be appropriate to protect the interests of individuals covered under FEHBP and alleviate any adverse impact on FEHBP that may result from the offering of such health benefit plans.

(4) FEHBP DEFINED.—In this section, the term “FEHBP” means the Federal Employees Health Benefits Program offered under chapter 55 of title 5, United States Code.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 35(e) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

“(K) Coverage under a health benefits plan offered under section 362(a)(1) of the Fair Wage, Competition, and Investment Act of 2005.”

(2) Section 173(f)(2)(A) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(2)(A)) is amended by adding at the end the following new clause:

“(x) Coverage under a health benefits plan offered under section 362(a)(1) of the Fair Wage, Competition, and Investment Act of 2005.”

SEC. 363. CLARIFICATION OF ELIGIBILITY OF CERTAIN INDIVIDUALS ENTITLED TO MEDICARE.

(a) IN GENERAL.—Subsection (b) of section 35 of the Internal Revenue Code of 1986 (defining eligible coverage month) is amended by adding at the end the following:

“(3) SPECIAL RULE FOR SPOUSE OF INDIVIDUAL ENTITLED TO MEDICARE.—Any month in which the spouse of an eligible coverage month with respect to a taxpayer (determined without regard to subsection (t)(2)(A)) shall be an eligible coverage month for any spouse of such taxpayer.”

(b) CONFORMING AMENDMENT.—Section 173(f)(5)(A)(i) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(5)(A)(i)) is amended by striking paragraph (3) and inserting the following:

“(3) SPECIAL RULE FOR SPOUSE OF INDIVIDUAL ENTITLED TO MEDICARE.—Any month in which the spouse of an eligible coverage month with respect to a taxpayer (determined without regard to subsection (t)(2)(A)) shall be an eligible coverage month for any spouse of such taxpayer.”

SEC. 371. SENSE OF THE SENATE ON FREE TRADE AGREEMENTS.

(a) FINDINGS.—The Senate makes the following findings:

(1) The United States is participating in the Doha Round of World Trade Organization (“WTO”) negotiations, which seeks to lower trade barriers for all members of the WTO.

(2) In addition to participating in the Doha Round of WTO negotiations, the United States is negotiating bilateral free trade agreements with 20 countries.

(3) Only 1 of those 20 countries is among the top 30 trading partners of the United States.

(4) During the debate on the legislation that was enacted as the Trade Act of 2002 (Public Law 107-210; 116 Stat. 933), a representation of members of both States and countries with small economies.

(5) During that debate and on other occasions, the President and members of the Executive Branch of the United States have repeatedly argued that increased trade means an increase in the number of jobs in the United States and a higher standard of living for people in the United States.

(6) The President and individuals in the Executive Branch of the United States have also argued that trade expands markets for United States goods and services, creates higher-paying jobs in the United States, and invigorates local communities and their economies.

(7) Trade agreements between the United States and countries with small economies have led to higher-paying jobs in the United States or a higher standard of living for people in the United States.

(b) SENSE OF THE SENATE.—It is the sense of the Senate—

(1) the trade policy of the United States should focus on creating more jobs in the United States and a higher standard of living for people in the United States.

(2) to best accomplish these goals, the United States should focus its efforts on trade negotiations occurring at the WTO and on multilateral basis, focus on agreements with countries that have large economies that will provide meaningful export opportunities for United States farmers, workers, and businesses.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRASSLEY (for himself, Mr. KOHL, Mr. HATCH, Mr. CARPER, Mr. FRIST, Mr. CHAFEE, Mr. DODD, Mrs. FEINSTEIN, Mr. HAGEL, Mr. KYL, Ms. LANDRIEU, Mrs. LINCOLN, Mr. LUGAR, Mr. MCCONNELL, Mr. SCHUMER, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. LOTT, Mr. ALEXANDER, Ms. SOWE, Mr. SESSIONS, Mr. DEMINT, Mr. LIEBERMAN, Mr. MARTINEZ, and Mr. ENNIS):

S. 5. 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; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to join Senators GRASSLEY, HATCH, CARPER, and many others in introducing the Class Action Fairness Act of 2005. This legislation addresses the continued lack of class action litigation, particularly unfair and abusive settlements that shortchange consumers across America.

The time for this bill has come. We have worked together on a bipartisan basis on this legislation in past Congresses. In fact, versions of this bill have passed the House of Representatives on two occasions in the past. In the Senate, we passed this bill through the Judiciary Committee in each of the last two Congresses and came within one vote of gaining cloture on the bill.

We worked successfully to substantially improve this bill during the last Congress. As a result of the interest of Senators FEINSTEIN, DODD, SCHUMER and LANDRIEU, we have changed the bill in important ways. Now, only cases that are truly national in scope will be tried primarily in the Federal courts. Cases that primarily involve people from only one State and that interpret State law will remain in State court.

These changes will ensure that class action plaintiffs and defendants can obtain critical review by one or more experts. The Attorney General review is an important safety valve for these cases.

Our remedy is straightforward. Consumers deserve notices that are written in plain English so they can understand their rights and responsibilities in the lawsuit. Too many of the class action notices are designed to be impossible to comprehend. Further, if the cases are settled, the notice to the members must clearly describe the terms of the settlement, the benefits to each plaintiff and a summary of the attorneys’ fees in the case and how they were calculated. We are grateful that the Federal Judicial Conference has adopted our idea and has already begun to improve the notices provided to class action plaintiffs.

Second, State attorneys general should be notified of proposed class action settlements to stop abusive cases if they want. This encourages a neutral third party to weigh in on whether a settlement is fair and to alert the court if they do not believe that it is.

Finally, we allow many class action lawsuits to be removed to Federal court. This is only common sense. These are national cases affecting consumers in 50 States. If the court rules were being drafted today, these are exactly the cases which we would want and expect to be tried in Federal court.

Stories of nightmare class action settlements that affect consumers around the country are all too frequent. For example, a suit against Blockbuster yielded dollar off coupons for future video rentals for the plaintiffs while their attorneys collected $9.25 million. In California State court, a class of 40 million consumers received $13 rebate on their next purchase of a computer or monitor. In both cases, the defendants’ lawyers had to purchase hundreds of dollars more of the defendants’ product to redeem the coupons. In essence, the
plaintiffs received nothing, while their attorneys took almost $6 million in legal fees. We could list many, many more examples, but let me discuss just one more case that is almost too strange to believe.

I am speaking about the Bank of Boston class action suit and the outrageous case of Martha Preston from Baraboo, WI. She was an unnamed class member of a class action lawsuit against the mortgage company that ended in a settlement. The plaintiffs’ lawyers were supposed to represent her. Instead, the settlement that they negotiated for her was a bad joke. She received $4 and change in the lawsuit, while her attorneys pocketed $8 million.

Yet, the huge sums her attorneys received were not the worst of the story. Soon after receiving her $4, Ms. Preston discovered that her lawyers took $25 million. Not only was she $75 poorer than she was before the suit, but they also had to defend herself against a $25 million suit. Naturally shocked, she and the other plaintiffs sued the lawyers who quickly turned around and sued her in Alabama, a State she had never visited, for $22 million. She was the only one for her class action experience, but she also had to defend herself against a $25 million suit by the very people who took advantage of her in the first place.

No one can argue with a straight face that the class action process is not in serious need of reform.

Comprehensive studies support the anecdotes we have discussed. For example, a study on the class action problem by the Manhattan Institute demonstrates that class action cases are being brought disproportionately in a few counties where plaintiffs expect to be able to take advantage of lax certification standards.

The study focused on three counties in Wisconsin—Madison County, IL; Jefferson County, TX; and Palm Beach County, FL—that have seen a steep rise in class actions. Of the last several years that seems disproportional to their populations. They found that rural Madison County, IL, ranked third nationwide, after Los Angeles County, CA, and Cook County, IL, in the estimated number of class actions filed each year, whereas rural Jefferson County and Palm Beach County ranked eighth and ninth, respectively. As plaintiff attorneys found that Madison County was a welcoming host, the number of class action suits filed there rose 1,850 percent between 1998 and 2000.

Another trend evident in the research was the use of “cut-and-paste” complaints in which plaintiffs’ attorneys file a number of suits against different defendants using the same new document that challenges standard industry practices. For example, in one situation, six law firms filed nine nearly identical class actions in Madison County in the same week alleging that the automobile insurance industry is defrauding Americans in the way that they calculate claims rates for totaled vehicles.

The system is not working as intended and needs to be fixed. The way to fix it is to move more of these cases currently being brought in small State courts like Madison County, IL, to Federal court.

The Federal courts are better venues for class actions for a variety of reasons articulated clearly in a RAND study. RAND proposed three primary explanations why these cases should be in Federal court. “First, federal judges scrutinize class action allegations more closely than state judges, and deny certification in situations where a state judge might grant it improperly.” Second, state judges may not have adequate resources to oversee and manage class actions with a national scope. Finally, if a single judge is to be charged with deciding what law will apply in a multistate class action, it is more appropriate that this take place in Federal court than in state court.

We all know that class actions can result in some important benefits for class members and society, and that most class lawyers and most State courts are acting responsibly. Class actions have been used to desegregate racially divided schools, to obtain redress for victims of employment discrimination, and to compensate individuals exposed to toxic chemicals or defective products. Class actions increase access to our civil justice system because they enable people to pursue claims that collectively would otherwise be too expensive to litigate. The difficulty in any effort to improve a basically good system is to weed out the abuses without causing undue damage. The legislation we propose attempts to do this.

Let me emphasize the limited scope of this legislation. We do not close the courthouse door to any class action. We do not require that State attorneys general do anything with the notice they receive or reasonable fees for class lawyers. And we do not mandate that every class action be brought in Federal court. Instead, we simply promote closer and fairer scrutiny of class actions and class settlements.

Right now, people across the country can be dragged into lawsuits unfounded of their rights and unarmed on the legal battlefield. What our bill does is give back to regular people their rights and representation. This measure may not stop all abuses, but it moves us forward. It will help ensure that unsuspecting people like Martha Preston don’t get ripped off.

We believe this is a moderate approach to correcting the worst abuses, while preserving the benefits of class actions. It is both pro-consumer and pro-defendant. We believe it will make a difference.

By Ms. COLLINS (for herself, Mr. CARPER, Mr. VONNOVICH, Mr. FENNOYD, Mr. AKAKA, and Mr. LIEBERMAN):

S. 21. A bill to provide for homeland security grant coordination and simplification, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Ms. COLLINS. Mr. President, I rise with my good friend Senator CARPER to offer the Homeland Security Grant En- hancement Act in order to strengthen and support the States, communities, and first responders to protect our homeland.

Three years ago, the Senate spent nearly eight months on the Homeland Security Act. Our efforts to fix it are not enough. The law contains virtually no guidance on how the Department will assist States and local governments with their homeland security needs. In fact, the 187-page Homeland Security Act. Our efforts to fix it are not enough. The law contains virtually no guidance on how the Department will assist States and local governments with their homeland security needs. In fact, the 187-page Homeland Security Act.

The Department of Homeland Security is charged with deciding what law will apply in a multistate class action, it is more appropriate that this take place in Federal court than in state court.

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By Mr. COLLINS (for herself, Mr. CARPER, Mr. VONNOVICH, Mr. FENNOYD, Mr. AKAKA, and Mr. LIEBERMAN):

S. 21. A bill to provide for homeland security grant coordination and simplification, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.
Establishment of these programs will mean first responders can spend more time training to save lives and less time filling out paper work. The interflexible structure of past homeland security funding, along with shifting federal requirements and increasing amounts of paperwork, poses a number of challenges to State and local governments as they attempt to provide these funds to first responders.

The legislation would provide greater flexibility in the use of those unspent funds. It would give the Department of Homeland Security flexibility to allow States, via a waiver from the Secretary, to use funds from one category, such as training, for another purpose, such as purchasing equipment.

The Senate Committee on Homeland Security and Governmental Affairs will act promptly to mark-up and report this important measure to establish a streamlined, efficient, and fair method for homeland security funds to get into the hands of first responders.

By Mr. STEVENS (for himself, Mr. INOUYE, Ms. SNOWE, and Mr. DODD):

S. 39. A bill to establish a coordinated national ocean exploration program within the National Oceanic and Atmospheric Administration; to the Committee on Commerce, Science, and Transportation.

Mr. STEVENS. Mr. President, I introduce today S. 39, the “National Ocean Exploration Program Act” to expand exploration and knowledge of our Nation’s oceans. When I introduced this bill in the 108th Congress, Senator Hollings and Senator INOUYE were original co-sponsors. Senator Hollings has left this body, but he worked closely with Senator INOUYE and me on this bill and we thank him for his contributions to ocean policy. Senators SNOWE and DODD would like to be added as original co-sponsors of this bill.

Senator INOUYE and I introduce this legislation today in an effort to increase and coordinate research and exploration of our Nation’s oceans. Alaskan and Hawaii are uniquely dependent on the ocean for food, employment, recreation, and the delivery of goods. However, approximately 95 percent of the ocean floor remains unexplored, much of it located in the polar latitudes and the southern ocean. This legislation will advance ocean exploration and increase funding for greater research.

In its final report, the U.S. Commission on Ocean Policy recommended that the National Oceanic and Atmospheric Administration and the National Science Foundation lead an expanded National Ocean Exploration Program. This legislation will accomplish that goal.

The National Exploration Program expands ocean exploration. Through this legislation, we will determine whether there are new marine substances with potential therapeutic benefits; study unique marine ecosystems, organisms and the geology of the world’s oceans; and maximize ocean research by integrating multiple scientific disciplines in the ocean science community.

The program will focus on remote ocean research and exploration. Specifically, research will be conducted on hydrothermal vents communities and seamounts. Increased research in these areas, where organisms exist in highly toxic environments, should yield significant scientific and medical breakthroughs.

Decades ago I help Oscar Dyson, a great Alaska fisherman, secure a small grant to explore the North Pacific. With that grant he discovered a great number of marine species that are now considered vital to the North Pacific. It is my hope that the National Ocean Exploration Program Act will be the catalyst for that type of ocean exploration and discovery.

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

S. 39

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 “National Ocean Exploration Program Act”.

SEC. 2. ESTABLISHMENT.

The Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, shall, in consultation with the National Science Foundation and other Federal agencies, establish a coordinated national ocean exploration program within the National Oceanic and Atmospheric Administration.

SEC. 3. PURPOSES.

The purposes of the program are the following:

(1) To explore the physical, biological, chemical, geological, archaeological, temporal, and other characteristics of the oceans to benefit, inform, and inspire the American people.

(2) To create missions and scientific activities of discovery that will improve our understanding, appreciation, and stewardship of the unique marine ecosystems, organisms, chemistry, and geology of the world’s oceans, and to enhance knowledge of submerged maritime historical and archaeological sites.

(3) To facilitate discovery of marine natural products from these ecosystems that may have potential beneficial uses, including those that may help combat disease or provide therapeutic benefits.

(4) To communicate such discoveries and knowledge to policymakers, regulators, researchers, educators, and interested non-governmental entities in order to support policy decisions and additional scientific research and development.

(5) To maximize effectiveness by integrating multiple scientific disciplines, employing the diverse resources of the ocean science community, and making ocean exploration data and information available in a timely and consistent manner.

(6) To achieve heightened education, environmental literacy, public understanding and appreciation of the oceans.

SEC. 4. AUTHORITIES.

In carrying out the program the Administrator of the National Oceanic and Atmospheric Administration shall—

(1) conduct interdisciplinary exploration voyages or other scientific activities in conjunction with other Federal agencies or academic or educational institutions, to survey little known areas of the world’s oceans and other regions, areas, and sites under the jurisdiction of the National Oceanic and Atmospheric Administration, and other Federal agencies, and private parties, and to carry out the purposes set forth in this Act; and make available to the public the results of scientific research conducted or supported by the program.

(2) conduct scientific voyages to locate, document, and preserve submerged sites, and other ocean exploration activities that combine archaeology and oceanographic sciences; and develop, in consultation with the National Ocean Council, a transparent process for reviewing and approving proposals for activities to be conducted under this program.

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(4) conduct scientific voyages to locate, document and preserve submerged sites, and other ocean exploration activities that combine archaeology and oceanographic sciences; and develop, in consultation with the National Ocean Council, a transparent process for reviewing and approving proposals for activities to be conducted under this program.

(5) enhance the technical capability of the United States marine science community by promoting the development of improved oceanographic research communication, navigation, and data collection systems, as well as underwater platforms and sensors.

(6) conduct public education and outreach activities that improve understanding of the oceans and the importance of the oceans, and that provide technical expertise and relevance of the national program.

SEC. 5. EXPLORATION TECHNOLOGY AND INFRASTRUCTURE TASK FORCE.

The National Oceanic and Atmospheric Administration, in coordination with the National Aeronautics and Space Administration, the U.S. Geological Survey, Office of Naval Research, and the National Science Foundation, shall convene an expert group to develop a National Ocean Exploration Program. The group shall include representatives of governmental and non-governmental, academic, and other experts, regional stakeholders in order to enhance the scientific and technical efficiency and relevance of the national program.

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By Mr. NELSON of Florida (for himself, Mr. MARTINEZ, Mr. SESSIONS, and Mr. ALLEN):

S. 145. A bill to amend title 10, United States Code, to require the naval forces of the Navy to include not less than 12 operational aircraft carriers; to the Committee on Armed Services.

Mr. NELSON of Florida. Mr. President, I feel strongly that any reduction in the size of the Nation’s carrier fleet is not in the best interest of national security. Therefore, I am introducing legislation to require the Navy to include not less than 12 operational aircraft carriers. I am pleased to be joined by my co-sponsors, Senator MARTINEZ, Senator ALLEN, and Senator SESSIONS.

America’s aircraft carrier fleet has played and continues to play a critical role in the global war on terrorism. Carrier based strike, electronic warfare, and reconnaissance aircraft, and even more importantly, special operations forces have provided the most responsive and capable support throughout operations in the Gulf region. The changed in the sociopolitical environment to suggest that America is more, or as secure with eleven carriers as we are with twelve. The operational tempo of our aircraft carriers has never been higher and it is hard to imagine that it will slow any time soon.

The range of strategic threats and opportunities that face the Nation at this moment in the war on terror does not support the idea that we can reduce our fleet without creating significant and unavoidable risk to our global reach and sustainability. I urge my colleagues to join with us to ensure the Navy’s global flexibility and striking power. Cutting our carrier fleet now increases strategic risk and reduces our combat power and capability, all for relatively small budgetary savings.

I look forward to working with Chairman WARNER and Senator LEVIN to gain the Armed Services Committee’s approval of this legislation, and its passage by the full Senate. Identical legislation is being introduced in the House by Representative ANDER CRENSHAW, and I look forward to working with my colleagues in both houses to see that this vital national security legislation reaches the President’s desk.

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. 145

Be it enacted by the Senate and House of Representa
tives of the United States of America in Congress assem
dled,

SECTION 1. REQUIREMENT FOR 12 OPERATIONAL AIRCRAFT CARRIERS WITHIN NAVAL FORCES OF THE NAVY.

Section 5062 of title 10, United States Code, is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after section (a) the following new subsection (b):

"(b) The naval combat forces of the Navy shall include not less than 12 operational aircraft carriers. In any sub-
section, an operational aircraft carrier includes an aircraft carrier that is temporarily unavailable for worldwide deployment due to routine or scheduled maintenance or re-
pair.".

By Mr. INOUYE:

S. 146. A bill to amend title 38, United States Code, to deem certain service in the organized military forces of the Government of the Common-
wealth of the Philippines and the Philip-
pine Scouts to have been active serv-
ice for purposes of benefits under pro-
grams administered by the Secretary of Veterans Affairs; to the Committee on Veterans’ Affairs.

Mr. INOUYE. Mr. President, many of you know of my continued support and advocacy on the importance of address-
ing the plight of Filipino World War II veterans. As an American, I believe the treatment of Filipino World War II vet-
ers is bleak and shameful. The Philip-
ipine Scouts arrived in the Philippines in 1898, when it was ceded by Spain, following the Spanish-American War. In 1934, the Congress enacted the Philippine Independence Act, Public Law 73-127, which provided a 10-year time frame for the independence of the Philippines. Between 1934 and final independence in 1946, the United States retained certain powers over the Philip-
ipines including the right to call mili-
tary forces organized by the newly-
formed Commonwealth government into the service of the United States Armed Forces.

The Commonwealth Army of the Philippines was called to serve with the United States Armed Forces in the Far East during World War II under President Roosevelt’s July 26, 1941 military order. The Filipinos who served were entitled to full veterans’ benefits by reason of their active serv-

ice with our armed forces. Hundreds of thousands of Filipinos served, and many hun-
dreds more died in battle. Shortly after Japan’s surrender, the Congress en-
acted the Armed Forces Volunteer Re-

cruitment Act of 1945 for the purpose of sending Filipino troops to occupy enemy lands, and to oversee military installations at various overseas loca-
tions. These troops were authorized to receive pay and allowances for services performed throughout the Western Pa-
cific. Although hostilities had ceased, wartime service of these troops continued as a matter of law until the end of 1946.

Despite all of their sacrifices, on February 18, 1946, the Congress passed the Rescission Act of 1946, now codified as Section 107 of Title 38 of the United States Code. The 1946 Act deemed that the service performed by these Filipino veterans would not be recognized as “active service” for the purpose of any U.S. law conferring “rights, privileges, and preferences” for Filipinos. Section 107 denied Filipino veterans access to health care, particularly for non-ser-
vice-connected disabilities, and pension benefits. Section 107 also limited serv-

ice-connected disability and death compensation for Filipino veterans to 50 percent of what their American counterparts receive.

On May 27, 1946, the Congress enacted the Second Supplemental Surplus Ap-

propiations Rescission Act, which du-

posed the language that had elimi-
nated Filipino veterans’ benefits under the First Rescission Act. Thus, Fili-

pino veterans who fought in the service of the United States during World War II have been precluded from receiving the benefits they had been available to them before 1946, and that are available to all other veterans of our armed forces regardless of race, national origin, or citizenship status.

The Filipino Veterans Equity Act, with which I introduce today, would restore the benefits due to these veterans by granting full recognition of service for the sacrifices they made during World War II. These benefits include veterans health care, service-connected dis-

ability compensation, non-service con-

dependent indemnity compensation, de-

In June 1946, the Congress enacted the Korean Veterans Pension Act, which provided for pensions to Korean veterans who served in the Commonwealth Army during World War II. These benefits are not available to Philippine veterans of that war.

Heroes should never be forgotten or ignored; let us not turn our backs on those who sacrificed so much. Let us instead work to repay all of these brave men for their sacrifices by pro-

viding them the veterans’ benefits they deserve.

I ask unanimous consent that the text of my bill be printed in the Record.

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

Be it enacted by the Senate and House of Representa
tives of the United States of America in Congress assembled,
Mr. AKAKA. Mr. President, I rise today with the senior Senator from Hawaii to introduce the Native Hawaiian Government Reorganization Act of 2005. This is bipartisan legislation that we have been working on with our colleagues in Hawaii's Congressional delegation for the past 6 years. During the past 2 years, we have worked closely with Hawaii's Governor, Linda Lingle, the Hawaiian governor in 40 years, to get this legislation enacted. We have also worked closely with the Hawaii State legislature which has passed two resolutions unanimously in support of Federal Recognition for Native Hawaiians. I mention this to underscore the fact that this is bipartisan legislation.

The Native Hawaiian Government Reorganization Act of 2005 does three things:

1. It authorizes the Office of Native Hawaiian Relations in the Department of the Interior to serve as a liaison between Native Hawaiians and the federal government. Funding for Native Hawaiian programs currently administered by the Departments of Health and Human Services, HHS, Education, or Housing and Urban Development, HUD, would continue to be administered by those agencies.

2. It establishes the Native Hawaiian Interagency Coordinating Group—an interagency group to be composed of federal officials from agencies which administer Native Hawaiian programs and services to determine that Native Hawaiians have their own programs which are currently administered by different agencies in the Federal Government. This group would encourage communication and collaboration between the Federal agencies working with Native Hawaiians.

3. It establishes a process for the reorganization of the Native Hawaiian governing entity. While Congress has traditionally treated Native Hawaiians as separate from the Hawaiian government, the Native Hawaiian government is comprised of Native Hawaiians and their political and legal relationship with the United States is based on the political and legal relationship between the United States and its indigenous peoples, which has been upheld for many, many years, by the United States Supreme Court. Therefore, because this legislation is based on the Indian Commerce Clause, I strenuously disagree with the mischaracterization of this legislation as race-based.

Finally, the bill does not authorize gaming. Some have characterized this bill as race-based legislation. As indigenous peoples, Native Hawaiians never relinquished their inherent rights to sovereignty. We were a government that governed itself, and the history of the Native Hawaiian government ended in 1893 with great emotion and despair, inspired by the dignity and grace of Queen Liliuokalani, Native Hawaiians have preserved their culture, tradition, and distinct communities. We have tried to hold on to our homeland. Hawaii, for us, is our homeland.

I am proud to be an American, and I am proud to have served my country in the military. As long as Hawaii is a part of the United States, however, I believe the United States must fulfill its responsibility to Hawaii's indigenous peoples. I believe it is imperative to clarify the existing legal and political relationship between the United States and Native Hawaiians by providing Native Hawaiians with Federal recognition for the purposes of a government-to-government relationship. Therefore, because this legislation is based on the political and legal relationship between the United States and its indigenous peoples, which has been upheld for many, many years, by the United States Supreme Court, based on the Indian Commerce Clause, I strenuously disagree with the mischaracterization of this legislation as race-based.

Is this bill so important? This bill is critical for the people of Hawaii because of the monumental step forward it provides for Hawaii's indigenous peoples. As many of my colleagues know, the Kingdom of Hawaii was overthrown in 1893 with the assistance of agents from the United States. In 1959, we enacted Public Law 103-150, commonly referred to as the Apology Resolution, which acknowledged the illegal overthrow of the Kingdom of Hawaii and the deprivation of the rights of Native Hawaiians to self-determination. The Apology Resolution committed the United States to acknowledge the ramifications of the overthrow in order to provide a proper foundation of reconciliation between the United States and the Native Hawaiian people.

This bill provides a step forward in the process of reconciliation. The bill establishes the structure for Native Hawaiians and non-Native Hawaiians to address longstanding issues resulting from the overthrow of the Kingdom of Hawaii. The structure is the negotiation process between the federally recognized Native Hawaiian government and the Federal and State governments that I referred to earlier in my statement.

This discussion has been assiduously avoided because no one has known how to address or deal with the emotions that are involved when these matters are discussed. There has been no structured process. Instead, there has been fear as to what the discussion would entail, causing people to avoid and shirk the issues. Such behavior has led...
to high levels of anger and frustration as well as misunderstanding between Native Hawaiians and non-Native Hawaiians.

As a young child, I was discouraged from speaking Hawaiian because I was told that I could not succeed in the Western world. My parents witnessed the overthrow and lived during a time when all things Hawaiian, including language, which they both spoke fluently, hula, custom, and tradition, were viewed unfavorably and discouraged. I was disappointed from speaking the language and practicing Hawaiian customs and tradition. My experience mirrors that of my generation of Hawaiians.

My generation learned to accept what was ingrained into us by our parents, and while we were concerned about the longstanding issues resulting from the overthrow dealing with political status and lands, we were told not to “make waves” by addressing these matters. My children, however, have had the advantage of growing up during the Hawaiian renaissance, a period of revival for Hawaiian language, custom, and tradition. My grandchildren, benefitting from this revival, can speak Hawaiian and know so much about our history.

It is this generation, however, that is growing impatient with the lack of progress in efforts to resolve longstanding issues. It is this generation that does not understand why we have not discussed these matters. It is this generation that cannot believe that we, as Native Hawaiians, have let the situation continue for 110 years.

It is an active minority within this generation, spurred by frustration and sadness, that embraces independence from the United States.

It is for this generation that I bring this bill forward to ensure that there is a structured process to address these issues.

My point is that Hawaii’s people, both Native Hawaiians and non-Native Hawaiians, are no longer willing to pretend that the longstanding issues resulting from the overthrow do not exist. We need the structured process that this bill provides, first in reorganizing the Native Hawaiian governing entity, and second by providing that entity with the opportunity to negotiate and resolve issues with the Federal Government to alleviate the growing mistrust, misunderstanding, anger, and frustration about these matters in Hawaii. This can only be done through a government-to-government relationship.

This bill is of significant importance in Hawaii. It has no impact on any of the other states. Hawaii’s entire Congressional delegation supports this legislation. Our Governor, the first Republican to be elected in 40 years, supports this legislation. Indeed, it is her Number One Priority. The Hawaii State Legislature supports this legislation.

And most importantly, a clear majority of the Native Hawaiian people and the people of Hawaii support this legislation.

I ask you to stand with me and my esteemed friend, Hawaii’s revered senator, our two House members, our Governor, the Hawaii State legislature, and all, to enact this critical measure for my state.

I ask unanimous consent that the text of my bill be printed in the RECORD.

Mr. AKAKA. 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. 147
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 “Native Hawaiian Government Reorganization Act of 2005.”

SEC. 2. FINDINGS.
Congress finds that—

(1) the Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States;

(2) Native Hawaiians, the native people of the Hawaiian archipelago that is now part of the United States, are indigenous, native people of the United States;

(3) the United States has a special political and legal responsibility to promote the welfare of the native people of the United States, including Native Hawaiians;

(4) under the treaty making power of the United States, Congress has accorded its constitutional authority to confer treaties between the United States and the Kingdom of Hawaii, and from 1826 until 1898, the United States—

(A) recognized the sovereignty of the Kingdom of Hawaii;

(B) accorded full diplomatic recognition to the Kingdom of Hawaii; and

(C) entered into treaties and conventions with the Kingdom of Hawaii to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

(5) pursuant to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside approximately 203,500 acres of land to address the conditions of Native Hawaiians in the Federal territory that later became the State of Hawaii;

(6) by setting aside 203,500 acres of land for Native Hawaiian homesteads and farms, the Hawaiian Homes Commission Act assists the members of the Native Hawaiian community to maintain the practice of Hawaiian culture, language, and traditions;

(7) approximately 6,800 Native Hawaiian families reside on the Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Hawaiian Home Lands are on a waiting list to receive assignments of Hawaiian Home Lands;

(8)(A) in 1959, as part of the compact with the United States admitting Hawaii into the Union, Congress established a public trust (commonly known as the “ceded lands trust”) for purposes 1 of which is the betterment of the conditions of Native Hawaiians;

(B) the public trust consists of lands, including submerged or submerged resources, and the revenues derived from the lands; and

(C) the assets of this public trust have never been completely inventoried or segregated;

(9) Native Hawaiians have continuously sought access to the ceded lands in order to establish and maintain native settlements and distinct native communities throughout the State;

(10) the Hawaiian Home Lands and other ceded lands provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and to ensure the survival and self-sufficiency of the Native Hawaiian people;

(11) Native Hawaiians continue to maintain other distinctly native areas in Hawaii; and

(12) as part of the compact with the United States to the native people of Hawaii for the United States’ role in the overthrow of the Kingdom of Hawaii.

(13) the Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands, either through the annexation of Hawaii or through a plebiscite or referendum;

(14) the Apology Resolution expresses the commitment of Congress and the President—

(A) to acknowledge the importance of the overthrow of the Kingdom of Hawaii;

(B) to support reconciliation efforts between the United States and Native Hawaiians; and

(C) to consult with Native Hawaiians on the reconciliation process as called for in the Apology Resolution;

(15) despite the overthrow of the government of the Kingdom of Hawaii, Native Hawaiians have continued to maintain their separate identity as a distinct Native Hawaiian community through cultural, social, and political institutions, and to give expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency;

(16) Native Hawaiians have also given expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency—

(A) through the provision of governmental services to Native Hawaiians, including the provision of—

(i) health care services;

(ii) educational programs;

(iii) employment and training programs;

(iv) economic development assistance programs;

(v) children’s services;

(vi) conservation programs;

(vii) fish and wildlife protection;

(viii) agricultural programs;

(ix) native language immersion programs;

(x) Native Hawaiian assistance programs for native language immersion schools from kindergarten through high school;

(xi) college and master’s degree programs in native language immersion instruction;

(xii) traditional justice programs, and

(B) by continuing their efforts to enhance Native Hawaiian self-determination and local control;

(17) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources;

(18) the Native Hawaiian people wish to preserve, develop, and transmit to future generations of Native Hawaiians their lands and Native Hawaiian political and cultural heritage that are the foundation of their traditions, beliefs, customs and practices, language, and social and political institutions, to control...
and manage their own lands, including ceded lands, and to achieve greater self-determination over their own affairs;

(19) this Act provides a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct, indigenous, native community to reorganize a Native Hawaiian governing entity; and

(20) Congress—

(A) has recognized that the United States has a special responsibility for the welfare of the native peoples of the United States, including Native Hawaiians;

(B) has identified Native Hawaiians as a distinct group of indigenous, native people of the United States within the scope of its authority under the Constitution, and has enacted statutes of statutes on their behalf;

(C) has delegated broad authority to the State of Hawaii to administer some of the United States’ responsibilities as they relate to the Native Hawaiian people and their lands;

(21) the United States has recognized and reaffirmed the special political and legal relationship between Native Hawaiian people through the enactment of the Act entitled, “An Act to provide for the admission of the State of Hawaii into the Union”, approved March 18, 1959 (Public Law 86-3; 73 Stat. 4), by—

(a) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held as a public trust for 5 purposes, 1 of which is for the betterment of the conditions of Native Hawaiians; and

(b) effectuating the United States’ responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including, but not limited to, the right of the United States to consent to any actions affecting the lands that comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108; 17, 1893, overthrow of the Kingdom of Hawaii.

(22) the United States has continually recognized and reaffirmed that—

(A) Native Hawaiians have a cultural, historic, and genetic link to the aboriginal, indigenous, native people who exercised sovereignty over the Hawaiian Islands;

(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereignty have been abrogated;

(C) the United States extends services to Native Hawaiians because of their unique status as the indigenous, native people of a once-sovereign nation with whom the United States has a political and legal relationship; and

(D) the special trust relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of the United States; and

(23) the State of Hawaii supports the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States as evidenced by 2 unanimous resolutions enacted by the Hawaii State Legislature in the 2000 and 2001 sessions of the Legislature and by the testimony of the Governor of the State of Hawaii before the Committee on Indian Affairs of the Senate on February 25, 2003.

SEC. 3. DEFINITIONS.

In this Act:

(1) NATURAL, INDIGENOUS, NATIVE PEOPLE.—The term “aboriginal, indigenous, native people” means people Congress has recognized as the original inhabitants of the lands that later became part of the United States and who exercised sovereignty in the areas that later became part of the United States.

(2) ADULT MEMBER.—The term “adult member” means a Native Hawaiian who has attained the age of 18 and who elects to participate in the reorganization of the Native Hawaiian governing entity.

(3) APOLOGY RESOLUTION.—The term “Apology Resolution” means Public Law 105-150, (107 Stat. 109) the extension of an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States in the June 17, 1893, overthrow of the Kingdom of Hawaii.

(4) COMMISSION.—The term “commission” means the Commission established under section 7(b) to provide for the certification that those adult members of the Native Hawaiian community listed on the roll meet the definition of Native Hawaiian set forth in paragraph (8).

(5) COUNCIL.—The term “council” means the Native Hawaiian Interim Governing Council established under section 9(c)(2).

(6) INDIAN HOME LANDS.—The term “Indian Home Lands” means the lands that later constitute the State of Hawaii; or (B) an individual who is one of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108; 17, 1893, overthrow of the Kingdom of Hawaii).

