of contractors' taxpayer identification numbers in the Central Contractor Registry database of the Department of Defense, and for other purposes.

S. 702

At the request of Mr. BAUCUS, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 702, a bill to amend the Internal Revenue Code of 1986 to repeal the occupational taxes relating to distilled spirits, wine, and beer.

S. CON. RES. 16

At the request of Mr. BINGAMAN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. Con. Res. 16, a concurrent resolution conveying the sympathy of Congress to the families of the young women murdered in the State of Chihuahua, Mexico, and encouraging increased United States involvement in bringing an end to these crimes.

S. RES. 31

At the request of Mr. COLEMAN, the names of the Senator from Montana (Mr. BURNS) and the Senator from Utah (Mr. HATCH) were added as cosponsors of S. Res. 31, a resolution expressing the sense of the Senate that the week of August 7, 2005, be designated as ''National Health Center Week'' in order to raise awareness of health services provided by community, migrant, public housing, and homeless health centers, and for other purposes.

S. RES. 83

At the request of Mr. SANTORUM, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. Res. 83, a resolution commemorating the 65th Anniversary of the Black Press of America.

S. RES. 85

At the request of Mr. THOMAS, the names of the Senator from Florida (Mr. MARTINEZ), the Senator from Montana (Mr. BAUCUS) and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. Res. 85, a resolution designating July 23, 2005, and July 22, 2006, as ''National Day of the American Cowboy''.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SMITH (for himself, Mr. INOUYE, Ms. SNOWE, Mr. DORGAN, Mr. SUNUNU, Mr. BURNS, Mr. LAUTENBERG, and Mr. STEVENS):

S. 714. A bill to amend section 227 of the Communications Act of 1934 (47 U.S.C. 227) relating to the prohibition on junk fax transmissions; to the Committee on Commerce, Science, and Transportation.

Mr. SMITH. Mr. President, I rise today with Senator INOUYE and other colleagues to introduce the ''Junk Fax Prevention Act of 2005.'' This bill will strengthen existing laws by providing consumers the ability to prevent unsolicited fax advertisements and provide greater Congressional oversight of enforcement efforts by the Federal Communications Commission (FCC). This bill will also help businesses by allowing them to continue to send faxes to their customers in a manner that has proven successful with both businesses and consumers.

In July of 2003, the FCC reconsidered its Telephone Consumer Protection Act (TCPA) rules and elected to eliminate the ability for businesses to contact their customers even where there exists an established business relationship. The effect of the FCC's rule would be to prevent a business from sending a fax solicitation to any person, whether it is a supplier or customer, without first obtaining prior written consent. This approach, while seemingly sensible, would impose significant costs on businesses in the form of extensive record keeping. Recognizing the problems created by this rule, the Commission has twice delayed the effective date, with the current extension of stay expiring on June 30, 2005.

The purpose of this legislation is to preserve the established business relationship exception currently recognized under the TCPA. In addition, this bill will allow consumers to opt out of receiving further unsolicited faxes. This is a new consumer protection that does not exist under the TCPA today.

We believe that this bipartisan bill strikes the appropriate balance in providing significant protections to consumers from unwanted unsolicited fax advertisements and preserves the many benefits that result from legitimate fax communications.

In the 108th Congress, this legislation passed both the Senate and House but was not signed into law prior to the adjournment of Congress. We hope that both the Senate and House can pass this legislation in a timely manner, prior to June 30, 2005, when the FCC's stay expires.

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. 714

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 ''Junk Fax Prevention Act of 2005''.

SEC. 2. PROHIBITION ON FAX TRANSMISSIONS CONTAINING UNSOLICITED ADVERTISEMENTS.

(a) PROHIBITION.—Section 227(b)(1)(C) of the Communications Act of 1934 (47 U.S.C. 227(b)(1)(C)) is amended to read as follows:

''(C) to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement, unless—

''(i) the unsolicited advertisement is from a sender with an established business relationship with the recipient; and

''(ii) the unsolicited advertisement contains a notice meeting the requirements under paragraph (2)(D), except that the exception under clauses (i) and (ii) shall not apply with respect to an unsolicited advertisement sent to a telephone facsimile machine by a sender to whom a request has been made not to send future unsolicited advertisements to such telephone facsimile machine that complies with the requirements under paragraph (2)(E); or''.

(b) DEFINITION OF ESTABLISHED BUSINESS RELATIONSHIP.—Section 227(a) of the Communications Act of 1934 (47 U.S.C. 227(a)) is amended—

(1) by redesignating paragraphs (2) through (4) as paragraphs (3) through (5), respectively; and

(2) by inserting after paragraph (1) the following:

''(2) The term 'established business relationship', for purposes only of subsection (b)(1)(C)(i), shall have the meaning given the term in section 64.1200 of title 47, Code of Federal Regulations, as in effect on January 1, 2003, except that—

''(A) such term shall include a relationship between a person or entity and a business subscriber subject to the same terms applicable under such section to a relationship between a person or entity and a residential subscriber; and

''(B) an established business relationship shall be subject to any time limitation established pursuant to paragraph (2)(G)).''.

