirements and projected purchase requirements for firming and the patterns of availability and use of firming energy;

(3) assess the wind energy resource potential on tribal land and projected cost savings through a blend of wind and hydropower over a 30-year period;

(4) include a preliminary interconnection study and a determination of resource adequacy of the Upper Great Plains Region of the Western Area Power Administration;

(5) determine seasonal capacity needs and associated transmission upgrades for integration of tribal wind generation; and

(6) include an independent tribal engineer as a study team member.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and Secretary of the Army shall submit to Congress a report that describes the results of the study, including—

(1) an analysis of the potential energy cost savings to the customers of the Western Area Power Administration through the blend of wind and hydropower;

(2) an evaluation of whether a combined wind and hydropower system can reduce reservoir fluctuation, enhance efficient and reliable energy production, and provide Missouri River management flexibility;

(3) recommendations for a demonstration project that could be carried out by the Western Area Power Administration in partnership with an Indian tribal government or tribal government energy consortium to demonstrate the feasibility and potential of using wind energy produced on Indian land to supply firming energy to the Western Area Power Administration or any other Federal power marketing agency; and

(4) an identification of—

(A) the economic and environmental benefits to be realized through such a Federal-tribal partnership; and

(B) the manner in which such a partnership could contribute to the energy security of the United States.

(d) CONSULTATION.—In developing the report and recommendations under this section, the Secretary and the Secretary of the Army shall consult with applicable Indian tribes on a government-to-government basis.

(e) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $500,000, to remain available until expended.

(2) NONREIMBURSABILITY OF COSTS.—All costs incurred by the Western Area Power Administration in carrying out this section shall be nonreimbursable.

**SEC. 108. TRANSMISSION LINE DEMONSTRATION PROJECT.**

The Dine Power Authority, an enterprise of the Navajo Nation, shall be eligible to receive grants and other assistance under the demonstration program authorized by section 2603 of the Energy Policy Act of 1992 (25 U.S.C. 3503) for activities associated with the development of a transmission line from the Four Corners Area to southern Nevada, including related power generation opportunities.

## TITLE II—RENEWABLE ENERGY AND RURAL CONSTRUCTION GRANTS

**SEC. 201. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

(a) INCENTIVE PAYMENTS.—Section 1212(a) of the Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is amended in the third and fourth sentences by striking ''payment and which satisfies'' and all that follows through ''Secretary shall establish.'' and inserting the following: ''payment. The Secretary shall establish other procedures necessary for efficient administration of the program. The Secretary shall not establish any criteria or procedures that have the effect of assigning to proposals a higher or lower priority for eligibility or allocation of appropriated funds on the basis of the energy source proposed.''.

(b) QUALIFIED RENEWABLE ENERGY FACILITY.—Section 1212(b) of the Energy Policy Act of 1992 (42 U.S.C. 13317(b)) is amended—

(1) by striking ''a State or any political'' and all that follows through ''nonprofit electrical cooperative'' and inserting the following: ''a nonprofit electrical cooperative, a public utility, a State, territory, or possession of the United States, the District of Columbia (or a political subdivision of a State, territory, or possession or the District of Columbia), or an Indian tribal government (or subdivision of an Indian tribal government),''; and

(2) by inserting ''landfill gas, incremental hydropower, ocean'' after ''wind, biomass,''.

(c) ELIGIBILITY WINDOW.—Section 1212(c) of the Energy Policy Act of 1992 (42 U.S.C. 13317(c)) is amended by striking ''during the 10-fiscal year period beginning with the first full fiscal year occurring after the enactment of this section'' and inserting ''before October 1, 2013''.

(d) PAYMENT PERIOD.—Section 1212(d) of the Energy Policy Act of 1992 (42 U.S.C. 13317(d)) is amended in the second sentence by inserting ''or in which the Secretary determines that all necessary Federal and State authorizations have been obtained to begin construction of the facility'' after ''eligible for such payments''.

(e) AMOUNT OF PAYMENT.—Section 1212(e)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13317(e)(1)) is amended in the first sentence by inserting ''landfill gas, incremental hydropower, ocean'' after ''wind, biomass,''.

(f) TERMINATION OF AUTHORITY.—Section 1212(f) of the Energy Policy Act of 1992 (42 U.S.C. 13317(f)) is amended by striking ''the expiration of'' and all that follows through ''of this section'' and inserting ''September 30, 2023''.

(g) INCREMENTAL HYDROPOWER; AUTHORIZATION OF APPROPRIATIONS.—Section 1212 of the Energy Policy Act of 1992 (42 U.S.C. 13317) is amended by striking subsection (g) and inserting the following:

''(g) INCREMENTAL HYDROPOWER.—

''(1) DEFINITION OF INCREMENTAL HYDROPOWER.—In this subsection, the term 'incremental hydropower' means additional generating capacity achieved from increased efficiency or an addition of new capacity at a hydroelectric facility in existence on the date of enactment of this paragraph.

''(2) PROGRAMS.—Subject to subsection (h)(2), if an incremental hydropower program meets the requirements of this section, as determined by the Secretary, the incremental hydropower program shall be eligible to receive incentive payments under this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2003 through 2023.