(7) INTERAGENCY COORDINATING GROUP.—The term “Interagency Coordinating Group” means the Native Hawaiian Interagency Coordinating Group established under section 6.

(8) NATIVE HAWAIIAN.—For the purpose of establishing the roll authorized under section 7(c)(1) and before the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity, the term “Native Hawaiian” means—

(A) an individual who is one of the indigenous, native people of Hawaii and who is a direct line descendant of the aboriginal, indigenous, native people who—

(1) resided in the islands that now comprise the State of Hawaii on or before January 1, 1893; and

(2) occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or

(3) an individual whose potential as an individual who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108; 17, 1893, overthrow of the Kingdom of Hawaii).

(9) NATIVE HAWAIIAN GOVERNING ENTITY.—The term “Native Hawaiian Governing Entity” means the governing entity organized by the Native Hawaiian people pursuant to this Act.

(10) OFFICE.—The term “Office” means the United States Office for Native Hawaiian Relations established by section 5(a).

(11) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

SEC. 4. UNITED STATES POLICY.

(a) POLICY.—The United States reaffirms that—

(1) Native Hawaiians are a unique and distinct, indigenous, native people with whom the United States has a special political and legal relationship;

(2) the United States has a special political and legal relationship with the Native Hawaiian people which includes promoting the welfare of Native Hawaiians;

(3) Congress possesses the authority under the Constitution of the United States to enact legislation to address the conditions of Native Hawaiians; and

(4) Congress possesses the authority to enact legislation to address the conditions of Native Hawaiians; and

(5) Native Hawaiians have—

(A) an inherent right to autonomy in their internal affairs;

(B) an inherent right of self-determination and self-governance;

(C) the right to reorganize a Native Hawaiian governing entity; and

(D) the right to become economically self-sufficient; and

(5) the United States shall continue to engage in a process of reconciliation and political and legal relations with the Native Hawaiian people.

(b) PURPOSE.—The purpose of this Act is to provide a process for the reorganization of the Native Hawaiian governing entity and the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity for purposes of continuing a government-to-government relationship.

SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIANS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary, the United States Office for Native Hawaiian Relations.

(b) DUTIES.—The Office shall—

(1) continue the process of reconciliation with the Native Hawaiian people in furtherance of the Apology Resolution;

(2) upon the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States to effectuate and coordinate the special political and legal relationship between the Native Hawaiian governing entity and the United States through the Secretary, and with other Federal agencies;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian governing entity by providing timely notice to, and consulting with, the Native Hawaiian people and the Native Hawaiian governing entity before taking any actions that may have the potential to meaningfully affect Native Hawaiian resources, rights, or lands;

(4) consult with the Interagency Coordinating Group, other Federal agencies, the Governor of the State of Hawaii, and relevant agencies of the State of Hawaii on policies, programs, and proposed actions affecting Native Hawaiian resources, rights, or lands; and

(5) provide a process for the reorganization of Federal programs authorized to address the conditions of Native Hawaiians.

SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING GROUP.

(a) ESTABLISHMENT.—In recognition that Federal programs authorized to address the conditions of Native Hawaiians are largely administered by Federal agencies other than the Department of the Interior, there is established an interagency coordinating group to be known as the “Native Hawaiian Interagency Coordinating Group”.

(b) COMPOSITION.—The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from—
(1) each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely affect Native Hawaiian resources, rights, or lands; and
(2) the Office.
(c) LEAD AGENCY.—(1) The Department of the Interior shall serve as the lead agency of the Interagency Coordinating Group.
(2) The Secretary shall convene meetings of the Interagency Coordinating Group.
(d) DUTIES.—The Interagency Coordinating Group shall
(1) coordinate Federal programs and policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government that may significantly or uniquely affect Native Hawaiian resources, rights, or lands;
(2) ensure that each Federal agency develops a policy on consultation with the Native Hawaiian people, and upon the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States, consultation with the Native Hawaiian governing entity; and
(3) ensure the participation of each Federal agency in the development of the report to be submitted to Congress authorized in section 5(b)(5).
SEC. 7. PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNMENT ENTITY.
(a) RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.—The right of the Native Hawaiian people to reorganize the Native Hawaiian governing entity to provide for their common welfare and to adopt appropriate organic governing documents is recognized by the United States.
(b) COMMISSION.—(1) IN GENERAL.—There is authorized to be established a Commission to be composed of nine members for the purposes of—
(A) preparing and maintaining a roll of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity; and
(B) certifying that the adult members of the Native Hawaiian community proposed for inclusion on the roll meet the definition of Native Hawaiian in section 3(b).
(2) MEMBERSHIP.—(A) APPOINTMENT.—Within 180 days of the date of enactment of this Act, the Secretary shall appoint the members of the Commission in accordance with subsection (B).
(B) VACANCIES.—Any vacancy on the Commission shall affect its powers and shall be filled in the same manner as the original appointment.
(3) REQUIREMENTS.—The members of the Commission shall be Native Hawaiian, as defined in section 3(b), and shall have expertise in the determination of Native Hawaiian ancestry and lineal descendant.
(4) EXPENSES.—Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.
(5) DUTIES.—The Commission shall—
(A) develop criteria for candidates to be elected to the Council;
(B) certify to the Secretary that each of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity are certified to be Native Hawaiian as defined in section 3(b) and to be 18 years of age or older;
(C) PRO anvment of documentation; and
(D) detail personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, the rates authorized for employees of agencies of the State of Hawaii and the Federal Government as are necessary to enable the Commission to perform the duties of the Commission.
(6) STAFF.—(A) IN GENERAL.—The Commission may, with the approval of the President, hire staff members including professional and technical personnel as are necessary to enable the Commission to perform the duties of the Commission.
(B) COMPENSATION.—(i) In general.—Except as provided in clause (ii), the Commission may pay an executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, related to compensation of positions and General Schedule pay rates.
(ii) Maximum rate of pay.—The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.
(c) PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNMENT ENTITY.—(1) ROLL.—(A) CONTENTS.—The roll shall include the names of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity and are certified to be Native Hawaiian as defined in section 3(b) and to be 18 years of age or older.
(B) VACANCIES.—Any vacancy on the roll or after any subsequent publications of the roll shall be filled in the same manner as the original appointment.
(C) EXPANSION.—The Secretary may add names to the roll or after any subsequent publications of the roll, not later than 90 days after the date on which the roll is submitted to the Secretary, the Commission shall publish the roll notwithstanding any order or directive issued by the Secretary or any other official of the Department of the Interior to the contrary.
(D) EFFECT OF PUBLICATION.—The publication of the initial and updated roll shall serve as the basis for the eligibility of adult members of the Native Hawaiian community whose names are listed on those rolls to participate in the reorganization of the Native Hawaiian governing entity.
(2) ORGANIZATION OF THE NATIVE HAWAIIAN GOVERNMENT ENTITY.—(A) FORM OF ROLL.—Each adult member of the Native Hawaiian community who elects to participate in the reorganization of the Native Hawaiian governing entity shall be listed on the roll in the form established by the Commission that is sufficient to enable the Secretary to determine whether the individual meets the definition of Native Hawaiian in section 3(b).
(B) DOCUMENTATION.—The Commission shall—
(i) identify the types of documentation that would enable the Commission to determine whether an individual meets the definition of Native Hawaiian in section 3(b);
(ii) establish a standard format for the submission of documentation; and
(iii) publish information related to clauses (i) and (ii) in the Federal Register;
(C) CONSULTATION.—In making determinations that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(b), each of the components of the Commission may consult with Native Hawaiian organizations, agencies of the State of Hawaii including but not limited to the Department of Land and Natural Resources, the Office of Hawaiian Affairs, and the State Department of Health, and other entities with expertise and experience in the determination of Native Hawaiian ancestry and lineal descendant.
(2) Certification and submission of roll to Secretary.—The Commission shall—
(A) prepare the roll in the form established by the Commission;
(B) submit the roll to the Secretary; and
(C) publish the roll in the Federal Register.
(3) APPEAL.—The Secretary may establish a mechanism for an appeal for any person whose name is excluded from the roll who claims to meet the definition of Native Hawaiian in section 3(b) and to be 18 years of age or older.
(4) Publication update.—The Secretary shall—
(A) publish the roll regardless of whether appeals are pending;
(B) update the roll and the publication of the roll on the final disposition of any appeal;
(C) update the roll to include any Native Hawaiian who has attained the age of 18 and has been certified to be Native Hawaiian in section 3(b) after the initial publication of the roll or after any subsequent publications of the roll.
(5) Failure to act.—If the Secretary fails to publish the roll, not later than 90 days after the date on which the roll is submitted to the Secretary, the Commission shall publish the roll notwithstanding any order or directive issued by the Secretary or any other official of the Department of the Interior to the contrary.
(6) Effect of publication.—The publication of the initial and updated roll shall serve as the basis for the eligibility of adult members of the Native Hawaiian community whose names are listed on those rolls to participate in the reorganization of the Native Hawaiian governing entity.
(2) ORGANIZATION OF THE NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL.—(A) ORGANIZATION.—The adult members of the Native Hawaiian community listed on the roll published under this section may—
(i) develop criteria for candidates to be elected to the Council; and
(ii) elect members from individuals listed on the roll published under this subsection to the Council.
(B) POWERS.—(i) IN GENERAL.—The Council—
(A) may represent those listed on the roll published under this section in the implementation of this Act; and
(B) shall have no powers other than powers given to the Council under this Act.
(C) FUNDING.—The Council may enter into a contract with, or obtain a grant from, any Federal or State agency to carry out clause (ii).
(3) ACTIVITIES.—(i) IN GENERAL.—The Council may conduct a reorganization among adult members of the Native Hawaiian community listed on the roll published under this subsection for the purpose of determining the proposed electability of individuals based on the organic governing documents of the Native Hawaiian governing entity, including but not limited to—
(aa) the proposed criteria for citizenship of the Native Hawaiian governing entity;
(bb) the proposed powers and authorities to be exercised by the Native Hawaiian governing entity, as provided for in the proposed ordinances and immunities of the Native Hawaiian governing entity;
(cc) the proposed civil rights and protections of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities of the Native Hawaiian governing entity;
(dd) other issues determined appropriate by the Council.
(II) DEVELOPMENT OF ORGANIC GOVERNING DOCUMENTS.—Based on the referendum, the Council may develop proposed organic governing documents for the Native Hawaiian governing entity.
(III) DISTRIBUTION.—The Council may distribute to all adult members of the Native Hawaiian community listed on the roll published under this subsection—
(aa) a copy of the proposed organic governing documents, as drafted by the Council; and
(bb) a brief impartial description of the proposed organic governing documents;
(IV) ELECTIONS.—The Council may hold elections for the purpose of ratifying the proposed organic governing documents and for the certification of the organic governing documents by the Secretary in accordance with paragraph (4), held elections of the officers of the Native Hawaiian governing entity pursuant to paragraph (5).
(V) SUBMITAL OF ORGANIC GOVERNING DOCUMENTS.—Following the reorganization of the Native Hawaiian governing entity and the adoption of organic governing documents, the Council shall submit the organic governing documents of the Native Hawaiian governing entity to the Secretary.
(VI) CERTIFICATIONS.—(A) IN GENERAL.—Within the context of the future negotiations to be conducted under the authority of section 8(b)(1), and the subsequent actions by the Congress and the State of Hawaii to enact legislation to implement the agreements of the 3 governments, not later than 90 days after the date on which the Council submits the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents—
(i) establish the criteria for citizenship in the Native Hawaiian governing entity;
(ii) were adopted by a majority vote of the adult members of the Native Hawaiian community whose names are listed on the roll published by the Secretary;
(iii) provide authority for the Native Hawaiian governing entity to negotiate with Federal, State, and local governments, and other entities;
(iv) provide for the exercise of governmental authorities by the Native Hawaiian governing entity, including any authorities that may be delegated to the Native Hawaiian governing entity by the United States and the State of Hawaii following negotiations authorized in section 8(b)(1) and the enactment of legislation to implement the agreements of the 3 governments;
(v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian governing entity without the consent of the Native Hawaiian governing entity;
(vi) provide for the protection of the civil rights of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities by the Native Hawaiian governing entity;
(vii) are consistent with applicable Federal law and the special political and legal relationship between the United States and the indigenous, native people of the United States; provided that the provisions of Public Law 103-454, 25 U.S.C. 479a, shall not apply.
(B) IN CASE OF NONCOMPLIANCE WITH THE REQUIREMENTS OF SUBPARAGRAPH (A).—
(i) RECOMMENDATION BY THE SECRETARY.—If the Secretary determines that the organic governing documents, or any part of the documents, do not meet all of the requirements set forth in subparagraph (A), the Secretary shall submit the organic governing documents to the Council, along with a justification for each of the Secretary’s findings as to why the provisions are not in full compliance.
(ii) AMENDMENT AND RESUBMITAL OF ORGANIC GOVERNING DOCUMENTS.—If the organic governing documents are resubmitted to the Council by the Secretary under clause (i), the Council shall—
(A) amend the organic governing documents to ensure that the documents meet all the requirements set forth in subparagraph (A); and
(B) resubmit the amended organic governing documents to the Secretary for certification in accordance with this paragraph.
(C) CERTIFICATIONS DEEMED MADE.—The certifications required under paragraph (4) shall be deemed to have been made if the Secretary has not acted within 90 days after the date on which the Council has submitted the organic governing documents of the Native Hawaiian governing entity to the Secretary.
(VI) ELECTIONS.—On completion of the certification by the Secretary under paragraph (4), the Council may hold elections of the officers of the Native Hawaiian governing entity.
(VII) REAFFIRMATION.—Notwithstanding any other provision of law, if the certification required under paragraph (4) and the election of the officers of the Native Hawaiian governing entity, the political and legal relationship between the United States and the Native Hawaiian governing entity is hereby reaffirmed and the United States extends Federal recognition to the Native Hawaiian governing entity as the representative governing body of the Native Hawaiian people.
SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY, NEGOTIATIONS, CLAIMS.
(A) REAFFIRMATION.—The delegation by the United States to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union” approved March 18, 1959 (Public Law 86-3, 73 Stat. 4), is reaffirmed.
(B) NEGOTIATIONS.
(1) IN GENERAL.—Upon the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity and the State of Hawaii may enter into negotiations with the Native Hawaiian governing entity designed to lead to an agreement addressing such matters:
(A) the transfer of lands, natural resources, and other assets, and the protection of existing rights related to such lands or resources;
(B) the exercise of governmental authority over any transferred lands, natural resources, and other assets, including land use;
(C) the exercise of civil and criminal jurisdiction;
(D) the delegation of governmental powers and authorities to the Native Hawaiian governing entity by the United States and the State of Hawaii;
(E) any residual responsibilities of the United States and the State of Hawaii.
(2) AMENDMENTS TO EXISTING LAWS.—Upon agreement on any matter or matters negotiated with the United States, the State of Hawaii, and the Native Hawaiian governing entity, the parties are authorized to submit—
(A) to the Committee on Indian Affairs of the Senate, the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives, recommendations for proposed amendments to Federal law that will enable the implementation of agreements reached between the 3 governments; and
(B) to the Governor and the legislature of the State of Hawaii, recommendations for proposed amendments to State law that will enable the implementation of agreements reached between the 3 governments.
(C) CLAIMS.
(1) IN GENERAL.—Nothing in this Act serves as a settlement of any claim against the United States.
(2) STATUTE OF LIMITATIONS.—Any claim against the United States arising under Federal law that—
(A) is in existence on the date of enactment of this Act;
(B) is asserted by the Native Hawaiian governing entity on behalf of the Native Hawaiian people; and
(C) relates to the legal and political relationship between the United States and the Native Hawaiian people;
shall be brought in the court of jurisdiction over such claims not later than 20 years from the date on which Federal recognition is extended to the Native Hawaiian governing entity under section 7(c)(6).
SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.
(A) INDIAN GAMING REGULATORY ACT.—Nothing in this Act shall be construed to authorize the Native Hawaiian governing entity to conduct gaming activities under the authority of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).
(B) BUREAU OF INDIAN AFFAIRS.—Nothing contained in this Act provides an authorization for eligibility to participate in any programs and services provided by the Bureau of Indian Affairs for any persons not otherwise eligible for the programs or services.
SEC. 10. SEVERABILITY.
If any section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections or provisions shall continue in full force and effect.
SEC. 11. AUTHORIZATION OF APPROPRIATIONS.
There are authorized to be appropriated such sums as are necessary to carry out this Act.
Mr. INOUYE. Mr. President, I am pleased to join my colleague, Senator AKAKA, as a cosponsor of the Native Hawaiian Government Reorganization Act.
Having served on the Indian Affairs Committee for the past 27 years, I know that most of our colleagues are more familiar with conditions and circumstances in Indian country, and naturally, they bring their experience with Indian country to bear in considering this measure, which has been pending in the Senate for the past six years.
Accordingly, Mr. President, I believe it is important that our colleagues understand what this bill seeks to accomplish as well as how it differs from legislation affecting Indian country.
It is a little known fact that beginning in 1910 and since that time, the
Congress has passed and the President has signed into law over 160 Federal laws designed to address the conditions of Native Hawaiians.

Thus, Federal laws which authorize the provision of health care, education, housing, and job training and employment assistance as well as programs to provide for the preservation of the Native Hawaiian language, Native language immersion, Native cultural and grave protections and repatriation of Native sacred objects have been in place for decades.

The Native Hawaiian programs do not draw upon funding that is appropriated for American Indians or Alaska Natives—there are separate authorizations for programs that are administered by different Federal agencies—not the Bureau of Indian Affairs or the Indian Health Service, for instance—and the Native Hawaiian program funds are not drawn from the Interior Appropriations Subcommittee account. Thus, they have no impact on the funding that is provided for the other indigenous, native people of the United States.

However, unlike the native people residing on the mainland, Native Hawaiians have not been able to exercise their rights as Native people to self-determination or self-governance because their government was overthrown on January 17, 1893.

This bill would provide a process for the reorganization of the Native Hawaiian government and the resumption of a political and legal relationship between that government and the government of the United States. Because the Native Hawaiian government is not an Indian tribe, the body of Federal Indian law that would otherwise customarily apply when the United States extends Federal recognition to an Indian tribal group does not apply.

Furthermore, the bill provides authority for a process of negotiations amongst the United States, the State of Hawaii, and the reorganized Native Hawaiian government to address such matters as the exercise of civil and criminal jurisdiction by the respective governments, the transfer of land and natural resources and other assets, and the exercise of governmental authority over those lands, natural resources and other assets.

Upon reaching agreement, the U.S. Congress and the legislature of State of Hawaii would have to enact legislation implementing the agreements of the three governments, including amendments that will necessarily have to be made to existing Federal law, such as the Hawaii Admissions Act and the Hawaii Homes Commission Act, and to State law, including amendments to the Hawaii State Constitution, before any of the new governmental relationships and authorities can take effect.

The bill provides for the reorganization of the Native Hawaiian government and the reestablishment of the rights to self-determination and self-governance that will best serve the needs and interests not only of the Native Hawaiian community but those of all the citizens of Hawaii.

Mr. President, we have every confidence that consistent with the Federal policy of the last 35 years, the restoration of the rights to self-determination and self-governance will enable the Native Hawaiian people, as the direct, lineal descendants of the aboriginal, indigenous native people of what has become our nation’s fiftieth state, to take their rightful place in the family of governments that makes up our constitutional system of governance.

By Mr. McCAIN (for himself, Mr. STEVENS, and Mr. DORGAN):

S. 148. A bill to establish a United States boxing commission to administer the Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. McCAIN. Mr. President, today I am pleased to be joined by Senators STEVENS and DORGAN and introduce the Professional Boxing Amendments Act of 2005. This legislation is virtually identical to a measure approved unanimously by the Senate last year. I remain committed to moving the Professional Boxing Amendments Act through the Senate and I trust that my colleagues will once again vote favorably on this important legislation. Simply put, this legislation would better protect professional boxing from the fraud, corruption, and ineffective regulations that have plagued the sport for far too many years, and that have devastated physically and financially many of our Nation’s professional boxers.

For almost a decade, Congress has made efforts to improve the sport of professional boxing—and for very good reason. With rare exception, professional boxers come from the lowest rung on our economic ladder. They are the least educated and most exploited athletes. The Professional Boxing Safety Act of 1996 and the Muhammad Ali Boxing Reform Act of 2000 established uniform health and safety standards for professional boxers, as well as basic protections for boxes against the sometimes coercive, exploitative, and unethical business practices of promoters, managers, and sanctioning organizations. But further action is needed.

The Professional Boxing Amendments Act would strengthen existing Federal laws and be an important step toward setting basic health and safety standards for professional boxers, establishing a centralized medical registry to be used by local commissions to protect boxers, reducing the arbitrary practices of sanctioning organizations, and enhancing the uniformity and basic standards for professional boxing contracts. Most importantly, this legislation would establish a Federal regulatory entity to set basic uniform standards for certain aspects of the sport.

Current Federal boxing law has improved to some extent the state of professional boxing. I remain concerned, as do many others, that the sport remains at risk. Some State and tribal boxing commissions still to this day do not comply with Federal boxing law, and there is still a troubling lack of enforcement of the law by both Federal and State officials. Indeed, professional boxing remains the only major sport in the United States that does not have a strong, centralized association, league, or other regulatory body to establish and enforce uniform rules and practices. Because a powerful few have not had a strong, centralized association, league, or other regulatory body to establish and enforce uniform rules and practices. Because a powerful few have not had a strong, centralized association, league, or other regulatory body to enforce professional boxing law, a national self-regulating organization—though preferable to Federal government oversight—is not a realistic option.

Ineffective and inconsistent oversight of professional boxing has contributed to the continuing scandals, controversies, unethical practices, and bloody deaths. These problems have led many in professional boxing to conclude that the only solution is an effective and accountable Federal boxing commission. The Professional Boxing Amendments Act would create such an entity.

This bill would establish the United States Boxing Commission (USBC or Commission). The Commission would be responsible for protecting the health, safety, and general interests of professional boxers. The USBC would be responsible for ensuring uniformity, fairness, and integrity in professional boxing. More specifically, the Commission would administer Federal boxing law and coordinate with other Federal regulatory agencies to ensure that this law is enforced; oversee all professional boxing matches in the United States; and work with the boxing industry and local commissions to improve the safety, integrity, and professionalism of professional boxing in this country.

The USBC would also license boxers, promoters, managers, and sanctioning organizations. The Commission would have the authority to revoke such a license for violations of Federal boxing law, to stop fights in the sport. The USBC is not to interfere with the daily operations of State and tribal boxing commissions. Instead, the Commission would work in consultation
with local commissions, and it would only exercise its authority when reason-able grounds exist for such inter-vention. In point of fact, the Professional Boxing Amendments Act states explicitly that it would not prohibit any boxing commission from exercising any of its powers, duties, or functions with respect to the regulation or super-vision of professional boxing to the ex-tent not inconsistent with the provi-sions of Federal boxing law.

Let there be no doubt, however, of the well-known pressing need in profes-sional boxing for a Federal boxing commission. The establishment of the USBC would address that need.

The problems that plague the sport of professional boxing undermine the credibility of the sport in the eyes of the public—and more importantly—compromise the safety of boxers. The Professional Boxing Amendments Act provides an effective approach to curb-

SEC. 2. AMENDMENT OF PROFESSIONAL BOXING SAFETY ACT OF 1996.

Except as otherwise expressly provided, whenever in this title an amendment or re-pair 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 Professional Boxing Safety Act of 1996 (15 U.S.C. 6301 et seq.).

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—Section 2 (15 U.S.C. 6301) is amended to read as follows: "SEC. 2. DEFINITIONS.

In this Act—

(1) COMMISSION.—The term ‘Commission’ means the United States Boxing Commis-sion.

(2) BOUT AGREEMENT.—The term ‘bout agreement’ means a contract between a promoter and a boxer that requires the boxer to participate in a professional boxing match for a particular date.

(3) BOXERS.—The term ‘boxer’ means an indi-vidual who fights in a professional boxing match.

(4) BOXING COMMISSION.—The term ‘boxing commission’ means an entity authorized under State or tribal law to regulate profes-sional boxing matches.

(5) BOXER REGISTRY.—The term ‘boxer registry’ means any entity certified by the Commission for the purposes of maintaining records and identification of boxers.

(6) BOXING SERVICE PROVIDER.—The term ‘boxing service provider’ means a promoter, manager, sanctioning body, licensee, or matchmaker.

(7) CONTRACT PROVISION.—The term ‘contract provision’ means any legal obligation between a boxer and a boxing service pro-vider.

(8) INDIAN LANDS; INDIAN TRIBE.—The terms ‘Indian lands’ and ‘Indian tribe’ have the meanings given those terms by para-graphs (4) and (5), respectively, of section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703).

(9) LICENSEE.—The term ‘licensee’ means an individual who serves as a trainer, corner man, second, or cut man for a boxer.

(10) MANAGER.—The term ‘manager’ means a person other than a promoter who, under contract, agreement, or other arrange-ment with a boxer, undertakes to control or administer, directly or indirectly, a boxing-related matter on behalf of that boxer, includ-ing a person who is a booking agent for a boxer.

(11) MATCHMAKER.—The term ‘matchmaker’ means a person that proposes, selec-tions, and arranges for boxers to participate in a professional boxing match.

(12) PHYSICIAN.—The term ‘physician’ means a doctor of medicine legally author-ized to practice medicine by the State in which the physical acts function, function in action and who has training and experi-ence in dealing with sports injuries, particu-larly head trauma.

(13) PROFESSIONAL BOXING MATCH.—The term ‘professional boxing match’ means a boxing contest held in the United States between individuals for financial compensa-tion. The term ‘professional boxing match’ does not include a boxing contest that is reg-u-lated by a duly recognized amateur sports organization, as approved by the Commis-sion.

(14) PROMOTER.—The term ‘promoter’—

(A) means the person primarily respon-sible for organizing, promoting, and pro-ducing a professional boxing match; but

(B) does not include a hotel, casino, re-sort, or other commercial establishment hosting or sponsoring a professional boxing match, unless—

(i) the hotel, casino, resort, or other com-mercial establishment is primarily respon-sible for organizing, promoting, and pro-ducing the match; or

(ii) there is no other person primarily re-sponsible for organizing, promoting, and pro-ducing the match.

(15) PROFESSIONAL AGREEMENT.—The term ‘professional agreement’ means a contract, for the acquisition of rights relating to a boxer’s participation in a professional boxing match or series of boxing matches (including the right to sell, distribute, exhibit, or li-cense the match or matches), with—

(A) the boxer who is to participate in the match or matches; or

(B) the nominee of a boxer who is to par-ticipate in the match or matches, or the nominee or entity is a licensed promoter, owned, con-trolled or held in trust for the boxer unless that nominee or entity is a licensed pro-moter who is conveying a portion of the rights previously acquired by the nominee or entity.

(16) STATE.—The term ‘State’ means each of the 50 States, Puerto Rico, the District of Columbia, and any territory or possession of the United States, including the Virgin is-lands.

(17) SANCTIONING ORGANIZATION.—The term ‘sanctioning organization’ means an or-ganization, other than a boxing commission, that sanctions professional boxing matches, ranks professional boxers, or charges a sanc-tioning fee for professional boxing matches in the United States—

(A) between boxers who are residents of different States; or

(B) that are advertised, otherwise pro-moted, or broadcast (by radio or circuit television) interstate commerce.

(18) SUSPENSION.—The term ‘suspension’ includes within its meaning the temporary revocation of a boxing license by a boxing com-mission.

(19) TRIBAL ORGANIZATION.—The term ‘tribal organization’ has the same meaning as in section 4(i) of the Indian Self-Deter-mination and Education Assistance Act (25 U.S.C. 450b(i)).

(b) CONFORMING AMENDMENT.—Section 21 (15 U.S.C. 6312) is amended to read as follows: "SEC. 21. PROFESSIONAL BOXING MATCHES CON-DUCTED ON INDIAN LANDS.

(a) IN GENERAL.—Notwithstanding any other provision of law, a tribal organization that establishes a boxing commission to regu-late professional boxing matches held on In-dian land under the jurisdiction of that trib-al organization.

(b) STANDARDS AND LICENSING.—A tribal organization that establishes a boxing com-mission shall, by tribal ordinance or resolu-tion, establish and provide for the implemen-tation of health and safety standards, licen-sing requirements, and other requirements re-lating to the conduct of professional boxing matches that are at least asrestrictive as—

(1) the otherwise applicable requirements of the State in which the Indian land on which the professional boxing match is held is located; or

(2) the guidelines established by the United States Boxing Commission.

(c) APPLICATION OF ACT TO BOXING MATCHES ON TRIBAL LANDS.—The provisions of this Act apply to professional boxing matches held on tribal lands to the same ex-tent and in the same way as they apply to profes-sional boxing matches held in any State.

SEC. 4. PURPOSES.

Section 3(2) (15 U.S.C. 6302(2)) is amended by striking ‘State’.

SEC. 5. UNITED STATES BOXING COMMISSION AP-PROVAL, OR ABC COMMISSION SANCTION, REQUIRED FOR MATCHES.

(a) IN GENERAL.—Section 4 (15 U.S.C. 6303) is amended to read as follows: "SEC. 4. APPROVAL OR SANCTION REQUIREMENT.

(a) IN GENERAL.—No person may arrange, promote, organize, produce, or fight in a pro-fessional boxing match within the United States unless the match—

(1) is approved by the Commission; and

(2) is held in a State, or on tribal land of a tribal organization, that regulates profes-sional boxing matches in accordance with
standards and criteria established by the Commission.

“(2) APPROVAL, PRELIMINARY.—

“(1) IN GENERAL.—For purposes of subsection (a) of section 13 (15 U.S.C. 6307e) and section 11 (15 U.S.C. 6307c) the Commission shall be presumed to have approved any match other than—

“(A) a match with respect to which the Commission has been informed of an alleged violation of this Act and with respect to which it has notified the supervising boxing commission that it does not approve

“(B) a match advertised to the public as a championship match;

“(C) a match scheduled for 10 rounds or more.

“(D) a match in which 1 of the boxers has—

“(1) suffered 10 consecutive defeats in professional boxing matches; or

“(2) knocked out 5 consecutive times in professional boxing matches.

“(2) DELEGATION OF APPROVAL AUTHORITY.—

Notwithstanding paragraph (1), the Commission shall be presumed to have approved a match described in subparagraph (B), (C), or (D) of paragraph (1) if—

“(A) the Commission has delegated its approval authority with respect to that match to a boxing commission; and

“(B) the boxing commission has approved the match.

“(3) KNOCKED-OUT DEFINED.—Except as may be otherwise provided by the Commission by rule, in paragraph (1)(D)(ii), the term ‘knocked out’ means the boxer is unable to continue after a count of 10 by the referee or stopped from continuing because of a technical knockout.

(b) CONFORMING AMENDMENT.—Section 19 (15 U.S.C. 6310) is repealed.

SEC. 6. SAFETY STANDARDS.

Section 5 (15 U.S.C. 6304) is amended—

(1) by striking “requirements or an alternative requirement in effect under regulations of a boxing commission that provides equivalent protection of the health and safety of boxers” and inserting “requirements”;

(2) by adding at the end of paragraph (1) “The examination shall include testing for infectious diseases in accordance with standards established by the Commission.”;

(3) by striking paragraph (2) and inserting the following:

“(2) An ambulance continuously present on the premises of a professional boxing match unless the promoter of that boxing match has posted a surety bond, cashier’s check, letter of credit, cash, or other security with the boxing commission in an amount acceptable to the boxing commission.”;

(4) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and inserting after paragraph (2) the following:

“(3) when a medical personnel with appropriate resuscitation equipment continuously present on site;”;

and

(5) by striking “match” in paragraph (5), as redesignated, and inserting “match in an amount prescribed by the Commission.”.

SEC. 7. REGISTRATION.

Section 6 (15 U.S.C. 6305) is amended—

(1) by striking “Indian tribe” after “State” the second place it appears in subsection (a)(2); (2) by striking the first sentence of subsection (c) and inserting “A boxing commission shall, in accordance with requirements established by the Commission, make a health and safety disclosure to a boxer when issuing an identification card to that boxer.”;

(3) by striking “should” in the second sentence of subsection (c) and inserting “shall, at a minimum”:; and

(4) by striking “after” in the end of the following:—

“COPY OF REGISTRATION AND IDENTIFICATION CARDS TO BE SENT TO COMMISSION.—A boxing commission shall furnish a copy of each registration record received under subsection (a), and each identification card issued under subsection (c), to the Commission.”.

SEC. 8. REVIEW.

Section 7 (15 U.S.C. 6306) is amended—

(1) by striking “that, except as provided in subsection (b), no” in subsection (a)(2) and inserting “that no”;

(2) by striking paragraphs (3) and (4) of subsection (a) and inserting the following:

“(3) Procedures to review a summary suspension when a hearing before the boxing commission is requested by a boxer, licensees, management, member, or other boxing service provider which provides an opportunity for that person to present evidence;

“(4) by striking subsection (b); and

“(5) by striking “(a) PROCEDURES.”.

SEC. 9. REPORTING.

Section 8 (15 U.S.C. 6307) is amended—

(1) by striking “2 business hours” and inserting “2 business days”;

(2) by striking “boxing” and inserting “boxing”, and

(3) by striking “each boxer registry.” and inserting “the Commission.”.

SEC. 10. CONTRACT REQUIREMENTS.

Section 9 (15 U.S.C. 6307a) is amended to read as follows:

“(a) IN GENERAL.—

“(1) provide to the boxer a written explanation under penalty of perjury of the organization’s rating criteria, its rating of the boxer, and the rationale or basis for its rating (including a response to any specific questions submitted by the boxer); and

“(2) submit a copy of its explanation to the Association of Boxing Commissions and the Commission for their review.

(b) CONFORMING AMENDMENTS.—Section 18(e) (15 U.S.C. 6309(e)) is amended—

(1) by striking “Federal Trade Commis- sion.” in the subsection heading and inserting “United States Boxing Commission”;

and

(2) by striking “Federal Trade Commis- sion.” in paragraph (1) and inserting “United States Boxing Commission.”.

SEC. 11. COERCIVE CONTRACTS.

Section 10 (15 U.S.C. 6307b) is amended—

(1) by striking paragraph (3) of subsection (a); (2) by inserting “OR ELIMINATION” after “Mandatory” in the heading of subsection (b); and

(3) by inserting “or elimination” after “mandatory” in subsection (b).

SEC. 12. SANCTIONING ORGANIZATIONS.

(a) IN GENERAL.—Section 11 (15 U.S.C. 6307c) is amended to read as follows:

“(a) OBJECTIVE CRITERIA.—Within 1 year after the date of enactment of the Professional Boxing Amendments Act of 2005, the Commission shall develop guidelines for objective and consistent written criteria for the rating of professional boxers based on the athletic merits and professional record of the boxers. Within 90 days after the Commission’s promulgation of the guidelines, each sanctioning organization shall adopt the guidelines and follow them.

“(b) NOTIFICATION OF CHANGE IN RATING.—A sanctioning organization shall, with respect to a change in the rating of a boxer previously rated by such organization in the top 10 boxers—

“(1) post a copy, within 7 days after the change, on its Internet website or home page, if any, including an explanation of the change, for a period of not less than 30 days; and

“(2) provide a copy of the rating change and a thorough explanation in writing under penalty of perjury to the boxer and the Commission; and

“providing the boxer an opportunity to appeal the ratings change to the sanctioning organization; and

“(4) apply the objective criteria for ratings required under subsection (a) in considering any such appeals.