(c) REQUIRED NOTICE OF OPT-OUT OPPORTUNITY.—Section 227(b)(2) of the Communications Act of 1934 (47 U.S.C. 227(b)(2)) is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) in subparagraph (C), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(D) shall provide that a notice contained in an unsolicited advertisement complies with the requirements under this subparagraph only if—

''(i) the notice is clear and conspicuous and on the first page of the unsolicited advertisement;

''(ii) the notice states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request meeting the requirements under subparagraph (E) is unlawful;

''(iii) the notice sets forth the requirements for a request under subparagraph (E);

''(iv) the notice includes—

''(I) a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and

''(II) a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement; the Commission shall by rule require the sender to provide such a mechanism and may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, exempt certain classes of small business senders, but only if the Commission determines that the costs to such class are unduly burdensome given the revenues generated by such small businesses;

''(v) the telephone and facsimile machine numbers and the cost-free mechanism set forth pursuant to clause (iv) permit an individual or business to make such a request during regular business hours; and

''(vi) the notice complies with the requirements of subsection (d);''.

(d) REQUEST TO OPT-OUT OF FUTURE UNSOLICITED ADVERTISEMENTS.—Section 227(b)(2) of the Communications Act of 1934 (47 U.S.C. 227(b)(2)), as amended by subsection (c), is further amended by adding at the end the following:

''(E) shall provide, by rule, that a request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if—

''(i) the request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

''(ii) the request is made to the telephone or facsimile number of the sender of such an unsolicited advertisement provided pursuant to subparagraph (D)(iv) or by any other method of communication as determined by the Commission; and

''(iii) the person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine;''.

(e) AUTHORITY TO ESTABLISH NONPROFIT EXCEPTION.—Section 227(b)(2) of the Communications Act of 1934 (47 U.S.C. 227(b)(2)), as amended by subsections (c) and (d), is further amended by adding at the end the following:

''(F) may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, allow professional or trade associations that are tax-exempt nonprofit organizations to send unsolicited advertisements to their members in furtherance of the association's tax-exempt purpose that do not contain the notice required by paragraph (1)(C)(ii), except that the Commission may take action under this subparagraph only—

''(i) by regulation issued after public notice and opportunity for public comment; and

''(ii) if the Commission determines that such notice required by paragraph (1)(C)(ii) is not necessary to protect the ability of the members of such associations to stop such associations from sending any future unsolicited advertisements; and''.

(f) AUTHORITY TO ESTABLISH TIME LIMIT ON ESTABLISHED BUSINESS RELATIONSHIP EXCEPTION.—Section 227(b)(2) of the Communications Act of 1934 (47 U.S.C. 227(b)(2)), as amended by subsections (c), (d), and (e) of this section, is further amended by adding at the end the following:

''(G)(i) may, consistent with clause (ii), limit the duration of the existence of an established business relationship, however, before establishing any such limits, the Commission shall—

''(I) determine whether the existence of the exception under paragraph (1)(C) relating to an established business relationship has resulted in a significant number of complaints to the Commission regarding the sending of unsolicited advertisements to telephone facsimile machines;

''(II) determine whether a significant number of any such complaints involve unsolicited advertisements that were sent on the basis of an established business relationship that was longer in duration than the Commission believes is consistent with the reasonable expectations of consumers;

''(III) evaluate the costs to senders of demonstrating the existence of an established business relationship within a specified period of time and the benefits to recipients of establishing a limitation on such established business relationship; and

''(IV) determine whether with respect to small businesses, the costs would not be unduly burdensome; and

''(ii) may not commence a proceeding to determine whether to limit the duration of the existence of an established business relationship before the expiration of the 18-month period that begins on the date of the enactment of the Junk Fax Prevention Act of 2005.''.

(g) UNSOLICITED ADVERTISEMENT.—Section 227(a)(5) of the Communications Act of 1934, as so redesignated by subsection (b)(1), is amended by inserting '', in writing or otherwise'' before the period at the end.

(h) REGULATIONS.—Except as provided in section 227(b)(2)(G)(ii) of the Communications Act of 1934 (as added by subsection (f)), not later than 270 days after the date of enactment of this Act, the Federal Communications Commission shall issue regulations to implement the amendments made by this section.

SEC. 3. FCC ANNUAL REPORT REGARDING JUNK FAX ENFORCEMENT.