''(2) LIMITATION ON FUNDS USED FOR INCREMENTAL HYDROPOWER PROGRAMS.—Not more than 30 percent of the amounts made available under paragraph (1) shall be used to carry out programs described in subsection (g)(2).

''(3) AVAILABILITY OF FUNDS.—Funds made available under paragraph (1) shall remain available until expended.''.

## TITLE III—ENERGY EFFICIENCY AND ASSISTANCE TO LOW-INCOME CONSUMERS

**SEC. 301. LOW-INCOME COMMUNITY ENERGY EFFICIENCY PILOT PROGRAM.**

(a) DEFINITION OF INDIAN TRIBE.—

(1) IN GENERAL.—In this section, the term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) INCLUSIONS.—In this section, the term ''Indian tribe'' includes an Alaskan Native village, Regional Corporation, and Village Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

(b) GRANTS TO LOCAL GOVERNMENT, NONPROFIT, AND TRIBAL ENTITIES.—The Secretary may provide grants to units of local government, private, nonprofit community development organizations, and tribal economic development entities for use in—

(1) improving energy efficiency;

(2) identifying and developing alternative renewable and distributed energy supplies; and

(3) increasing energy conservation in low-income rural and urban communities.

(c) COMPETITIVE GRANTS.—In addition to grants described in subsection (b), the Secretary may provide grants on a competitive basis for—

(1) investments that develop alternative renewable and distributed energy supplies;

(2) energy efficiency projects and energy conservation programs;

(3) studies and other activities that improve energy efficiency in low-income rural and urban communities;

(4) planning and development assistance for increasing the energy efficiency of buildings and facilities; and

(5) technical and financial assistance to local government and private entities on developing new renewable and distributed sources of power or combined heat and power generation.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2003 through 2005.

**SEC. 302. RURAL AND REMOTE COMMUNITY ELECTRIFICATION GRANTS.**

Section 313 of the Rural Electrification Act of 1936 (7 U.S.C. 940c) is amended by adding at the end the following:

''(c) RURAL AND REMOTE COMMUNITIES ELECTRIFICATION GRANTS.—

''(1) DEFINITIONS.—In this subsection:

''(A) ELIGIBLE ENTITY.—The term 'eligible entity' means—

''(i) a unit of local government of a State or Territory;

''(ii) an Indian tribe; and

''(iii) a tribal college or university.

''(B) INDIAN TRIBE.—

''(i) IN GENERAL.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''(ii) INCLUSIONS.—The term ''Indian tribe'' includes a Alaskan Native village, Regional Corporation, and Village Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

''(C) TRIBAL COLLEGE OR UNIVERSITY.—The term 'tribal college or university' has the meaning given the term in section 316(b)(3) of the Higher Education Act (20 U.S.C. 1059c(b)(3))).

''(2) GRANTS.—The Secretary, in consultation with the Secretary of Energy and the Secretary of the Interior, may provide to an eligible entity 1 or more grants for the purpose of—

''(A) increasing energy efficiency;

''(B) siting or upgrading transmission and distribution lines; or

''(C) providing or modernizing electric facilities.

''(3) GRANT CRITERIA.—The Secretary shall provide grants under this subsection based on a determination of the most effective and cost-efficient use of the funds to achieve the purposes of this subsection.

''(4) PRIORITY.—In providing grants under this subsection, the Secretary shall give priority to renewable energy facilities.

''(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $20,000,000 for each of the 7 fiscal years following the fiscal year in which this subsection is enacted.''.

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By Mr. DASCHLE:

S. 425. A bill to revise the boundary of the Wind Cage National Park in the State of South Dakota; to the Committee on Energy and Natural Resources.

Mr. DASCHLE. Mr. President, today I am introducing the Wind Cave National Park Boundary Revision Act of 2003. The Senate unanimously approved this legislation late last fall, but it was not considered by the House of Representatives before Congress adjourned for the year. I hope that my colleagues will again support this effort and that we can see this bill signed into law.

Wind Cave National Park, located in southwestern South Dakota, is one of the Park System's precious natural treasures and one of the Nation's first national parks. The cave itself, after which the park is named, is one of the world's oldest, longest and most complex cave systems, with more than 103 miles of mapped tunnels. The cave is well known for its exceptional display of boxwork, a rare, honeycomb-shaped formation that protrudes from the cave's ceilings and walls. While the cave is the focal point of the park, the land above the cave is equally impressive, with 28,000 acres of rolling meadows, majestic forests, creeks, and streams. As one of the few remaining mixed-grass prairie ecostytems in the country, the park is home to abundant wildlife, such as bison, deer, elk and birds, and is a National Game Preserve.

The Wind Cave National Park Boundary Revision Act will help expand the park by approximately 20 percent in the southern ''keyhole'' region. This land is currently owned by a ranching family that wants to see it protected from development and preserved for future generations. The land is a natural extension of the park, and boasts the mixed-grass prairie and ponderosa pine forests found in the rest of the park, including a dramatic river canyon. The addition of this land will enhance recreation for hikers who come for the solitude of the park's back country. It will also protect archaeological sites, such as a buffalo jump, over which early native Americans once drove the bison they hunted, and improve fire management.