“(c) CHALLENGE OF RATING.—If, after dis- putting with an appeal under subsection (b)(3), a sanctioning organization receives a petition from a boxer challenging that organization’s rating of the boxer, it shall (except to the extent otherwise required by the Commission), within 7 days after receiving the petition—

“(1) provide to the boxer a written explana- tion under penalty of perjury of the orga- nization’s rating criteria, its rating of the boxer, and the rationale or basis for its rating (including a response to any specific questions submitted by the boxer); and

“(2) submit a copy of its explanation to the Association of Boxing Commissions and the Commission for their review.

(b) CONFORMING AMENDMENTS.—Section 18(e) (15 U.S.C. 6309(e)) is amended—

(1) by striking “Federal Trade Commis- sion.” in the subsection heading and inserting “United States Boxing Commission”;

and

(2) by striking “Federal Trade Commis- sion.” in paragraph (1) and inserting “United States Boxing Commission.”.

SEC. 13. REQUIRED DISCLOSURES BY SANC- TIONING ORGANIZATIONS.

Section 12 (15 U.S.C. 6307d) is amended—

(1) by striking the matter preceding para- graph (1) and inserting “Within 7 days after a professional boxing match of 10 rounds or more, the sanctioning organization, if any, for that match shall provide to the Commis- sion, and, if requested, to the boxing commission in the State or on Indian land responsible for regulating the match, a written statement of—;

“(2) by striking “will assess” in paragraph (1) and inserting “has assessed, or will as- sess,” and

(3) by striking “will receive” in paragraph (2) and inserting “has received, or will re- ceive,”.

SEC. 14. REQUIRED DISCLOSURES BY PRO- MOTERS AND BROADCASTERS.

Section 13 (15 U.S.C. 6307e) is amended—

(1) by striking “PROMOTERS,” in the sec- tion caption and inserting “PROMOTERS AND BROADCASTERS;”.

(2) by striking so much of subsection (a) as precedes paragraph (1) and inserting the fol- lowing:

“(a) DISCLOSURES TO BOXING COMMISSIONS AND THE COMMISSION.—Within 7 days after a professional boxing match of 10 rounds or more, the promoter of any boxer participating in that match shall provide to the Commission, and, if requested, to the boxing commission in the State or on Indian land responsible for regulating the match—;

“(3) by striking “writing,” in subsection (a)(1) and inserting “writing, other than a broadcast, previously provided to the commission;”.

(4) by striking “all fees, charges, and expen- ses that will be” in subsection (a)(3)(A) and inserting “a writing of all fees, charges, and expenses that have been, or will be,”;

(5) by inserting “a written statement of” before “liability” in subsection (a)(3)(C); and

(6) by inserting “a statement of” before “any” in subsection (a)(3)(C).
and license, and appoint the judges and referees deemed qualified.

A sanctioning organization may provide a copy of any contract executed by or on behalf of the broadcast station, cable service, or multichannel video programming distributor for use but not public disclosure; and

SEC. 17. CONFLICTS OF INTEREST.

Section 17 (15 U.S.C. 6308) is amended—

(a) IN GENERAL.—The Commission shall establish confidentiality standards for the disclosure of personally identifiable information to boxing commissions that will—

(1) protect the health and safety of boxers by making relevant information available to the boxing commissions for use but not public disclosure; and

(2) ensure that the privacy of the boxers is protected.

(b) CONTENT; SUBMISSION.—The Commission shall determine—

1. the information provided to the Commission or to a boxing commission pursuant to this subsection shall be confidential and not revealed by the Commission or a boxing commission, except that the Commission may publish an analysis of the data in aggregate form or in a manner which does not disclose confidential information about identifiable broadcasters.

2. A member of the Commission may be engaged as a professional boxer, boxing promoter, agent, fight manager, or other representative or owner of the site of the match; and

(c) CONFIDENTIALITY.—The information provided to the Commission shall be confidential and not revealed by the Commission or a boxing commission, except that the Commission may publish an analysis of the data in aggregate form or in a manner which does not disclose confidential information about identifiable broadcasters.

3. TELEVISION BROADCAST RIGHTS.—In paragraph (1), the term ‘‘television broadcast rights’’ means the right to broadcast the match on television, regardless of whether such broadcast is via a broadcast station, cable service, or multichannel video programming distributor as such terms are defined in section 3(5), 602(6), and 602(13) of the Act of 1994 (47 U.S.C. 153(5), 602(6), and 602(13), respectively).

SEC. 15. JUDGES AND REFEREES.

(a) IN GENERAL.—Section 16 (15 U.S.C. 6307h) is amended—

(1) by inserting ‘‘(a) LICENSING AND ASSIGNMENT REQUIREMENT.—Before ‘No person’;’’;

(2) by striking certified and approved, and inserting ‘‘qualified’’;

(3) by inserting ‘‘or Indian lands’’ after ‘‘State’’; and

(4) by adding at the end the following:

(b) BOXERS.—A boxer may not own or control, directly or indirectly, an entity that promotes the boxer’s bouts if that entity is responsible for

1. executing a bout agreement or promotional agreement with the boxer’s opponent;

2. providing any payment or other compensation to—

(A) the boxer’s opponent for participation in a bout with the boxer;

(B) the boxing commission that will regulate the bout;

(C) ring officials who officiate at the bout.

SEC. 18. ENFORCEMENT.

Section 18 (15 U.S.C. 6309) is amended—

(1) by striking ‘‘(a) INJUNCTIONS.—’’ in sub-section (a) and inserting ‘‘(a) ACTIONS BY ATTORNEY GENERAL’’;

(2) by inserting ‘‘any officer or employee of the Commission’’ after ‘‘laws’’, in subsection (b)(3); and

(3) by inserting ‘‘has engaged in or after’’ ‘‘organization’’ in subsection (c);

(4) by striking ‘‘subdivision (b) in subsection (c)(3) and inserting ‘subsection (b), a civil penalty of not more than’’;

(5) by striking ‘‘boxer’’ in subsection (d) and inserting ‘‘person’’.
serve after the expiration of that member’s term until a successor has taken office.

“(6) REMOVAL.—A member of the Commission may be removed by the President only for cause.

“(c) EXECUTIVE DIRECTOR.—

“(1) IN GENERAL.—The Commission shall employ an Executive Director to perform the administrative functions of the Commission under this Act, and such other functions and duties of the Commission as the Commission shall specify.

“(2) DUTIES OF Functions.—Subject to the authority, direction, and control of the Commission the Executive Director shall carry out the functions and duties of the Commission under this Act.

“(d) GENERAL COUNSEL.—The Commission shall employ a General Counsel to provide legal counsel and advice to the Executive Director and the Commission in the performance of its functions under this Act, and to carry out such other functions and duties as the Commission shall specify.

“(e) STAFF.—The Commission shall employ such additional staff as the Commission considers appropriate to assist the Executive Director and the General Counsel in carrying out the functions and duties of the Commission under this Act.

“(f) DATA BASE.—(1) Members of Commission.—(A) IN GENERAL.—Each member of the Commission shall be compensated at a rate equal to the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(B) Traveling Expenses.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(C) Vacancy.—The Commission shall fill the vacancy by appointment of the President, subject to confirmation by the Senate.

“(2) Executive Director and Staff.—The Commission shall fix the compensation of the Executive Director, the General Counsel, and other personnel of the Commission. The rate of compensation of the Executive Director, the General Counsel, and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5315 of title 5, United States Code.

“SEC. 203. FUNCTIONS.

“(a) PRIMARY FUNCTIONS.—The primary functions of the Commission are—

“(1) to protect the health, safety, and general interests of boxers consistent with the provisions of this Act; and

“(2) to promote, foster, and maintain integrity in professional boxing;

“(b) SPECIFIC FUNCTIONS.—The Commission shall—

“(1) administer title I of this Act;

“(2) promulgate uniform standards for professional boxing in consultation with the Association of Boxing Commissions;

“(3) except as otherwise determined by the Commission, oversee all professional boxing matches in the United States;

“(4) work with the boxing commissions of the several States and tribal organizations in the United States;

“(5) formulate and transmit to the Attorney General (who shall represent the Commission in any judicial proceeding under this Act), the chief law enforcement officer of the several States, and other appropriate officers and agencies of Federal, State, and local government that can be applicable to professional boxing matches in the United States are vigorously, effectively, and fairly enforced;

“(6) require licensing regulations for professional boxing and provide assistance to such authorities in meeting minimum standards prescribed by the Commission under this title;

“(7) serve as the coordinating body for all efforts in the United States to establish and maintain uniform minimum health and safety standards for professional boxing;

“(8) if the Commission determines it to be appropriate, publish a newspaper, magazine, or other publication and establish and maintain a website consistent with the purposes of the Commission;

“(9) procure the temporary and intermittent services of experts and consultants to the extent authorized by section 3109(b) of title 5, United States Code, at rates the Commission determines to be reasonable; and

“(10) promulgate rules, regulations, and guidelines, and take any other action necessary and proper to accomplish the purposes of, and consistent with, the provisions of this title.

“(c) PROHIBITIONS.—The Commission may not—

“(1) promote boxing events or rank professional boxers;

“(2) provide technical assistance to, or authorize the use of the name of the Commission by, boxing commissions that do not comply with requirements of the Commission;

“(d) USE OF NAME.—The Commission shall have the exclusive right to use the name ‘United States Boxing Commission’—(1) in boxing activities; and

(i) 4-year term for a boxer; and

(ii) 2-year term for any other person.

“(2) to enhance physical, medical, financial, and other safeguards established for the protection of professional boxers; and

“(C) functions of the Commission are—

“(1) to consult with the Association of Boxing Commissions—

“(1) REQUIREMENT FOR LICENSE.—No person may compete in a professional boxing match or serve as a boxing manager, boxing promoter, or sanctioning organization for a professional boxing match except as provided in a license granted to that person under this subsection.

“(2) APPLICATION AND TERM.—(A) IN GENERAL.—The Commission shall—

“(1) promulgate application procedures, forms, and fees;

“(2) issue and publish appropriate standards for licenses granted under this section; and

“(3) issue a license to any person who, as determined by the Commission, meets the standards established by the Commission under this title.

“(B) DURATION.—A license issued under this section shall be for a renewable—

“(1) 4-year term for a boxer; and

“(2) 2-year term for any other person.

“(C) PROCEDURE.—The Commission may issue a license under this paragraph through boxing commissions or in a manner determined by the Commission.

“(b) LICENSING FEES.—(1) The Commission may prescribe and charge reasonable fees for the licensing of persons under this title. The Commission may set, charge, and adjust varying fees on the basis of classifications of persons, functions, and events determined appropriate by the Commission.

“(2) LIMITATIONS.—In the case of charging and charging fees under paragraph (1), the Commission shall ensure that, to the maximum extent practicable—

“(1) club boxing is not adversely affected; and

“(C) to improve the status and standards of professional boxing in consultation with the Association of Boxing Commissions; or

“(3) COLLECTION.—Fees established under this subsection may not be used for the purposes of any boxing commissions; or through boxing commissions or by any other means determined appropriate by the Commission.

“SEC. 205. NATIONAL REGISTRY OF BOXING PERSONNEL.

“(a) REQUIREMENT FOR REGISTRY.—The Commission shall establish and maintain (or authorize a third party to establish and maintain) a national computerized registry for the collection, storage, and retrieval of information related to the performance of its duties.

“(b) CONTENTS.—The information in the registry shall include the following:

“(1) BOXERS.—A list of professional boxers and data in the medical record established under section 114 of this Act, which the Commission shall secure from disclosure in accordance with the confidentiality requirements of section 116.

“(2) OTHER PERSONNEL.—Information (pertinent to the sport of professional boxing) on boxing promoters, boxing matchmakers, boxing managers, trainers, cut men, referees, boxing judges, physicians, and any other personnel determined by the Commission as performing professional activity for professional boxing matches.

“SEC. 206. CONSULTATION REQUIREMENTS.

“The Commission shall consult with the Association of Boxing Commissions—

“(1) before prescribing any regulation or establishing any standard under the provisions of this title; and

“(2) not less than once each year regarding matters relating to professional boxing.

“SEC. 207. MISCONDUCT.

“(a) SUSPENSION AND REVOCATION OF LICENSE OR REGISTRATION.

“(1) AUTHORITY.—The Commission may, after notice and opportunity for a hearing, suspend or revoke any license issued under this title, if the Commission finds that—

“(A) the license holder has violated any provision of this Act;

“(B) there are reasonable grounds for belief that a license holder prescribed by the Commission under this title is not being met, or that bribery, collusion, intentional losing, racketeering, extortion, or the use of unlawful threats, coercion, or intimidation have occurred in connection with a license; or

“(C) the suspension or revocation is necessary for the protection of health and safety or is otherwise in the interest of the public.

“(2) PERIOD OF SUSPENSION.—(A) IN GENERAL.—A suspension of a license under this section shall be effective for a period determined appropriate by the Commission except as provided in subparagraph (B).

“(B) SUSPENSION FOR MEDICAL REASONS.—In the case of a license of a boxer for medical reasons by the Commission, the Commission may terminate the suspension or denial at any time that a boxer certifies that he is fit to participate in a professional boxing match.

“The Commission shall prescribe the standards and procedures for accepting certification by a boxer under this subsection.

“(3) PERIOD OF REVOCATION.—In the case of a revocation of the license of a boxer, the
removal shall be for a period of not less than 1 year.

(b) INVESTIGATIONS AND INJUNCTIONS.—

(1) AUTHORITY.—The Commission may—

(A) conduct any investigation that it considers necessary to determine whether any person has violated, or is about to violate, any provision of this Act or any regulation prescribed under this Act;

(B) require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated;

(C) in its discretion, publish information concerning any violations; and

(D) investigate any facts, conditions, practices, or matters to aid in the enforcement of the provisions of this Act, in the prescribed form, that the Commission shall determine, or in securing information to serve as a basis for recommending legislation concerning the matters to which this Act relates.

(2) POWERS.

(A) IN GENERAL.—For the purpose of any investigation under paragraph (1) or any other proceeding under this title—

(i) any officer designated by the Commission may administer oaths and affirmations, subpoena or otherwise compel the attendance of witnesses and the production of any documents under subparagraph (A) may be required from any place in the United States, including Indian land, at any designated place of hearing.

(ii) the provisions of sections 6002 and 6004 of title 18, United States Code, shall apply.

(B) WITNESSES AND EVIDENCE.—The attendance of witnesses and the production of any documents under subparagraph (A) may be required from any place in the United States, including Indian land, at any designated place of hearing.

(C) ENFORCEMENT OF SUBPOENAS. —

(A) CIVIL ACTION.—In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may file an action in any district court of the United States within the jurisdiction of which an investigation or proceeding is being conducted by the Commission under this Act, or in securing information to serve as a basis for recommending legislation concerning the matters to which this Act relates.

(B) FAILURE TO OBEY.—Any failure to obey an order issued by a court under subparagraph (A) may be punished as contempt of that court.

(C) PROCESS.—All process in any contempt case under subparagraph (A) may be served in the judicial district in which the person is an inhabitant or in which the person may be found.

(D) EVIDENCE OF CRIMINAL MISCONDUCT.—

(A) IN GENERAL.—No person may be excused from attending and testifying or from producing books, papers, contracts, agreements, and other records and documents before the Commission, in obedience to the subpoena of the Commission, or in any case or proceeding instituted by the Commission, on the ground that his attendance or his production of evidence, documentary or otherwise, required of that person may tend to incriminate the person or subject the person to a penalty or forfeiture.

(B) LIMITED IMMUNITY.—No individual may be prosecuted or subject to any penalty or forfeiture for, or on account of, any transaction or occurrence over which such individual is compelled, after having claimed a privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury or any other crime or offense committed in the Commission or in the United States courts of any territory or other place subject to the jurisdiction of the United States, in connection with or upon a showing, the court shall grant without bond a permanent or temporary injunction or restraining order.

(D) MANDAMUS.—Upon application of the Commission, the district courts of the United States, the United States District Court for the District of Columbia, and the United States courts of any territory or other place subject to the jurisdiction of the United States, shall have jurisdiction to issue writs of mandamus commanding any person or proceeding instituted by the Commission, or in any cause relating to professional boxing, if the person is licensed by a boxing commission to perform that activity as of the effective date of this Act.

(E) INTERVENTION IN CIVIL ACTIONS.—

(1) IN GENERAL.—In a civil action, on behalf of the public interest, might intervene of right as provided under rule 24(a) of the Federal Rules of Civil Procedure in any civil action relating to professional boxing filed in a district court of the United States.

(2) AMICUS FILING.—The Commission may file a brief in any action filed in a court of the United States on behalf of the public interest in any case relating to professional boxing.

(3) HEARINGS BY COMMISSION.—Hearings conducted by the Commission under this Act shall be public and may be held before any officer of the Commission. The Commission shall keep appropriate records of the hearings.

SEC. 208. NONINTERFERENCE WITH BOXING COMMISSIONS.

(a) Noninterference.—Nothing in this Act prohibits any boxing commission from exercising any of its powers, duties, or functions with respect to the regulation or supervision of professional boxing matches or the performance of any other professional activity in connection with professional boxing.

(b) Minimum Standards. —Nothing in this Act prohibits any boxing commission from enforcing local standards or requirements that exceed the minimum standards or requirements promulgated by the Commission under this Act.

SEC. 209. ASSISTANCE FROM OTHER AGENCIES.

(a) Assistance. —Any employee of any executive department, agency, bureau, board, commission, official, or officer designated by the Commission to perform that activity as of the effective date of this title.

(b) First Annual Report on the Commission.—The Commission on the progress made at the end of the first year of the Act of 1996, as amended by this Act, is further amended—

(A) by amending section 1 to read as follows—

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ‘‘Professional Boxing Safety Act’’.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 101. Purposes.
Sec. 102. Approval or sanction requirement.
Sec. 103. Safety standards.
Sec. 104. Registration.
Sec. 105. Review.
Sec. 106. Reporting.
Sec. 107. Contract requirements.
Sec. 108. Sanction in case of contravention of a provision of this Act.
Sec. 109. Sanctioning organizations.
Sec. 110. Required disclosures to State boxing commissions by sanctioning organizations.
Sec. 111. Required disclosures by professional promoters and broadcasters.
Sec. 112. Medical registry.
Sec. 113. Confidentiality.
Sec. 114. Judges and referees.
"Sec. 115. Conflicts of interest.

Sec. 116. Enforcement.

Sec. 117. Professional boxing matches conducted on Indian lands.

Sec. 118. Relationship with State or Tribal law.

"TITLE II—UNITED STATES BOXING COMMISSION"

Sec. 201. Definitions.


Sec. 203. Functions.

Sec. 204. Licensing and registration of boxing personnel.

Sec. 205. National registry of boxing personnel.

Sec. 206. Noninterference with boxing commissions.

Sec. 209. Resistance from other agencies.

Sec. 210. Reports.

Sec. 211. Initial implementation.

Sec. 212. Authorization of appropriations."

By Mr. JEFFORDS (for himself, Ms. COLLINS, Mr. LIEBERMAN, Ms. SNOWE, Mr. SCHUMER, Mr. BIDEN, Mrs. BOXER, Mrs. CLINTON, Mr. DODD, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. KERRY, Mr. LUTENBERG, Mr. LEAHY, Mr. REED, and Mr. SARBANES):

S. 150. A bill to amend the Clean Air Act of 1990, to reduce emissions from electric powerplants, and for other purposes; to be known as the "Clean Power Generation Act of 2005"; and for other purposes. 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 "Clean Power Act of 2005".

SEC. 2. ELECTRIC ENERGY GENERATION EMISSION REDUCTIONS.

(a) In General. The Clean Air Act (42 U.S.C. 7401 et seq.) is amended by adding at the end the following:

"TITLE VII—ELECTRIC ENERGY GENERATION EMISSION REDUCTIONS"

Sec. 701. Definitions.

Sec. 702. Purposes.

Sec. 703. Definitions.
ties to meet the emission limitations (other
and industries; and
versely affected employees, communities,
adverse economic impacts;
should be allocated to promote public pur-
of air pollution from electricity generation,
those harmful emissions to levels that are
emissions on public and environmental
ments of the United States;
ating facilities to not more than 5 tons;
tric and thermal energy;
sulfur dioxide, nitrogen oxides, carbon diox-
ical buildings in the absence of an allocation
than the emission limitation for mercury) through an alternative method of compli-
consisting of an emission allowance and
fer, and
(2) to encourage energy conservation, use of renewable and clean alternative tech-
ologies, and pollution prevention as long-
range strategies, consistent with this title, for reducing air and other adverse impacts of energy generation and use.

**SEC. 705. DEFINITIONS.**

In this title:

(1) COVERED POLLUTANT.—The term ‘covered pollutant’ means—

(A) sulfur dioxide;

(B) any nitrogen oxide;

(C) carbon dioxide; and

(D) mercury.

(2) ELECTRICITY GENERATING FACILITY.—The term ‘electricity generating facility’ means an electric or thermal electricity generating unit, a combination of such units, or a combination of 1 or more such units and 1 or more combustion devices, that—

(A) has a nameplate capacity of 15 megawatts or more (or the equivalent in thermal energy generation, determined in accordance with a methodology developed by the Administrator);

(B) generates electric energy, for sale, through combustion of fossil fuel; and

(C) emits a covered pollutant into the at-

mosphere.

(3) ELECTRICITY INTENSIVE PRODUCT.—The term ‘electricity intensive product’ means a product that is an energy efficient building, 15 years;

(A) is less than the average lifetime elec-

tricity of that type of entity, as compared

15 megawatts (or the equivalent in thermal

energy generation, determined in accordance

with a methodology developed by the

Administrator); or

(B) is

less; and

(i) a natural gas fired generator that—

(i) has an energy conversion efficiency of at least 55 percent; and

(ii) uses best available control technology (as defined in section 169); and

(iii) a fuel cell operating on fuel derived from a nonrenewable source of energy.

(iv) MERCURY.—The term ‘mercury’ in-

cludes any mercury compound.

(v) NONWESTERN REGION.—The term ‘non-

western region’ means the area of the States

that is not included in the western region.

(vi) NONRENEWABLE ELECTRICITY GENERAT-

ING UNIT.—The term ‘nonrenewable elec-

tricity generating unit’ means a unit that—

(A) has been in operation for 10 years or

less; and

(B) generates electric energy by means of—

(i) wind;

(ii) biomass;

(iii) landfill gas;

(iv) a geothermal, solar thermal, or photo-
tovoltaic source; or

(v) a fuel cell operating on fuel derived from a nonrenewable source of energy.

(vii) SMALL ELECTRICITY GENERATING FAC-

ILITY.—The term ‘small electricity gener-

ating facility’ means an electric or thermal electricity generating unit, or combination of units, that—

(A) has a nameplate capacity of less than

15 megawatts (or the equivalent in thermal

energy generation, determined in accordance

with a methodology developed by the Admin-
arator); or

(B) generates electric energy, for sale,

through combustion of fossil fuel; and

(C) emits a covered pollutant into the at-
mosphere.

(viii) WESTERN REGION.—The term ‘western region’ means the area comprising the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(7) ENERGY EFFICIENT PRODUCT.—The term ‘energy efficient product’ means a product manufactured after the date of enactment of this title that has an expected lifetime elec-
tricity of natural gas consumption for that

A: does not exceed the lesser of—

(i) the maximum energy consumption that qualifies for the applicable Energy Star label for that type of product; or

(ii) the average energy consumption of the most efficient 25 percent of that type of product manufactured in the same year.

B: The term ‘lifetime’ includes—

(A) in the case of a residential building that is an energy efficient building, 30 years;

(B) in the case of a commercial building that is an energy efficient building, 15 years; and

(C) in the case of an energy efficient produ-

d, a period determined by the Admin-
trator to be the average life of that type of energy efficient product.

(8) MERCURY.—The term ‘mercury’ in-
includes any mercury compound.

(9) NEW CLEAN FOSSIL FUEL-FIRED EL-

HITTICITY GENERATING UNIT.—The term ‘new clean fossil fuel-fired electricity generating unit’ means a unit that—

(A) has been in operation for 10 years or

less; and

(B) uses best available control technology (as defined in section 169); and

(10) NONWESTERN REGION.—The term ‘non-

western region’ means the area of the States

that is not included in the western region.

(11) NONRENEWABLE ELECTRICITY GENERAT-

ING UNIT.—The term ‘nonrenewable elec-

tricity generating unit’ means a unit that—

(A) has been in operation for 10 years or

less; and

(B) generates electric energy by means of—

(i) wind;

(ii) biomass;

(iii) landfill gas;

(iv) a geothermal, solar thermal, or photo-
tovoltaic source; or

(v) a fuel cell operating on fuel derived from a nonrenewable source of energy.

(12) RENEWABLE ELECTRICITY GENERATING

UNIT.—The term ‘renewable electricity gen-

erating unit’ means—

(A) in the case of a residential building that is an energy efficient building, 15 years;

(B) by an entity that is primarily engaged in the transmission and distribution of electricity, that significantly improves the efficiency of that type of entity, as compared with the annual energy or nat-

ural gas consumption per unit output of the facility, as compared with the annual electricity or nat-
gas consumption per unit output that could be expected to result from an allocation of emission allowances (as determined by the Administrator); or

(C) by

ii) a generator that—

(v) uses integrated gasification combined cycle technology;

(13) SMALL ELECTRICITY GENERATING FAC-

ILITY.—The term ‘small electricity gener-

ating facility’ means an electric or thermal electricity generating unit, or combination of units, that—

(A) has a nameplate capacity of less than

15 megawatts (or the equivalent in thermal

energy generation, determined in accordance

with a methodology developed by the Admin-
arator); or

(B) generates electric energy, for sale,

through combustion of fossil fuel; and

(C) emits a covered pollutant into the at-
mosphere.

(14) WESTERN REGION.—The term ‘western region’ means the area comprising the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.
subject to subsections (b) and (c), the Administrator shall promulgate regulations to ensure that, during 2010 and each year thereafter, the total annual emissions of covered pollutants from all electricity generating facilities located in all States does not exceed—

(1) in the case of sulfur dioxide—

(A) 275,000 tons in the western region; or

(B) 1,975,000 tons in the nonwestern region;

(2) in the case of nitrogen oxides, 1,510,000 tons;

(3) in the case of carbon dioxide, 2,050,000,000 tons; or

(4) in the case of mercury, 5 tons.

(b) Excess Emissions Based on Unused Allowances.—The regulations promulgated under subsection (a) shall authorize emissions of covered pollutants in excess of the national emission limits established under that subsection for a year to the extent that the number of tons of the excess emissions is less than or equal to the number of emission allowances that are—

(1) used in the year; but

(2) allocated for any previous year under section 707.

(c) Reductions.—For 2010 and each year thereafter, the quantity of emissions specified for each covered pollutant in subsection (a) shall be reduced by the sum of—

(1) the number of tons of the covered pollutant that were emitted by small electricity generating facilities in the second preceding year;

(2) any number of tons of reductions in emissions of the covered pollutant required under section 706(b).

Section 705. Emission Allowances.

(a) Creation and Allocation.—

(1) In General.—For 2010 and each year thereafter, subject to paragraph (2), there are created, and the Administrator shall allocate in accordance with section 707, emission allowances as follows:

(A) In the case of sulfur dioxide—

(i) 275,000 emission allowances for each year for use in the western region; and

(ii) 1,975,000 emission allowances for each year for use in the nonwestern region.

(B) In the case of nitrogen oxides, 1,510,000 emission allowances for each year.

(C) In the case of carbon dioxide, 2,050,000,000 emission allowances for each year.

(2) Reductions.—For 2010 and each year thereafter, the number of emission allowances specified for each covered pollutant in paragraph (1) shall be reduced by a number equal to the sum of—

(A) the number of tons of the covered pollutant that were emitted by small electricity generating facilities in the second preceding year; and

(B) any number of tons of reductions in emissions of the covered pollutant required under subsection (b).

(b) Nature of Emission Allowances.—

(1) Not a Property Right.—An emission allowance allocated by the Administrator under subsection (a) is not a property right.

(2) No Limit on Authority to Terminate or Limit.—Nothing in this title or any other provision of law limits the authority of the United States to terminate or limit an emission allowance.

Section 706. Tracking and Transfer of Emission Allowances.

(a) In General.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations to establish an emission allowance tracking and transfer program for the emission allowances of sulfur dioxide, nitrogen oxides, and carbon dioxide.

(b) Requirements.—The emission allowance tracking and transfer system established under paragraph (a) shall—

(i) incorporate the requirements of subsection (b) of section 112 (except that written certification by the transferee shall not be necessary to effect a transfer); and

(ii) permit any entity—

(1) to buy, sell, or hold an emission allowance; and

(2) to permanently retire an unused emission allowance.

(c) Proceeds of Transfers.—Proceeds from the transfer of emission allowances by any person to which the emission allowances have been allocated—

(i) shall not constitute funds of the United States; and

(ii) shall not be available to meet any obligations of the United States.

Section 707. Verification, Monitoring, and Recordkeeping.

(a) In General.—The Administrator shall ensure that Federal regulations, in combination with any applicable State regulations, are adequate to verify, monitor, and document emissions of covered pollutants from electricity generating facilities.

(b) Verification from Small Electricity Generating Facilities.—On or before July 1, 2006, the Administrator, in cooperation with State agencies, shall complete, and on an annual basis update, a comprehensive inventory of emissions of sulfur dioxide, nitrogen oxides, carbon dioxide, and particulate matter from small electricity generating facilities.

(c) Monitoring Information.—

(A) In General.—Not later than 180 days after the date of enactment of this title, the Administrator shall promulgate regulations to require each electricity generating facility to submit to the Administrator—

(i) not later than April 1 of each year, verifiable information on covered pollutants emitted by the electricity generating facility in the previous year, expressed in—

(I) tons of covered pollutants;

(II) tons of covered pollutants per megawatt hour of energy (or the equivalent thermal energy) generated; and

(III) as part of the first submission under clause (i), verifiable information on covered pollutants emitted by the electricity generating facility in 2002, 2003, and 2004, if the electricity generating facility was required to report that information in those years.

(B) Source of Information.—Information submitted under subparagraph (A) shall be obtained using a continuous emission monitoring system (as defined in section 102).

(C) Availability to the Public.—The information described in subparagraph (A) shall be made available to the public—

(i) in the case of the first year in which the information is required to be submitted under this paragraph, not later than 18 months after the date of enactment of this title; and

(ii) in the case of each year thereafter, not later than April 1 of the year.

(d) Ambient Air Quality Monitoring for Sulfur Dioxide and Hazardous Air Pollutants.—

(A) In General.—Beginning January 1, 2006, each coal-fired electricity generating facility with an aggregate generating capacity of 50 megawatts or more shall, in accordance with guidelines issued by the Administrator, commence ambient air quality monitoring within a 3-mile radius of the coal-fired electricity generating facility for the purpose of measuring maximum concentrations of sulfur dioxide and hazardous air pollutants emitted by the coal-fired electricity generating facility.

(b) Location of Monitoring Points.—Monitoring under subparagraph (A) shall include monitoring at not fewer than 2 points—

(1) that are at ground level and within 3 miles of the coal-fired electricity generating facility;
(ii) at the concentration of pollutants being monitored is expected to be the greatest; and
(iii) at which the monitoring shall be the most frequent.

(C) FREQUENCY OF MONITORING OF SULFUR DIOXIDE.—Monitoring of sulfur dioxide under subparagraph (A) shall be carried out on a continuous basis and averaged over 5-minute periods.

(D) AVAILABILITY TO THE PUBLIC.—The results of the monitoring under subparagraph (A) shall be available to the public.

(f) EXCESS EMISSION PENALTY.—
(1) IN GENERAL.—Subject to paragraph (2), section 408(a) shall apply in all States (as determined by the Administrator) to an owner or operator of an electricity generating facility; and
(2) CALCULATION OF PENALTY.—
(A) IN GENERAL.—Except as provided in subparagraph (B), the penalty for failure to submit emission allowances for covered pollutants as required under subsection (d) shall be equal to 3 times the product obtained by multiplying—
(i) as applicable—
(ii) the number of tons emitted in excess of the emission limitation requirement applicable to the electricity generating facility; and
(iii) the number of emission allowances that the owner or operator failed to submit; and
(ii) the average annual market price of emission allowances (as determined by the Administrator).

(B) MERCURY.—In the case of mercury, the penalty shall be equal to 3 times the product obtained by multiplying—
(i) the number of grams emitted in excess of the emission limitation requirement for mercury applicable to the electricity generating facility; and
(ii) the average cost of mercury controls at electricity generating units that have a nameplate capacity of 15 megawatts or more in all States (as determined by the Administrator).

(g) SIGNIFICANT ADVERSE LOCAL IMPACTS.—
(1) IN GENERAL.—If the Administrator determines that emissions of an electricity generating facility may reasonably be anticipated to cause or contribute to a significant adverse local impact, including endangerment of public health, contribution to acid deposition in a sensitive receptor area, and other degradation of the environment, the Administrator shall limit the emissions of the electricity generating facility as necessary to avoid that impact.

(2) VIOLATION.—Notwithstanding the availability of emission allowances, it shall be a violation of this Act for any electricity generating facility to exceed any limitation on emissions established under paragraph (1).

(h) ADDITIONAL REDUCTIONS.—
(1) PROTECTION OF PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT.—If the Administrator determines that the emission levels necessary to achieve the national emission limitations established under section 704 are not reasonably anticipated to protect public health or welfare or the environment (including protection of children, pregnant women, minority or low-income communities, and other sensitive populations), the Administrator shall require reductions in emissions from electricity generating facilities in addition to the reductions required under the other provisions of this title.

(2) EXCEPTION FOR CERTAIN CARBON DIOXIDE EMISSIONS.—The prohibition described in paragraph (1) shall not apply in the case of carbon dioxide emission allowances generated from an emission control program that limits total carbon dioxide emissions from the entirety of any industrial sector.

(i) REQUIRED ASSESSMENT.—The study shall include an assessment of ambient air quality in areas surrounding electricity generating facilities that participate in emission allowance trading, including a comparison—
(1) of the ambient air quality in those areas; and
(2) of the national average ambient air quality.

(j) LIMITATION ON EMISSIONS.—If the Administrator determines, based on the results of a study conducted under paragraph (a)(3), that adverse local impacts result from emission allowance trading, the Administrator may require reductions in electricity generating facilities in addition to the reductions required under the other provisions of this title.

(k) USE OF CERTAIN OTHER EMISSION ALLOWANCES.—
(1) IN GENERAL.—Subject to paragraph (2), emission allowances or other emission trading instruments created under title I or IV for sulfur dioxide or nitrogen oxides shall not be valid for submission under subsection (d).

(2) EMISSION ALLOWANCES PLACED IN RESERVE.—
(A) IN GENERAL.—Except as provided in subparagraph (B), an emission allowance created by subsection (a)(3) shall be made available to the public.

(B) REQUIREMENT FOR DISPOSAL OF EMISSION ALLOWANCES.—
Subject to paragraph (2), an emission allowance created by subsection (a)(3) shall be considered to be equivalent to 1⁄4 of an emission allowance created by subsection (a) for sulfur dioxide or nitrogen oxides, respectively.

(B) EMISSION ALLOWANCES RESULTING FROM ACHIEVEMENT OF NEW SOURCE PERFORMANCE STANDARDS.—If an emission allowance described in subparagraph (A) was placed in reserve under section 409(a)(2) or 405 or through regulations implementing controls on nitrogen oxides, because an affected unit emitted lower levels of nitrogen oxides than were permitted under an emission limitation imposed under title I or IV before the date of enactment of this title, such an allowance shall be equivalent to 1⁄4 of an emission allowance created by subsection (a) for sulfur dioxide or nitrogen oxides, respectively.