Section 227 of the Communications Act of 1934 (47 U.S.C. 227) is amended by adding at the end the following:

''(g) JUNK FAX ENFORCEMENT REPORT.—The Commission shall submit an annual report to Congress regarding the enforcement during the past year of the provisions of this section relating to sending of unsolicited advertisements to telephone facsimile machines, which report shall include—

''(1) the number of complaints received by the Commission during such year alleging that a consumer received an unsolicited advertisement via telephone facsimile machine in violation of the Commission's rules;

''(2) the number of citations issued by the Commission pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

''(3) the number of notices of apparent liability issued by the Commission pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

''(4) for each notice referred to in paragraph (3)—

''(A) the amount of the proposed forfeiture penalty involved;

''(B) the person to whom the notice was issued;

''(C) the length of time between the date on which the complaint was filed and the date on which the notice was issued; and

''(D) the status of the proceeding;

''(5) the number of final orders imposing forfeiture penalties issued pursuant to section 503 during the year to enforce any law, regulation, or policy relating to sending of unsolicited advertisements to telephone facsimile machines;

''(6) for each forfeiture order referred to in paragraph (5)—

''(A) the amount of the penalty imposed by the order;

''(B) the person to whom the order was issued;

''(C) whether the forfeiture penalty has been paid; and

''(D) the amount paid;

''(7) for each case in which a person has failed to pay a forfeiture penalty imposed by such a final order, whether the Commission referred such matter for recovery of the penalty; and

''(8) for each case in which the Commission referred such an order for recovery—

''(A) the number of days from the date the Commission issued such order to the date of such referral;

''(B) whether an action has been commenced to recover the penalty, and if so, the number of days from the date the Commission referred such order for recovery to the date of such commencement; and

''(C) whether the recovery action resulted in collection of any amount, and if so, the amount collected.''.

SEC. 4. GAO STUDY OF JUNK FAX ENFORCEMENT.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study regarding complaints received by the Federal Communications Commission concerning unsolicited advertisements sent to telephone facsimile machines, which study shall determine—

(1) the mechanisms established by the Commission to receive, investigate, and respond to such complaints;

(2) the level of enforcement success achieved by the Commission regarding such complaints;

(3) whether complainants to the Commission are adequately informed by the Commission of the responses to their complaints; and

(4) whether additional enforcement measures are necessary to protect consumers, including recommendations regarding such additional enforcement measures.

(b) ADDITIONAL ENFORCEMENT REMEDIES.—In conducting the analysis and making the recommendations required under subsection (a)(4), the Comptroller General shall specifically examine—

(1) the adequacy of existing statutory enforcement actions available to the Commission;

(2) the adequacy of existing statutory enforcement actions and remedies available to consumers;

(3) the impact of existing statutory enforcement remedies on senders of facsimiles;

(4) whether increasing the amount of financial penalties is warranted to achieve greater deterrent effect; and

(5) whether establishing penalties and enforcement actions for repeat violators or abusive violations similar to those established under section 1037 of title 18, United States Code, would have a greater deterrent effect.

(c) REPORT.—Not later than 270 days after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study under this section to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

By Mr. HARKIN (for himself, Mr. DAYTON, Mr. DURBIN, and Mr. LAUTENBERG):

S. 715. A bill to amend the Internal Revenue Code of 1986 to encourage investment in facilities using wind to produce electricity, and for other purposes; to the Committee on Finance.

Mr. HARKIN. Mr. President, I am introducing today the Wind Power Tax Incentives Act of 2005. I am pleased to be joined by Senators DAYTON, DURBIN and LAUTENBURG. This legislation makes it easier for farmers and others around the country to invest in wind power for commercial electricity production. Wind power is a clean, economical, and reliable source of renewable energy abundant on farms and in rural areas of Iowa and elsewhere.

With this legislation we can help farmers help themselves by developing a new source of income, and help the rest of the country in the production of renewable energy. Farmers are ready to take on this challenge. A recent study found that 93 percent of corn producers support wind energy. They also strongly support the 2002 farm bill's historic energy title.

This regulation complements the farm bill's energy programs and other wind power initiatives currently being

considered by this body, and is strongly supported by the American Wind Energy Association and John Deere. Our bill changes Federal tax law to make the section 45 wind production tax credit more widely available to farmers, farm cooperatives, and other investors. Section 45 of the Federal tax code provides a tax credit, currently 1.8 cents per kilowatt-hour, for electricity produced and sold during the first ten years of the life of a wind turbine. The credit has been extraordinarily successful in spurring greater installation of new wind power capacity, making this sustainable energy source economically feasible. However, certain barriers have prevented many farmers and other investors from qualifying for the credit, thus impeding their participation.

It is time to allow full participation by farmers and other investors in this important tax incentive. Our legislation removes barriers by making two important changes to the tax code.