This plan to expand the park has strong, but not universal, support in the surrounding community. The community's views were expressed during a recent 60-day public comment period on the proposal. Most South Dakotans recognize the value in expanding the park, not only to encourage additional tourism in the Black Hills, but to permanently protect these extraordinary lands for future generations of Americans to enjoy. Understandably, however, some are legitimately concerned about the potential loss of hunting opportunities and local tax revenue.

Governor Janklow has expressed his conditional support for the park expansion, stating that there must be no reduction in the amount of lands with public access that can currently be hunted, that there must be no loss of tax revenue to the county from the expansion, and that chronic wasting disease issue must be dealt with effectively. These are reasonable conditions that should be met as this process moves forward.

The legislation I am introducing today protects hunting opportunities for sportsmen by excluding 880 acres of School and Public Lands property from the expansion. In addition, Wind Cave National Park and the Trust for Public Lands are working with interested parties to find a way to offset the loss of local county tax revenues. Finally, I understand that the South Dakota Game, Fish, and Parks Department has reached an agreement with Wind Cave officials to expand research into chronic wasting disease, which will benefit wildlife populations nationwide. I am satisfied that the legitimate concerns about the potential expansion have been effectively addressed and today am moving forward to begin the legislative phase of this process.

In conclusion, Wind Cave National Park has been a valued American treasure for nearly 100 years. We have an opportunity with this legislation to expand the park and enhance its value to the public so that visitors will enjoy it even more during the next 100 years. It is my hope that my colleagues will again support this expansion of the park and pass this legislation in the near future.

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

Mr. INOUYE. Mr. President, I am pleased to join the distinguished former Chairman of the Committee on Energy and Natural Resources as an original co-sponsor of the Tribal Energy Self-Sufficiency Act.

This measure reflects the work of the House and Senate conferees on the comprehensive energy legislation in the last session of the Congress—the tribal provisions of the bill were approved by the conferees and it is those provisions which comprise the measure we introduce today.

We believe that the enactment of this measure will afford tribal governments the necessary authorizations and resources that they need to develop energy resources on their lands and thereby make a significant contribution to the Nation's energy needs.

We encourage our colleagues to support this measure as they did in the last session of the Congress.

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

S. 425

*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 ''Wind Cave National Park Boundary Revision Act of 2003''.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) MAP.—The term ''map'' means the map entitled ''Wind Cave National Park Boundary Revision'', numbered 108/80,030, and dated June 2002.

(2) PARK.—The term ''Park'' means the Wind Cave National Park in the State.

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

(4) STATE.—The term ''State'' means the State of South Dakota.

**SEC. 3. LAND ACQUISITION.**

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary may acquire the land or interest in land described in subsection (b)(1) for addition to the Park.

(2) MEANS.—An acquisition of land under paragraph (1) may be made by donation, purchase from a willing seller with donated or appropriated funds, or exchange.

(b) BOUNDARY.—

(1) MAP AND ACREAGE.—The land referred to in subsection (a)(1) shall consist of approximately 5,675 acres, as generally depicted on the map.

(2) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(3) REVISION.—The boundary of the Park shall be adjusted to reflect the acquisition of land under subsection (a)(1).

**SEC. 4. ADMINISTRATION.**

(a) IN GENERAL.—The Secretary shall administer any land acquired under section 3(a)(1) as part of the Park in accordance with laws (including regulations) applicable to the Park.

(b) TRANSFER OF ADMINISTRATIVE JURISDICTION.—

(1) IN GENERAL.—The Secretary shall transfer from the Director of the Bureau of Land Management to the Director of the National Park Service administrative jurisdiction over the land described in paragraph (2).

(2) MAP AND ACREAGE.—The land referred to in paragraph (1) consists of the approximately 80 acres of land identified on the map as ''Bureau of Land Management land''.

**SEC. 5. GRAZING.**

(a) GRAZING PERMITTED.—Subject to any permits or leases in existence as of the date of acquisition, the Secretary may permit the continuation of livestock grazing on land acquired under section 3(a)(1).

(b) LIMITATION.—Grazing under subsection (a) shall be at not more than the level existing on the date on which the land is acquired under section 3(a)(1).

(c) PURCHASE OF PERMIT OR LEASE.—The Secretary may purchase the outstanding portion of a grazing permit or lease on any land acquired under section 3(a)(1).

(d) TERMINATION OF LEASES OR PERMITS.—The Secretary may accept the voluntary termination of a permit or lease for grazing on any acquired land.