(c) METHODOLOGY.—The program established under subsection (a) shall clearly identify the methodology for the allocation of emission allowances, including standards for measuring annual electricity generation and energy efficiency as the standards relate to emissions.

SEC. 707. EMISSION ALLOWANCE ALLOCATION.

(a) ALLOCATION TO ELECTRICITY CONSUMERS.—
(1) IN GENERAL.—For 2010 and each year thereafter, after making allocations of emission allowances under subsections (b) through (d), the Administrator shall allocate the remaining emission allowances created by section 706(a) for the year for each covered pollutant other than mercury to households served by electricity.

(2) ALLOCATION AMONG HOUSEHOLDS.—The allocation to each household shall reflect—
(A) the number of persons residing in the household; and
(B) the ratio that—
(i) the quantity of the residential electricity consumption of the State in which the household is located; bears to
(ii) the quantity of the residential electricity consumption of all States.

(b) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations making appropriate arrangements for the allocation of emission allowances to households under this subsection, including as necessary the appointment of 1 or more trustees—
(A) to receive the emission allowances for the benefit of the households;
(B) to obtain fair market value for the emission allowances; and
(C) to distribute the proceeds to the beneficiaries.

(b) ALLOCATION FOR TRANSITION ASSISTANCE.—
(1) IN GENERAL.—For 2010 and each year thereafter through 2019, the Administrator shall allocate the percentage specified in paragraph (2) of the emission allowances created by section 706(a) for the year for each covered pollutant other than mercury in the following manner:

(A) 80 percent shall be allocated to provide transition assistance to dislocated workers (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)) whose employment has been terminated or who have been laid off as a result of the emission reductions required by this title; and
(B) 20 percent shall be allocated to providers of electricity intensive products in a number equal to the product obtained by multiplying—
(i) the ratio that—
(ii) the quantity of each electricity intensive product produced by each producer in the previous year; bears to
(iii) the quantity of the electricity intensive product produced by all producers in the previous year;
(iv) the average quantity of electricity used in producing the electricity intensive product by producers that use the most energy efficient process for producing the electricity intensive product; and
(v) with respect to the previous year, the national average quantity (expressed in megawatt hour of electricity generated by electricity generating facilities in all States. The re-

(c) METHODS OF ALLOCATION.—The percentage referred to in paragraph (1) are—
(A) in the case of 2010, 6 percent;
(B) in the case of 2011, 5.5 percent;
(C) in the case of 2012, 5 percent;
(D) in the case of 2013, 4.5 percent;
(E) in the case of 2014, 4 percent;
(F) in the case of 2015, 3.5 percent;
(G) in the case of 2016, 3 percent;
(H) in the case of 2017, 2.5 percent;
(I) in the case of 2018, 2 percent; and
(J) in the case of 2019, 1.5 percent.

(3) REGULATIONS FOR ALLOCATION FOR TRANSITION ASSISTANCE TO DISLOCATED WORKERS AND COMMUNITIES.

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations making appropriate adjustments for the distribution of emission allowances under paragraph (1)(A), including as necessary the appointment of 1 or more trustees—

(i) to review the emission allowances allocated under paragraph (1)(A) for the benefit of the dislocated workers and communities;

(ii) to obtain fair market value for the emission allowances; and

(iii) to apply the proceeds to providing transition assistance to the dislocated workers and communities.

(B) FORM OF TRANSITION ASSISTANCE.—Transition assistance under paragraph (1)(A) may take the form of—

(i) grants to employers, employer associations, and representatives of employees—

(I) to provide training, adjustment assistance, and employment services to dislocated workers as determined by the State;

(ii) to make income-maintenance and needs-related payments to dislocated workers;

and

(ii) grants to States and local governments to assist communities in attracting new employers or providing essential local government services.

(C) ALLOCATION TO RENEWABLE ELECTRICITY GENERATING UNITS, EFFICIENCY PROJECTS, AND CLEANER ENERGY SOURCES.

For 2010 and each year thereafter, the Administrator shall allocate not more than 20 percent of the national average quantity (expressed in tons) of emissions of each such pollutant per megawatt hour of electricity generated by electricity generating facilities in all States; and

(d) TRANSITION ASSISTANCE TO ELECTRICITY GENERATING FACILITIES.

(1) IN GENERAL.—For 2010 and each year thereafter, the Administrator shall allocate the percentage specified in paragraph (2) of the emission allowances created by section 705(a) for the year for each covered pollutant other than mercury to the owners or operators of electricity generating facilities in the ratio that—

(A) the number of electricity generating units by each electricity generating facility in 2008, bears to

(B) the quantity of electricity generated by all electricity generating facilities in 2008.

(2) SPECIFIED PERCENTAGES.—The percentages referred to in paragraph (1) are—

(A) in the case of 2010, 10 percent;

(B) in the case of 2011, 9 percent;

(C) in the case of 2012, 8 percent;

(D) in the case of 2013, 7 percent;

(E) in the case of 2014, 6 percent;

(F) in the case of 2015, 5 percent;

(G) in the case of 2016, 4 percent;

(H) in the case of 2017, 3 percent;

(i) in the case of 2018, 2 percent; and

(j) in the case of 2019, 1 percent.

(e) ALLOCATION TO ENCOURAGE BIOLOGICAL CARBON SEQUESTRATION.

(1) IN GENERAL.—For 2010 and each year thereafter, the Administrator shall allocate, on a competitive basis and in accordance with paragraphs (2) and (3), not more than 0.075 percent of the carbon dioxide emission allowances created by section 705(a) for the year for the purposes of—

(A) carrying out projects to reduce net carbon dioxide emissions through biological carbon dioxide sequestration in the United States that—

(i) result in benefits to watersheds and fish and wildlife habitats; and

(ii) are in accordance with project reporting, monitoring, and verification guidelines based on—

(I) measurement of increases in carbon storage in excess of the carbon storage that would have occurred in the absence of such a project;

(II) comprehensive carbon accounting that—

(aa) reflects net increases in carbon reservoirs;

(bb) takes into account any carbon emissions resulting from development of carbon reservoirs in existence as of the date of commencement of the project;

(III) adjustments to account for

(aa) emissions that may result at other locations as a result of the impact of the project on timber supplies; or

(bb) potential displacement of carbon emissions to other land owned by the entity that carries out the project; and

(iv) adjustments to reflect the expected carbon storage over carbon cycle periods, taking into account the likely duration of the storage of the carbon stored in a carbon reservoir; and

(b) conducting accurate inventories of carbon sinks.

(2) CARBON INVENTORY.—The Administrator, in consultation with the Secretary of Agriculture, shall promulgate regulations making appropriate adjustments for the distribution of emission allowances described in paragraph (1) to not more than 5 State or multi-State land management agencies or nonprofit entities that—

(A) have a primary goal of land conserva tion; and

(B) submit to the Administrator proposals for projects—

(i) to demonstrate and assess the potential for the development and use of carbon inventories and accounting systems;

(ii) to improve the standards relating to, and the identification of, incremental carbon sequestration in forests, agricultural soil, grassland, or rangeland; and

(iii) to assist in development of a national biological carbon storage baseline or inventory.

(3) REVOLVING LOAN PROGRAM.—The Administrator shall allocate not more than ½ of the emission allowances described in paragraph (1) to States, based on proposals submitted to the Administrator, in consultation with the Secretary of Agriculture, in accordance with the purposes specified in paragraph (2)(B) and

(B) for 2011 and each year thereafter, contribute to the program of the State an amount equal to 25 percent of the value of the emission allowances received under this paragraph for the year in cash, in-kind services, or technical assistance.

(4) USE OF EMISSION ALLOWANCES.—An entity that receives an allocation of emission allowances under this subsection may use the proceeds from the sale or other transfer of the emission allowances for the purpose of carrying out activities described in this subsection.

(5) RECOMMENDATIONS CONCERNING CARBON DIOXIDE EMISSION ALLOWANCES.

(A) IN GENERAL.—Not later than 4 years after the date of enactment of this title, the Administrator, in consultation with the Secretary of Agriculture, shall submit to Congress recommendations for establishing a system under which entities that receive grants or loans under this section may be allowed to sell carbon dioxide emission allowances created by section 705(a) for incremental carbon sequestration in forests, agricultural soil, grassland, or rangeland.

(B) GUIDELINES.—The recommendations shall include recommendations for development, reporting, monitoring, and verification guidelines for quantifying net carbon sequestration from land use projects that address the elements specified in paragraph (1)(A).

(D) ALLOCATION TO ENCOURAGE GEOLOGICAL CARBON SEQUESTRATION.

(1) IN GENERAL.—For 2010 and each year thereafter, the Administrator shall allocate not more than 3 percent of the carbon dioxide emission allowances created by section 705(a) to entities that carry out geological sequestration of carbon dioxide produced by electricity generating facilities in accordance with requirements established by the Administrator.
"(A) to ensure the permanence of the sequestration; and

"(B) to ensure that the sequestration will not cause or contribute to significant adverse changes in the environment.

"(2) NUMBER OF EMISSION ALLOWANCES.—For 2010 and each year thereafter, the Administrator shall allocate to each entity described in subparagraph (A)(i) a number of emission allowances that is equal to the number of tons of carbon dioxide produced by the electric generating facility during the previous calendar year, as determined geologically as described in paragraph (1).

"(3) USE OF EMISSION ALLOWANCES.—An entity that allocates emission allowances under this subsection may use the proceeds from the sale or other transfer of the emission allowances only for the purpose of carrying out activities described in this subsection.

"SEC. 708. MERCURY EMISSION LIMITATIONS.

"(a) IN GENERAL.—

"(1) REGULATIONS.—The Administrator shall promulgate regulations to establish limitations on mercury emissions by coal-fired electricity generating facilities.

"(B) NO EXCEEDANCE OF NATIONAL LIMITATION.—The rules established under this section shall ensure that the national limitation for mercury emissions from each coal-fired electricity generating facility established under section 704(a)(4) is not exceeded.

"(C) LIMITATION ON MERCURY EMISSIONS FROM SOURCES OR PROCESSES THAT RESULT IN THE RE-RELEASE OF MERCURY INTO THE ENVIRONMENT.—

"(1) NOT LATER THAN JANUARY 1, 2006, the Administrator shall promulgate regulations to ensure that any mercury captured or recovered by emission controls installed at an electric generating facility is not re-released into the environment.

"(2) REQUIRED ELEMENTS.—The regulations shall require—

"(A) daily covers on all active waste disposal units, and permanent covers on all inactive waste disposal units, to prevent the release of mercury into the environment;

"(B) monitoring of groundwater to ensure that mercury or mercury compounds do not migrate from the waste disposal unit;

"(C) waste disposal siting requirements and cleanup evaluation of the potential ground- and surface water resources;

"(D) elimination of agricultural application of coal combustion products;

"(E) appropriate limitations on mercury emissions from sources or processes that reprocess or use coal combustion waste, including manufacturers of wallboard and cement.

"SEC. 709. OTHER HAZARDOUS AIR POLLUTANTS.

"(a) IN GENERAL.—Not later than January 1, 2006, the Administrator shall issue to owners and operators of coal-fired electricity generating facilities requirements to control hazardous air pollutants other than mercury.

"(b) DEADLINE FOR SUBMISSION OF REQUESTED INFORMATION.—Not later than July 1, 2006, the Administrator shall promulgate regulations to require the owner or operator of any electric generating facility—

"(1) to establish emission limitations reflecting the expected mercury emissions from facilities described in subparagraph (A)(i) exceed the national limitation for mercury emissions for each existing facility established under section 704(a)(4),

"(2) to submit the requested data not later than 180 days after the date of the request.

"(c) PROMULGATION STANDARDS.—The Administrator shall—

"(1) not later than January 1, 2006, propose emission standards under section 112(d) for hazardous air pollutants other than mercury;

"(2) not later than January 1, 2007, promulgate emission standards under section 112(d) for hazardous air pollutants other than mercury;

"(3) PROHIBITION ON EXCESS EMISSIONS.—It shall be unlawful for an electricity generating facility operated in 1999 under common ownership or control, emission limitations for each electricity generating facility subject to an annual quantity of emissions that is less than or equal to 40 percent of the annual emissions by a similar electricity generating facility that has no controls for emissions of mercury; and

"(4) EFFECT ON OTHER LAW.—Nothing in this section affects any requirement of subparagraph (e).

"SEC. 710. MODERNIZATION OF ELECTRICITY GENERATING FACILITIES.

"(a) IN GENERAL.—Beginning on the later of January 1, 2014, or the date that is 40 years after the date that any electricity generating facility commences operation, each electricity generating facility shall be subject to emission limitations reflecting the expected mercury emissions from sources or processes that reprocess or use coal combustion waste, including manufacturers of wallboard and cement.

"(b) ADDITIONAL REQUIREMENTS.—The requirements of this section shall be in addition to the other requirements of this title.

"SEC. 711. RELATIONSHIP TO OTHER LAW.

"(a) IN GENERAL.—Except as expressly provided in this title, nothing in this title—

"(1) limits or otherwise affects the application of any other provision of this Act; or

"(2) precludes a State from adopting and enforcing any requirement for the control of emissions of air pollutants that is more stringent than the requirements imposed under this title.

"(b) REGIONAL SEASONAL EMISSION CON- TROLS.—Nothing in this title affects any regional seasonal emission control for nitrogen oxides established by the Administrator or a State under title I.

"SEC. 714. AMENDMENT.—Section 412(a) of the Clean Air Act (42 U.S.C. 7412(a)) is amended in the first sentence by...
striking "opacity" and inserting "mercury, opacity."

SEC. 3. SAVINGS CLAUSE.
Section 193 of the Clean Air Act (42 U.S.C. 7515) as amended by striking "date of enactment of the Clean Air Act Amendments of 1990" each place it appears and inserting "date of enactment of the Clean Power Act of 2005."

SEC. 4. ACID PRECIPITATION RESEARCH PROGRAM.
Section 103(j) of the Clean Air Act (42 U.S.C. 7403(j)) is amended—
(1) by striking the comma after (F); and
(2) by inserting the following:

"(G) an assessment of emission reductions under titles IV and VII of the Clean Air Act (42 U.S.C. 7601 et seq.) is included under this paragraph."

SEC. 5. AUTHORIZATION OF APPROPRIATIONS FOR DEPOSITION MONITORING.
(a) OPERATIONS AND SUBSIDY. In addition to amounts made available under any other law, there are authorized to be appropriated for each of fiscal years 2006 through 2015—
(i) for operating the National Atmospheric Deposition Program National Trends Network—
(A) $2,000,000 to the United States Geological Survey;
(B) $600,000 to the Environmental Protection Agency;
(C) $600,000 to the National Park Service; and
(D) $300,000 to the Forest Service;
(2) for operational support of the National Atmospheric Deposition Program Mercury Deposition Network—
(A) $400,000 to the Environmental Protection Agency;
(B) $400,000 to the United States Geological Survey;
(C) $100,000 to the National Oceanic and Atmospheric Administration; and
(D) $100,000 to the National Park Service;
"(A) $2,000,000 to the United States Geological Survey;
(B) $600,000 to the Environmental Protection Agency;
(C) $600,000 to the National Park Service; and
(D) $300,000 to the Forest Service;
(2) for operational support of the National Atmospheric Deposition Program Mercury Deposition Network—
(A) $400,000 to the Environmental Protection Agency;
(B) $400,000 to the United States Geological Survey;
(C) $100,000 to the National Oceanic and Atmospheric Administration; and
(D) $100,000 to the National Park Service;
"(B) by adding at the end the following:

"(G) SENSITIVE Ecosystems.—
"(i) In General.—Beginning in 2006, and every 4 years thereafter, the report under subparagraph (E) shall include—
"(I) an identification of environmental objectives necessary to be achieved (and related indicators used in measuring achievement of the objectives) to adequately protect and restore sensitive ecosystems; and
"(II) an assessment of the status and trends of the environmental objectives and indicators identified in previous reports under this paragraph.

"(ii) Sensitive ecosystems to be addressed.—Sensitive ecosystems to be addressed under clause (i) include—
"(I) acid-neutralizing capacity; and
"(II) changes in the number of water bodies in the sensitive ecosystems referred to in subparagraph (G)(ii) with an acid-neutralizing capacity greater than zero; and
"(B) by adding at the end the following:

"(G) SENSITIVE Ecosystems.—
"(i) In General.—Beginning in 2006, and every 4 years thereafter, the report under subparagraph (E) shall include—
"(I) an identification of environmental objectives necessary to be achieved (and related indicators used in measuring achievement of the objectives) to adequately protect and restore sensitive ecosystems; and
"(II) an assessment of the status and trends of the environmental objectives and indicators identified in previous reports under this paragraph.

"(ii) Sensitive ecosystems to be addressed.—Sensitive ecosystems to be addressed under clause (i) include—
"(I) the Adirondack Mountains, mid-Appalachian Mountains, Rocky Mountains, and southern Blue Ridge Mountains;
"(II) the Great Lakes, Lake Champlain, Long Island Sound, and the Chesapeake Bay; and
"(III) other sensitive ecosystems, as determined by the Administrator.

"(H) ACID DEPOSITION STANDARDS.—Beginning in 2006, and every 4 years thereafter, the report under subparagraph (E) shall include a revision of the report under section 404 of Public Law 97-118 (42 U.S.C. 7651 et seq.) that includes a reassessment of the health and welfare of the lakes and streams that were subjects of the original report under that section; and
(2) by adding at the end the following:

"(4) PROTECTION OF SENSITIVE ECOSYSTEMS.—
"(A) Determination.—Not later than December 31, 2012, the Administrator, taking into consideration the findings and recommendations of the report revisions under paragraph (2) and data provided by the States, shall determine whether emission reductions under titles IV and VII are sufficient to—
"(i) achieve the necessary reductions identified in paragraph (3)(P); and
"(ii) ensure achievement of the environmental objectives identified under paragraph (3)(G);

"(B) REGULATIONS.—
"(i) In general.—Not later than 2 years after the Administrator makes a determination under subparagraph (A) that emission reductions under title IV are not sufficient, the Administrator shall promulgate regulations to protect the sensitive ecosystems referred to in paragraph (3)(G)(ii).

"(ii) Provisions.—Regulations under clause (i) shall include modifications to—
"(I) provisions relating to nitrogen oxide and sulfur dioxide emission reductions;
"(II) provisions relating to allocations of nitrogen oxide and sulfur dioxide allowances; and

"(III) such other provisions as the Administrator determines to be necessary."

SEC. 6. TECHNICAL AMENDMENTS.
Title IV of the Clean Air Act (relating to noise pollution) (42 U.S.C. 7401 et seq.)—
(1) is amended by redesignating sections 401 through 403 as sections 401 through 403, respectively; and
(2) is redesignated as title VIII and moved to appear at the end of that Act.

Ms. COLLINS. Mr. President, I rise today to join Senator JEFFORDS and Senator McCaIN in introducing the Clean Power Act of 2005. This bill closes the loophole that has allowed the dirtiest, most polluting power plants in the Nation to escape significant pollution controls for more than 30 years. Maine is one of the most beautiful and pristine States in the Nation. It is also one of the most environmentally responsible States in the Nation. Maine has fewer emissions of the pollutants that cause smog and acid rain than all but a handful of States. It also has one of the lowest emissions of carbon dioxide nationwide.

Unfortunately, despite the collective environmental commitment of both its citizens and industries, Maine still suffers from air pollution. Every freshwater lake, river, and stream in Maine is subject to a State mercury advisory that warns pregnant women and young children to limit consumption of fish caught in those waters. Even Acadia National Park, one of our most beautiful national parks, experiences days in which viability is obscured by smog. Where does all this pollution come from? A large part of it comes from a relatively small number of mostly coal-fired powerplants that exploit loopholes to escape the provisions of the Clean Air Act. Coal-fired powerplants are the single largest source of carbon dioxide, mercury, carbon monoxide, and greenhouse gas emissions in the Nation. A single coal-fired powerplant can emit more of the pollutants that cause smog and acid rain than all of the cars, factories, and businesses in Maine combined. As the easternmost State in the Nation, Maine is downwind of almost all powerplants in the United States. Many of the pollutants emitted by these powerplants—mercury, sulfur dioxide, nitrogen oxides, and carbon dioxide—end up in or over Maine. Airborne mercury falls into our lakes and streams, contaminating freshwater fish and threatening our people’s health. Carbon dioxide is causing climate change that threatens to alter Maine’s delicate ecological balance. Sulfur dioxide and nitrogen oxides come to Maine in the form of acid rain and smog that damage the health of our people and the health of our environment.

A single powerplant can emit nearly one ton of mercury in a single year. That’s equivalent to incinerating over one million Mercury thermometers and is enough to contaminate millions of acres of freshwater lakes. In contrast, Maine has zero powerplant emissions of mercury. This bill would reduce mercury emissions from powerplants by 90 percent.

Powerplants are also one of the largest contributors of greenhouse gas emissions in the United States. In fact, powerplants account for 40 percent of our carbon dioxide emissions, which scientists believe are the primary cause of man-made global warming.

I recently had the opportunity to view firsthand some of the dramatic impacts of global warming. In August, I traveled with Senator McCaIN and several other Senators to the northernmost community in the world. We visited Ny-Alesund on the Norwegian island of Spitsbergen at 78°N. Ny-Alesund lies well north of the Arctic Circle and is much closer to the North Pole than to Oslo, the country’s...
capital. It has even served as a starting point for several polar expeditions.

Scientists tell us that the global climate is changing more rapidly than at any time since the beginning of civilization. They further state that the region where the changing most rapidly is the Arctic. The changes are remarkable and disturbing.

In the last 30 years, the Arctic has lost sea-ice cover over an area 10 times as large as the State of Maine. In the summer, the change is even more dramatic, with the ice retreats as much as 40% thinner than it was just a few decades ago. In addition to disappearing sea-ice, Arctic glaciers are also rapidly retreating. In Ny-Alesund, Senator McCaIN and I witnessed massive blocks of ice falling off glaciers that had already retreated well back from the shores where they once rested.

The Clean Power Act takes an important step in addressing global warming by reducing powerplant emissions of carbon dioxide to 2000 levels by the year 2010. Although doing so will not solve the problem of global warming, it is an important first step. In light of the rapid warming in the Arctic and the significance that this warming portends for the rest of the planet, reducing carbon dioxide emissions is a step that we can no longer afford to put off.

I am pleased that the Senate Environmental and Public Works Committee will be considering clean air legislation in the 109th Congress. The Jeffords-Colins-Lieberman bill does more to reduce smog, acid rain, mercury pollution, and global warming than any other bill. Our bill provides more public health and environmental benefits than any other serious proposal, and it provides those benefits sooner.

I believe it is time to stop acid rain, free our lakes from mercury pollution, and reduce global warming, and eliminate the threats in to our forests and may be affecting Atlantic salmon streams; mercury that contaminates our lakes, rivers and streams; and poses health risks to children and the unborn, and climate variabilities from manmade carbon dioxide emissions that cause severe shifts in our weather patterns. Maine is leading the way, giving it the Northeast because whatever spews from power plants exempt from emissions reductions reduction in the Jeffords’ bill in the hopes that the bill will be a rallying point to further the debate for reducing dirty air. I am optimistic that the Congress can come together with the President, industry and all those who want cleaner, healthier air to create a cohesive

While I recognize that the pollutants listed under the Clean Air Act were chosen in order to achieve healthier air for humans by cutting back on smog and soot, and also for mercury contamination, I believe it is long past due that carbon dioxide be recognized as a pollutant that is harmful to both the health of the planet, and indirectly, all of us.

I am supporting the goal of CO2 emissions reduction in the Jeffords’ bill in the hopes that the bill will be a rallying point to further the debate for reducing dirty air. I, as I have in the last three Congresses—because I remain dedicated to reducing power plant emissions that cause some of the Nation’s— and Maine’s most serious public health and environmental problems. For too many years, coal-burning power plants exempt from emissions standards under the Clean Air Act have created massive pollution problems for the Northeast because whatever spews out of their chimneys into the Midwest, blows into the Northeast, including my State of Maine, giving it the dubious distinction of being at the “end of the tailpipe”, so to speak.

The Jeffords legislation calls for reductions in power plant emissions for pollutants that cause smog, soot, respiratory disease; acid rain that kills our forests and may be affecting Atlantic salmon streams; mercury that contaminates our lakes, rivers and streams; and poses health risks to children and the unborn, and climate variabilities from manmade carbon dioxide emissions that cause severe shifts in our weather patterns. The changes are remarkable and disturbing.

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S. 153. A bill to direct the Secretary of the Interior to conduct a resource study of the Rim of the Valley Corridor in the State of California to evaluate alternatives for protecting the resources of the Corridor, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I am pleased to introduce this bill today along with Senator BOXER: to direct the Interior Secretary to conduct a study to evaluate the suitability and feasibility of expanding the Santa Monica National Recreation Area to include the Rim of the Valley Corridor.

The Rim of the Valley Corridor encircles the San Fernando Valley, La Crescenta, Simi, Conejo, and Santa Clarita Valleys, consisting of parts of the Santa Monica Mountains, Santa Susanna Mountains, San Gabriel Mountains, Verdugo Mountains, San Rafael Hills and connects to the adjacent Los Padres and San Bernardino National Forests.

This parcel of land is unique because of its rare Mediterranean ecosystem and wildlife corridor that stretches north from the Monicas. With the population growth forecasted to multiply exponentially over the next several decades, the need for parks to balance out the expected population growth has become critical in California.

Since the creation of the Santa Monica Recreation Area in 1978, Federal, State, and local authorities have worked successfully together to create and maintain the highly successful Santa Monica Mountains National Recreation Area, the world's largest urban park, hemmed in on all sides by development.

Park and recreational lands provide people with a vital refuge from urban life while preserving valuable habitat and wildlife. With the passage of this legislation, Congress will hold true to its original commitment to preserve the scenic, natural, and historic setting of the Santa Monica Mountains Recreation Area.

With the inclusion of the Rim of the Valley Corridor in the Santa Monica Mountains Recreation Area, greater ecological health and diversity will be promoted, particularly for larger animals like mountain lions, bobcats, and the golden eagle. By creating a single contiguous Rim of the Valley Trail, people will enjoy greater access to existing trails in the Recreational Area.

As the study called for in this bill is complete, the Secretary of the Interior and Congress will be in a key position to determine whether all or portions of the Rim of the Valley Corridor warrant national park status.

This bill enjoys strong support from local and State officials and I hope that it will have as much strong bipartisan support this Congress, as it did last Congress. Congressman ADAM SCHIFF plans to introduce companion legislation for this bill in the House and I applaud his commitment to this issue.

I urge my colleagues to support this legislation and I ask unanimous consent that the text of this proposed legislation be printed in the RECORD.

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

S. 153

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 “Rim of the Valley Corridor Study Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) CORRIDOR.—The term “Corridor” means the land, water, and interests of the area in the State known as the “Rim of the Valley Corridor”.

(2) RECREATION AREA.—The term “Recreation Area” means the Santa Monica Mountains National Recreation Area in the State.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) STATE.—The term “State” means the State of California.
(1) seek to achieve the objectives of—
   (A) protecting wildlife populations in the Recreation Area by preserving habitat linkages and wildlife movement corridors between units of habitat in adjoining regional open space;
   (B) establishing connections along the State-designated Rim of the Valley Trail System to the area that would be impacted by the Recreation Area;
   (i) creating a single contiguous Rim of the Valley Trail; and
   (ii) encompassing major feeder trails connecting units and regional transit to the Rim of the Valley Trail System;
   (C) preserving recreational opportunities;
   (D) creating open space for a variety of recreational users;
   (E) protecting—
      (i) rare, threatened, or endangered plant and animal species; and
      (ii) rare or unusual plant communities and habitats;
   (F) protecting historically significant landscapes, districts, sites, and structures; and
   (G) respecting the needs of communities in, or in the vicinity of, the Corridor;
   (2) analyze the potential impact of each alternative on staffing and other potential costs to Federal, State, and local agencies and other organizations; and
   (3) evaluate the potential impact that designating all or a portion of the Corridor as a unit of the Recreation Area would have on land in or bordering the area that is privately owned as of the date on which the study is conducted.

(c) CONSULTATION.—In conducting the study, the Secretary shall consult with appropriate Federal, State, county, and local government entities.

(d) APPLICABLE LAW.—Section 8(c) of Public Law 103-433 (16 U.S.C. 1a-8(c)) shall apply to the conduct and completion of the study required by subsection (a).

SEC. 4. REPORT.

(a) IN GENERAL.—Not later than 3 years after the date on which funds are first made available for the study, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and to the Committee on Resources of the House of Representatives a report that describes the results of the study conducted under section 3.

(b) INCLUSION.—The report submitted under subsection shall include the concerns of private landowners within the boundaries of the Recreation Area.

By Mrs. FEINSTEIN (for herself, Mr. HATCH, Mr. GRASSLEY, Mr. CORNYN, and Mr. KYL):

S. 155. A bill to increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent street gang crime, to protect law-abiding citizens and property owners from violent criminals, to revise and enhance criminal penalties for violent crimes, to reform and facilitate prosecution of juvenile gang members who commit violent crimes, to expand and improve gang prevention programs, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise today to join my good friend and colleague Senator ORRIN HATCH, to introduce the Gang Prevention and Effective Deterrence Act of 2005."

Gangs are spreading across our country, increasing in violence and power in every State. The growth and spread of these gangs illustrate the simple fact that they are no longer a local problem. They are a national problem, and require a national solution. This bill is designed to contribute to that solution by bringing together Federal, State, and local enforcement, providing them with the right legal tools, and providing authorization for funds to make this partnership effective.

First, let me illustrate the scope of the problem. In 2002, there were approximately 731,500 gang members and 21,500 gangs in the United States. Additionally, the FBI report on national crime statistics found that youth-gang homicides had jumped to more than 1,100 in 2002, up from 682 in 1999. According to a report commissioned by a coalition of big city police chiefs, gang-related killings skyrocketed by 50 percent from 1999 to 2002. In 2002, there were a little more than 16,000 homicides in the United States; 617 of those murders were gang-related. In Southern California alone there have been about 3,100 gang-related killings since 1999. 87 percent of U.S. cities with a population of more than 100,000 have reported gang problems, according to the Department of Justice.

The bottom line is that this is a major problem. This legislation before us today squarely addresses these serious issues. Its main goal is to create a new type of crime, by defining and criminalizing "criminal Street Gangs." This recognizes the basic point of a street gang—it is more powerful, and more dangerous, than its individual members. Defeating gangs means recognizing what is so dangerous about them, and then making that conduct against the law.

This bill does exactly that. It makes illegal participation in a criminal street gang and crimes committed in connection with a criminal street gang" defined to mean a formal or informal group, club, organization or association of 3 or more persons who act together to commit gang crimes. This legislation makes it a crime for a member of a criminal street gang to commit, conspire or attempt to commit two or more predicate gang crimes; or to get another individual to commit a gang crime. The term "gang crime" is defined to include violent, serious State, and Federal felony crimes such as: murder, maiming, manslaughter, kidnapping, arson, robbery, assault with a dangerous weapon, obstruction of justice, carjacking, distribution of a controlled substance, certain firearms offenses, and money laundering. And it criminalizes violent crimes in furtherance or in aid of criminal street gangs.

These two provisions are at the heart of this legislation. Armed with this new law, Federal prosecutors, working in tandem with State and local law enforcement, will be able to take on gangs in much the same way that traditional Mafia families have been systematically destroyed by effective RICO prosecutions. The legislation also recognizes that the core changes, standing alone, are not sufficient.

The Gang Prevention and Effective Deterrence Act is a comprehensive bill to increase gang prosecution and prevention, and to increase coordinated enforcement efforts against violent gangs including the funding of witness protection programs and for intervention and reformation programs for at-risk youth. In support of this effort, the bill increases funding for Federal prosecutors and FBI agents to increase coordinated enforcement efforts against violent gangs.

Witness protection is particularly important—as an example, recent press reports from Boston show that gang members are distributing what is, in essence, a witness intimidation media kit, complete with graphics and CDs important—such as a list of names, addresses, and phone numbers of supposed "snitches" who will be killed—one CD depicts three bodies on its covers. In another incident, a witnesses' grand jury testimony was taped to his home—soon afterward he was killed.

The Act also creates new criminal gang prosecution offenses, enhances existing gang and violent crime penalties to deter and punish illegal street gangs, proposes violent crime reforms needed to effectively prosecute gang members, proposes a limited reform of the juvenile justice system to facilitate Federal prosecution of 16 and 17 year old gang members who commit serious acts of violence—specifically it:

Makes recruiting minors to join criminal street gangs a Federal crime and requires offenders to pay the costs associated with housing and treating any recruit minor who is prosecuted for their gang activity.

Makes murder and other violent crimes committed in connection with drug trafficking Federal crimes.

Creates a new offense of multiple interstate murders, where an individual crosses State lines and intends to cause the death of two or more people.

Allows for prosecution of gang members who cross State lines to obstruct justice, intimidate or retaliate against witnesses, jurors, informants, or victims.

Requires that someone convicted of hiring another person to commit murder be punished with imprisonment, instead of a fine.

Makes sexual assault a predicate act under RICO and increases the maximum sentences for those RICO crimes.

Allows for detention of persons charged with violation of the act who have been previously convicted of prior crimes of violence or serious drug offenses. Current law does not allow a prosecutor to
ask that a person be held without bail even if the person has previously been convicted of a crime of violence or a serious drug offense. This bill would allow prosecutors to make that request of a judge but would allow a criminal defendant the right to argue why he or she should not be held.

Makes it clear that in a death penalty case, the case can be tried where the murder, or related conduct, occurred.

Extends the time within which a violent crime case can be charged and tried. For violent crime cases, the time is extended from 5 years to 10 years after the offense occurred or the continuing offense was completed, and from 5 years to 8 years after the date on which the violation was first discovered.

Permits wiretaps to be used for new gang crimes created by this bill.

Allows for a murdered witness’s statements to be admitted at trial in gang crimes created by this bill.

Funds to support anti-gang efforts in gang activity areas. Supporting the Federal Bureau of Investigation’s Safe Streets Program. Creating and expanding witness protection programs, the hiring of additional State and local prosecutors, funding gang prevention and community prosecution programs and purchasing equipment to increase the accurate identification and prosecution of violent offenders.

The bottom line is that this legislation would provide the tools and the resources to begin that national task of destroying criminal street gangs. It is designed to emphasize and encourage Federal, State and local cooperation. It combines enforcement with prevention. It is a tough, effective and fair approach.

This is not a new bill. I have been working on it for almost ten years. In 1996, I joined Senator Hatch and others to develop the Federal Gang Violence Act, which would have increased criminal penalties for gang members, made recruiting persons into a criminal street gang a crime, and enhanced penalties for transferring a gun to a member of an organized gang. Provisions of that bill were incorporated into the 1999 Juvenile Justice bill, which was approved overwhelmingly (73-25) by the Senate in the 106th Congress. However, the Juvenile Justice bill stalled in conference, and those provisions were never signed into law.

In the years that followed we kept up our efforts, with Republicans and Democrats working together on this critical issue. In the 108th Congress a version of this bill was introduced, and eventually was co-sponsored by Senators Hatch and others. That bill was the subject of much discussion and debate. Some of my colleagues raised some valuable suggestions and criticisms, many of which were incorporated in the bill last year. The result of this compromise was reported favorably by the Judiciary Committee last Fall, but was never considered by the full Senate.