First, under current tax law most losses, deductions, and credits from passive investments cannot affect wages or other income or reduce taxes on such income. So a farmer who passively invests in wind energy could not use the credits to offset taxes on farm income. This bill creates an exception to passive loss restrictions for an interest in a wind facility that qualifies for the section 45 credit. The wind facility's loss or tax credits could then offset the income or taxes arising from the taxpayer's farming business. Existing law provides an even broader exception for oil and gas investments, but in contrast to existing law, our proposed exception for wind investment applies only to those with income under $1 million, in order to avoid potential windfalls or abuse.

Second, the bill allows cooperatives to invest in qualified wind facilities and pass through the section 45 credits to cooperative members. This will allow farmers to join together and pool their resources in a cooperative and still take advantage of the credit.

When we first introduced this bill in the 108th Congress, it also contained a measure providing alternative minimum tax (AMT) relief. This important piece of the equation was incorporated late last year in the American Jobs Creation Act, and passed into law. But there's more to be done.

The benefits of this legislation are obvious. Increased renewable energy production lessens our dependence on foreign oil, provides environmental and public health gains, bolsters farm income, creates jobs and boosts economic growth, especially in rural areas. The Nation must move toward energy security, and domestically produced wind power, along with other forms of renewable energy like biofuels, plays an important part in this endeavor.

I want to thank Senators DAYTON, DURBIN and LAUTENBURG for co-sponsoring this legislation with me. Their leadership in this area will be instrumental to moving the bill forward. I am hopeful we can pass this legislation soon to help secure a brighter renewable energy future for our Nation's farmers and all citizens.

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. 715

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Wind Power Tax Incentives Act of 2005''.

SEC. 2. OFFSET OF PASSIVE ACTIVITY LOSSES AND CREDITS OF AN ELIGIBLE TAXPAYER FROM WIND ENERGY FACILITIES.

(a) IN GENERAL.—Section 469 of the Internal Revenue Code of 1986 (relating to passive activity losses and credits limited) is amended—

(1) by redesignating subsections (l) and (m) as subsections (m) and (n), respectively; and

(2) by inserting after subsection (k) the following:

''(l) OFFSET OF PASSIVE ACTIVITY LOSSES AND CREDITS FROM WIND ENERGY FACILITIES.—

''(1) IN GENERAL.—Subsection (a) shall not apply to the portion of the passive activity loss, or the deduction equivalent (within the meaning of subsection (j)(5)) of the portion of the passive activity credit, for any taxable year which is attributable to all interests of an eligible taxpayer in qualified facilities described in section 45(d)(1).

''(2) ELIGIBLE TAXPAYER.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'eligible taxpayer' means, with respect to any taxable year, a taxpayer the adjusted gross income (taxable income in the case of a corporation) of which does not exceed $1,000,000.

''(B) RULES FOR COMPUTING ADJUSTED GROSS INCOME.—Adjusted gross income shall be computed in the same manner as under subsection (i)(3)(F).

''(C) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as a single taxpayer for purposes of this paragraph.

''(D) PASS-THRU ENTITIES.—In the case of a pass-thru entity, this paragraph shall be applied at the level of the person to which the credit is allocated by the entity.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to facilities placed in service after the date of the enactment of this Act.

SEC. 3. APPLICATION OF CREDIT TO COOPERATIVES.

(a) IN GENERAL.—Section 45(e) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following:

''(10) ALLOCATION OF CREDIT TO SHAREHOLDERS OF COOPERATIVE.—

''(A) ELECTION TO ALLOCATE.—

''(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned pro rata among shareholders of the organization on the basis of the capital contributions of the shareholders to the organization.

''(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

''(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to any shareholders under subparagraph (A)—

''(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

''(ii) shall be included in the amount determined under subsection (a) for the taxable year of the shareholder with or within which the taxable year of the organization ends.

''(C) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of a cooperative organization determined under subsection (a) for a taxable year is less than the amount of such credit shown on the return of the cooperative organization for such year, an amount equal to the excess of—

''(i) such reduction, over

''(ii) the amount not apportioned to such shareholders under subparagraph (A) for the taxable year, shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this subpart or subpart A, B, E, or G.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

By Mr. AKAKA (for himself, Mr. ROCKEFELLER, and Mr. CONRAD):

S. 716. A bill to amend title 38, United States Code, to enhance services provided by vet centers, to clarify and improve the provision of bereavement counseling by the Department of Veterans Affairs, and for other purposes; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, I rise today to introduce the ''Vet Center Enhancement Act of 2005.'' This legislation would enhance care and services provided through Vet Centers. Since their establishment over 25 years ago, Vet Centers have become a safe place in the community where more and more veterans and their families have turned for assistance and services. This legislation would provide resources that Vet Centers need to serve and reach out to the growing number of Operation Enduring Freedom and Operation Iraqi Freedom (OEF/OIF) veterans and surviving family members.

The legislation would allow the Department of Veterans Affairs (VA) to hire an additional 50 Global War on Terror outreach coordinators, strike the three-year authorization provision for these outreach workers, clarify that Vet Centers can provide bereavement counseling to family members including parents, and provide more funding for the Vet Center program.