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By Mr. DASCHLE:

S. 426. A bill to direct the Secretary of the Interior to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the initial stage of the Oahe Unit, James Division, South Dakota, to the Commission of Schools and Public Lands and the Department of Game, Fish, and Parks of the Stat of South Dakota for the purpose of mitigating lost wildlife habitat, on the condition that the current preferential leaseholders shall have an option to purchase the parcels from the Commission, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. DASCHLE. Mr. President, today I am introducing the Blunt Reservoir and Pierre Canal Land Conveyance Act of 2003. This proposal is the culmination of more than 4 years of discussion with local landowners, the South Dakota Water Congress, the U.S. Bureau of Reclamation, local legislators, representatives of South Dakota sportsmen groups and affected citizens. It lays out a plan to convey certain parcels of land acquired for the Blunt Reservoir and Pierre Canal features of the Oahe Irrigation Project in South Dakota to the Commission of School and Public Lands of the State of South Dakota for the purpose of mitigating lost wildlife habitat, and provides the option to preferential leaseholders to purchase their original parcels from the Commission.

The bill I'm introducing today is the result of consultations with the Energy and Natural Resources Committee when it considered the bill last July. The committee incorporated changes to the legislation that will ensure a smooth transition of land from federal to private ownership, increase county tax revenues, as well as provide the tools and future funding necessary to help the state of South Dakota improve wildlife habitat and public hunting opportunities. The Senate unanimously approved this legislation late last fall, but it was not considered by the House of Representatives before Congress adjourned for the year. I hope that my colleagues will once again support this effort, and that we can see this bill signed into law.

To more fully understand the issues addressed by the legislation, it is necessary to review some of the history related to the Oahe Unit of the Missouri River Basin project in South Dakota.

The Oahe Unit was originally approved part of the overall plan for water development in the Missouri River Basin that was incorporated in the Flood Control Act of 1944. Subsequently, Public Law 90–453 authorized construction and operation of the initial stage of this unit. The purposes of the Oahe Unit, as authorized, were to provide for the immigration of 190,000 acres of farmland, conserve and enhance fish and wildlife habitat, promote recreation and meet other important goals.

The project came to be known as the Oahe Irrigation Project. The principal features of the initial stage of the project included the Oahe pumping plant, located near Oahe Dam, to pump water from the Oahe Reservoir; a system of main canals, including the Pierre Canal, running east from the Oahe Reservoir; and, the establishment of regulating reservoirs, including the Blunt Dam and Reservoir, located approximately 35 miles east Pierre, SD.

Under the authorizing legislation, 42,155 acres were to be acquired by the Federal Government in order to construct and operate the Blunt Reservoir feature of the Oahe Irrigation Project. Land acquisition for the proposed Blunt Reservoir feature began in 1972 and continued through 1977. A total of 17,878 acres usually were acquired from willing sellers.

The first land for the Pierre Canal feature was purchased in July 1975 and included the 1.3 miles of Reach 1B. An additional 21-mile reach was acquired from 1976 through 1977, also from willing sellers.

Organized opposition to the Oahe Irrigation Project surfaced in 1973 and continued to build until a series of public meetings were held in 1977 to determine if the project should continue. In late 1977, the Oahe project was made a part of Presidents Carter's Federal Water Project review process.

The Oahe project construction was then halted on September 30, 1977, when Congress did not include funding in the fiscal year 1978 appropriations. Thus, all major construction contract activities ceased, and land acquisition was halted.

The Oahe Project remained an authorized water project with a bleak future and minimal chances of being completed as authorized. Consequently, the Department of Interior, through the Bureau of Reclamation, gave those persons who willingly had sold their lands to the project, and their descendants, the right to lease those lands and use them as they had in the past until they were needed by the Federal Government for project purposes.

During the period from 1978 until the present, the Bureau of Reclamation has administered these lands on a preferential lease basis for those original landowners or their descendants, and on a non-preferential basis for lands under lease to persons who were not preferential leaseholders. Currently, the Bureau of Reclamation administers 12,978 acres as preferential leases and 4,304 acres as non-preferential leases in the Blunt Reservoir.

As I noted previously, the Oahe Irrigation Project is related directly to the overall project purposes of the Pick-Sloan Missouri Basin program authorized under the Flood Control Act of 1944. Under this program, the U.S. Army Corps of Engineers constructed four major dams across the Missouri River in South Dakota. The two largest reservoirs formed by these dams, Oahe Reservoir and Sharpe Reservoir, cause the loss of approximately 221,000 acres of fertile, wooded bottomland that constituted some of the most productive, unique and irreplaceable wildlife habitat in the State of South Dakota. This included habitat for both game and non-game species, including several species now listed as threatened or endangered. Meriwether Lewis, while traveling up the Missouri River in 1804 on his famous expedition, wrote in his diary, ''Song birds, game species and furbearing animals abound here in numbers like none of the party has ever seen. The bottomlands and cottonwood trees provide a shelter and food for a great variety of species, all laying their claim to the river bottom.''

Under the provisions of the Wildlife Coordination Act of 1958, the State of South Dakota has developed a plan to mitigate a part of this lost wildlife habitat as authorized by Section 602 of Title VI of Public Law 105–277, October 21, 1998, known as the Cheyenne River Sioux Tribe, Lower Brule Sioux Tribe,

and State of South Dakota Terrestrial Wildlife Habitat Restoration Act. The State's habitat mitigation plan has received the necessary approval and interim funding authorizations under Sections 602 and 609 of Title VI.