The legislation today is the same as that which was approved by the Judiciary Committee, and I hope this year we will move quickly to pass it into law. That said, I understand that some of my colleagues are still concerned about certain aspects of the bill. My intention is to continue to negotiate in the weeks ahead. I am open to change, and welcome further discussion and analysis.

We all agree that gangs are a terrible and growing problem. We all agree that something needs to be done. I believe that this legislation is desperately needed, and I look forward to working with my colleagues on both sides of the aisle to pass this bill and make it law.

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

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:
Sec. 101. SOLICITATION OR RECRUITMENT OF CRIMINAL STREET GANG ACT.

Subsection A—Criminal Law Reforms and Enhanced Penalties To Deter and Punish Illegitimate Gang Activity

Title III—JUVENILE CRIME REFORM POLICY AND PUNISHMENT OF OFFENDERS

Subtitle A—Criminal Street Gangs

SEC. 301. Treatment of Federal juvenile offenders.


SEC. 303. Release and detention prior to disposition.

SEC. 304. Speedy trial.

SEC. 305. Federal sentencing guidelines.


SEC. 307. Duration of imprisonment.

SEC. 308. Length of sentence.

SEC. 309. Effect on parole.

Title IV—Criminal Street Gangs

SEC. 401. Definition.

SEC. 402. Purpose and findings.

SEC. 403. Juvenile gang crime.

SEC. 404. Jurisdiction.

SEC. 405. Evidence.

SEC. 406. Testimony.

SEC. 407. Sentencing.

Title V—Criminal Street Gangs: Injunctions

SEC. 501. Injunctions: Definition.

SEC. 502. Injunctions: Duration.

SEC. 503. Injunctions: Grounds.

Title VI—Criminal Street Gangs: Monitorship

SEC. 601. Monitorship: Definition.

SEC. 602. Monitorship: Assistance.

SEC. 603. Monitorship: Duration.

SEC. 604. Monitorship: Grounds.

Title VII—Criminal Street Gangs: Abatement

SEC. 701. Abatement: Definition.

SEC. 702. Abatement: Authority.

SEC. 703. Abatement: Grounds.

Title VIII—Criminal Street Gangs: Civil Remedies

SEC. 801. Civil Remedies: Definition.

SEC. 802. Civil Remedies: Jurisdiction.

SEC. 803. Civil Remedies: Grounds.

Title IX—Criminal Street Gangs: Remedies

SEC. 901. Remedies: Definition.

SEC. 902. Remedies: Authority.

SEC. 903. Remedies: Grounds.

Title X—Criminal Street Gangs: Enforcement

SEC. 100. Findings.

SEC. 101. Solicitation or recruitment of criminal street gang.

SEC. 102. Criminal street gang prosecutions.

SEC. 103. Release and detention prior to disposition.

SEC. 104. Notification after arrest.
“(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

“(B) any property used or intended to be used, in any manner or part, to commit, or to facilitate the commission of such violation.

“(2) CRIMINAL PROCEEDINGS.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 831), other than subsection (d) of that section, and in rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

“(3) CIVIL PROCEEDINGS.—Property subject to forfeiture under paragraph (1) may be forfeited pursuant to procedures set forth in chapter 46 of title 18.

“SEC. 104. INTERSTATE AND FOREIGN TRAVEL OR TRANSPORTATION IN AID OF RACKETEERING ENTERPRISES AND CRIMINAL STREET GANGS.

Section 1952 of title 18, United States Code, is amended by adding at the end the following:

“(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 26 of title 18, United States Code, is amended to read as follows:

“§ 321. Criminal street gang prosecution.

“SEC. 105. AMENDMENTS RELATING TO VIOLENT CRIMES IN FURTHERANCE OR IN AID OF CRIMINAL STREET GANGS.

(a) VIOLENT CRIMES AND CRIMINAL STREET GANG RECRUITMENT.—Chapter 26 of title 18, United States Code, as amended by section 101, is amended by adding at the end the following:

“§ 523. Violent crimes in furtherance or in aid of criminal street gang.

“(a) Any person who, for the purpose of gaining entrance to or maintaining or increasing position in, or in furtherance or in aid of, or for the direct or indirect benefit of, or in association with a criminal street gang, or as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value to or from a criminal street gang, murders, kidnappings, sex offenses (which means any offense that involved conduct that would violate chapter 101A if the conduct occurred in the special maritime and territorial jurisdiction), maiming, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, commits any other crime of violence or threatens to commit a crime of violence against any individual, or attempts or conspires to do so, shall be punished

“(1) by being fined not more than $20,000, imprisoned for not more than 30 years, or both; or

“(2) by being fined not more than $50,000, imprisoned for not more than 10 years, or both.

“(b) whoever

“SEC. 106. INCREASED PENALTIES FOR USE OF INTERSTATE COMMERCIAL FACILITIES IN THE COMMISSION OF MURDER-FOR-HIRE AND OTHER FELONY CRIMES OF VIOLENCE.

Section 1956 of title 18, United States Code, is amended—

“(1) by striking the heading and inserting the following:

“1956. Use of interstate commerce facilities in the Commission of murder-for-hire and other felony crimes of violence”; and

“(2) by amending subsection (a) to read as follows:

“(a) Any person who travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility in interstate or foreign commerce, with the intent that a murder or other felony crime of violence be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, or who conspires to do so—

“(1) may be fined under this title and shall be imprisoned not more than 30 years; and

“(2) if personal injury results, may be fined not more than $250,000, and shall be punished by death or imprisoned for any term of years or for life, or both.”

“SEC. 107. INCREASED PENALTIES FOR VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

Section 1959(a) of title 18, United States Code, is amended to read as follows:

“(a) Any person who, as consideration for the receipt of, or as consideration for a
promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of obtaining entrance to or maintaining or increasing the enterprise's influence in a racketeering activity, or in furtherance or as part of an enterprise engaged in racketeering activity, murders, kidnaps, sexually assaults (which means any offense that involved conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction), maims, assaults with a weapon or assault resulting in serious bodily injury upon, threatens to commit a crime of violence against any individual in violation of the laws of the United States, attempts or conspires to do so, shall be punished, in addition and consecutive to the punishment provided for any other violation of this chapter.

"(1) for murder, by death or imprisonment for any term of years or for life, a fine under this title, or both;

"(2) for kidnapping or sexual assault, by imprisonment for any term of years or for life, a fine under this title, or both;

"(3) for maiming, by imprisonment for any term of years or for life, a fine under this title, or both;

"(4) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 20 years, a fine under this title, or both;

"(5) for threatening to commit a crime of violence, by imprisonment for not more than 10 years, a fine under this title, or both;

"(6) for attempting or conspiring to commit murder, kidnapping, maiming, or sexual assault, by imprisonment for not more than 30 years, a fine under this title, or both;

"(7) for attempting or conspiring to commit assault with a dangerous weapon or assault which would result in serious bodily injury, by imprisonment for not more than 20 years, a fine under this title, or both;"

SEC. 108. MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME.

(a) IN GENERAL.—Part D of the Controlled Substances Act (21 U.S.C. 881 et seq.) is amended by adding at the end the following:

"MURDER AND OTHER VIOLENT CRIMES COMMITTED DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME.

"Sec. 429. In General.—Any person who, during and in relation to any drug trafficking crime, murders, kidnaps, sexually assaults (which means any offense that involved conduct that would violate chapter 109A if the conduct occurred in the special maritime and territorial jurisdiction), maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, commits any other crime of violence or threatens to commit a crime of violence against any individual in violation of the laws of the United States, attempts or conspires to do so, shall be punished, in addition and consecutive to the punishment provided for the drug trafficking crime—

"(1) in the case of murder, by death or imprisonment for any term of years or for life, a fine under title 18, United States Code, or both;

"(2) in the case of kidnapping or sexual assault, by imprisonment for any term of years or for life, a fine under title 18, United States Code, or both;

"(3) in the case of maiming, by imprisonment for any term of years or for life, a fine under title 18, United States Code, or both;

"(4) in the case of assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment not more than 30 years, a fine under title 18, United States Code, or both;

"(5) in the case of committing any other crime of violence, by imprisonment for not more than 20 years, a fine under this title, or both;

"(6) in the case of threatening to commit a crime of violence specified in paragraphs (1) through (4), by imprisonment for not more than 10 years, a fine under such title 18, or both;

"(7) in the case of attempting or conspiring to commit assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 20 years, a fine under such title 18, or both;

"(8) in the case of attempting or conspiring to commit a crime involving assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 30 years, a fine under such title 18, or both;"

(b) VENUE.—A prosecution for a violation of this section may be brought in—

"(1) the judicial district in which the murder or other crime of violence occurred; or

"(2) any judicial district in which the drug trafficking crime may be prosecuted.

"(c) APPLICABLE DETHY PENALTIES PEERnymETERS.

"(d) DEFINITIONS.—As used in this section—

"(1) the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code; and

"(2) the term 'drug trafficking crime' has the meaning given that term in section 922(q)(2) of title 18, United States Code.

"(e) CLERICAL AMENDMENT.—The table of contents of the Controlled Substances Act is amended by adding after the item relating to section 423, the following:

"Sec. 424. Murder and other violent crimes committed during and in relation to a drug trafficking crime."

Subtitle B—Increased Federal Resources To Suppress, Deter, and Prevent At-Risk Youth From Joining Illegal Street Gangs

SEC. 110. DESIGNATION OF AND ASSISTANCE FOR HIGH INTENSITY INTERSTATE GANG ACTIVITY AREAS.

(a) DESIGNATION.—The Attorney General, after consultation with the Governors of appropriate States, may designate high intensity interstate gang activity areas, to receive support under this title, in any area in the United States that the Attorney General determines to be an area of significant threat to the community, and in any area in the District of Columbia, Indian tribe, or possession of the United States. The term "State" shall include an Indian tribe, as defined by section 106 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

(b) HIGH INTENSITY INTERSTATE GANG ACTIVITY AREAS.

(1) DESIGNATION.—The Attorney General, after consultation with the Governors of appropriate States, may designate as high intensity interstate gang activity areas, specific areas that are located within 1 or more States. To the extent that the goals of a high intensity interstate gang activity area (HIGAAA) overlap with the goals of a high intensity street gang trafficking area (HISGTA), the Attorney General may merge the 2 areas to serve as a dual-purpose entity. The Attorney General may not make the final designation of a high intensity interstate gang activity area without first consulting with and receiving comment from local elected officials representing communities within the State of the proposed designation.

(2) ASSISTANCE.—In order to provide Federal assistance to high intensity interstate gang activity areas, the Attorney General shall—

"(A) establish criminal street gang enforcement teams, consisting of Federal, State, local, and tribal law enforcement partners for the coordinated investigation, disruption, apprehension, and prosecution of criminal street gangs and offenders in high intensity interstate gang activity areas;

"(B) direct the assignment or detailing from any Federal department or agency (subject to the approval of the head of that department or agency, the Depart- ment or agency other than the Department of Justice) of personnel to each criminal street gang enforcement team; and

"(C) provide all necessary funding for the operation of the criminal street gang enforcement team in each high intensity interstate gang activity area.

"(3) COMPOSITION OF CRIMINAL STREET GANG ENFORCEMENT TEAM.—The team established pursuant to paragraph (2)(A) shall consist of agents and officers, where feasible, from—

"(A) the Bureau of Alcohol, Tobacco, Firearms, and Explosives;

"(B) the Department of Homeland Security;

"(C) the Department of Housing and Urban Development;

"(D) the Drug Enforcement Administration;

"(E) the Internal Revenue Service;

"(F) the Federal Bureau of Investigation;

"(G) the United States Marshal's Service;

"(H) the United States Postal Service;

"(I) State and local law enforcement; and

"(J) Federal, State and local prosecutors.

"(4) CRITERIA FOR DESIGNATION.—In considering an area for designation as a high intensity interstate gang activity area under this section, the Attorney General shall consider—

"(A) the current and predicted levels of gang crime activity in the area;

"(B) the extent to which violent crime in the area appears to be related to criminal street gang activity, such as drug trafficking, murder, robbery, assaults, carjacking, arson, kidnapping, extortion, and other criminal activity;

"(C) the extent to which State and local law enforcement agencies have committed resources to—

"(i) respond to the gang crime problem; and

"(ii) participate in a gang enforcement team;

"(D) the extent to which a significant increase in the allocation of Federal resources would enhance local response to the gang crime activities in the area; and

"(E) any other criteria that the Attorney General considers to be appropriate.

"(5) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated $100,000,000 for each of the fiscal years 2005 to 2009 to carry out this section.

"(2) USE OF FUNDS.—Of amounts made available under paragraph (1) in each fiscal year—

"(A) 50 percent shall be used to carry out subsection (b)(1); and

"(B) 50 percent shall be used to make grants available for community-based programs to provide crime prevention, research, and intervention services that are designed for gang members and at-risk youth in areas designated pursuant to this section as high intensity interstate gang activity areas.

"(3) REPORTS.—By February 1st of each year, the Attorney General shall provide a report to Congress which describes, for each designated high intensity interstate gang activity area—

"(A) the specific long-term and short-term goals and objectives;
(B) the measurements used to evaluate the performance of the high intensity interstate gang activity area in achieving the long-term and short-term goals; (C) the age, composition, and membership of "gangs"; (D) the number and nature of crimes committed by "gangs"; and (E) the definition of the term "gang" used to compile this report.

SEC. 111. ENHANCEMENT OF PROJECT SAFE NEIGHBORHOODS INITIATIVE TO IMPROVE ENFORCEMENT OF CRIMINAL LAWS AGAINST VIOLENT GANGS.

(a) In general.—While maintaining the focus of Project Safe Neighborhoods as a comprehensive, strategic approach to reducing gun violence in America, the Attorney General is authorized to expand the Project Safe Neighborhoods program to require each United States attorney to—

(1) identify, investigate, and prosecute significant criminal street gangs operating within their district;

(2) coordinate the identification, investigation, and prosecution of criminal street gangs among Federal, State, and local law enforcement agencies; and

(3) coordinate and establish criminal street gang enforcement teams, established under section 31707 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13867) and extension of, and expand the Project Safe Neighborhoods program to require each United States attorney to—

(1) identify, investigate, and prosecute significant criminal street gangs operating within their district;

(2) coordinate the identification, investigation, and prosecution of criminal street gangs among Federal, State, and local law enforcement agencies; and

(3) coordinate and establish criminal street gang enforcement teams, established under section 31707 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13867) and

(b) Additional staff for Project Safe Neighborhoods.

(1) In general.—The Attorney General may hire Assistant United States attorneys, non-attorney coordinators, or paralegals to carry out the provisions of this section.

(2) Authorization of appropriations.—There are authorized to be appropriated $7,500,000 for each of the fiscal years 2005 through 2009 to carry out this section.

SEC. 112. ADDITIONAL RESOURCES NEEDED BY THE FEDERAL BUREAU OF INVESTIGATION TO INVESTIGATE AND PROSECUTE VIOLENT CRIMINAL STREET GANGS.

(a) Responsibilities of Attorney General.—The Attorney General is authorized to require the Federal Bureau of Investigation to—

(1) increase funding for the Safe Streets Program; and

(2) support the criminal street gang enforcement teams, established under section 31707(b), in high intensity interstate gang activity areas within a United States attorney’s district.

(b) Additional staff for Project Safe Neighborhoods.

(1) In general.—The Attorney General may hire Assistant United States attorneys, non-attorney coordinators, or paralegals to carry out the provisions of this section.

(2) Authorization of appropriations.—There are authorized to be appropriated $7,500,000 for each of the fiscal years 2005 through 2009 to carry out this section.

SEC. 114. REAUTHORIZE THE GANG RESISTANCE EDUCATION AND TRAINING PROJECTS PROGRAM.

Section 32401(b) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13921(b)) is amended by striking paragraphs (1) through (6) and inserting the following:

(1) $20,000,000 for fiscal year 2005;

(2) $20,000,000 for fiscal year 2006;

(3) $20,000,000 for fiscal year 2007;

(4) $20,000,000 for fiscal year 2008; and

(5) $20,000,000 for fiscal year 2009.

TITLE II—VIOLENT CRIME REFORMS NEEDED TO DETECT AND PREVENT ILLEGAL GANG CRIME

SEC. 201. MULTIPLE INTERSTATE MURDER.

Chapter 51 of title 18, United States Code, is amended by adding at the end of the new section—

§ 1123. Multiple murders in furtherance of common scheme of purpose

(a) In general.—Whoever, having committed murder in violation of the laws of any State or the United States, moves or travels in interstate or foreign commerce with the intent to commit one or more murders in violation of the laws of any State or the United States, commits one or more murders in violation of the laws of any State or the United States in furtherance of a common scheme of purpose, or who conspires to commit any such murder, shall be fined under this title, imprisoned for any noncapital felony, crime of violence (as defined in section 16), including any racketeering activity or gang crime which involves any violent crime, unless the indictment is found or the information is instituted by the later of—

(1) 10 years after the date on which the alleged violation occurred; or

(2) 10 years after the date on which the continuing offense was completed; or

(3) 8 years after the date on which the alleged violation was first discovered.

(b) Definitions.—The table of sections at the beginning of chapter 214 of title 18, United States Code, is amended by adding at the end of the following:

§ 3297. Violent crime offenses

“§ 3297. Violent crime offenses

“Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any noncapital felony, crime of violence (as defined in section 16), including any racketeering activity or gang crime which involves any violent crime, unless the indictment is found or the information is instituted by the later of—

(1) 10 years after the date on which the alleged violation occurred; or

(2) 10 years after the date on which the continuing offense was completed; or

(3) 8 years after the date on which the alleged violation was first discovered.”

SEC. 202. EXPANSION OF REPUTABLE PRESUMPTION AGAINST RELEASE BEFORE PERIODS CHARGED WITH FIREARMS OFFENSES.

Section 3142 of title 18, United States Code, is amended—

(1) in subsection (e), in the matter following paragraph (3)—

(a) by inserting “an offense under section 922(g)(1) where the underlying conviction is a serious drug offense as defined in section 924(c)(2)(F) of title 18, United States Code,” after “that the person committed”; and

(b) by inserting “or” before “the Maritime” in the end; and

(2) in subsection (f)—

(A) in subparagraph (C), by striking “or” at the end; and

(B) by adding at the end the following:

“(g) an offense under section 922(g); or”;

and

(3) in subsection (g), by amending paragraph (1) to read as follows:

“(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, or involves a drug, firearm, explosive, or destructive device.

SEC. 203. VENUE IN CAPITAL CASES.

Section 3235 of title 18, United States Code, is amended to read as follows—

§ 3235. Venue in capital cases

“(a) The trial for any offense punishable by death shall be held in the district where the offense was committed or in any district in which the offense began, continued, or was completed.

(b) If the offense, or related conduct, under subsection (a) involves activities which affect interstate or foreign commerce, the venue may be in the district where the importation of an object or person into the United States, such offense may be prosecuted in any district in which those activities occurred.”

SEC. 204. STATUTE OF LIMITATIONS FOR VIOLENT CRIME.

(a) In general.—Chapter 214 of title 18, United States Code, is amended by adding at the end of the following:

§ 3297. Violent crime offenses

“Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any noncapital felony, crime of violence (as defined in section 16), including any racketeering activity or gang crime which involves any violent crime, unless the indictment is found or the information is instituted by the later of—

(1) 10 years after the date on which the alleged violation occurred; or

(2) 10 years after the date on which the continuing offense was completed; or

(3) 8 years after the date on which the alleged violation was first discovered.”

(b) Application.—The table of sections at the beginning of chapter 214 of title 18, United States Code, is amended by adding at the end the following:

§ 3297. Violent crime offenses

SEC. 205. PREDECATE CRIMES FOR AUTHORIZATION OF INTERCEPTION OF WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS.

Section 2516(1) of title 18, United States Code, is amended—

(1) in paragraph (a), by striking “or”;

(2) by redesignating paragraph (a) as subparagraph (a); and

(3) by inserting after paragraph (a) the following:

“§ 2516. Violent crime offenses

“(a) any violation of section 424 of the Controlled Substances Act relating to murder and other violent crimes in furtherance of a drug trafficking crime;

“(b) any violation of 1123 of title 18, United States Code relating to multiple interstate murder;

“(c) any violation of section 521, 522, or 523 (relating to criminal street gangs); or”;

SEC. 206. CLARIFICATION TO HEARSAY EXCEPTION FOR FORFEITURE BY WRONGDOING.

Rule 804(b)(6) of the Federal Rules of Evidence is amended to read as follows—

“§ 804. Hearsay. A statement offered against a party that has engaged, acquiesced, or conspired, in wrongdoing that was intended to, and did, procure
the unavailability of the declarant as a witness.’’.

SEC. 207. CLARIFICATION OF VENUE FOR RETALIATION AGAINST A WITNESS.

Section 1513 of title 18, United States Code, is amended by—

(1) redesignating subsection (e) beginning with ‘‘Whoever conspires’’ as subsection (f); and

(2) adding at the end the following:

‘‘(g) A prosecution under this section may be brought in the district in which the official proceeding (whether or not pending, about to be instituted or was completed) was intended to be affected or was completed, or in which the act constituting the alleged offense occurred.’’.

SEC. 208. AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN GANG AND VIOLENT CRIMES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements to conform to the provisions of title I and this title.

(b) REQUIREMENTS.—In carrying out this section, the United States Sentencing Commission shall—

(1) establish new guidelines and policy statements, as warranted, in order to implement new or revised criminal offenses created under this title;

(2) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this title, the growing incidence of serious gang and violent crimes, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(3) consider the extent to which the guidelines and policy statements adequately address—

(A) whether the guideline offense levels and enhancements for gang and violent crimes—

(i) are sufficient to deter and punish such offenses; and

(ii) are adequate in view of the statutory increases in penalties contained in the Act; and

(B) whether any existing or new specific offense characteristics should be added to reflect congressional intent to increase gang and violent crime penalties, punish offenders, and deter violent crimes;

(4) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(5) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(6) revise any necessary conforming changes to the sentencing guidelines; and

(7) assure that the guidelines adequately meet the purposes of sentencing under section 3553 United States Code.

SEC. 209. INCREASED PENALTIES FOR CRIMINAL USE OF FIREARMS IN CRIMES OF VIOLENCE AND DRUG TRAFFICKING.

(a) IN GENERAL.—Section 924(c)(1)(A) of title 18, United States Code, is amended—

(1) by striking ‘‘shall’’ and inserting ‘‘or conspires to commit any of the above acts shall, for each instance in which the firearm is used, carried, or possessed’’;

(2) in clause (i), by striking ‘‘5 years’’ and inserting ‘‘15 years’’;

(3) by striking clause (ii);

(b) CONFORMING AMENDMENTS.—Section 924 of title 18, United States Code, is amended—

(1) in subsection (c), by striking paragraph (4); and

(2) by striking subsection (o).

SEC. 210. POSSESSION OF FIREARMS BY DANGEROUS FELONS.

(a) IN GENERAL.—Section 924(e) of title 18, United States Code, is amended to read as follows:

‘‘(e)(1) In the case of a person who violates section 922(g) of this title and has previously been convicted by any court referred to in section 922(g)(1) for a violent felony or a serious drug offense.

(2) In the case of 3 such prior convictions, committed on occasions different from one another, and where a period of not more than 10 years has elapsed since the date of conviction or release of the person from imprisonment for that conviction, be subject to imprisonment for not more than 20 years, a fine under this title, or both;

(3) In the case of 2 such prior convictions, committed on occasions different from one another, be subject to imprisonment for not less than 15 years, a fine under this title, or both;

(4) If an alleged offense occurred.

(b) AMENDMENT TO SENTENCING GUIDELINES.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal Sentencing Guidelines to provide for an appropriate increase in the offense level for conviction under section 922(g) of title 18, United States Code, in accordance with section 994(e) of such title 18, as amended by subsection (a).

SEC. 211. CONFORMING AMENDMENT.

The matter before paragraph (1) in section 922(d) of title 18, United States Code, is amended by inserting ‘‘, transfer,’’ after ‘‘sell’’.

SEC. 301. TREATMENT OF FEDERAL JUVENILE OFFENDERS.

(a) IN GENERAL.—Section 5032 of title 18, United States Code, is amended to read as follows:

‘‘5032. Delinquency proceedings in district courts; juveniles tried as adults; transfer for criminal prosecution.

‘‘(a) DELINQUENCY PROCEEDINGS IN DISTRICT COURTS.

‘‘(1) IN GENERAL.—A juvenile alleged to have committed an act of delinquency under this title, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum term of imprisonment does not exceed 6 months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that—

(A) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over that juvenile with respect to such alleged act of juvenile delinquency;

(B) the State does not have available programs and services adequate for the needs of juveniles; or

(C) the offense charged is a crime of violence that is a felony for which a sentence is imposed in section 401 of the Controlled Substances Act (21 U.S.C. 841), section 1002(a), 1005, 1009, or 1016(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3), 922(x), or section 924(b), (g), or (h) of this title, and there is a substantial Federal interest in the exercise of the authority under section 922(g) of this title to have the juvenile delinquency proceeding instituted for the alleged act of juvenile delinquency except as provided below.

(b) TRANSFER FOR FEDERAL CRIMINAL PROSECUTION.

‘‘(1) IN GENERAL.—A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless—

(A) the juvenile has requested in writing upon advice of counsel to be proceeded against as an adult; or

(B) with respect to a juvenile 15 years and older alleged to have committed an act after his 16th birthday which if committed by an adult would be a felony that is a crime of violence or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1006, 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959), or section 922(x) of this title, or in section 924(b), (g), or (h) of this title, the Attorney General makes a motion to transfer the criminal proceeding on the basis of the alleged act in the appropriate district court of the United States and the court hearing, upon the request of the juvenile, such transfer would be in the interest of justice as provided in paragraph (2) or
“(c) with respect to a juvenile 13 years and older alleged to have committed an act after his thirteenth birthday which if committed by an adult would be a felony that is the crime of a motor vehicle theft, subsection 1219(a)(2); subsection 1219(f)(2)(A) or (c), 1111, 1113, or, if the juvenile possessed a firearm during the offense, an offense under section 924(a), 2331, 2421(a)(2), or 2421(c), the attorney general shall make a motion to transfer the juvenile to adult jurisdiction. At or after such hearing, the court in which the juvenile is alleged to have committed the criminal offense, the court of appeals pursuant to section 3731 of this title, or any court that has jurisdiction by statute or by agreement with the State in which the investigation or proceeding has reached the stage that evidence has begun to be taken with respect to the juvenile shall, after notice to the parties, hear and determine the appeal by the United States on the merits. In a prosecution under this section, the court shall consider the factors specified in subsection (b)(2) of this section.

(5) ORDER.—An order of the court made in ruling on a motion by a defendant to transfer a defendant to adult status under this subsection shall not be a final order for the purpose of enabling an appeal, except that an appeal by the United States shall lie to a court of appeals pursuant to section 3731 of this title from an order of a district court releasing upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis. The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court if they are clearly erroneous, and the court of appeals shall review de novo the district court’s application of the law to the facts.

(e) SIXTEEN AND SEVENTEEN YEAR OLDS CHARGED WITH THE MOST SERIOUS VIOLENT FELONIES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a juvenile may be prosecuted as an adult if the juvenile is alleged to have committed, conspired, solicited or attempted to commit, on or after the day the juvenile attains the age of 16 any offense involving—

(A) murder;

(B) manslaughter;

(C) assault with intent to commit murder;

(D) sexual assault (which means any offense against the person committed by force, threat of force, or otherwise influenced other persons to take part in criminal activities; or

(E) arson;

(F) carjacking with a dangerous weapon;

(G) robbery (as described in sections 2111, 2113, 2241(a), or 2241(c), 1111, 1113, or, if the juvenile possessed a firearm during the offense, an offense in violation of a State felony statute that would have been a felony if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred, upon notification by the United States, to the appropriate district court of the United States for criminal prosecution.);

(2) FACTORS.—An order of the court made in ruling on a motion by a defendant to transfer a defendant to adult status under this subsection shall not be a final order for the purpose of enabling an appeal, except that an appeal by the United States shall lie to a court of appeals pursuant to section 3731 of this title from an order of a district court releasing upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis. The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court if they are clearly erroneous, and the court of appeals shall review de novo the district court’s application of the law to the facts.

(3) SUBSEQUENT PROCEEDING BARRED.—An order of the court made in ruling on a motion by a defendant to transfer a defendant to adult status under this subsection shall not be a final order for the purpose of enabling an appeal, except that an appeal by the United States shall lie to a court of appeals pursuant to section 3731 of this title from an order of a district court releasing upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis. The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court if they are clearly erroneous, and the court of appeals shall review de novo the district court’s application of the law to the facts.
to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

"(2) Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal proceedings except for impeachment or in support of a claim for perjury or making a false statement.

"(3) FURTHER PROCEEDINGS.—Whenever a juvenile transferred to district court under subsection (b) or (c) is not convicted of the crime upon which the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged as an adult, further proceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter.

"(4) RECEIPT OF RECORDS.—A juvenile shall not be transferred to adult prosecution under subsection (b) nor shall a hearing be held under section 5037 (disposition after a finding of guilt) until any prior juvenile court records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile record is unavailable and why it is unavailable.

"(5) SPECIFIC ACTS DESCRIBED.—Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter, the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile’s official record.

"(g) STATE.—For purposes of this section, the term ‘State’ includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(b) CONFORMING AMENDMENT.—The analysis for chapter 403 of title 18, United States Code, is amended by striking the item relating to section 5032 and inserting the following:

'Section 5032. Delinquency proceedings in district courts; juveniles tried as adults; transfer for criminal prosecution.'

SEC. 302. NOTIFICATION AFTER ARREST. Section 5034 of title 18, United States Code, is amended in the first sentence, by striking ‘immediately notify’ and inserting ‘immediately’; and by inserting ‘or as soon as practicable, but not later than the time the juvenile’s official record is issued’. Section 5034 is amended—

(a) DUTIES OF MAGISTRATE JUDGE.—Section 5034 of title 18, United States Code, is amended by adding the following:

'(1) IN GENERAL.—If an alleged delinquent, who is to be proceeded against as a juvenile pursuant to section 5032 and who is in detention pending trial, is not brought to trial within 45 days from the date upon which such detention began, the information shall be dismissed without prejudice.

(b) JUVENILE DEFENDANTS. Section 5036 of title 18, United States Code, is amended to read as follows:

'Section 5036. Speedy trial

(a) IN GENERAL.—If an alleged delinquent, who is to be proceeded against as a juvenile pursuant to section 5032 and who is in detention pending trial, is not brought to trial within 45 days from the date upon which such detention began, the information shall be dismissed without prejudice.

(b) JUVENILE DEFENDANTS. Section 5037 of title 18, United States Code, is amended—

(1) by striking ‘A juvenile’ and inserting the following:

'(a) IN GENERAL.—Except as provided in subsection (b), a juvenile’; and

(2) by adding the following:

'(b) DETENTION PRIOR TO DISPOSITION.—In accordance with chapter 207.

SEC. 304. SPEEDY TRIAL. Section 5036(b) of title 18, United States Code, is amended to read as follows:

'Section 5036. Speedy trial

(a) IN GENERAL.—If an alleged delinquent, who is to be proceeded against as a juvenile pursuant to section 5032 and who is in detention pending trial, is not brought to trial within 45 days from the date upon which such detention began, the information shall be dismissed without prejudice.

(b) JUVENILE DEFENDANTS. Section 5037 of title 18, United States Code, is amended—

(1) by striking ‘A juvenile’ and inserting the following:

'(a) IN GENERAL.—Except as provided in subsection (b), a juvenile’; and

(2) by adding the following:

'(b) DETENTION PRIOR TO DISPOSITION.—In accordance with chapter 207.

SEC. 305. FEDERAL GUIDELINES GUIDELINES. (a) APPLICATION OF GUIDELINES TO CERTAIN JUVENILE DEFENDANTS.—Section 994(b)(1)(C) of title 18, United States Code, is amended—

(1) by striking the first sentence, and inserting—

'(a) REPRESENTATION BY COUNSEL.—The magistrate judge shall ensure that the case is represented by counsel.

(b) GUARDIAN AD LITEM.—The magistrate judge shall ensure that the case is represented by a guardian ad litem.

(c) JUDICIAL CONSIDERATIONS.—In determining whether an information should be dismissed, the court shall consider—

'(1) the seriousness of the alleged act of juvenile delinquency;

'(2) the facts and circumstances of the case that led to the dismissal; and

'(3) the impact of a reactivation of the administration of justice.'
Recent studies confirm that gang violence is an increasing problem in all of our communities. Based on the latest available National Youth Gang Survey, it is now estimated that there are more than 25,000 gangs, and over 750,000 gang members who are active in more than 1,000 jurisdictions across United States. The most current reports indicate that in 2002 alone, after five years of decline, gang membership has spiked nationwide.

I have been—and remain—committed to support State and local task forces as a model for effective gang enforcement strategies. Working together, these task forces have demonstrated that they can make a difference in the community. In Salt Lake City, the Metro Gang Multi-Jurisdictional Task Force stands out as a critical player in fighting gang violence in Salt Lake City. We need to re-assure outstanding organizations like this that there will be adequate resources available to expand and fund these critical task force operations to fight gang violence.

In my study of this problem, it has become clear that the government needs to work with communities to meet the growing head-on and defeat it. If we really want to reduce gang violence, we must ensure that law enforcement has adequate resources and legal tools, and that our communities have the ability to implement proven intervention and prevention strategies, so that the youth who are removed from the community are not simply replaced by the next generation of new gang members.

In closing, I want to commend my colleagues—Senators FEINSTEIN, GRASSLEY, KYL, and CORNYN. They have worked very closely with me as we considered these issues last Congress and I look forward to working with them and others as we proceed this year. I urge my colleagues to join with us in promptly passing this important legislation.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 156. A bill to designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I am proud to introduce the "Ojito Wilderness Act". This bill was passed in various forms by both the Senate and the House of Representatives in the 108th Congress. I am pleased that the senior Senator from New Mexico, Mr. DOMENICI, is cosponsoring this bill.

The support for this proposal truly is impressive. It has been formally endorsed by the Governor of New Mexico; the local Sandoval County Commission and the neighboring Bernalillo County Commission; the Albuquerque City Council; New Mexico House of Representatives Energy and Natural Resources Committee Chairman James Roger Madalena; the Governors of the Pueblos of Zia, Santa Ana, Santo Domingo, Cochiti, Tesuque, San Ildefonso, Pojoaque, Nambe, Santa Clara, San Juan, Sandia, Laguna, Acoma, Isleta, Picuris, and Taos; the National Congress of American Indians; the Hopi Tribe; The Wilderness Society; the New Mexico Wilderness Alliance; the Coalition for New Mexico Wilderness, on behalf of more than 375 businesses and organizations; the Rio Grande Chapter of the Sierra Club; the National Parks Conservation Association; the Albuquerque Convention and Visitors Bureau; 1000 Friends of New Mexico; and numerous individuals.

The Ojito provides a unique wilderness area that is important not only to its local stewards, but also to the nearby residents of Albuquerque and Santa Fe, as well as visitors from across the country. It is an outdoor geology laboratory, offering a spectacular and unique opportunity to view from a single location the juxtaposition of the southwestern margin of the Rocky Mountains, the Colorado Plateau, and the Rio Grande Rift, along with the volcanic necks of the Rio Puerco Fault. Its rugged terrain offers a rewarding challenge to hikers, backpackers, and photographers. It shelters ancient Puebloan ruins and an endemic endangered plant, solitude and inspiration. Designating Ojito as a wilderness area ensures that the beauty of this special place will be protected and enjoyed for years to come.