In February 2004, VA authorized the Vet Center program to hire 50 OEF/OIF veterans to conduct outreach to their fellow Global War on Terrorism veterans. There are still many OEF/OIF veterans in need of readjustment services, which requires more workers. This legislation would authorize the hiring of 50 additional outreach coordinators to reach this underserved population of veterans. In addition, this legislation would also repeal the three-

year authorization provision placed on these positions.

The number of brave servicemembers who die while defending freedom continues to rise, leaving many surviving family members in need for help. Under current law, VA has the authority to provide bereavement counseling to the immediate family. However, it is necessary to clarify that parents of a deceased servicemember qualify for this bereavement counseling and that such care could be provided at Vet Centers. This legislation would make the clarifications.

A recent article in the Washington Post detailed a mother's experience after her son was killed in Iraq and how she finally felt relief at an unexpected place, a Vet Center. The article also provided information concerning the Vet Center bereavement program and discussed the need for clarification of the Vet Center bereavement care program. This article paints a clear picture of the distress that surviving family members endure as a result of the death of a beloved soldier. I ask unanimous consent that the text of The Washington Post article be printed in the RECORD.

As the War on Terrorism persists, the number of veterans seeking readjustment counseling and related mental health services through Vet Centers will continue to grow. Experts predict that as many as 30 percent of those returning servicemembers may need psychiatric care. For these returning servicemembers who have suffered psychological wounds, the stigma surrounding these types of wounds creates a barrier that often times prevents them from seeking the care they need. Vet Centers, which have licensed mental health professionals, provide a means to overcome this barrier because of the center's location in the community and because veteran staff members can relate to the experiences of the veterans seeking services. In 2004, Vet Centers cared for 9,597 OEF/OIF veterans and 2005 projections are that Vet Centers will see 12,656 OEF/OIF veterans.

Despite increases in the number of veterans coming for care to Vet Centers, the budget for the program has remained stagnant. This legislation would authorize funding for the program from $93 million to $180 million.

We must make the readjustment period for the returning service members and the surviving family members of deceased servicemembers as smooth as possible.

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

[From the Washington Post, Feb. 24, 2005]

VA PROGRAM OFFERS SOLACE TO CIVILIANS

(By David Finkel)

Her son had been killed in Iraq, and Hope Veverka needed someone to talk to.

''It was so horrific, the pain,'' said Veverka, the mother of Army Pfc. Brandon Sapp, who died in August when he drove his vehicle over a remote-controlled bomb. ''I didn't want it to destroy me.''

Unable to sleep, Veverka, 45, tried a hospice-based program for dealing with grief. Unable to stop thinking about the person who was the last to see her son while deliberately pushing a detonator, she talked to friends and attended a support group for parents who lost children. All helped somewhat, she says, but it was in an unexpected place—a readjustment center for veterans—where she finally felt some relief.

''These guys, they have served,'' Veverka said of the counselors she sees weekly at the Department of Veterans Affairs' Vet Center near her home in West Palm Beach, Fla. ''They get it. I can just talk, and they understand.''

More and more relatives of service members who died are learning the same thing, that because of a new bereavement program, vet centers are not just for veterans anymore. In August 2003, as the number of fatalities in Iraq passed the 250 mark, the 206 vet centers across the United States began offering counseling and bereavement services to immediate relatives of anyone in the military to die while on active duty.

The program marks the first time that non-veterans have been eligible for a benefit previously restricted to veterans. Before the program began, civilian family members might go to a vet center as part of a living veteran's counseling but had to go elsewhere if they needed counseling of their own.

''It's a big deal,'' said Alfonso Batres, chief of the VA's Office of Readjustment Counseling. ''And the families are so grateful that anything is being done.''

The program, which is free and allows unlimited visits, had 367 participants in connection with 252 deaths as of Feb. 1. Eighty-six of the 367 were spouses, 119 were mothers, 64 were fathers, 60 were siblings, 37 were children and one was a grandparent.

Batres says the numbers would be higher, but privacy concerns prohibit counselors from contacting people to see whether they are interested in getting help. Instead, initial contact must come from the family members.

Typically, relatives are referred to the program by military casualty-assistance officers, who are the ones to notify them of the death of their loved ones. A civilian organization called TAPS, the Tragedy Assistance Program for Survivors, which offers around-the-clock grief counseling and peer support—but does not have professionally trained counselors as at a vet center—also refers people to the program.

''It's really, really significant,'' TAPS founder and chairman Bonnie Carroll said of the VA's decision to treat family members. ''From our perspective, it has just been revolutionary.''

Batres says that implementing the program has not been problem-free. Especially in the early months, he says, some counselors complained that they already had more to do than they could handle. Others were concerned that expanding the centers' mandate to non-veterans could create a bad precedent.