The State's habitat mitigation plan requires the development of approximately 27,000 acres of wildlife habitat in South Dakota. Transferring the 4,304 acres of non-preferential lease lands in the Blunt Reservoir feature to the South Dakota Department of Game, Fish and Parks would constitute a significant step toward satisfying the habitat mitigation obligation owed to the state by the Federal Government and as agreed upon by the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the South Dakota Department of Game, Fish and Parks.

As we developed this legislation, many meetings occurred among the local landowners, South Dakota Department of Game, Fish and Parks, business owners, local legislators, the Bureau of Reclamation, as well as representatives of sportsmen groups. It became apparent that the best solution for the local economy, tax base and wildlife mitigation issues would be to allow former Blunt Reservoir and Pierre Canal landowners to repurchase their former lands, on which they currently hold preferential leases, from the Bureau of Reclamation, BOR. The bill also will transfer non-preferentially-leased lands and unleased lands to the South Dakota Department of Game, Fish, and Parks, GFP, as part of its broader plan to restore wildlife habitat that was lost due to the construction of the Missouri River dams. Under the provisions agreed to by the Senate Energy and Natural Resources Committee last summer, the South Dakota Commission of School and Public Lands would be responsible for working out the terms for selling the preferentially-leased lands to the former landowners.

The bill will not only rightfully return property to South Dakotans, but also ensure the viability of the local land and tax bases. The legislation authorizes the creation of a trust fund that would be used to create a trust fund to pay the local taxes on those lands transferred to State. The trust fund would be through future appropriations by Congress.

The State of South Dakota, the Federal Government, the original landowners, the sportsmen and wildlife will benefit from this bill. It provides for a fair and just resolution to the private property and environmental problems caused by the Oahe Irrigation Project some 25 years ago. We have waited long enough to right some of the wrongs suffered by our landowners and South Dakota's wildlife resources.

Again, I am hopeful the Senate will act quickly on this legislation. Our goal is to enact a bill that will allow meaningful wildlife habitat mitigation to begin, give certainty to local landowners who sacrificed their lands for a defunct federal project they once supported, ensure the viability of the local land base and tax base, and provide well maintained and managed recreation areas for sportsmen.

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

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

S. 426

*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 ''Blunt Reservoir and Pierre Canal Land Conveyance Act of 2003''.

**SEC. 2. BLUNT RESERVOIR AND PIERRE CANAL.**

(a) DEFINITIONS.—In this section:

(1) BLUNT RESERVOIR FEATURE.—The term ''Blunt Reservoir feature'' means the Blunt Reservoir feature of the Oahe Unit, James Division, authorized by the Act of August 3, 1968 (82 Stat. 624), as part of the Pick-Sloan Missouri River Basin program.

(2) COMMISSION.—The term ''Commission'' means the Commission of Schools and Public Lands of the State.

(3) NONPREFERENTIAL LEASE PARCEL.—The term ''nonpreferential lease parcel'' means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) was considered to be a nonpreferential lease parcel by the Secretary as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(4) PIERRE CANAL FEATURE.—The term ''Pierre Canal feature'' means the Pierre Canal feature of the Oahe Unit, James Division, authorized by the Act of August 3, 1968 (82 Stat. 624), as part of the Pick-Sloan Missouri River Basin program.

(5) PREFERENTIAL LEASEHOLDER.—The term ''preferential leaseholder'' means a person or descendant of a person that held a lease on a preferential lease parcel as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(6) PREFERENTIAL LEASE PARCEL.—The term ''preferential lease parcel'' means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) was considered to be a preferential lease parcel by the Secretary as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(8) STATE.—The term ''State'' means the State of South Dakota, including a successor in interest of the State.

(9) UNLEASED PARCEL.—The term ''unleased parcel'' means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) is not under lease as of the date of enactment of this Act.

(b) DEAUTHORIZATION.—The Blunt Reservoir feature is deauthorized.

(c) ACCEPTANCE OF LAND AND OBLIGATIONS.—

(1) IN GENERAL.—As a condition of each conveyance under subsections (d)(5) and (e), respectively, the State shall agree to accept—

(A) in ''as is'' condition, the portions of the Blunt Reservoir Feature and the Pierre Canal Feature that pass into State ownership;

(B) any liability accruing after the date of conveyance as a result of the ownership, operation, or maintenance of the features referred to in subparagraph (A), including liability associated with certain outstanding obligations associated with expired easements, or any other right granted in, on, over, or across either feature; and

(C) the responsibility that the Commission will act as the agent for the Secretary in administering the purchase option extended to preferential leaseholders under subsection (d).

(2) RESPONSIBILITIES OF THE STATE.—An outstanding obligation described in paragraph (1)(B) shall inure to the benefit of, and be binding upon, the State.

(3) OIL, GAS, MINERAL AND OTHER OUTSTANDING RIGHTS.—A conveyance to the State under subsection (d)(5) or (e) or a sale to a preferential leaseholder under subsection (d) shall be made subject to—

(A) oil, gas, and other mineral rights reserved of record, as of the date of enactment of this Act, by or in favor of a third party; and

(B) any permit, license, lease, right-of-use, or right-of-way of record in, on, over, or across a feature referred to in paragraph (1)(A) that is outstanding as to a third party as of the date of enactment of this Act.