I have made a number of changes to this bill in order clarify a number of issues and to facilitate its enactment, and I hope that it will be enacted quickly.

I ask unanimous consent that the text of the bill I have introduced today be printed in the RECORD.

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

S. 156

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 "Ojito Wilderness Act".

SEC. 2. DEFINITIONS. In this Act:

(1) MAP.—The term "map" means the map entitled "Ojito Wilderness Act" and dated October 1, 1995, and pub- lished in the appropriate offices of the Bureau of Land Management.

(2) PUEBLO.—The term "Pueblo" means the Pueblo of Zia.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(4) STATE.—The term "State" means the State of New Mexico.

SEC. 3. DESIGNATION OF THE OJITO WILDERNESS. (a) IN GENERAL.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.), there is hereby designated as wilderness: (1) that component of the National Wilderness Preservation System, certain land in the Albuquerque District-Bureau of Land Management, New Mexico, which comprises approximately 11,182 acres, as generally depicted on the map, and which shall be known as the "Ojito Wilderness".
(A) shall constitute or be construed to constitute either an express or implied reservation by the United States of any water or water rights with respect to the land designated as wilderness by this Act; (B) shall affect any water rights in the State existing on the date of enactment of this Act, including any water rights held by the United States; and (C) shall be construed as establishing a precedent with regard to any future wilderness designations.

(2) AFFECTED INTEREST OR PROPERTY.—(A) In general.—(i) Any affected interest or property shall be subject to the terms and conditions of subsection (d), as determined by an independent appraisal. The appraisal shall be conducted in accordance with the Uniform Standards of Professional Appraisal Practice. (ii) The Secretary shall fund, assist, authorize, or issue a permit or license for the development of any new water resource facility within the wilderness area designated by this Act.

(3) PUBLIC ACCESS.—(A) Subject to (B) in general. (B) Except as provided in paragraph (1) or (2), the Secretary shall conduct an appraisal to determine the fair market value of the lands conveyed under subsection (a) that are subject to the following right of way: (i) for public use and benefit; (ii) for the benefit of the United States, and (iii) at the Secretary’s discretion.

(4) TAX-EXEMPT INTEREST ON FEDERALLY GUARANTEED WATER, WASTEWATER, AND ESSENTIAL COMMUNITY FACILITIES LOANS.—(A) In general.—(i) After the date of enactment of this Act, the Secretary shall conduct an appraisal to determine the fair market value of the lands conveyed under subsection (a) that are subject to the following rights-of-way: (A) for public use and benefit; (B) for the benefit of the United States, and (C) at the Secretary’s discretion.

(5) RESTRICTION.—(A) Subject to (B) in general. (B) Except as provided in paragraph (1) or (2), the Secretary shall conduct an appraisal to determine the fair market value of the lands conveyed under subsection (a) that are subject to the following right of way: (i) for public use and benefit; (ii) for the benefit of the United States, and (iii) at the Secretary’s discretion.

(6) EXCHANGE.—(A) Subject to (B) in general. (B) Except as provided in paragraph (1) or (2), the Secretary shall conduct an appraisal to determine the fair market value of the lands conveyed under subsection (a) that are subject to the following right of way: (i) for public use and benefit; (ii) for the benefit of the United States, and (iii) at the Secretary’s discretion.

(7) WITHDRAWAL.—Subject to (A) in general. (B) Except as provided in paragraph (1) or (2), the Secretary shall conduct an appraisal to determine the fair market value of the lands conveyed under subsection (a) that are subject to the following right of way: (i) for public use and benefit; (ii) for the benefit of the United States, and (iii) at the Secretary’s discretion.

(8) SOVEREIGN IMMUNITY.—The lands conveyed under subsection (a) shall be subject to the following right of way: (i) for public use and benefit; (ii) for the benefit of the United States, and (iii) at the Secretary’s discretion.

(9) JUDICIAL RELIEF.—(A) Subject to (B) in general. (B) Except as provided in paragraph (1) or (2), the Secretary shall conduct an appraisal to determine the fair market value of the lands conveyed under subsection (a) that are subject to the following right of way: (i) for public use and benefit; (ii) for the benefit of the United States, and (iii) at the Secretary’s discretion.

(10) LAND HELD IN TRUST.—Subject to (A) in general. (B) Except as provided in paragraph (1) or (2), the Secretary shall conduct an appraisal to determine the fair market value of the lands conveyed under subsection (a) that are subject to the following right of way: (i) for public use and benefit; (ii) for the benefit of the United States, and (iii) at the Secretary’s discretion.

(11) EFFECT.—Subject to (A) in general. (B) Except as provided in paragraph (1) or (2), the Secretary shall conduct an appraisal to determine the fair market value of the lands conveyed under subsection (a) that are subject to the following right of way: (i) for public use and benefit; (ii) for the benefit of the United States, and (iii) at the Secretary’s discretion.

(12) RESTRICTION.—Subject to (A) in general. (B) Except as provided in paragraph (1) or (2), the Secretary shall conduct an appraisal to determine the fair market value of the lands conveyed under subsection (a) that are subject to the following right of way: (i) for public use and benefit; (ii) for the benefit of the United States, and (iii) at the Secretary’s discretion.

(13) WITHDRAWAL.—Subject to (A) in general. (B) Except as provided in paragraph (1) or (2), the Secretary shall conduct an appraisal to determine the fair market value of the lands conveyed under subsection (a) that are subject to the following right of way: (i) for public use and benefit; (ii) for the benefit of the United States, and (iii) at the Secretary’s discretion.

(14) DESCRIPTION OF LANDS.—Subject to (A) in general. (B) Except as provided in paragraph (1) or (2), the Secretary shall conduct an appraisal to determine the fair market value of the lands conveyed under subsection (a) that are subject to the following right of way: (i) for public use and benefit; (ii) for the benefit of the United States, and (iii) at the Secretary’s discretion.

(15) EFFECT.—Subject to (A) in general. (B) Except as provided in paragraph (1) or (2), the Secretary shall conduct an appraisal to determine the fair market value of the lands conveyed under subsection (a) that are subject to the following right of way: (i) for public use and benefit; (ii) for the benefit of the United States, and (iii) at the Secretary’s discretion.

(16) JUDICIAL RELIEF.—Subject to (A) in general. (B) Except as provided in paragraph (1) or (2), the Secretary shall conduct an appraisal to determine the fair market value of the lands conveyed under subsection (a) that are subject to the following right of way: (i) for public use and benefit; (ii) for the benefit of the United States, and (iii) at the Secretary’s discretion.
Mr. LIEBERMAN. Mr. President, I rise today to re-introduce legislation that would establish a new system to preserve the environmental quality of Long Island Sound by identifying, protecting, and enhancing sites within the Long Island Sound ecosystem that have significant ecological, educational, open space, public access, or recreational value.

With this legislation, we hope to preserve the natural beauty and ecological wonder of the Long Island Sound, one of our nation’s most treasured national treasures, while ensuring that we can take necessary common-sense steps to protect and prevent the Sound from degradation.

One of the important features of the Stewardship Act I am introducing is that it will use new approaches to address an old problem, the proper conservation of our resources. The legislation does so through a process that is voluntary and that explicitly respects the interests and rights of private property owners. It also uses established scientific methods for identifying potential coastal sites. Finally, it incorporates a flexible management system that institutionalizes learning and ensures efficiency in the identification and acquisition of conservation and recreation sites.

The value of this legislation, which passed by unanimous consent during the last Congress, is clear. I look forward to working with my co-sponsors from Connecticut and New York, Senators Dodd, Clinton, and Schumer, and a bipartisan group of our Connecticut and New York House colleagues to enact this legislation and ensure that we can take necessary common-sense steps to protect and preserve Long Island Sound for generations to come.

It does unanimous consent that the text of the bill will be printed in the RECORD.

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

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) Long Island Sound is a national treasure of great cultural, environmental, and ecological importance;

(2) 8,000,000 people live within the Long Island Sound watershed and 28,000,000 people (approximately 10 percent of the population of the United States) live within 50 miles of Long Island Sound;

(3) activities that depend on the environmental health of Long Island Sound contribute more than $5,000,000,000 each year to the regional economy;

(4) the portion of the shoreline of Long Island Sound that is accessible to the general public (estimated at less than 20 percent of the total shoreline) is inadequate to serve the needs of the people living in the area;

(5) existing shoreline facilities are in many cases overburdened and underfunded;

(6) large parcels of open space already in public ownership are strained by the strain of the demand for recreation with the needs of sensitive natural resources;

(7) approximately 1/2 of the tidal marshes of Long Island Sound have been filled, and much of the remaining masses have been ditched, dyked, or impounded, reducing the ecological value of the marshes; and

(8) much of the remaining exemplary natural landscape is vulnerable to further development.

(b) PURPOSE.—The purpose of this Act is to establish the Long Island Sound Stewardship Initiative to identify, protect, and enhance sites within the Long Island Sound ecosystem with significant ecological, educational, open space, public access, or recreational value through a bi-State network of sites best exemplifying these values.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADAPTIVE MANAGEMENT.—The term "adaptive management" means a scientific process—

(I) developing predictive models;

(II) making management policy decisions based upon that output;

(III) revising the management policies as data become available with which to evaluate the policies; and

(IV) acknowledging uncertainty, complexity, and variance in the spatial and temporal aspects of natural systems; and

(B) that requires that management be viewed as experimental and

(2) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(b) C HAIRPERSON. The term "Chairperson" means a site that—

(A) qualifies for identification by the Committee to be known as the "Long Island Sound Stewardship Region" and dated November 15, 2001.

(c) MEMBERSHIP.—The term "membership" means a representative of private property owners.

(d) TERM; VACANCIES. The term "term" means a State or a political subdivision of a State.

(e) REPRESENTATION.—In appointing members to the Committee, the Chairperson shall consider—

(I) the needs of sensitive natural resources; and

(II) the Peconic Estuary, as described on the map entitled "Peconic Estuary Program Study Area Boundaries", included in the Comprehensive Conservation and Management Plan for the Peconic Estuary Program and dated November 15, 2001.

(f) REPRESENTATION.—In appointing members to the Committee, the Chairperson shall consider—

(I) the Peconic Estuary, as described on the map entitled "Peconic Estuary Program Study Area Boundaries", included in the Comprehensive Conservation and Management Plan for the Peconic Estuary Program and dated November 15, 2001.

SEC. 4. LONG ISLAND SOUND STEWARDSHIP INITIATIVE REGION.

(a) ESTABLISHMENT.—There is established in the States the Long Island Sound Stewardship Initiative Region.

(b) BOUNDARIES.—The Region shall encompass the immediate coastal upland and underwater areas along Long Island Sound, including—

(1) those portions of the Sound with coastally influenced vegetation, as described on the map entitled "Long Island Sound Stewardship Region" and dated April 21, 2001; and

(2) the Peconic Estuary, as described on the map entitled "Peconic Estuary Program Study Area Boundaries", included in the Comprehensive Conservation and Management Plan for the Peconic Estuary Program and dated November 15, 2001.

SEC. 5. LONG ISLAND SOUND STEWARDSHIP ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established a committee to be known as the "Long Island Sound Stewardship Advisory Committee".

(b) CHAIRPERSON.—The Chairperson of the Committee shall be the Director of the Long Island Sound Office of the Environmental Protection Agency, or a designee of the Director.

(c) MEMBERSHIP.—The Committee shall consist of—

(I) a representative from the Regional Plan Association;

(II) a representative of the marine trade organization; and

(III) a representative of private landowner interests.

(d) REPRESENTATION.—In appointing members to the Committee, the Chairperson shall consider—

(I) the Peconic Estuary, as described on the map entitled "Peconic Estuary Program Study Area Boundaries", included in the Comprehensive Conservation and Management Plan for the Peconic Estuary Program and dated November 15, 2001.

(e) REPRESENTATION.—In appointing members to the Committee, the Chairperson shall consider—

(I) the Peconic Estuary, as described on the map entitled "Peconic Estuary Program Study Area Boundaries", included in the Comprehensive Conservation and Management Plan for the Peconic Estuary Program and dated November 15, 2001.

(f) REPRESENTATION.—In appointing members to the Committee, the Chairperson shall consider—

(I) the Peconic Estuary, as described on the map entitled "Peconic Estuary Program Study Area Boundaries", included in the Comprehensive Conservation and Management Plan for the Peconic Estuary Program and dated November 15, 2001.

SEC. 5. LONG ISLAND SOUND STEWARDSHIP ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established a committee to be known as the "Long Island Sound Stewardship Advisory Committee".

(b) CHAIRPERSON.—The Chairperson of the Committee shall be the Director of the Long Island Sound Office of the Environmental Protection Agency, or a designee of the Director.

(c) MEMBERSHIP.—The term "membership" means a representative of private property owners.

(d) TERM; VACANCIES. The term "term" means a representative of private landowner interests.

(e) REPRESENTATION.—In appointing members to the Committee, the Chairperson shall consider—

(I) the Peconic Estuary, as described on the map entitled "Peconic Estuary Program Study Area Boundaries", included in the Comprehensive Conservation and Management Plan for the Peconic Estuary Program and dated November 15, 2001.

(f) REPRESENTATION.—In appointing members to the Committee, the Chairperson shall consider—

(I) the Peconic Estuary, as described on the map entitled "Peconic Estuary Program Study Area Boundaries", included in the Comprehensive Conservation and Management Plan for the Peconic Estuary Program and dated November 15, 2001.

(g) REPRESENTATION.—In appointing members to the Committee, the Chairperson shall consider—

(I) the Peconic Estuary, as described on the map entitled "Peconic Estuary Program Study Area Boundaries", included in the Comprehensive Conservation and Management Plan for the Peconic Estuary Program and dated November 15, 2001.
(3) STAFF.—
(A) IN GENERAL.—The Chairperson of the Committee may appoint and terminate personnel as necessary to enable the Committee to perform the duties of the Committee.
(B) PERSONNEL AS FEDERAL EMPLOYEES.—
(i) IN GENERAL.—Any personnel of the Committee who are employees of the Committee shall be employees under section 2180 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.
(ii) MEMBERS OF COMMITTEE.—Clause (i) does not apply to members of the Committee.
(e) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Committee have been appointed, the Committee shall hold the initial meeting of the Committee.
(f) MEETINGS.—The Committee shall meet at the call of the Chairperson, but no fewer than 4 times each year.
(g) QUORUM.—A majority of the members of the Committee shall constitute a quorum, but a lesser number of members may hold hearings.

SEC. 6. DUTIES OF THE COMMITTEE.
The Committee shall—
(1) consistent with the guidelines described in section 8—
(A) evaluate applications from government or nonprofit organizations qualified to hold conservation easements for funds to purchase, hold, or develop rights for stewardship sites;
(B) evaluate applications to develop and implement management plans to address threats;
(C) evaluate applications to act on opportunities to protect and enhance stewardship sites; and
(D) recommend that the Administrator award grants to qualified applicants;
(2) recommend guidelines, criteria, schedules, and due dates for evaluating information to identify stewardship sites;
(3) publish a list of sites that further the purposes of this Act, provided that owners of sites shall be—
(A) notified prior to the publication of the list; and
(B) allowed to decline inclusion on the list;
(4) raise awareness of the values of and threats to selected sites; and
(5) leverage additional resources for improved stewardship of the Region.

SEC. 7. POWERS OF THE COMMITTEE.
(a) The Committee may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Committee considers advisable to carry out this Act.
(b) INFORMATION FROM FEDERAL AGENCIES.—
(1) IN GENERAL.—The Committee may secure directly from a Federal agency such information as the Committee considers necessary to carry out this Act.
(2) PROVISION OF INFORMATION.—
(A) IN GENERAL.—Subject to subparagraph (C), on request of the Chairperson of the Committee, the head of a Federal agency shall provide the information requested by the Chairperson to the Committee.
(B) ADMINISTRATION.—The furnishing of information by a Federal agency to the Committee shall not be considered a waiver of any exemption available to the agency under section 552 of title 5, United States Code.
(C) INFORMATION TO BE KEPT CONFIDENTIAL.—
(i) IN GENERAL.—For purposes of section 1005 of title 18, United States Code—
(A) the Committee shall be considered an agency within the meaning of the Freedom of Information Act; and
(B) any individual employed by an individual, entity, or organization that is a party to a contract with the Committee under this Act shall be considered an employee of the Committee.
(ii) PROHIBITION ON DISCLOSURE.—Information provided by the Committee, other than information that is available to the public, shall not be disclosed to any person in any manner except to an employee of the Committee or to the United States mail service for the purpose of receiving, reviewing, or processing the information.
(iii) POSTAL SERVICES.—The Committee may use the United States mails in the same manner and under the same conditions as other agencies of the Federal Government.
(d) DONATIONS.—The Committee may accept, use, and dispose of donations of services or property that advance the goals of the Long Island Sound Stewardship Initiative.
(e) INITIAL MEETING.—The Committee shall identify 20 initial Long Island Sound stewardship sites that the Committee has determined—
(I) are natural resource-based recreation areas; or
(II) are exemplary natural areas with ecological value; and
(iii) best promote the purposes of this Act.
(F) EXEMPTION.—Sites described in subparagraph (A) are not subject to the site identification process described in subsection (d).
(2) EQUIBILE DISTRIBUTION OF FUNDS FOR INITIAL SITES.—In identifying initial sites under paragraph (1), the Committee shall—
(A) consistent with the guidelines described in paragraph (3)(A), described in paragraph (3)(B).
(b) APPLICATION FOR IDENTIFICATION AS A STEWARDSHIP SITE.—
(1) IN GENERAL.—The Committee shall identify additional stewardship sites using a selection technique that includes—
(A) public access;
(B) community support;
(C) areas with high population density;
(D) environmental justice (as defined in section 3513 of title 42, Code of Federal Regulations (or successor regulations));
(E) connectivity to existing protected areas and open spaces;
(F) cultural, historic, and scenic areas; and
(G) other criteria developed by the Committee.
(c) NATURAL AREAS WITH ECOCAL VALUE.—The Committee shall identify additional natural areas with ecological value and potential as stewardship sites—
(A) based on measurable conservation targets for the Region; and
(B) following a process for prioritizing new sites using systematic site selection, which shall include—
(i) ecological uniqueness; and
(ii) other criteria developed by the Committee.
(d) SITE IDENTIFICATION PROCESS.—
(1) NATURAL RESOURCE-BASED RECREATION AREAS.—The Committee shall identify additional recreation areas with potential as stewardship sites using a selection technique that includes—
(A) public access;
(B) community support;
(C) areas with high population density;
(D) environmental justice (as defined in section 3513 of title 42, Code of Federal Regulations (or successor regulations));
(E) connectivity to existing protected areas and open spaces;
(F) cultural, historic, and scenic areas; and
(G) other criteria developed by the Committee.
(2) APPLICATION FOR IDENTIFICATION AS A STEWARDSHIP SITE.—
(1) IN GENERAL.—The Committee shall identify stewardship sites using a selection technique that includes—
(A) public access;
(B) community support;
(C) areas with high population density;
(D) environmental justice (as defined in section 3513 of title 42, Code of Federal Regulations (or successor regulations));
(E) connectivity to existing protected areas and open spaces;
(F) cultural, historic, and scenic areas; and
(G) other criteria developed by the Committee.
(3) EVALUATION OF OUTCOMES AND INTEGRATION.—
(A) IN GENERAL.—The Committee shall apply the management framework to the process for updating the list of recommended stewardship sites.

SEC. 9. REPORTS.
(a) IN GENERAL.—For each of fiscal years 2006 through 2013, the Committee shall submit to the Administrator an annual report that contains—
(1) a detailed statement of the findings and conclusions of the Committee since the last report;
(2) a description of all sites recommended by the Committee to be approved as stewardship sites;
(3) the recommendations of the Committee for such legislation and administrative actions as the Committee considers appropriate; and
(4) in accordance with subsection (b), the recommendations of the Committee for the awarding of grants.
(b) GENERAL GUIDELINES FOR RECOMMENDATIONS.—
(I) IN GENERAL.—The Committee shall recommend that the Administrator award...
grants to qualified applicants to help to secure and improve the open space, public access, or ecological values of stewardship sites, through—
(A) purchase of the property of the site;
(B) purchase of relevant property rights of the site; or
(C) entering into any other binding legal arrangement that ensures that the values of the site are sustained, including entering into an arrangement with a land manager or owner to develop or implement an approved management plan that is necessary for the conservation of natural resources.

(2) EQUITABLE DISTRIBUTION OF FUNDS.—The Committee shall be further authorized to distribute funds between the States.

(c) ACTION BY THE ADMINISTRATOR.—
(1) IN GENERAL.—Not later than 90 days after receiving a report under subsection (a), the Administrator shall—
(A) review the recommendations of the Committee; and
(B) take actions consistent with the recommendations of the Committee, including consideration of appropriate levels of funding to be distributed among the States.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Administrator shall submit to Congress a report on the implementation of this Act on land use in the Region.

(3) Reporting Requirement.—The Committee shall terminate on December 31, 2031.

SEC. 10. PRIVATE PROPERTY PROTECTION.

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this Act—
(1) requires any private property owner to allow public access (including Federal, State, or local government access) to the private property; or
(2) authorizes any Federal, State, or local government to regulate land use.

(b) LIABILITY.—Nothing in this Act authorizes any Federal, State, or local government to regulate land use.

(c) AUTHORITY TO CONTROL LAND USE.—Nothing in this Act modifies the authority of Federal, State, or local government to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS IN THE LONG ISLAND SOUND STewardship Initiative Region.—Nothing in this Act requires the owner of any private property located within the boundaries of the Region to participate in or be associated with the Initiative.

(e) EFFECT OF ESTABLISHMENT.—
(1) IN GENERAL.—The boundaries approved by the legislation are those for which Federal funds appropriated for the purpose of this Act may be expended.
the Sierra Vista subwatershed of Arizona. In my view, the establishment of a similar, cooperative body in the Verde Basin will be a vital step in assuring the wise use of our limited water resources.

I look forward to the expedient passage of this legislation in this Congress and again thank all of the parties involved with this effort during the past several years. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 161

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 “Northern Arizona Land Exchange and Verde River Basin Partnership Act of 2005”.

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

TITILE I—NORTHERN ARIZONA LAND EXCHANGE

SEC. 101. Definitions.

SEC. 102. Land exchange.

SEC. 103. Description of non-Federal land.

SEC. 104. Description of Federal land.

SEC. 105. Status and management of land involved in exchange.

SEC. 106. Miscellaneous provisions.

SEC. 107. Conveyance of additional land.

TITILE II—VERDE RIVER BASIN PARTNERSHIP

SEC. 201. Purpose.


SEC. 204. Verde River Basin studies.


SEC. 206. Memorandum of understanding.

SEC. 207. Effect.

TITILE I—NORTHERN ARIZONA LAND EXCHANGE

SEC. 101. DEFINITIONS.

In this title:

(1) CAMP.—The term “camp” means Camp Bearbrite, Fruiting Pines, Patterdale Pines, Pine Summit, Sky Y, and Young Life Lost Canyon camps in the State of Arizona.

(2) CITIES.—The term “cities” means the cities of Flagstaff, Williams, and Camp Verde, Arizona.

(3) FEDERAL LAND.—The term “Federal land” means the land described in section 104.

(4) NON-FEDERAL LAND.—The term “non-Federal land” means the land described in section 104.

(5) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.


SEC. 102. LAND EXCHANGE.

(a) IN GENERAL.—(1) Upon the conveyance by Yavapai Ranch of title to the non-Federal land identified in section 104, the Secretary shall simultaneously convey to Yavapai Ranch title to the Federal land identified in section 104.

(2) TITLE TO THE LANDS TO BE EXCHANGED.—Title to the lands to be exchanged shall be in a form acceptable to the Secretary and Yavapai Ranch.

(b) THE FEDERAL AND NON-FEDERAL LANDS TO BE EXCHANGED.—The Federal and non-Federal lands to be exchanged under this title may be modified prior to the exchange as provided in this title.

(4) If the value of the Federal land exceeds the value of the non-Federal land by more than $50,000, the Secretary and Yavapai Ranch shall, by mutual agreement, delete Federal land from the exchange until the value of the Federal land and non-Federal land is, to the maximum extent practicable, equal.

(c) EXCHANGE PROCEEDS.—(1) The value of the Federal land and non-Federal land shall be determined by appraisals prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

(2) After the Secretary has reviewed and approved the final appraised values of the Federal land and non-Federal land to be exchanged, the Secretary shall not be required to reapprove or update the final appraised values before the completion of the land exchange.

(d) CONTRACTING.—(1) If the Secretary lacks adequate staff or resources to complete the exchange by the date specified in section 106(c), Yavapai Ranch, subject to the agreement of the Secretary, may contract with independent third-party contractors to carry out any work necessary to complete the exchange by that date.

(2) In accordance with this subsection, Yavapai Ranch contracts with an independent third-party contractor to carry out any work that would otherwise be performed by the Secretary, the Secretary shall reimburse Yavapai Ranch for the costs for the third-party contractors.

(e) EASEMENTS.—The exchange of non-Federal and Federal land under this title shall be subject to any easements, rights-of-way, utility lines, and any other valid encumbrances in existence on the date of enactment of this Act, including acquired easements for water pipelines as generally depicted on the map entitled “Yavapai Ranch Land Exchange” dated August 2004, and any other reservations that may be agreed to by the Secretary and Yavapai Ranch.

(f) UPON COMPLETION OF THE LAND EXCHANGE.—Upon completion of the land exchange under this title, the Secretary and Yavapai Ranch shall grant each other at no charge reciprocal easements for access and utilities across, and through:

A. The routes depicted on the map entitled “Yavapai Ranch Land Exchange, Road and Trail Easements, Yavapai Ranch Area” dated August 2004; and

B. Any relocated routes that are agreed to by the Secretary and Yavapai Ranch.
An easement described in paragraph (2) shall be unrestricted and non-exclusive in nature and shall run with and benefit the land.

SEC. 103. DESCRIPTION OF NON-FEDERAL LAND.

(a) IN GENERAL.—The non-Federal land referred to in this title consists of approximately 35,000 acres of privately-owned land located within the Prescott National Forest, as generally depicted on the map entitled ‘‘Yavapai Ranch Land Exchange, Non-Federal Lands’’, dated August 2004.

(b) EASEMENTS.—(1) The conveyance of non-Federal land to the United States under section 102 shall be subject to the reservation of the following:

(A) water rights and perpetual easements that run with and benefit the land retained by Yavapai Ranch for—

(i) the maintenance, repair, improvement, development, and replacement of not more than 3 wells in existence on the date of enactment of this Act;

(ii) related storage tanks, valves, pumps, and hardware; and

(B) pipelines to points of use; and

(C) easements for reasonable access to accomplish the purposes of the easements described in subparagraph (A).

(2) Each easement for an existing well referred to in subparagraph (A) shall be 40 acres in area, centered on the existing well.

(3) The United States shall be entitled to one-half the production of each existing or replaced well, limited to a total of 3,100,000 gallons of water annually for National Forest System purposes.

(4) The locations of the easements and wells shall be as generally depicted on the map entitled ‘‘Yavapai Ranch Land Exchange, Reserved Easements for Water Lines and Wells’’, dated August 2004.

SEC. 104. BLAIR LAYTON NATIONAL LAND.

(a) IN GENERAL.—The Federal land referred to in this title consists of the following:

(1) certain land comprising approximately 15,300 acres as generally depicted on the map entitled ‘‘Yavapai Ranch Land Exchange, Flagstaff Federal Lands Airport Parcel’’, dated August 2004, and

(2) comprising approximately 28.26 acres in two separate parcels, as generally depicted on the map entitled ‘‘Yavapai Ranch Land Exchange, Flagstaff Federal Lands Wetzel School and Mt. Elden Parcels’’, dated August 2004.

(b) Certain land located in the Kaibab National Forest, and referred to as the Williams, Williams golf course, Williams Sewer, Buckskinner Park, Williams Railroad, and Well parcels number 2, 3, and 4, cumulatively comprising approximately 990 acres, as generally depicted on the map entitled ‘‘Yavapai Ranch Land Exchange, Williams Federal Lands’’, dated August 2004.

(c) Certain land located in the Kaibab National Forest, comprising approximately 2,200 acres, as generally depicted on the map entitled ‘‘Yavapai Ranch Land Exchange, Camp Verde Federal Land General Crook Parcel’’, dated August 2004.

(d) Certain land located in the Kaibab National Forest, comprising approximately 237.5 acres, as generally depicted on the map entitled ‘‘Yavapai Ranch Land Exchange, Younglife Lost Canyon’’, dated August 2004.


(f) To conserve water in the Verde Valley, Arizona, and to minimize the adverse impacts from future development of the eastern Verde River alluvium of the Verde River.

SEC. 105. STATUS AND MANAGEMENT OF LAND AFTER EXCHANGE.

(a) IN GENERAL.—Land acquired by the United States under this title shall become part of the Prescott National Forest and may be managed in accordance with this title and the laws applicable to the National Forest System.

(b) GRAZING.—Where grazing on non-Federal land acquired by the United States under this title occurs prior to the date of enactment of this Act, the Secretary may manage the land to allow for continued grazing use, in accordance with the laws generally applicable to domestic livestock grazing on National Forest System land.

(c) TIMBER HARVESTING.—(1) After completion of the land exchange under this title, except as provided in paragraph (2), commercial timber harvesting shall be prohibited on the non-Federal land acquired by the United States under this title.

(2) Timber harvesting may be conducted on the non-Federal land acquired under this title if the Secretary determines that such harvesting is necessary—

(A) to prevent or control fires, insects, and disease through forest thinning or other forest management techniques;

(B) to protect or enhance grassland habitat, watershed values, native plants and wildlife species; or

(C) to improve forest health.

SEC. 106. MISCELLANEOUS PROVISIONS.

(a) REVOCATION OF ORDERS.—Any public order withdrawing any of the Federal land
from appropriation or disposal under the public land laws are revoked to the extent necessary to permit disposal of the Federal land.

(b) **WITHDRAWAL OF FEDERAL LAND.**—Subject to valid existing rights, the Federal land is withdrawn from all forms of entry and appropriation under the public land laws; location, entry, and patent under the mining laws; and operation of the mineral leasing and geothermal leasing laws, until the date on which the land exchange is completed.

(c) **DESTRUCTION OF EXCHANGE.**—It is the intent of Congress that the land exchange authorized and directed under this title be completed not later than 18 months after the date of enactment of this Act.

### SEC. 107. CONVEYANCE OF ADDITIONAL LAND

(a) **IN GENERAL.**—The Secretary shall convey to a person that represents the majority of landowners with encroachments on the lot of land referred to in subsection (a) a parcel of land described in subsection (b).

(b) **DESCRIPTION OF LAND.**—The parcel of land referred to in subsection (a) is lot 8 in section 11, T. 21 N., R. 7 E., Gila and Salt River Base and Meridian, Coconino County, Arizona.

(c) **AMOUNT OF CONSIDERATION.**—In exchange for the land described in subsection (b), the person acquiring the land shall pay to the Secretary consideration in the amount of—

1. $2,500; plus
2. any costs of re-monumenting the boundary of land.

(d) **TIMING.**—(1) Not later than 90 days after the date on which the Secretary receives a power of attorney executed by the person acquiring the land, the Secretary shall convey to the person the land described in subsection (b).

(2) If, by the date that is 270 days after the date of enactment of this Act, the Secretary does not receive the power of attorney described in paragraph (1)—

(A) the authority provided under this section shall terminate; and

(B) any conveyance of the land shall be made under Public Law 97-465 (16 U.S.C. 531c et seq.).

### TITLE II—VERDE RIVER BASIN PARTNERSHIP

#### SEC. 201. PURPOSE

The purpose of this title is to authorize assistance for a collaborative and science-based planning and management partnership for the Verde River Basin in the State of Arizona, consisting of members that represent—

(1) Federal, state, and local agencies; and

(2) economic, environmental, and community water interests in the Verde River Basin.

#### SEC. 202. DEFINITIONS

In this title:

(1) **DIRECTOR.**—The term “Director” means the Director of the Arizona Department of Water Resources.

(2) **PARTNERSHIP.**—The term “Partnership” means the Verde River Basin Partnership.

(3) **PLAN.**—The term “plan” means the plan for the Verde River Basin required by section 204(a)(1).

(4) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.

(5) **STATE.**—The term “State” means the State of Arizona.

(6) **VERDE RIVER BASIN.**—The term “Verde River Basin” means the land area designated by the Arizona Department of Water Resources as encompassing surface water and groundwater resources, including drainage and recharge areas with a hydrologic connection to the Verde River.

(7) **WATER BUDGET.**—The term “water budget” means the accounting of—

(A) the quantities of water leaving the Verde River Basin—

(i) as discharge to the Verde River and tributaries;

(ii) as surface outflow;

(iii) as evapotranspiration by riparian vegetation;

(iv) as surface evaporation;

(v) for irrigation, and subsurface inflows.

(B) the quantities of water replenishing the Verde River Basin by precipitation, infiltration, and geothermal leasing laws, until the date on which the land exchange is completed.

(C) **STUDIES.**—The Partnership shall prepare a plan for conducting water resource studies in the Verde River Basin that identifies—

(1) the primary study objectives to fulfill water resource planning and management needs for the Verde River Basin; and

(2) the water resource studies, hydrologic models, surface and groundwater monitoring networks, and other analytical tools helpful in the identification of long-term water supply management options within the Verde River Basin.

(D) **REQUIREMENTS.**—At a minimum, the plan shall—

(A) include a list of specific studies and analyses that are needed to support Partnership planning and management decisions;

(B) identify ongoing or completed water resource or riparian studies that are relevant to water resource planning and management for the Verde River Basin; and

(C) describe the estimated cost and duration of the proposed studies and analyses; and

(D) designate as a study priority the completion of a water budget analysis for the Verde Valley.

(8) **VERDE VALLEY WATER BUDGET ANALYSIS.**—

(1) **IN GENERAL.**—Subject to the availability of appropriations, not later than 14 months after the date of enactment of this Act, the Director of the U.S. Geological Survey, or his or her representative, shall prepare and submit to the Partnership a report that provides a water budget analysis of the portion of the Verde River Basin within the Verde Valley.

(2) **COMPONENTS.**—The report submitted under paragraph (1) shall include—

(A) a summary of the information available on the hydrologic flow regime for the portion of the Middle Verde River from the Clarkdale streamgaging station to the city of Camp Verde at United States Geological Survey Gage 09009900;

(B) with respect to the portion of the Middle Verde River described in subparagraph (A), estimates of—

(i) the input, outflow of surface water and groundwater;

(ii) annual consumptive water use; and

(iii) changes in groundwater storage; and

(C) an analysis of the potential long-term consequences of various water use scenarios on groundwater levels and Verde River flows.

#### SEC. 203. VERDE RIVER BASIN PARTNERSHIP

(a) **IN GENERAL.**—The Secretary may participate in the establishment of a partnership, to be known as the “Verde River Basin Partnership”, made up of Federal, State, local governments, and other entities with responsibilities and expertise in water to coordinate and cooperate in the identification and implementation of comprehensive science-based policies, projects, and management activities relating to the Verde River Basin.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—On establishment of the Partnership, there are authorized to be appropriated to the Secretary and the Director for the Interior such sums as are necessary to carry out the activities of the Partnership for each of fiscal years 2006 through 2010.

#### SEC. 204. VERDE RIVER BASIN STUDIES

(a) **STUDIES.**—(1) In general.—The Partnership shall prepare a plan for conducting water resource studies in the Verde River Basin that identifies—

(A) the primary study objectives to fulfill water resource planning and management needs for the Verde River Basin; and

(B) the water resource studies, hydrologic models, surface and groundwater monitoring networks, and other analytical tools helpful in the identification of long-term water supply management options within the Verde River Basin.