The provisional status of the program has also been unsettling to some. Batres says he had hoped to get the program authorized by Congress, which would have given it a sense of permanence, but instead it was approved as an unfunded initiative at the discretion of the secretary of the VA.

Nonetheless, Batres says, as the months have gone by, the nature of the work has changed the misgivings of his staff into a shared sense of mission. ''It's akin to going to a disaster site'' is how he describes the work. ''This is a death site. It's almost like going into a sacred place.''

Joe Griffis, a counselor at the vet center in Lake Worth, Fla., agrees that this first venture into treating non-veterans is worthwhile. ''We're here to help the veteran,'' he said, ''and when they've been killed, it's the closest we can get to them to give them that service.''

Griffis says he has treated family members connected to five deaths, four of which occurred from enemy fire and one by suicide.

''They come in with grief, with a great sense of loss, often with guilt feelings about what they could have done, angry at the government, angry at God, angry at the child himself,'' he said of his clients, most of whom have been parents.

Rather than diagnosing a condition, he says, his goal is to ''let them ventilate all of their feelings. Their anger. Their grief. Their sadness. No matter what it's about. And let them have a feeling of relief before they walk out of the session.''

Veverka, who is one of Griffis's clients, says that is exactly what has happened to her in her weekly sessions.

''There was something lacking,'' she said of the support groups she attended in the first days after her son's death, where she found herself undifferentiated from the parents whose child had died of leukemia and the parents whose child had been killed crossing a street. ''It was only addressing half of my emotions. I needed something with the military.''

Try the vet center, someone suggested.

''So I went,'' she said of a place so familiar to her now that counselors have hung a photograph of her son for her to see every time she walks in the door, ''and it ended up being the door I needed.''

By Mr. BIDEN (for himself, Mr. SPECTER, Mr. MCCONNELL, Mrs. MURRAY, Mr. DAYTON, Mr. CHAMBLISS, Mr. CORZINE, and Ms. CANTWELL):

S. 718. A bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide both State and local law enforcement agencies and law enforcement officers during internal investigations, interrogation of law enforcement officers, and administrative disciplinary hearings, and to ensure accountability of law enforcement officers, to guarantee the due process rights of law enforcement officers, and to require States to enact law enforcement discipline, accountability, and due process laws; to the Committee on the Judiciary.

Mr. BIDEN. Mr. President, I rise to introduce the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2005, along with Senator SPECTER, Senator MCCONNELL, Senator CHAMBLISS, Senator DAYTON, Senator MURRAY, Senator CORZINE, and Senator CANTWELL.

These are trying times for the men and women on our front lines who provide our domestic security and public safety—our Nation's law enforcement personnel. In fact, our men and women in blue are facing what I have called a perfect storm. First, they are being called upon to undertake more responsibilities than ever before. They are being required to undertake homeland security duties that weren't required before September 11, and, at the same time, the FBI is reprogramming its field agents from crime to terrorism

cases. While I don't disagree that this shift in resources is appropriate, it undoubtedly leaves a gap in law enforcement efforts to combat drugs and crime, and State and local agencies must fill this gap. At the same time, budget shortages at the local level are forcing personnel lay-offs, an increasing use of overtime to meet demand, and the forced elimination of critical crime prevention programs. Local law enforcement is struggling to keep up with service calls. To add insult to injury, Federal assistance for State and local law enforcement has been reduced by billions over the last 2 years—with the proposed elimination of the COPS hiring program—a proven initiative that has been hailed as one of the keys to the crime-drop of the nineties. Quite simply, we are asking law enforcement to do more with less, and I believe that public safety is being compromised as a result of Congress's unfortunate choices on the Federal budget.

We may argue about the Federal responsibility to provide financial assistance to State and local law enforcement, however, few will dispute the sacrifices that our men and women in law enforcement make for our nation. Indeed, they face one of the most difficult work environments imaginable—an average of 165 police officers are killed in the line of duty every year. Our Nation's law enforcement officers put themselves in harms way on a daily basis to ensure the safety of their fellow citizens and the domestic security of our Nation. Nevertheless, many times these brave officers do not receive basic rights if they become involved in internal police investigations or administrative hearings. According to the National Association of Police Organizations, ''[i]n roughly half of the states in this country, officers enjoy some legal protections against false accusations and abusive conduct, but hundreds of thousands of officers have very limited due process rights and confront limitations on their exercise of other rights, such as the right to engage in political activities.'' Similarly, the Fraternal Order of Police notes that, ''[i]n a startling number of jurisdictions throughout this country, law enforcement officers have no procedural or administrative protections whatsoever; in fact, they can be, and frequently are, summarily dismissed from their jobs without explanation. Officers who lose their careers due to administrative or political expediency almost always find it impossible to find new employment in public safety. An officer's reputation, once tarnished by accusation, is almost impossible to restore.''