(4) ADDITIONAL CONDITIONS OF CONVEYANCE TO STATE.—A conveyance to the State under subsection (d)(5) or (e) shall be subject to the reservations by the United States and the conditions specified in section 1 of the Act of May 19, 1948 (chapter 310; 62 Stat. 240), as amended (16 U.S.C. 667b), for the transfer of property to State agencies for wildlife conservation purposes.

(d) PURCHASE OPTION.—

(1) IN GENERAL.—A preferential leaseholder shall have an option to purchase from the Commission, acting as an agent for the Secretary, the preferential lease parcel that is the subject of the lease.

(2) TERMS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a preferential leaseholder may elect to purchase a parcel on one of the following terms:

(i) Cash purchase for the amount that is equal to—

(I) the value of the parcel determined under paragraph (4); minus

(II) ten percent of that value.

(ii) Installment purchase, with 10 percent of the value of the parcel determined under paragraph (4) to be paid on the date of purchase and the remainder to be paid over not more than 30 years at 3 percent annual interest.

(B) VALUE UNDER $10,000.—If the value of the parcel is under $10,000, the purchase shall be made on a cash basis in accordance with subparagraph (A)(i).

(3) OPTION EXERCISE PERIOD.—

(A) IN GENERAL.—A preferential leaseholder shall have until the date that is 5 years after enactment of this Act to exercise the option under paragraph (1).

(B) CONTINUATION OF LEASES.—Until the date specified in subparagraph (A), a preferential leaseholder shall be entitled to continue to lease from the Secretary the parcel leased by the preferential leaseholder under the same terms and conditions as under the lease, as in effect as of the date of enactment of this Act.

(4) VALUATION.—

(A) IN GENERAL.—The value of a preferential lease parcel shall be its fair market value for agricultural purposes determined by an independent appraisal, exclusive of the

value of private improvements made by the leaseholders while the land was federally owned before the date of the enactment of this Act, in conformance with the Uniform Appraisal Standards for Federal Land Acquisition.

(B) FAIR MARKET VALUE.—Any dispute over the fair market value of a property under subparagraph (A) shall be resolved in accordance with section 2201.4 of title 43, Code of Federal Regulations.

(5) CONVEYANCE TO THE STATE.—

(A) IN GENERAL.—If a preferential leaseholder fails to purchase a parcel within the period specified in paragraph (3)(A), the Secretary shall convey the parcel to the State of South Dakota Department of Game, Fish, and Parks.

(B) WILDLIFE HABITAT MITIGATION.—Land conveyed under subparagraph (A) shall be used by the South Dakota Department of Game, Fish, and Parks for the purpose of mitigating the wildlife habitat that was lost as a result of the development of the Pick-Sloan project.

(6) USE OF PROCEEDS.—Proceeds of sales of land under this Act shall be deposited as miscellaneous funds in the Treasury and such funds shall be made available, subject to appropriations, to the State for the establishment of a trust fund to pay the county taxes on the lands received by the State Department of Game, Fish, and Parks under the bill.

(e) CONVEYANCE OF NONPREFERENTIAL LEASE PARCELS AND UNLEASED PARCELS.—

(1) CONVEYANCE BY SECRETARY TO STATE.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall convey to the South Dakota Department of Game, Fish, and Parks the nonpreferential lease parcels and unleased parcels of the Blunt Reservoir and Pierre Canal.

(B) WILDLIFE HABITAT MITIGATION.—Land conveyed under subparagraph (A) shall be used by the South Dakota Department of Game, Fish, and Parks for the purpose of mitigating the wildlife habitat that was lost as a result of the development of the Pick-Sloan project.

(2) LAND EXCHANGES FOR NONPREFERENTIAL LEASE PARCELS AND UNLEASED PARCELS.—

(A) IN GENERAL.—With the concurrence of the South Dakota Department of Game, Fish, and Parks, the South Dakota Commission of Schools and Public Lands may allow a person to exchange land that the person owns elsewhere in the State for a nonpreferential lease parcel or unleased parcel at Blunt Reservoir or Pierre Canal, as the case may be.

(B) PRIORITY.—The right to exchange nonpreferential lease parcels or unleased parcels shall be granted in the following order or priority:

(i) Exchanges with current lessees for nonpreferential lease parcels.

(ii) Exchanges with adjoining and adjacent landowners for unleased parcels and nonpreferential lease parcels not exchanged by current lessees.

(C) EASEMENT FOR WATER CONVEYANCE STRUCTURE.—As a condition of the exchange of land of the Pierre Canal Feature under this paragraph, the United States reserves a perpetual easement to the land to allow for the right to design, construct, operate, maintain, repair, and replace a pipeline or other water conveyance structure over, under, across, or through the Pierre Canal feature.

(f) RELEASE FROM LIABILITY.—

(1) IN GENERAL.—Effective on the date of conveyance of any parcel under this Act, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the parcel, except for damages for acts of negligence committed by the United States or by an employee, agent, or contractor of the United States, before the date of conveyance.