(2) **REQUIREMENTS.**—At a minimum, the plan shall—

(A) include a list of specific studies and analyses that are needed to support Partnership planning and management decisions;

(B) identify ongoing or completed water resource or riparian studies that are relevant to water resource planning and management for the Verde River Basin; and

(C) describe the estimated cost and duration of the proposed studies and analyses; and

(D) designate as a study priority the completion of a water budget analysis for the Verde Valley.

(b) **VERDE VALLEY WATER BUDGET ANALYSIS.**—

(1) **IN GENERAL.**—Subject to the availability of appropriations, not later than 14 months after the date of enactment of this Act, the Director of the U.S. Geological Survey, or his or her representative, shall prepare and submit to the Partnership a report that provides a water budget analysis of the portion of the Verde River Basin within the Verde Valley.

(2) **COMPONENTS.**—The report submitted under paragraph (1) shall include—

(A) a summary of the information available on the hydrologic flow regime for the portion of the Middle Verde River from the Clarkdale streamgaging station to the city of Camp Verde at United States Geological Survey Gage 09009900;

(B) with respect to the portion of the Middle Verde River described in subparagraph (A), estimates of—

(i) the input, outflow of surface water and groundwater;

(ii) annual consumptive water use; and

(iii) changes in groundwater storage; and

(C) an analysis of the potential long-term consequences of various water use scenarios on groundwater levels and Verde River flows.

#### SEC. 205. VERDE RIVER BASIN PARTNERSHIP FINAL REPORT

Not later than 4 years after the date of enactment of this Act, the Partnership shall submit to the Secretary and the Governor of Arizona a final report that includes a summary of the results of any water resource assessments conducted under this title in the Verde River Basin; identifies any areas in the Verde River Basin that are determined to have ground-water deficits or other current or potential water supply problems; identifies long-term water supply management options for communities and water resources within the Verde River Basin; and identifies water resource analyses and monitoring needed to support the implementation of management options.

#### SEC. 206. MEMORANDUM OF UNDERSTANDING

The Secretary (acting through the Chief of the Forest Service) and the Secretary of the Interior shall enter into a memorandum of understanding authorizing the United States Geological Survey to access Forest Service land (including stream gauges, weather stations, and other points of data collection on the Forest Service land) to carry out this title.

#### SEC. 207. EFFECT

Nothing in this title diminishes or expands State or local jurisdiction, responsibilities, or rights with respect to water resource management or control.

Mr. KYL. Mr. President, today, I am pleased to join with Senator MCCAIN to introduce the Northern Arizona Land Exchange and Verde River Basin Partnership Act of 2005. This bill facilitates the formation of a partnership between Federal, State, and local stakeholders to facilitate sound water resource planning and management in the Verde River Basin. This is the result of two years of discussions and compromise between the Arizona delegation, United States Forest Service,
community groups, local officials, and other stakeholders. The bill passed the Senate last session, but unfortunately was not enacted before adjournment. I am introducing this legislation with the hope that the Senate will act quickly to pass it early in this Congress.

The bill is divided into two titles. Title I provides the framework for the land exchange between Yavapai Ranch Limited Partnership and the United States Forest Service. Title II outlines the key aspects of the Verde River Basin Partnership. The land exchange outlined in Title I is a fair and equitable exchange that will yield many environmental benefits to the citizens of Arizona. It will place approximately 35,000 acres of private land in federal ownership for public use. This acreage is important ecologically because it contains such key features as old growth ponderosa pine, and high quality grassland that serves as excellent habitat for quail and antelope, critical to the preservation of the watersheds. In addition, it consolidates under Forest Service ownership a 110-square mile area in the Prescott National Forest near the existing Juniper Mesa (II) to preserve the area in its natural state. Without this land exchange, these private tracts would be open to future development. I am pleased that this bill will preserve them for future generations.

The land exchange also significantly improves the management of the Prescott National Forest. The existing checkboard ownership pattern makes management and access difficult. By consolidating this land, the exchange will enable the Forest Service will be able to effectively apply forest restoration treatments to reduce the fire risk and improve the overall health of the forest. I cannot emphasize enough how crucial this is, given the history of devastating fires in the state.

In addition to protecting Arizona’s natural resources, Title I of the bill allows several Northern Arizona communities to accommodate future growth and economic development, and to meet other municipal needs. This exchange will allow the cities of Flagstaff and Williams to expand their airports, meet their water-treatment needs, and develop town parks and recreation areas. The town of Camp Verde will have an opportunity to acquire land to build an emergency center and protect its views. Several youth organizations will be able to acquire land for their camps.

This bill addresses one of the most crucial challenges facing Arizona: sound management of water resources. I have heard from many state and local officials, and the constituents affected by the land exchange, that we needed to do more in this bill to address water issues. I note in response that this bill has a key acquisition opportunity for the state. First, it establishes a conservation easement on the Camp Verde General Crook parcel, which limits water use after private acquisition to just 300 acre feet a year. This limitation was strengthened from the previous versions of the bill which included a use restriction of 700 acre feet a year. This provision sets an important precedent for responsible water use in the Verde Valley and across the state.

By Mr. ROCKEFELLER:
S. 162. A bill to amend chapter 99 of the Internal Revenue code of 1986 to clarify that certain coal industry health benefits may not be modified or terminated; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, today I am introducing legislation to make very clear that Congress fully protected the health insurance benefits of mining families when we passed the Coal Act in 1992. This legislation is identical to S. 3004 which I introduced in the 108th Congress. Unfortunately, it is necessary, because we have recently seen bankruptcy courts disregard the Coal Act and absolve companies of their obligations to provide health benefits for workers and retirees. This is unacceptable. And the bill I am introducing today reiterates that the bankruptcy code does not supersede the Coal Act.

Last fall, another company abandoned promises it made to workers and retirees in West Virginia. Horizon Natural Resources sought and received a court ruling that released it from its contracts with union miners and allowed it to avoid honoring health care benefit obligations for over 2,300 retired miners. This is a morally bankrupt corporate strategy, and is inconsistent with the Coal Act passed by Congress in 1992.

The Coal Act was needed in 1992 to prevent some companies from walking away from their clear contractual obligations and agreements with their workers. One of the provisions of that bill was written especially with the intent of not allowing companies to simply reorganize as a way to get out of their obligations to their workers. Unfortunately, too many companies are increasingly using bankruptcy courts to achieve the same.

It should not be necessary for me to introduce this bill today. Congress has already spoken on this subject. The law is clear: Coal Act retirees are entitled to full benefits provided under the statute. No judge should rewrite the law to take those benefits away. However, because judges are legislating from the bench, it will be helpful for Congress to reiterate our intention to protect the health benefits of coal miners and their families.

This issue is extremely important to all of those who are being victimized by the bankruptcy courts. I hope that my colleagues will join me in this effort to protect the miners, retired miners and their families who are seeking the benefits they were promised in exchange for years of hard work.

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

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

S. 162

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

SECTION 1. PROTECTION OF COAL INDUSTRY HEALTH BENEFITS.

Section 9711(g) of the Internal Revenue Code of 1986 (relating to rules applicable to this part and part II) is amended by adding at the end the following new paragraph:

(3) PROHIBITION ON TERMINATION AND MODIFICATION OF BENEFITS.—Except as provided in subsection (d), the benefits required to be provided by a last signatory operator under this chapter may not be terminated or modified by any court in a proceeding under title 11 of the United States Code or by agreement at any time when such operator is participating in such a proceeding:

By Mr. BENNETT:
S. 163. A bill to establish the National Mormon Pioneer Heritage Area in the State of Utah, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BENNETT. Mr. President, I rise today to re-introduce the National Mormon Pioneer Heritage Area Act. The Act designates as a National Heritage Area an area that spans some 250 miles along Highway 89 and encompasses outstanding examples of historical, cultural, and natural resources that demonstrate the colonization of the western United States, and the experience and influence of the Mormon pioneers in furthering that colonization.

The landscape, architecture, artisan skills, and events along Highway 89...
convey in a very real way the legacy of the Mormon pioneers’ achievements. The community of Panquitch for example, has an annual Quilt Day celebration to commemorate the sacrifice and fortitude of its pioneers whose efforts saved the town from starvation in 1864. The celebration is in remembrance of the Quilt Walk, a walk in which a group of men from Panquitch used quilts to form a path that would bear their weight across the snow. This quilt enabled these men to cross over the mountains to procure food for their community, which was facing starvation as it experienced its first winter in Utah.

Another example of the tenacity of pioneers can be seen today at the Hole-in-the-Rock. Here, in 1880, a group of 250 people, 80 wagons, and 1,000 head of cattle upon the Colorado River Gorge. Finding no pathways down to the river, the pioneers decided to use a narrow crevice leading down to the bottom of the area. The crevice was big enough to accommodate wagons, the pioneers spent 6 weeks enlarging the crevice by hand, using hammers, chisels, and blasting powder. They then attached large ropes to the wagons as they began to descend down the steep incline. It is because of such tenacity and innovation on the part of the pioneers that the western United States was shaped the way it was and still remains today.

The National Mormon Pioneer Heritage Area will serve as a special recognition of the people and places that have contributed greatly to our Nation’s development. It will allow for the conservation of historical and cultural resources, the establishment of interpretive exhibits, will increase public awareness of the surviving skills and crafts of those living along Highway 89, and specifically allows for the preservation of historic buildings. In light of the benefits associated with preserving the rich heritage of the founding of many of the communities along Highway 89, my legislation has broad support from Sanpete, Sevier, Piute, Garfield, and Kane counties and is a locally based, locally supported undertaking.

Since the introduction of this legislation in the 108th Congress, I am pleased that elected officials, who have been unanimously supportive of this legislation, have come together to outline in a Memorandum of Understanding, with the local coordinating entity identified in the legislation, the cooperative relationship the coordinating entity enjoys with the elected officials of the local counties.

This legislation passed the Senate both in the 107th and 108th Congresses as part of packages agreed upon by the committee of jurisdiction. Unfortunately, both times the packages were not able to be considered by the other body prior to adjournment. I reintroduce this bill today with the hope that during this session of Congress we might achieve success in this body early enough to be considered by the House.

By Mr. BENNETT:

S. 164. A bill to provide for the acquisition of certain property in Washington County, Utah; to the Committee on Energy and Natural Resources.

Mr. BENNETT. Mr. President, today I am re-introducing a bill which is intended to bring to a close the Federal acquisition of an important piece of privately held land, located within the federally designated desert tortoise reserve in Washington County, UT.

As some of you may already know, this is not the first time legislation has been introduced in an attempt to resolve this issue. Most recently, on December 7, 2004, at the conclusion of the 108th Congress, the Senate passed by unanimous consent an amendment in the nature of a substitute to H.R. 620, which adopted as title XVI agreed upon provisions of S. 1209. Unfortunately, the House of Representatives adjourned sine die before it had time to act upon H.R. 620. The legislation I am introducing today is the same as the language earlier adopted by the Senate, except for a technical clarification regarding management of the acquired lands.

I want to personally express my appreciation to Senator Domenici and his staff for their leadership and assistance on this issue. I would also like to thank the ranking minority member, Mr. Bingaman, the Department of the Interior, and their respective staffs, for their assistance and support of this measure.

Earlier in July of 2000, I introduced S. 2873, which was referred to and reported favorably by the Senate Committee on Energy and Natural Resources. In addition, similar legislation was twice approved by the House of Representatives, both in the 106th and 107th Congresses. For over a decade, the private property addressed by this bill has been under Federal control and the Federal Government has enjoyed the benefits of the private property without fulfilling its constitutional obligation to compensate the landowner. The government’s failure to timely acquire the landowner’s private property has forced the landowner into bankruptcy. It is now the time has come to finally resolve this issue.

In March of 1991, the desert tortoise was listed as an endangered species under the Endangered Species Act. Government and environmental researchers determined that the land immediately north of St. George, UT, was prime desert tortoise habitat. Consequently, in February 1996, nearly 5 years after the listing, the United States Fish and Wildlife Service, USFWS, issued Washington County a Section 10 permit under the Endangered Species Act which paved the way for the adoption of a habitat conservation plan, HCP, and an implementation agreement. Under the Plan and Agreement, the Bureau of Land Management, BLM, committed to acquire all private lands in the designated habitat area for the formation of the Red Cliffs Reserve for the protection of the desert tortoise.

One of the private land owners within the reserve is Environmental Land Technology, Ltd., ELT, which began acquiring lands from the State of Utah in 1981 for residential and recreational development several years prior to the listing of the species. Moreover, in the years preceding the listing, the desert tortoise and the adoption of the habitat conservation plan, ELT completed appraisals, cost estimates, engineering studies, site plans, surveys, utility layouts, and right-of-way negotiations. ELT staked out golf courses, and obtained water rights for the development of this land. Prior to the adoption of the HCP, it was not clear which lands the Federal and local governments would set aside for the desert tortoise, although it was clear that there were sufficient surrounding Federal lands to provide adequate habitat. However, when the HCP was adopted in 1996, the decision was made to include ELT’s lands within the boundaries of the reserve primarily because of the high concentrations of tortoises. The tortoises on ELT land also appeared to be one of, if not the only population without an upper respiratory disease that afflicted all of the other populations. As a consequence of the inclusion of the ELT lands, ELT’s development efforts were halted.

With assurances from the Federal Government that the acquisition of the ELT development lands was a high priority, the owner negotiated with, and entered into, an assembled land exchange agreement to anticipate of intrastate land exchanges. The private land owner then began a costly process of identifying comparable Federal lands within the State that would be suitable for an exchange for his lands in Washington County. Over the last 7 years, BLM and the private land owners, including ELT, have completed several exchanges, and the Federal Government has acquired, through those exchanges or direct purchases, nearly all of the private property located within the reserve, except for approximately 1,516 acres of the ELT development land. However, with the unforeseen creation of the Grand Staircase-Escalante National Monument in September 1996, and the subsequent land exchange with the State of Utah and the Federal Government to consolidate Federal lands within that monument, there are no longer sufficient comparable Federal lands within Utah to complete the originally contemplated intrastate exchanges for the remainder of the ELT land.

Faced with this problem, and in light of the high priority the Department of the Interior has placed on acquiring...
these lands, BLM officials recommended that the ELT lands be acquired by direct purchase. During the FY 2000 budget process, BLM proposed that $30 million be set aside to begin acquiring the remaining lands in Washington County. Unfortunately, because this project involves endangered species habitat and the USFWS is responsible for administering activities under the Endangered Species Act, the Office of Management and Budget shifted the $30 million from the BLM budget request to the USFWS’s Cooperative Endangered Species Conservation Fund budget request. Ultimately, however, none of those funds was made available for BLM acquisitions within the Federal section of the reserve. Instead, the funds in that account were made available on a matching basis for the use of individual States to acquire wildlife habitat. The result of this bureaucratic fumbling has resulted in extreme financial hardship for ELT.

The lands within the Red Cliffs Reserve are ELT’s only asset. The establishment of the Washington County HCP has effectively taken this property and prevented ELT from developing or disposing of the property. ELT has been brought to the brink of financial ruin as it has exhausted its resources in an effort to hold the property while awaiting the compensation to which it is entitled. ELT is its remaining assets, and the private land owner has also had to sell his personal assets, including his home, to simply hold the property. This has become a financial crisis for the landowner. It is simply wrong for the Federal Government to expect the landowner to continue to bear the cost of the government’s efforts to provide habitat for an endangered species. That is the responsibility of the Federal Government. Moreover, while the landowner is bearing this financial hardship for ELT, the Federal Government has never disputed its obligation. While the Federal Government has never disputed its obligation to acquire private land, the landowner should not have to be driven into financial ruin while waiting upon the Federal Government to discharge its obligation. While the Federal Government has never disputed its obligation to acquire the property, it has had the benefit of the private land owner for all these years without having to pay for it. The private landowner should not have to bear the costs of this Federal foot-dragging.

This legislation is consistent with the high priority the Department of the Interior has repeatedly placed on this land acquisition, and is a necessary final step towards an equitable resolution. The time for pursuing other options has long since expired and it is unfortunate that it requires legislative action. Without commenting on the actions of the Federal Government, it would seem that if it is the government’s objective to provide habitat for the benefit of an endangered species, then the government ought to bear the costs, rather than forcing them upon the landowner. It is also time to address this issue so that the Federal agencies may be single-minded in their efforts to recover the desert tortoise which remains the aim of the creation of the reserve. This legislation simply codifies the statute of limitations for the private land owner to obtain the compensation to which he is constitutionally entitled. It is time to right this wrong and get on with the efforts to recover the species and I encourage my colleagues to again support the immediate enactment of this important legislation.

By Mr. COLEMAN:
S. 185. A bill for the relief of Tchisou Tho; to the Committee on the Judiciary.

Mr. COLEMAN. Mr. President, today I am introducing a private relief bill for an outstanding young man from my State of Minnesota, Tchisou Tho.

This legislation would allow Tchisou, a Hmong immigrant, to stay in this country by adjusting his status to permanent resident. Not only would this allow him to stay in the country he has lived in since he was 5 years old, but it will make him eligible for in-State tuition at the University of Minnesota.

Tchisou’s family came to the United States 14 years ago on a visitor’s visa from France after fleeing Communist rule in Laos in 1975. He was 5 years old at the time. They moved to Minnesota in 1993 to find work and to give their children an opportunity to receive a quality education.

Tchisou was an all-American high school student. He was home hung out at the mall with his friends and attended prom. He was an honor roll student, active in his community, church, and school. Tchisou was going to be the first member of his family to graduate from high school, and he was getting ready to begin his junior year in a scholarship to the University of Minnesota.

But in May 2003, just as Tchisou was getting ready to graduate from high school, his family met with immigration officials to request changes to their immigration status. Instead, they received a deportation order.

Tchisou’s parents acknowledged that they had broken the law by overstaying their visas, and agreed to leave the country. But Tchisou did not want to have the chance to graduate with his high school class. Legislation I introduced last year allowed Tchisou to stay. And thanks to the compassion of the immigration authorities, Tchisou’s family was allowed to stay in the country just long enough to see their son walk in his high school graduation ceremony. Shortly thereafter, Tchisou’s parents and brothers and sisters returned to France as they promised, where they live today.

Still focused on his educational goals and now living with his married sister in St. Paul, Tchisou enrolled at the University of Minnesota as an international student. However, he was required to pay out-of-State tuition and unfortunately had to drop out after one semester when he ran out of money.

Determined to finish college, Tchisou is currently driving a forklift at the loading docks of a home improvement store to save money, but neither Tchisou nor his family can afford to pay his college while his immigration status is being sorted out. He was recently named employee of the month. Tchisou hopes to re-enroll at the University of Minnesota.

I acknowledge that Tchisou’s parents broke the law. They overstayed their visas to remain in this country, which they should not have done. And they have since been deported. But I think it would be unfair to punish Tchisou for the actions of his parents. This private relief bill would allow Tchisou the chance to live the American dream.

With the help of my good friend and colleague, the senior Senator from Georgia, Chairman CHAMBLISS, we were able to pass this legislation last year. I hope the Senate will be able to act on this important legislation early this year so that Tchisou may enroll at the University of Minnesota, graduate, and be an asset to our community.

I ask unanimous consent that the text of the bill be printed in the Record.

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

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I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:
Mr. Hatch. Mr. President, I rise today to introduce the Family Enter-
tainment and Copyright Act of 2005. This important legislation consists of a
package of smaller intellectual property bills that the House and Senate have
been working to enact since last Congress. This legislation passed the
Senate not once, but twice, during the last days of the 108th Congress. Un-
fortunately, though, it was doomed by a non-germane amendment unrelated
to intellectual property law. My hope is that we can work together this Con-
gress to avoid this type of pitfall, and I commit to work with other members
to do so.

Before giving into my substantive dis-
cussion of the bill, I would like to thank my colleagues Senators Leahy,
Cornyn, and Feinstein for their ongo-
ing efforts on this legislation. Just as
it was last year, this legislation is a
group effort, and I want to take care
to recognize the contributions and their
excellent work along with that of Rep-
resentatives Sensenbrenner, Smith, Berman, and Conyers in the House.

Title I of this Act, the Artists’ Rights
and Theft Prevention Act of 2005, (the
ART Act), contains a slightly modified
version of S. 392, authored by Senators
Cornyn and Feinstein in the 108th
Congress. This bill addresses signifi-
cant gaps in our copyright laws
that are feeding some of the piracy now rampant on the Internet.
First, it criminalizes attempts to
record movies off of theater screens.
These camcorded copies of new movies
now appear on filesharing networks
almost contemporaneously with the
atrical release of a film. Several States
have already taken steps to criminalize
this activity, but providing a uniform
law—instead of a collection of State
criminal statutes—will assist law
enforcement officials in combating the
theft and redistribution of valuable in-
tellectual property embodied in newly
released motion pictures.
Second, the bill will create a pre-reg-
istration system that will permit
criminal penalties and statutory-dam-
age awards. This will also provide
a tool for law enforcement officials com-
bating the growing problem of music
and movies being distributed on file-
sharing networks circulating on the
Internet before they are even re-
leased. Obviously, the increasingly fre-
quent situation of copyrighted works

Mr. Hatch. Mr. President, I rise
today to introduce the Family Enter-
return to the subject of the
original legislation.

The Deschutes River Conservancy,
formerly known as the Deschutes Re-
sources Conservancy, was originally
authorized in 1996 as a pilot project. It
was so successful it was reauthorized in
the 106th Congress. The Conservancy
is designed to achieve local consensus for
on-the-ground projects to improve eco-
system health in the Deschutes River Basin.

The Deschutes River is truly one of
Oregon’s greatest resources. It drains
Oregon’s high desert along the eastern
front of the Cascades, eventually flow-
ing into the Columbia River in the
State’s most intensively used recrea-
tional river. It provides water to
both irrigation projects and to the city
of Bend, which is one of Oregon’s fast-
est growing cities. The Deschutes
Basin also contains hundreds of thou-
sands of acres of productive forest and
rangelands, serves the treaty fishing
and water rights of the Confederated
Tribes of Warm Springs, and has Or-
egon’s largest non-Federal hydro-
electric project.

By all accounts, the Deschutes River
Conservancy has been a huge success.
It has brought together diverse inter-
ests within the Basin, including irrigators,
conservationists, local government offi-
cials, an investor-owned utility, local
businesses, as well as local elect-
oficials and representatives of State and Federal agencies. Together,
the Conservancy board members have
been able to develop project criteria
and identify a number of water quality,
water quantity, fish passage and habi-
tat improvement projects that could be
funded. Over the years, projects have
been selected by consensus, and there
must be a fifty-fifty cost share from
non-Federal sources.

Over the past 8 years, they have been
very successful at finding cooperative,
market-based solutions to enhance the
ecosystem in the basin. The Conserv-
ancy has used this approach to restore
over ninety cubic feet per second of
streamflow in the Deschutes Basin.
In addition, by planting over 100,000
trees, installing miles of riparian fencing,
removing becks and reconstructing
stream beds, the Conservancy has
helped improve fish habitat and water
quality along one hundred miles of the
Deschutes River and its tributaries.

The existing authorization provides
for up to two million dollars each year
for projects. This bill would continue
that annual authorization ceiling for 10
years. Funds are provided through the
Bureau of Reclamation, the group’s
lead Federal agency.

The Deschutes River Conservancy en-
joy widespread support in Oregon. It
has very committed board members
who represent diverse interests in the
Basin. The high caliber of their work,
and their pragmatic approach to eco-
system restoration have been recog-
nized by others outside the region.

I am convinced that Federal partici-
pation in this project needs to con-
tinue. This organization has helped to
avoid the conflicts over water that we
have seen in too many watersheds in
the western United States. I urge my
colleagues to support this bill.

Mr. Hatch. Mr. President, I rise
today to introduce the Family Enter-

January 25, 2005

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being distributed illegally via the Internet before they are even made available for sale to the public severely undercuts the ability of copyright holders to receive fair and adequate compensation for their works.

Title IV of the Family Movie Act of 2005 (the FMA), resolves some ongoing disputes about the legality of so-called “jump-and-skip” technologies that companies like Clearplay in my home State of Utah have developed to permit family-friendly viewing of films that may contain objectionable content. The FMA creates a narrowly defined safe-harbor clarifying that distributors of such technologies will not face liability for copyright or trademark infringement, provided that they comply with the requirements of the Act. I have been working with my colleagues in the Senate and several leaders in the House—including, most importantly Chairmen Smith and SENSENBRENNER—for the past couple of years to resolve this issue. The FMA will help to end aggressive litigation threatening the viability of small companies like Clearplay which are busy creating innovative technologies for consumers that allow them to tailor their experience to their own individual or family preferences.

The Family Movie Act creates a new exemption in section 110(11) of the Copyright Act for skipping and muting audio from motion pictures during performances of an authorized copy of the motion picture taking place in the course of a private viewing in a household. The version passed last year by the House explicitly excluded from the scope of the new copyright exemption so-called “ad-skipping” technologies that make changes, deletions, or additions to commercial advertisements or to network or station promotional announcements that would otherwise be displayed as a part of the performance of the motion picture. This provision was included on the House floor to address the concerns of some Members who were concerned that a court might misread the new section 110(11) exemption to apply to “ad-skipping” cases, such as in the recent litigation involving ReplayTV.

In the Senate, however, some expressed concern that the inclusion of such explicit language could create unwanted ambiguity with respect to the merits of the legal positions at the heart of recent “ad-skipping” litigation. Those issues remain unsettled in the courts, and it was never the intent of this legislation to resolve or affect those issues in any way. Indeed, the Copyright Act contains literally scores of similar exemptions, and none of those exemptions have been or should be construed to imply anything about the legality of conduct falling outside their scope. As a result, the Copyright Office has determined that such explicit exclusion is unnecessary to achieve the desired outcome, which is to avoid application of this new exemption in potential future cases involving ad-skipping devices. In order to avoid unnecessary controversy, the Senate bill omits the exclusionary language with the understanding that doing so does not in any way change the scope of the bill.

That change in no way affects the scope of the exemption is clear when considering that the new section 110(11) exemption protects the “making imperceptible . . . limited portions of audio or video content of a motion picture . . . .” An advertisement, under the Copyright Act, is itself a “motion picture,” and thus a product or service that enables the skipping of an entire advertisement, in any media, would be beyond the scope of the exemption. Moreover, the phrase “limited portions” is intended to refer to portions that are both quantitatively and qualitatively insubstantial in relation to the work as a whole. Where any substantial part of a complete work, such as a trademark advertisement made imperceptible, the new section 110(11) exemption would not apply. The limited scope of this exemption does not, however, imply or show that such conduct or a technology that enables such conduct is not infringing. This legislation does not in any way deal with that issue. It means simply that such conduct and products enabling such conduct are not immunized from liability by this exemption.

This bill differs from the version passed by the House last year in that it adds two “savings clauses.” The copyright savings clause makes clear that there should be no spillover effect from the passage of this law: that is, nothing shall be construed to have any effect on rights, defenses, or limitations on rights granted under title 17, other than those explicitly provided for in the new section 110(11) exemption. The trademark savings clause clarifies that an individual who performs acts that are both within the scope of the new section 110(11) exemption and not infringing is not liable for trademark infringement in potential future cases involving ReplayTV.

Just to conclude, I will again thank my colleagues in the Senate and representatives of the United States of America in Congress assembled.

S. 167

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

TITLE I—ARTISTS’ RIGHTS AND THEFT PREVENTION

SEC. 101. SHORT TITLE.

This title may be cited as the “ART Act.”

SEC. 102. CRIMINAL PENALTIES FOR UNAUTHORIZED RECORDING OF MOTION PICTURES IN A MOTION PICTURE EXHIBITION FACILITY.

(a) In General.—Chapter 113 of title 18, United States Code, is amended by adding after section 2319A the following new section: “2319B. Unauthorized recording of motion pictures in a Motion picture exhibition facility

(1) OFFENSE.—Any person who, without the authorization of the copyright owner, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, from a performance of such work in a motion picture exhibition facility, shall be punished by

(1) be imprisoned for not more than 3 years, fined under this title, or both; or
(2) if the offense is a second or subsequent offense, be imprisoned for not more than 6 years, fined under this title, or both.

The possession by a person of an audiovisual recording device in a motion picture exhibition facility may be considered as evidence in proceedings to determine whether that person committed an offense under this subsection, but shall not, by itself, be sufficient
to support a conviction of that person for such offense.

“(b) FORFEITURE AND DESTRUCTION.—When a person is convicted of a violation of subsection (a), the court in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other audiovisual works protected under title 17, or parts thereof, and any audiovisual recording devices or other equipment used in connection with the infringement.

“(c) AUTHORIZED ACTIVITIES.—This section does not prevent any lawfully authorized investigative, protective, or intelligence activity by an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or by a person acting under a contract with the United States, a State, or a political subdivision of a State.

“(d) IMMUNITY FOR THEATERS.—With reasonable cause, the owner or lessee of a motion picture exhibition facility where a motion picture or other audiovisual work is being exhibited, the authorized agent or employee of such owner or lessee, the licensor of the motion picture or other audiovisual work for the purpose of questioning or summoning a law enforcement officer; and

“(2) shall not be liable in any civil or criminal action arising out of a detention under paragraph (1).

“(e) VICTIM IMPACT STATEMENT.—(1) The preparation of the present report under rule 32(c) of the Federal Rules of Criminal Procedure, victims of an offense under this section shall be permitted to submit to the probation officer a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

“(2) CONTENTS.—A victim impact statement submitted under this subsection shall include—

“(A) producers and sellers of legitimate works affected by conduct involved in the offense;

“(B) holders of intellectual property rights in the works described in subparagraph (A); and

“(C) the legal representatives of such producers and sellers.

“(f) STATE LAW NOT PREEMPTED.—Nothing in this section may be construed to annul or limit any rights or remedies under the laws of any State.

“(g) DEFINITIONS.—In this section, the following definitions shall apply:

“(1) TITLE 17 DEFINITIONS.—The terms ‘audiovisual work’, ‘copyright owner’, ‘motion picture’, ‘motion picture exhibition facility’, and ‘transmit’ have, respectively, the meanings given those terms in section 101 of title 17.

“(2) AUDIOVISUAL RECORDING DEVICE.—The term ‘audiovisual recording device’ means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless whether audiovisual recording is the sole or primary purpose of the device.

“(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 13 of title 17, United States Code, is amended by inserting after the item relating to section 2319A the following:

“2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility.”

“(c) DEFINITION.—Section 101 of title 17, United States Code, is amended by inserting after the definition of ‘Motion picture’ the following: ‘The term ‘motion picture exhibition facility’ means a movie theater, cinema, or other place of exhibition that is being primarily used for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of a normal circle of a family and its social acquaintances.’

“SEC. 103. CRIMINAL INFRINGEMENT OF A WORK BEING PREPARED FOR COMMERCIAL DISTRIBUTION.

“(a) PROHIBITED ACTS.—Section 506(a) of title 17, United States Code, is amended to read as follows:

“(a) CRIMINAL INFRINGEMENT.—

“(1) IN GENERAL.—Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed—

“(A) for purposes of commercial advantage or private financial gain;

“(B) by the reproduction or distribution, including by electronic means, during any 180-day period, more than one phonorecord of 1 or more copyrighted works, which have a total retail value of more than $1,000; or

“(C) by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.

“(2) EVIDENCE.—For purposes of this subsection, evidence of distribution or commercial distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement of a copyright.

“(3) DEFINITION.—In this subsection, the term ‘work being prepared for commercial distribution’ means—

“(A) a computer program, a musical work, a motion picture or other audiovisual work, or a sound recording, if, at the time of unauthorized distribution—

“(i) the copyright owner has a reasonable expectation of commercial advantage or commercial distribution; and

“(ii) the copies or phonorecords of the work have not been commercially distributed; or

“(B) a motion picture, if, at the time of unauthorized distribution, the motion picture—

“(i) has been made available for viewing in a motion picture exhibition facility; and

“(ii) has not been made available in copies for sale to the general public in the United States in a format intended to permit viewing outside a motion picture exhibition facility.

“(4) shall be imprisoned not more than 10 years, fined under this title, or both, if the offense is a second or subsequent offense; and

“(5) be imprisoned not more than 10 years, fined under this title, or both, if the offense is a second or subsequent offense under paragraph (2);” and

“(6) in subsection (f), as redesignated—

“(A) in paragraph (1), by striking ‘and’ at the end;

“(B) in paragraph (2), by striking the period at the end and inserting a semicolon; and

“(C) adding at the end the following:

“(3) the term ‘financial gain’ has the meaning given the term in section 101 of title 17; and

“(4) the term ‘work being prepared for commercial distribution’ has the meaning given the term in section 506(a) of title 17.”

“SEC. 104. CIVIL REMEDIES FOR INFRINGEMENT OF A WORK BEING PREPARED FOR COMMERCIAL DISTRIBUTION.

“(a) PREREGISTRATION.—Section 408 of title 17, United States Code, is amended by adding at the end the following:

“(f) PREREGISTRATION OF WORKS BEING PREPARED FOR COMMERCIAL DISTRIBUTION.—

“(1) RULEMAKING.—Not later than 180 days after the date of enactment of this subsection, the Register of Copyrights shall issue regulations to establish procedures for preregistration of a work that is being prepared for commercial distribution and has not been published.

“(2) CLASS OF WORKS.—The regulations established under paragraph (1) shall permit preregistration for any work that is included in a class of works that the Register determines has had a history of infringement prior to authorized commercial distribution.

“(3) APPLICATION FOR PREREGISTRATION.—Not later than 3 months after the first publication of a work preregistered under this subsection, the applicant shall submit to the Copyright Office—

“(A) an application for registration of the work;

“(B) a deposit; and

“(C) the applicable fee.

“(4) EFFECT OF UNTIMELY APPLICATION.—An action under this chapter for infringement of a work preregistered under this subsection, in a case in which the infringement commenced no later than 2 months after the first publication of the work, shall be dismissed if the items described in paragraph (3) are not submitted to the Copyright Office in proper form before the earlier of—

“(A) 3 months after the first publication of the work; or

“(B) 1 month after the copyright owner has learned of the infringement.

“(b) INFRINGEMENT ACTIONS.—Section 411(a) of title 17, United States Code, is amended by inserting ‘papert’ or ‘after’ shall be interpreted as follows: ‘an infringement of the copyright of a work that has been preregistered under section 408(a), before the expiration of the period of infringement and that has an effective date of registration not later than the earlier of 3 months after the first publication of the work or 1 month after the copyright owner has learned of the infringement.

“SEC. 105. FEDERAL SENTENCING GUIDELINES.

“(a) REVIEW AND AMENDMENT.—Not later than 180 days after the date of enactment of this section, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and
in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of intellectual property rights crimes, including any offense under—

(1) section 506, 1201, or 1202 of title 17, United States Code; or

(2) subsections 2319A, 2319B, or 2320 of title 18, United States Code.

(b) AUTHORIZATION.—The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 2(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.

(c) RESPONSIBILITIES OF UNITED STATES SENTENCING COMMISSION.—In carrying out this section, the United States Sentencing Commission shall—

(1) take all appropriate measures to ensure that the Federal sentencing guidelines and policy statements described in subsection (a) are sufficiently stringent to deter, and adequately reflect the nature of, intellectual property rights crimes;

(2) determine whether to provide a sentencing adjustment for those convicted of the offenses described in subsection (a), if the conduct involves the display, performance, distribution, or sale of a derivative work, or the creation or distribution of a copyrighted work before it has been authorized by the copyright owner, whether in the media format used by the infringing party or any other format;

(3) determine whether the scope of "uploading" set forth in application note 3 of section 2B3.3 of the Federal sentencing guidelines is adequate to address the loss attributable to people who, without authorization, broadly distribute copyrighted works over the Internet; and

(4) in subsection (c) of the sentencing guidelines and policy statements applicable to the offenses described in subsection (a) adequately reflect any harm to victims from copyright infringement if law enforcement authorities cannot determine how many times copyrighted material has been reproduced or distributed.