The legislation that we introduce today, which is endorsed by the Fraternal Order of Police and of the National Association of Police Organizations, seeks to provide officers with certain basic protections in those jurisdictions where such workplace protections are not currently provided. First, this bill allows law enforcement officials to engage in political activities when they are off-duty. Second, it provides standards and procedures to guide State and local law enforcement agencies during internal investigations, interrogations, and administrative disciplinary hearings. Additionally, it calls upon States to develop and enforce these disciplinary procedures. The bill would preempt State laws which confer fewer rights than those provided for in the legislation, but it would not preempt any State or local laws that confer rights or protections that are equal to or exceed the rights and protections afforded in the bill. For example, my own State of Delaware has a law enforcement officers' bill of rights, and those procedures would not be impacted by the provisions of this bill.

This bill will also include important provisions that will enhance the ability of citizens to hold their local police departments accountable. The legislation includes provisions that will ensure citizen complaints against police officers are investigated and that citizens are informed of the outcome of these investigations. The bill balances the rights of police officers with the rights of citizens to raise valid concerns about the conduct of some of these officers. In addition, I have consulted with constitutional experts who have opined that the bill is consistent with Congress' powers under the Commerce Clause and that it does not run afoul of the Supreme Court's Tenth Amendment jurisprudence.

I would also like to note that I understand the objections that many management groups, including the International Association of Chiefs of Police, have to this measure. I have discussed this with them, and I've pledged that their views will be heard and considered as this bill is debated in Congress. It is my view that we must bridge this gap. Without a meeting of the minds between police management and union officials, the enactment of a meaningful law enforcement officers' bill of rights will be difficult. Law enforcement officials are facing unprecedented challenges, and management and labor simply must work together on this issue and the numerous other issues facing the law enforcement community.

I urge my colleagues to join Senators SPECTER, MCCONNELL, CHAMBLISS, DAYTON, MURRAY, CORZINE, CANTWELL, and me in providing all of the Nation's law enforcement officers with the basic rights they deserve.

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. 718

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 ''State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2005''.

SEC. 2. FINDINGS AND DECLARATION OF PURPOSE AND POLICY.

(a) FINDINGS.—Congress finds that—

(1) the rights of law enforcement officers to engage in political activity or to refrain from engaging in political activity, except when on duty, or to run as candidates for public office, unless such service is found to be in conflict with their service as officers, are activities protected by the first amendment of the United States Constitution, as applied to the States through the 14th amendment of the United States Constitution, but these rights are often violated by the management of State and local law enforcement agencies;

(2) a significant lack of due process rights of law enforcement officers during internal investigations and disciplinary proceedings has resulted in a loss of confidence in these processes by many law enforcement officers, including those unfairly targeted for their labor organization activities or for their aggressive enforcement of the laws, demoralizing many rank and file officers in communities and States;

(3) unfair treatment of officers has potentially serious long-term consequences for law enforcement by potentially deterring or otherwise preventing officers from carrying out their duties and responsibilities effectively and fairly;

(4) the lack of labor-management cooperation in disciplinary matters and either the perception or the actuality that officers are not treated fairly detrimentally impacts the recruitment of and retention of effective officers, as potential officers and experienced officers seek other careers, which has serious implications and repercussions for officer morale, public safety, and labor-management relations and strife and can affect interstate and intrastate commerce, interfering with the normal flow of commerce;

(5) there are serious implications for the public safety of the citizens and residents of the United States which threatens the domestic tranquility of the United States because of a lack of statutory protections to ensure—

(A) the due process and political rights of law enforcement officers;

(B) fair and thorough internal investigations and interrogations of and disciplinary proceedings against law enforcement officers; and

(C) effective procedures for receipt, review, and investigation of complaints against officers, fair to both officers and complainants; and

(6) resolving these disputes and problems and preventing the disruption of vital police services is essential to the well-being of the United States and the domestic tranquility of the Nation.

(b) DECLARATION OF POLICY.—Congress declares that it is the purpose of this Act and the policy of the United States to—

(1) protect the due process and political rights of State and local law enforcement officers and ensure equality and fairness of treatment among such officers;

(2) provide continued police protection to the general public;

(3) provide for the general welfare and ensure domestic tranquility; and

(4) prevent any impediments to the free flow of commerce, under the rights guaranteed under the United States Constitution and Congress' authority thereunder.

SEC. 3. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS OF OFFICERS.

(a) IN GENERAL.—Part H of title I of the Omnibus Crime Control and Safe Streets Act

of 1968 (42 U.S.C. 3781 et seq.) is amended by adding at the end the following:

"SEC. 820. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS OF STATE AND LOCAL LAW ENFORCEMENT OFFICERS.