(2) NO ADDITIONAL LIABILITY.—Nothing in this section adds to any liability that the United States may have under chapter 171 of title 28, United States Code (commonly known as the ''Federal Tort Claims Act'').

(g) REQUIREMENTS CONCERNING CONVEYANCE OF LEASE PARCELS.—

(1) INTERIM REQUIREMENTS.—During the period beginning on the date of enactment of this Act and ending on the date of conveyance of the parcel, the Secretary shall continue to lease each preferential lease parcel or nonpreferential lease parcel to be conveyed under this section under the terms and conditions applicable to the parcel on the date of enactment of this Act.

(2) PROVISION OF PARCEL DESCRIPTIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall provide the State a full legal description of all preferential lease parcels and nonpreferential lease parcels that may be conveyed under this section.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this Act $750,000 to reimburse the Secretary for expenses incurred in implementing this Act, and such sums as are necessary to reimburse the Commission for expenses incurred implementing this Act, not to exceed 10 percent of the cost of each transaction conducted under this Act.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 60—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON RULES AND ADMINISTRATION

Mr. LOTT (for himself and Mr. DODD) submitted the following resolution; which was referred to the Committee on Rules and Administration:

*Resolved*, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Rules and Administration is authorized from March 1, 2003, through September 30, 2003; October 1, 2003, through September 30, 2004; and, Oct. 1, 2004, through February 28, 2005, in its discretion (1) to make expenditures from the contingent fund of the Senate; (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this resolution shall not exceed $1,288,413, of which amount (1) not to exceed $30,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $6,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(b) For the period October 1, 2003, through September 30, 2004, expenses of the committee under this resolution shall not exceed $2,269,014, of which amount (1) not to exceed $50,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $10,000 may be expended for the training of the professional staff or such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(c) For the period October 1, 2004, through February 28, 2005, expenses of the committee under this resolution shall not exceed $967,696, of which amount (1) not to exceed $21,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganizations Act of 1946, as amended), and (2) not to exceed $4,200 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 4. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 2003, through September 30, 2003; October 1, 2003, through September 30, 2004; and October 1, 2004, through February 28, 2005, to be paid from the Appropriations account for ''Expenses of Inquiries and Investigations.''

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Friday, February 14, 2003 at 9:30 a.m., for a hearing entitled ''Consolidating Intelligence Analysis: A Review of the President's Proposal to Create a Terrorist Threat Integration Center.''

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

## AUTHORIZATION TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS

Mr. FRIST. Mr. President, I ask unanimous consent that during this adjournment of the Senate, the majority leader or the assistant majority leader be authorized to sign duly enrolled bills or Joint Resolutions.

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

## MEASURE READ FOR THE FIRST TIME—S. 3

Mr. FRIST. I understand S. 3, introduced earlier today by Senator SANTORUM, is at the desk and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 3) to prohibit the procedure commonly known as partial-birth abortion.

Mr. FRIST. I now ask for its second reading and I object to my own request.

The PRESIDING OFFICER. The objection is heard.

The bill will be read for the second time on the next legislative day.

## MEASURE READ THE FIRST TIME—S. 13

Mr. FRIST. I understand that S. 13, introduced earlier today by Senator KYL, is at the desk. I ask for its first reading.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 13) to provide financial security to family farm and small-business owners by ending the unfair practice of taxing someone at death.

Mr. FRIST. I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. Objection is heard.

## MEASURE READ THE FIRST TIME—S. 414

Mr. FRIST. Mr. President, I understand S. 414, introduced earlier today by Senator DASCHLE, is at the desk and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 414) to provide an economic stimulus package, and for other purposes.

Mr. FRIST. I now ask for its second reading and object to my own request.

The PRESIDING OFFICER. Objection is heard.

## ORDERS FOR MONDAY, FEBRUARY 24, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 noon, Monday, February 24. I further ask unanimous consent that on Monday, following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and as previously ordered, Senator CHAMBLISS be recognized to deliver President Washington's Farewell address.

I further ask unanimous consent that upon the conclusion of the reading of the Farewell Address, the Senate return to executive session and resume consideration of the nomination of Miguel Estrada to be a Circuit Judge for the DC Circuit.

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

## PROGRAM

Mr. FRIST. For the information of Senators, when the Senate reconvenes, Senator CHAMBLISS will lead us in the time-honored tradition of reading President Washington's Farewell Address. Following the reading, the Senate will return to the consideration of the nomination of Miguel Estrada.

Once again, I encourage Members to come to the floor on that day, to make their statements regarding this nominee. Today is the seventh day we have considered the nomination. I remain optimistic, however, that upon our return my colleagues on the other side of the aisle will allow us to lock in a time certain for a vote on the confirmation of this important nomination.

We have a number of important issues that will need to be addressed during the first session of this Congress. Therefore, I hope we can get past this delay and let the Senate work its will on this nomination.

Under a previous order, at 3:30 p.m. the Senate will proceed to the consideration of S. 151, the PROTECT Act. There will be 2 hours of debate on the bill prior to a vote on passage. Therefore, Members should expect the next rollcall vote to occur on Monday, February 24, at 5:30 p.m.