TITILE II—EXEMPTION FROM INFRINGEMENT FOR SKIPPING AUDIO AND VIDEO CONTENT IN MOTION PICTURES

SEC. 201. SHORT TITLE.

This title may be cited as the "Family Movie Act of 2005."

SEC. 202. EXEMPTION FROM INFRINGEMENT FOR SKIPPING AUDIO AND VIDEO CONTENT IN MOTION PICTURES.

(a) In General.—Section 110 of title 17, United States Code, is amended—

(1) in paragraph (9), by striking "and" after the semicolon at the end;

(2) in paragraph (10), by striking the period at the end and inserting "; and"; and

(3) by inserting after paragraph (10) the following:

"(11) the making imperceptible, by or at the direction of a member of a private household, of limited portions of audio or video content of a motion picture, during a performance limited to that household for private home viewing, from an authorized copy of the motion picture, or the creation or provision of a computer program or other technology that enables such making imperceptible and that is designed and marketed to be used, at the direction of a member of a private household, for such making imperceptible; if no fixed copy of the altered version of the motion picture is created by such computer program or other technology; and"

(4) at the end the following:

"For purposes of paragraph (11), the term ‘making imperceptible’ does not include the addition of audio or video content that is performed or displayed over or in place of existing content in a motion picture."

Nothing in paragraph (11) shall be construed to impair section 106 of this title, or to have any effect on defenses or limitations on rights granted under any other section of this title or under any other paragraph of this section."

(b) EXEMPTION FROM TRADEMARK INFRINGEMENT.—Section 32 of the Trademark Act of 1946 (15 U.S.C. 1114) is amended by adding at the end the following:

"(3)(A) Any person who engages in the conduct described in paragraph (11) of title 17, United States Code, and complies with the requirements set forth in that paragraph is not liable on account of such conduct for a violation of any right under this Act. This subparagraph does not preclude liability, nor shall it be construed to restrict the defenses or limitations on respect to technology manufactured in conduct not described in paragraph (11) of section 110 of title 17, United States Code, even if that person also engages in conduct described in paragraph (11) of section 110 of such title.

"(B) A manufacturer, licensee, or licensor of technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) is not liable on account of such conduct for a violation of any right under this Act, if such manufacturer, licensee, or licensor ensures that the technology provides a clear and conspicuous notice at the beginning of each performance that the performance of the motion picture is altered from the performance intended by the director or copyright holder of the motion picture. The limitations on liability in subparagraph (A) and this subparagraph shall not apply to a manufacturer, licensee, or licensor of technology that fails to comply with this paragraph."

"(C) The requirement under subparagraph (B) to provide notice shall apply only with respect to technology manufactured after the end of the 180-day period beginning on the date of the enactment of the Family Movie Act of 2005."

"(D) Any failure by a manufacturer, licensor, or licensor of technology to qualify for the exemption under subparagraphs (A) and (B) shall not be construed to create an infringement. The Librarian, in consultation with the National Film Preservation Foundation, may adopt regulations to implement the exemptions set forth in subparagraphs (A) and (B)."

"(2) in paragraph (10), by striking the period at the end and inserting "; and"

"(3) in subsection (d) by striking "‘three’" and inserting "‘five’";

"(4) in subsection (e) by striking "‘11’" and inserting "‘12’"; and

"(5) by striking subsection (f) and inserting the following:

"(e) REMIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code."

(c) NATIONAL FILM REGISTRY.—Section 106 of the National Film Preservation Act of 1996 (2 U.S.C. 179m) is amended by adding at the end the following:

"(2) review the comprehensive national film preservation plan, and amend it to the extent necessary to ensure that it addresses technological advances in the preservation and storage of, and access to film collections in multiple formats; and

"(3) wherever possible, undertake expanded initiatives to ensure the preservation of the moving image heritage of the United States, including film, videotape, television, and born digital moving image formats, by supporting the work of the National Audio-Visual Conservation Center of the Library of Congress, and other appropriate nonprofit archival and preservation organizations."

(d) NATIONAL FILM PRESERVATION BOARD.—Section 104 of the National Film Preservation Act of 1996 (2 U.S.C. 179n) is amended by—

(1) in subsection (a)(1) by striking "20" and inserting "22";

(2) in subsection (a)(2) by striking "three" and inserting "five";

(3) in subsection (d) by striking "11" and inserting "12"; and

"(e) LIMITATION.—"The Library shall utilize the National Audio-Visual Conservation Center of the Library of Congress at Culpeper, Virginia, to ensure that preserved films included in the National Film Registry are stored in a proper manner, and disseminated to researchers, scholars, and the public as may be appropriate in accordance with—

"(1) title 17, United States Code; and

"(2) the terms of any agreements between the Librarian and persons who hold copyrights to such audiovisual works."

USE OF SEALS.—Section 107 (a) of the National Film Preservation Act of 1996 (2 U.S.C. 179q(a)) is amended by—

(1) in paragraph (1), by inserting "in any format" after "or any copy"; and

(2) in paragraph (2), by inserting "or film copy" and inserting "in any format".

(c) EPEFFECTIVE DATE.—Section 113 of the National Film Preservation Act of 1996 (2 U.S.C. 179w) is amended by striking "7" and inserting "12".

Title II—Reauthorization of the National Film Preservation Foundation

SEC. 301. SHORT TITLE.

This subtitle may be cited as the "National Film Preservation Foundation Reauthorization Act of 2005."

SEC. 302. REAUTHORIZATION AND AMENDMENT.

(a) DUTIES OF THE LIBRARIAN OF CONGRESS.—The Librarian of Congress shall—

(1) carry out activities to make films in the collections of the Library of Congress born digital moving image formats, by sup-

(2) review the comprehensive national film preservation plan, and amend it to the extent necessary to ensure that it addresses technological advances in the preservation and storage of, and access to film collections in multiple formats; and

(3) wherever possible, undertake expanded initiatives to ensure the preservation of the moving image heritage of the United States, including film, videotape, television, and born digital moving image formats, by supporting the work of the National Audio-Visual Conservation Center of the Library of Congress, and other appropriate nonprofit archival and preservation organizations.

(b) NATIONAL FILM PRESERVATION BOARD.—Section 104 of the National Film Preservation Act of 1996 (2 U.S.C. 179n) is amended by—

(1) in subsection (a)(1) by striking "20" and inserting "22";

(2) in subsection (a)(2) by striking "three" and inserting "five";

(3) in subsection (d) by striking "11" and inserting "12"; and

"(e) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code."

(c) NATIONAL FILM REGISTRY.—Section 106 of the National Film Preservation Act of 1996 (2 U.S.C. 179m) is amended by adding at the end the following:

"(2) review the comprehensive national film preservation plan, and amend it to the extent necessary to ensure that it addresses technological advances in the preservation and storage of, and access to film collections in multiple formats; and

"(3) wherever possible, undertake expanded initiatives to ensure the preservation of the moving image heritage of the United States, including film, videotape, television, and born digital moving image formats, by supporting the work of the National Audio-Visual Conservation Center of the Library of Congress, and other appropriate nonprofit archival and preservation organizations."

Title II—Reauthorization of the National Film Preservation Foundation

SEC. 311. SHORT TITLE.

This subtitle may be cited as the "National Film Preservation Foundation Reauthorization Act of 2005."
Mr. LEAHY. Mr. President, today I join my colleagues, Senators HATCH, FEINSTEIN, and CORNYN, introducing an important piece of bipartisan intellectual property legislation. The provisions of the “Family Entertainment and Copyright Act of 2005” are virtually identical to those in the bill we passed in the waning days of the 108th Congress. Unfortunately, that package of intellectual property bills was hijacked in an effort to use it as a vehicle to pass unrelated legislation. The effort failed, and so did Congress: we were not able to send to the President the most important package of intellectual property legislation on last year’s agenda. The legislation passed in the Senate—several times in fact—but there was simply not enough time for the House of Representatives to act.

I am pleased that we were able to salvage two components of last year’s bill. As Congress came to a close, the House passed the Senate version of the CREATE Act, I cosponsored with Senator HATCH. The new law will continue to encourage collaborative research partnerships between private industry and not-for-profits, such as universities. We were also able to send to the President the Anti-counterfeiting Amendments Act, a version of Senator Biden’s legislation that my friend from Delaware has championed for several years. Both laws are important, but our task was not done.

It is time to enact the remaining components of the Family Entertainment and Copyright Act, to finish off the work of the 108th Congress as we begin the 109th.

Title I of the bill contains the “Artists’ Rights and Theft Prevention Act,” better known as the ART Act. This provision passed the Senate as a standalone bill in June of 2004, and again as part of the FECA bill at the end of the last Congress. The bill will make important inroads in the fight against movie piracy by criminalizing the use of camcorders to pilfer movies from the big screen. It will also direct the Register of Copyrights to create a registry of pre-release works in order to better address the problem of movie-theft before these works are offered for legal distribution.

The next title of the bill is the Family Movie Act, which will preserve the right of film producers to control pictures in the manner they see fit. At the same time, the Act protects the rights of directors and copyright holders to maintain the artistic vision and integrity of their works. A version of this legislation passed the House in September of 2004, and it passed the Senate as part of the FECA bill at the end of the 108th Congress.

Title III of the bill is the Film Preservation Act, legislation that I sponsored in the last Congress. A version of this bill, too, was part of the FECA bill that passed the Senate last Congress. The Film Preservation Act will allow the Library of Congress to continue its important work in preserving America’s family film treasures. The works preserved by this important program include silent-era films, avant-garde works, ethnic films, newsreels, and home movies that are in many ways more illuminating on the question of local family life than the Hollywood sound features kept and preserved by major studios. What’s more, the bill will assist libraries, museums, and archives in preserving films, and in making those works available to researchers and the public.

Finally, the bill contains the Preservation of Orphan Works Act. This provision corrects for a drafting error in the Sonny Bono Copyright Term Extension Act. Correction of this error will allow libraries to create copies of certain copyrighted works, such as films and musical compositions that are in the last 20 years of their copyright term, are no longer commercially exploited, and are not available at a reasonable price. Again, this provision empowers libraries and other cultural institutions to make works not lost to history.

Anytime we enact a package of legislation as large as the “Family Entertainment and Copyright Act,” building consensus is difficult. However, this is a chamber built on collegiality and compromise, and while I may have crafted specific components of this package differently, I believe that the final result we have is one worthy of enactment. The components of this package have already passed the Senate at least once, and I have received assurances from the other chamber that the bill will receive swift consideration once it is approved in this body.

The legislative process is functioning well when we work with our colleagues across the aisle, and it is at its best when we work on a bipartisan basis with our friends in the other chamber. This bill has benefited from both. The agenda of the 109th Congress promises many issues that divide us, but this is not such a bill: It has garnered broad support, and I believe we can finally move to swiftly enact it.

Mr. CORNYN. Mr. President, in the fall of 2003, I introduced S. 1932, the Artists’ Rights and Theft Prevention Act of 2003, along with my friend from Oregon, Senator DODD. As Senator CORNYN is well aware, the ART Act was a modest but necessary first step to combat the rampant piracy plaguing the motion picture, recording and general content industries. The Bill focuses on the most egregious forms of piracy plaguing the entertainment industry today—the piracy of film, movies, and other copyrighted materials before copyright owners have had the opportunity to market fully their products.

Now, as part of a comprehensive package, “the Family Entertainment and Copyright Act of 2005,” it is even more significant. This package contains a number of targeted, important reforms that help strengthen our intellectual property laws. I rise to express my strong support for the bill and ask my colleagues to move it expeditiously.

Intellectual property laws and the American businesses that rely on them deserve our strongest support. Our Nation was founded on a number of important ideas. One central one was that the value created by the work and sweat of a person should be recognized as that person’s property and should be protected. Protecting the creativity and capital that American innovators invest to make our lives richer is the right thing to do. Failure to do so not only would diminish the quality of our intellectual lives, but it would suffer too. Intellectual property-related industries are a central driver of our Nation’s economy and a staple of our international trade.

Imagine if our copyright-based industries alone accounted for more than 5 percent of the U.S. GDP or $353,100,000,000 in 2001 and almost 6 percent of U.S. employment, and led all major industry sectors in foreign sales and exports in 2001. The legislation we focus on today is even more significant. This package contains a number of targeted, important reforms that help strengthen our intellectual property laws. I rise to express my strong support for the bill and ask my colleagues to move it expeditiously.
Ideas and the people who generate them serve as critical resources both in our daily lives and in the stability and growth of America’s economy. The creation of intellectual property—such as the designs for new products or the artistic creations—unleashes our Nation’s potential, brings ideas from concept to commerce, and drives future economic and productivity gains. Increasingly, the kind of economy we have is knowledge-driven, information age economy, intellectual property is the new coin of the realm.

Having noted and quoted the DOJ Report, I want to pause to thank the Justice Department and outgoing Attorney General John Ashcroft for their efforts on this area. The DOJ engaged in serious domestic and international investigations and prosecutions against digital thieves who have misused promising digital technology like the Internet to further their attacks on American businesses. General Ashcroft and the Justice Department, who deserve our gratitude for so many reasons, certainly deserve it for their efforts on this area.

Having provided that foundation, let me discuss briefly some of the important provisions contained in this legislative package.

We have purposefully compiled a package of legislation that strikes a balance between innovation and copyright protection. One needn’t be sacrificial to encourage the other—rather they go hand-in-hand.

First, I would mention the Cornyn-Feinstein “Artist’s Rights and Theft Prevention Act” or the ART Act. Notably, it contains a provision making it a felony to record a movie in a theater. One of the principal ways that movie piracy and thieves situate a movie in a movie theater, or bribing a projectionist to help them, and recording movies with small camcorders. These camcordered copies can then make their way around the world on the Internet and usually land on the streets of cities around the world in pirated copies sold on the street, often the day the movie opens in the U.S. or even before the movie opens in many countries.

All it takes is a single or a small handful of camcordered copies distributed worldwide to have a devastating effect on a movie’s profitability. Movies are generally an investment of tens or hundreds of millions of dollars that rely on box office and home video and other subsequent sales to recoup this investment. A camcorder copy released early in any of these cycles can undermine the economics of this business, and especially if they hit the streets or the internet while the movie is still in the theaters. This is theft that supports organized crime groups, and perhaps, even terrorism. It deserves to be stopped by the specter of a federal felony.

Its second key provision focuses on so-called “pre-released” works. Because serious harm can be done to both the reputation of and market for creative products if they are pirated before they actually come to market, we have included reforms in the ART Act and this package that make it easier for the Justice Department to prosecute those who steal and distribute copies of copyrighted works on the internet before they are released to the public by their owners or authorized distributors. We make the prosecutor’s job easier by allowing certain presumptions with regard to the harm caused, including the dollar amount and number of copies, necessary to allow the prosecutor to bring a felony action where the works were being prepared for commercial release but have not been released to the public legitimately. This is fair because no one can legitimately believe that they are within their rights copying and distributing works that are not yet available for sale in the marketplace. This is a common sense concept, which deserves the support of the Congress.

Also, I would mention the Family Movie Act—another important component of this package. This provision allows the use of certain, specified technology to skip or mute content that may be objectionable to certain viewers when watching a movie at home, so long as no fixed copy of the edited work is made.

Very few would argue that many of the movies produced today contain significant amounts of gratuitous sex, violence, foul language or other potentially objectionable content. A number of innovative companies have stepped forward to solve this problem by providing filters that tag such scenes and allows consumers to tailor their viewing experience.

This legislation is designed to solve an on-going controversy surrounding the use of such technology. Specifically, there is litigation pending over the issue of whether providing edited versions of movies to consumers creates a “derivative work” that violates the rights of those who created or own the copyrights and trademarks for the original movies. The existence of this controversy arguably is hampering the development of the technology that families may find helpful in protecting children from potentially objectionable content.

Let me make clear that this bill is not designed to deal with ad-skipping by consumers in the home. I know that there has been some misinformation about this by groups who apparently oppose copyright protections generally, but this bill has nothing to do with anything other than using a certain kind of technology to modify the viewing experience of a movie to skip over objectionable content.

Finally, the two remaining provisions—though relatively small—are not insignificant. The Film Preservation Act, legislation that I recognize is part of the movie industry, and I thank him for his efforts in promoting it, will reauthorize a Library of Congress Program dedicated to saving rare and significant films. Additionally, we make a small but necessary change to the Sonny Bono Copyright Term Extension Act. Correction of this error will allow libraries to create copies of certain copyrighted works, such as films and musical compositions that are in the last 20 years of their copyright term, which are not otherwise exploitable, and are not available at a reasonable price.

Before I relinquish my time, I do want to thank a number of people who have worked tirelessly on this bill. Allow me to thank David Jones and Tom Syndor of the staff of Chairman ORRIN HATCH, who is not only our previous Judiciary Committee Chairman, but a leader on copyright and intellectual property issues; Susan Davies and Dan Fine of Senator LEAHY’s staff, who also has long been a leader on intellectual property issues; and finally, David Hantman of Senator FEINSTEIN’s staff, a Senator with whom I am happy to have teamed to introduce the ART Act in the last Congress.

Having begun with the staff, who rarely get mentioned as much as they deserve for the great work they do, let me also thank the Senators they work for, including Senators HATCH, as the Majority Leader, who has taken a personal interest in this legislation and worked to make it happen.

Mr. CORNYN. As the chairman knows, he and I and our other cosponsors have worked throughout last Congress on the provisions of the Family Entertainment and Copyright Act of 2005 that we have introduced today. With respect to the ART Act portion of the bill, I just wanted to raise the point that there had been some concern over the potential effect of the FMA on future cases involving ad skipping technologies and ask if you would have any objection to including in the record the relevant portion of the floor discussion on that issue from last Congress.

Mr. HATCH. I thank my friend, the Senator from Texas, for that reminder. I would certainly have no objection to entering our previous colloquy into the RECORD again and ask unanimous consent that it appear after our remarks.
Mr. HATCH. Mr. President, Section 102 of the ART Act establishes a new provision of Title 18 entitled, “Unauthorized Recording of Motion Pictures in a Motion Picture Exhibition Facility.” I ask Senator CORNYN, what is the purpose of this provision?

Mr. CORNYN. Section 102 addresses a serious piracy issue facing the movie business: the use of camcorders in a motion picture theater. Sad to say, this bill could be used against a salesperson or a customer at stores such as Best Buy or Circuit City if he or she were to point a video camera at a television screen showing a movie. Is this cause for concern?

Mr. CORNYN. Absolutely not. The offense is only applicable to transmitting or copying a movie in a motion picture exhibition facility, which has to be a movie theater or similar venue “that is being used primarily for the exhibition of a motion picture.” In the example of Best Buy—the store is being used primarily to sell electronic equipment, not to exhibit motion pictures. For the same reason, the statute would not cover a university student who records a short segment of a film being shown in film class, as the venue is being used primarily as a classroom, and not as a movie theater.

Mr. HATCH. Does the Senator from California agree with your colleague from Texas?

Mrs. FEINSTEIN. Absolutely on all points.

Mr. HATCH. I have also heard some say that this statute could be used to prosecute someone for camcording a DVD at his home. Is this a fair concern?

Mrs. FEINSTEIN. No, it is not. The definition of a motion picture exhibition facility includes the concept that the exhibition has to be “open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.” This definition makes clear that someone recording from a television in his home does not meet that definition. It is important to emphasize that the clause “open to the public” applies specifically to the exhibition, not to the facility. An exhibition of a race open to the public that is itself not made to the public is not the subject of this bill.

Thus, for example, a university film lab may be “open to the public.” However, a student who is watching a film in that lab for his or her own study or research, or engaging in an exhibition that is “open to the public.” Thus, if that student copied an excerpt from such an exhibition, he or she would not be subject to liability under the bill.

Mr. HATCH. Do the users of hearing aids, cell phones or similar devices have anything to fear from this statute?

Mrs. FEINSTEIN. Of course not. The statute covers only a person who uses a device “to record an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under Title 17, or any part thereof.” In other words, the defendant would have to be making a copy, a take-home copy, or attempting to make, a copy that is itself an audiovisual work, or make, or attempt to make, a transmission embodying an audiovisual work, as that term is defined in Section 101 of Title 17. As such, the Act would not reach the conduct of a person who uses a hearing aid, a still camera, or a picture phone to capture an image or mere sound from the movie.

Mr. HATCH. It appears that there is no fair use exception to this provision. Is that correct?

Mrs. FEINSTEIN. This is a criminal provision under Title 18, not a copyright provision under Title 17. Accordingly, there is no fair use exception included. However, Federal prosecutors should use their discretion not to bring criminal prosecutions against activities within movie theaters that would constitute fair use under the copyright laws. The object of this legislation is to prevent the copying and distribution of motion pictures in a manner that causes serious commercial harm. This legislation is not intended to chill legitimate free speech.

Mr. HATCH. Does the Senator from Texas agree?

Mr. CORNYN. Yes, on all points.

Mr. CORNYN. Mr. President, would the chairman yield for a question?

Mr. HATCH. I would be happy to yield for a question from the distinguished Senator from Texas.

Mr. CORNYN. The chairman knows, he and I and our other co-sponsors have worked throughout this Congress on the provisions of the Family Entertainment and Copyright Act of 2004 that we have introduced today. I trust that I do not have to explain what I believe to be our mutual understanding about the effect of certain provisions of the Family Movie Act. Title II of the Family Entertainment and Copyright Act of 2004 that we introduced today modifies slightly the Family Movie Act provisions of H.R. 4077 as passed by the House of Representatives. That bill created a new exemption in section 110(11) of the Copyright Act for skipping and muting audio and video content in motion pictures during performances that take place in the course of a private viewing in a household from an authorized copy of the motion picture. The provision specifically excluded from the scope of the new copyright exemption computer programs or technologies that make changes, deletions, or additions to commercial advertisements or to network or station promotional announcements that would otherwise be displayed before, during, or after the performance of the motion picture.

My understanding is that this provision reflected a “belt and suspenders” approach that was adopted to quiet the concerns of some Members in the House who were concerned that a court might misread the statute to apply to “ad-skipping” casing producers, as it is characterized, however, expressed concern that the inclusion of such explicit language could create unwanted inferences as to the “ad-skipping” issues at the heart of the recent litigation. Those issues remain unsettled, and it is important that the intent of this legislation to resolve or affect those issues. In the meantime, the Copyright Office has confirmed that such a provision is unnecessary to achieve the intent of the bill, which is to target the application of the exemption in potential future cases involving “ad-skipping” devices; therefore, the Senate amendment we offer removes the unnecessary exclusionary language.

Would the chairman confirm for the Senators present his understanding of the intent and effect, or perhaps stated more appropriately, the lack of any effect, of the Senate amendment on the sections at issue in this hearing?

Mr. HATCH. My cosponsor, Senator CORNYN, raises an important point. While we removed the “ad-skipping” language from the statute to avoid this unnecessary controversy, you are absolutely correct that this does not in any way change the scope of the bill. The bill protects the “making imperceptible . . . limited portions of audio or video content of a motion picture . . . .” An advertisement, under the Copyright Act, is itself a “motion picture,” and thus a product or service that enables the skipping of an entire advertisement, in any media, would be beyond the scope of the exemption. Moreover, the phrase “limited portions” is intended to cover both quantitively and qualitatively insubstantial in relation to the work as a whole. Where any substantial part of a complete work, such as a commercial advertisement, is made imperceptible, the new section 110(11) exemption would not apply.

The limited scope of this exemption does not, however, imply or show that
such a product would be infringing. This legislation does not in any way deal with that issue. It means simply that such a product is not immunized from liability by this exemption.

Mr. CORNYN. I thank the chairman. I am happy to share a common understanding. If the chairman would yield for one more question about the Family Movie Act?

Mr. HATCH. Certainly.

Mr. CORNYN. This bill also differs from the House-passed version because it adds two “savings clauses.” As I understand it, the “copyright” savings clause makes clear that there should be no “spillover effect” from the passage of this law: that is, nothing shall be construed to have any effect on rights, defenses, or limitations on rights granted under title 17, other than those explicitly provided for in the new section 110(11) exemption. The second, relating to trademark, clarifies that the treatise of the law does not include a person or company who fails to qualify for the exemption from trademark infringement found in this provision is therefore liable for trademark infringement. Is that the chairman’s understanding as well?

Mr. HATCH. Yes it is. Let me ask that a copy of the section-by-section analysis of the Family Movie Act as amended by the Senate be included in the RECORD. This section-by-section analysis contains a more complete analysis of the bill as proposed today in the Senate, including the limited changes made by the bill Senators LEAHY, CORNYN, BIDEN, and I offer today. The analysis follows.

SECTION-BY-SECTION ANALYSIS OF THE FAMILY MOVIE ACT OF 2004, AMENDED AND PASSED BY THE SENATE

OVERVIEW

Title II of the Family Entertainment and Copyright Amendment Act incorporates the House-passed provision of the Family Movie Act of 2004, with limited changes as reflected in this section-by-section analysis. As discussed in the introduction, this legislation is intended to and does not affect the scope, effect, or application of the law.

The purpose of the Family Movie Act is to empower private individuals to use technology to skip and mute material that they find objectionable in movies, without impacting protected technologies of copyright or trademark law or those whose business models depend upon advertising. This amendment to the law should be narrowly constructed to fulfill its intended purposes. The sponsors of the legislation have been careful to tailor narrowly the legislation to clearly allow specific, consumer-directed activities and not to otherwise or decide fraternal issues or to affect any other potential or actual disputes in the law.

The bill as proposed in the Senate makes clear that, under certain conditions, “making imperceptible” of limited portions of audio or video content of a motion picture—is that is, skipping and muting limited portions of audio and video content for personal use—does not infringe copyright or trademark law. This clarification may affect such activities as adding any type of copy protection scheme or technology that enables such making imperceptible, does not infringe copyright or trademark law. That is true whether the movie is on prerecorded media, like a DVD, or is transmitted to the home, as through pay-per-view and “video-on-demand” services.

Subsection (a): Short Title

Subsection (a) sets forth the short title of the bill as the Family Movie Act of 2004.

Subsection (b): Exemption from Copyright and Trademark Infringement for Skipping of Audio or Video Content of Motion Pictures

Subsection (b) is the Family Movie Act core provision and creates a new exemption at section 110(11) of the Copyright Act for the “making imperceptible” of limited portions of audio or video content of a motion picture during a performance in a private household. The section provides that if a number of conditions are met to achieve its intended effect while remaining carefully circumscribed and avoiding any unintended consequences, the making imperceptible of limited portions of audio or video content of the motion picture that the viewer exercises substantial choice over the types of content that they choose to skip or mute.

The making imperceptible must occur “during a performance in or transmitted to the household for private home viewing.” Thus, this provision does not exempt an unauthorized “public performance” of an altered version.

The making imperceptible must be “from an authorized copy of a motion picture.” Thus, skipping and muting from an unauthorized or “bootleg” copy of a motion picture would not be exempt. No “making imperceptible” of the altered version of the motion picture may be created by the computer program or other technology that makes imperceptible portions of the audio or video content of the motion picture. This provision makes clear that services or technologies that make a fixed copy of the altered version are not afforded the benefit of this exemption.

The “making imperceptible” of limited portions of a motion picture does not include the addition of audio or video content over or in place of existing content or any alteration of a modified image of a person, a product, or an advertisement in place of another, or adding content of any kind.

The other operative provisions of this new section 110(11) exemption, merit further elaboration as to their purposes and effects.

The bill makes clear that the “making imperceptible” of limited portions of audio or video content of a motion picture must be done in a private household. While this limitation does not require that the individual member of the private household exercise ultimate decision-making over the types of content that they choose to skip or mute, the decision-making over the types of content that they choose to skip or mute is that of that individual in response to the individualized preferences expressed by that individual. The test of “at the direction of an individual” would be satisfied when the individual selects preferences from among options that are offered by the technology.

An example is the ClearPlay model. ClearPlay allows the viewer or at the direction of a viewer where a performance that occurs in, or that is transmitted to, a private household for private home viewing. This section would not exempt from liability an otherwise infringing performance, or a transmission of a performance, during which portions of audio or video content of the motion picture are made imperceptible. In other words, where a performance in a household or a transmission of a performance in a household is done lawfully, the making imperceptible limited portions of audio or video content of the motion picture during that performance, consistent with the requirements of this new section, will not result in infringement liability. Similarly, an infringing performance in a household, or an infringing transmission of a motion picture, are rendered non-infringing by section 110(11) by virtue of the fact that limited portions of audio or video content of the motion picture being performed are made imperceptible during such performance or transmission in a manner consistent with that section.

The bill also provides additional guidance, if not an exact definition, of what the term “making imperceptible” means. The bill provides specifically that the term “making imperceptible” does not include the addition of audio or video content over or in place of existing content or any alteration of a modified image of a person, a product, or an advertisement in place of another, or adding content of any kind.

The version of the movie that the viewer sees depends upon the preferences expressed by that viewer. Such a model would fall under the liability limitation of the Family Movie Act.

This limitation, however, would not allow a program distributor, such as a provider of video-on-demand services, a cable or satellite channel, or a broadcaster, to make imperceptible a limited portion of audio or video content of a motion picture in order to provide an altered version of that movie to all of its customers, which could violate a number of the copyright owner’s exclusive rights, or to make clear that, under certain conditions, this version may allow individualized preferences and control must be present such that the viewer exercises substantial choice over the types of content that they choose to skip or mute.

It is also important to emphasize that as well as the creation or provision of a motion picture of “making imperceptible” limited portions of audio or video content of a motion picture during a performance that occurs in, or that is transmitted to, a private household for private home viewing. This section would not exempt from liability an otherwise infringing performance, or a transmission of a performance, during which portions of audio or video content of the motion picture are made imperceptible. In other words, where a performance in a household or a transmission of a performance in a household is done lawfully, the making imperceptible limited portions of audio or video content of the motion picture during that performance, consistent with the requirements of this new section, will not result in infringement liability. Similarly, an infringing performance in a household, or an infringing transmission of a motion picture, are rendered non-infringing by section 110(11) by virtue of the fact that limited portions of audio or video content of the motion picture being performed are made imperceptible during such performance or transmission in a manner consistent with that section.

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in the actual motion picture will be skipped or muted at the direction of the viewer based on that viewer’s desire to avoid seeing or hearing the action or sound in the motion picture. The purpose of or having the effect of avoiding copy protection technologies would be an abuse of the safe harbor outlined in this legislation and may violate section 1201 of title 17.

Violating the Digital Millennium Copyright Act, and particularly its anti-circumvention provision, is not necessary to enable technology of the kind contemplated under the Family Movie Act. Although the amendment to section 110 provides that it is not an infringement of copyright to engage in the conduct that is the subject of the Family Movie Act, the Act does not provide any exemption for the anti-circumvention provisions of section 1201 of title 17, or from any other provision of chapter 12 of title 17. It would not be a defense to a claim of violation of section 1201 that the circumvention is for the purpose of engaging in the conduct covered by this new exemption in section 110(11), just as it is not a defense under section 110 that the newly-created copyright exemption is intended to facilitate the offering of such technology and consumer offerings that is referred to in this legislation is driven in some measure by the desire for copyright law to be respected and to ensure that technology is deployed in a way that supports the continued creation and protection of entertainment and information products and services, and it certainly creates no impediment to the technology employed by those companies. Indeed, it is important to the fact that the support for such technology and consumer offerings is intended to be driven in some measure by the desire to avoid unnecessarily interfering with current business models, especially with respect to advertising, promotional announcements, and the like.

The House-passed bill included an explicit exclusion to the new section 110(11) exemption in the form of commercial advertisements for the purpose of engaging in the conduct covered by this new exemption in section 110(11) of the Copyright Act. The Family Movie Act is intended to be the offering of entertainment products and services, and it certainly creates no impediment to the technology employed by those companies. Indeed, it is important to the fact that the support for such technology and consumer offerings that is referred to in this legislation is driven in some measure by the desire for copyright law to be respected and to ensure that technology is deployed in a way that supports the continued creation and protection of entertainment and information products and services, and it certainly creates no impediment to the technology employed by those companies. Indeed, it is important to the fact that the support for such technology and consumer offerings is intended to be driven in some measure by the desire to avoid unnecessarily interfering with current business models, especially with respect to advertising, promotional announcements, and the like.

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The phrase “limited portions of a motion picture” applies to the purpose of or having the effect of avoiding copy protection technologies would be an abuse of the safe harbor outlined in this legislation and may violate section 1201 of title 17.

The House-passed bill adopted a “belt and suspenders” approach to this question by adding exclusionary language in the statute itself. Ultimately that provision raised concerns in the Senate that such language would result in an inference that the bill somehow expresses an opinion, or even decides, the unresolved legal questions that the provision would be limited to those provided for by the so-called “ad-skipping” devices. In the meantime, the Copyright Office also made clear that such exclusionary language is not necessary to exempt from copyright law the use of technology that enables such making imperceptible, but that manufacturer, licensee or licensor is subject to the additional requirement that it ensure that the technology provides a clear and conspicuous notice at the beginning of each performance that the performance of the motion picture is altered from the performance intended by the director or the copyright holder.

Of course, nothing in this section would immunize anyone from such conduct, apart from the narrow conduct described by 110(11), rises to the level of a Lanham Act violation.

For example, someone who provides technology to enable the making imperceptible limited portions of a motion picture consistent with section 110(11) could not be held liable on account of such conduct under the Trademark Act, but if in providing such...

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**SUBMITTED RESOLUTIONS**

**SENATE RESOLUTION 10—HONORING THE LIFE OF JOHNNY CARSON**

Mr. NELSON of Nebraska (for himself, Mr. HAGEL, Mr. KENNEDY, Mrs. FEINSTEIN, and Mr. INOUYE) submitted the following resolution; which was considered and agreed to:

> WHEREAS Johnny Carson, a friend to the United States Senate, passed away January 23, 2005;
> WHEREAS Johnny Carson was a philanthropist, friend, and favorite Nebraska native;
> WHEREAS Johnny Carson was born in Iowa, raised in Norfolk, Nebraska, and made famous in Hollywood as a late night friend to all of America;
> WHEREAS Johnny Carson served in the United States Navy as an ensign during World War II;
> WHEREAS Johnny Carson late hosted “The Tonight Show” for 30 years;
> WHEREAS Johnny Carson was best known as America’s late night king of comedy;
> WHEREAS Johnny Carson was one of the biggest stars in Hollywood but never forgot his roots;
> WHEREAS Johnny Carson was respected by his colleagues as a gentleman; and
> WHEREAS Johnny Carson was bright and witty, and always set the highest of standards for his performances: Now, therefore, be it

> **Resolved.** That the Senate—
> (1) mourns the loss of Johnny Carson;
> (2) recognizes the contribution of Johnny Carson to his home State of Nebraska;
> (3) admires the sense of humor and late night presence of Johnny Carson in homes in the United States for over 30 years;
> (4) expresses gratitude for the lifetime of memories Johnny Carson provided; and
> (5) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to the family of Johnny Carson.

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**SENATE RESOLUTION 11—HONORING THE SERVICE OF REV. EREND LLOYD O'GILVIE**

Mr. KYL (for himself, Mr. BROWNBACK, Mr. LOTT, Mr. CHAMBLISS,