## ADJOURNMENT UNTIL MONDAY, FEBRUARY 24, 2003

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the provisions of H. Con. Res. 4.

There being no objection, the Senate, at 12:58 p.m., adjourned until Monday, February 24, 2003, at noon.

## NOMINATIONS

Executive nominations received by the Senate February 14, 2003:

### DEPARTMENT OF STATE

HEATHER M. HODGES, OF OHIO, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF MOLDOVA.

### THE JUDICIARY

LAWRENCE B. HAGEL, OF VIRGINIA, TO BE A JUDGE OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS FOR THE TERM PRESCRIBED BY LAW, VICE RONALD M. HOLDAWAY, RETIRED.

### DEPARTMENT OF TRANSPORTATION

ELLEN G. ENGLEMAN, OF INDIANA, TO BE CHAIRMAN OF THE NATIONAL TRANSPORTATION SAFETY BOARD FOR A TERM OF TWO YEARS, VICE MARION BLAKEY, RESIGNED.

ELLEN G. ENGLEMAN, OF INDIANA, TO BE A MEMBER OF THE NATIONAL TRANSPORTATION SAFETY BOARD FOR A TERM EXPIRING DECEMBER 31, 2007, VICE JOHN ARTHUR HAMMERSCHMIDT, TERM EXPIRED.

### DEPARTMENT OF HOMELAND SECURITY

CHARLES E. MCQUEARY, OF NORTH CAROLINA, TO BE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY, DEPARTMENT OF HOMELAND SECURITY. (NEW POSITION)

# *Daily Digest*

# Senate

## *Chamber Action*

***Routine Proceedings, pages S2505–S2548***

**Measures Introduced:** Seventeen bills and one resolution were introduced, as follows: S. 3–5, S. 13, S. 414–426, and S. Res. 60. **Page S2522**

**Nomination Considered:** Senate continued consideration of the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit. **Pages S2505–16**

A unanimous-consent agreement was reached providing for further consideration of the nomination on Monday, February 24, 2003. **Page S2548**

**Signing Authority—Agreement:** A unanimous-consent agreement was reached providing that, in the absence of the President pro tempore, during the adjournment of the Senate, the Majority Leader or the Assistant Majority Leader is authorized to sign duly enrolled bills or joint resolutions. **Pages S2547–48**

**Nominations Received:** Senate received the following nominations:

Heather M. Hodges, of Ohio, to be Ambassador to the Republic of Moldova.

Lawrence B. Hagel, of Virginia, to be a Judge of the United States Court of Appeals for Veterans Claims for the term prescribed by law.

Ellen G. Engleman, of Indiana, to be Chairman of the National Transportation Safety Board for a term of two years.

Ellen G. Engleman, of Indiana, to be a Member of the National Transportation Safety Board for a term expiring December 31, 2007.

Charles E. McQueary, of North Carolina, to be Under Secretary for Science and Technology, Department of Homeland Security. (New Position) **Page S2548**

**Measures Read First Time:** **Page S2522**

**Enrolled Bills Presented:** **Page S2522**

**Additional Cosponsors:** **Page S2522**

**Statements on Introduced Bills/Resolutions:** **Pages S2522–47**

**Additional Statements:** **Page S2521**

**Authority for Committees to Meet:** **Page S2547**

**Adjournment:** Senate met at 10 a.m, and adjourned at 12:58 p.m., until 12 noon, on Monday, February 24, 2003. (For Senate's program, see the remarks of the Majority Leader in today's Record on page S2548.)

## *Committee Meetings*

*(Committees not listed did not meet)*

### TERRORIST THREAT INTEGRATION CENTER

*Committee on Governmental Affairs:* Committee concluded hearings to examine the President's proposal to create a Terrorist Threat Integration Center, to consolidate terrorist-related intelligence, after receiving testimony from former Senator Warren Rudman, on behalf of the United States Commission on National Security/21st Century; Jeffrey H. Smith, former General Counsel, Central Intelligence Agency; former Virginia Governor James S. Gilmore III, Arlington, on behalf of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction; and James B. Steinberg, Brookings Institution, Washington, D.C.

# House of Representatives

## Chamber Action

The House was not in session today. The House will next meet at 2 p.m. on Tuesday, February 25, 2003.

## Committee Meetings

No committee meetings were held.

### NEW PUBLIC LAWS

*(For last listing of Public Laws, see* DAILY DIGEST, *p. D109)*

H.R. 16, to authorize salary adjustments for Justices and judges of the United States for fiscal year 2003. Signed on February 13, 2003. (Public Law 108–6)

*Next Meeting of the* **SENATE**

**12 noon, Monday, February 24**

**Senate Chamber**

**Program for Monday:** Senator Chambliss will deliver Washington's Farewell Address; to be followed by consideration of the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

Also, at 3:30 p.m. Senate will consider S. 151, to amend title 18, United States Code, with respect to the sexual exploitation of children, with a vote to occur thereon at approximately 5:30 p.m.

*Next Meeting of the* **HOUSE OF REPRESENTATIVES**

**2 p.m., Tuesday, February 25**

**House Chamber**

**Program for Tuesday:** To be announced.

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