''(a) DEFINITIONS.—In this section:

''(1) DISCIPLINARY ACTION.—The term 'disciplinary action' means any adverse personnel action, including suspension, reduction in pay, rank, or other employment benefit, dismissal, transfer, reassignment, unreasonable denial of secondary employment, or similar punitive action taken against a law enforcement officer.

''(2) DISCIPLINARY HEARING.—The term 'disciplinary hearing' means an administrative hearing initiated by a law enforcement agency against a law enforcement officer, based on an alleged violation of law, that, if proven, would subject the law enforcement officer to disciplinary action.

''(3) EMERGENCY SUSPENSION.—The term 'emergency suspension' means the temporary action by a law enforcement agency of relieving a law enforcement officer from the active performance of law enforcement duties without a reduction in pay or benefits when the law enforcement agency, or an official within that agency, determines that there is probable cause, based upon the conduct of the law enforcement officer, to believe that the law enforcement officer poses an immediate threat to the safety of that officer or others or the property of others.

''(4) INVESTIGATION.—The term 'investigation'—

''(A) means an action taken to determine whether a law enforcement officer violated a law by a public agency or a person employed by a public agency, acting alone or in cooperation with or at the direction of another agency, or a division or unit within another agency, regardless of a denial by such an agency that any such action is not an investigation; and

''(B) includes—

''(i) asking questions of any other law enforcement officer or non-law enforcement officer;

''(ii) conducting observations;

''(iii) reviewing and evaluating reports, records, or other documents; and

''(iv) examining physical evidence.

''(5) LAW ENFORCEMENT OFFICER.—The terms 'law enforcement officer' and 'officer' have the meaning given the term 'law enforcement officer' in section 1204, except the term does not include a law enforcement officer employed by the United States, or any department, agency, or instrumentality thereof.

''(6) PERSONNEL RECORD.—The term 'personnel record' means any document, whether in written or electronic form and irrespective of location, that has been or may be used in determining the qualifications of a law enforcement officer for employment, promotion, transfer, additional compensation, termination or any other disciplinary action.

''(7) PUBLIC AGENCY AND LAW ENFORCEMENT AGENCY.—The terms 'public agency' and 'law enforcement agency' each have the meaning given the term 'public agency' in section 1204, except the terms do not include the United States, or any department, agency, or instrumentality thereof.

''(8) SUMMARY PUNISHMENT.—The term 'summary punishment' means punishment imposed—

''(A) for a violation of law that does not result in any disciplinary action; or

''(B) for a violation of law that has been negotiated and agreed upon by the law enforcement agency and the law enforcement officer, based upon a written waiver by the officer of the rights of that officer under subsection (i) and any other applicable law or constitutional provision, after consultation with the counsel or representative of that officer.

''(b) APPLICABILITY.—

''(1) IN GENERAL.—This section sets forth the due process rights, including procedures, that shall be afforded a law enforcement officer who is the subject of an investigation or disciplinary hearing.

''(2) NONAPPLICABILITY.—This section does not apply in the case of—

''(A) an investigation of specifically alleged conduct by a law enforcement officer that, if proven, would constitute a violation of a statute providing for criminal penalties; or

''(B) a nondisciplinary action taken in good faith on the basis of the employment related performance of a law enforcement officer.

''(c) POLITICAL ACTIVITY.—

''(1) RIGHT TO ENGAGE OR NOT TO ENGAGE IN POLITICAL ACTIVITY.—Except when on duty or acting in an official capacity, a law enforcement officer shall not be prohibited from engaging in political activity or be denied the right to refrain from engaging in political activity.

''(2) RIGHT TO RUN FOR ELECTIVE OFFICE.—A law enforcement officer shall not be—

''(A) prohibited from being a candidate for an elective office or from serving in such an elective office, solely because of the status of the officer as a law enforcement officer; or

''(B) required to resign or take an unpaid leave from employment with a law enforcement agency to be a candidate for an elective office or to serve in an elective office, unless such service is determined to be in conflict with or incompatible with service as a law enforcement officer.

''(3) ADVERSE PERSONNEL ACTION.—An action by a public agency against a law enforcement officer, including requiring the officer to take unpaid leave from employment, in violation of this subsection shall be considered an adverse personnel action within the meaning of subsection (a)(1).

''(d) EFFECTIVE PROCEDURES FOR RECEIPT, REVIEW, AND INVESTIGATION OF COMPLAINTS AGAINST LAW ENFORCEMENT OFFICERS.—

''(1) COMPLAINT PROCESS.—Not later than 1 year after the effective date of this section, each law enforcement agency shall adopt and comply with a written complaint procedure that—

''(A) authorizes persons from outside the law enforcement agency to submit written complaints about a law enforcement officer to—

''(i) the law enforcement agency employing the law enforcement officer; or

''(ii) any other law enforcement agency charged with investigating such complaints;

''(B) sets forth the procedures for the investigation and disposition of such complaints;

''(C) provides for public access to required forms and other information concerning the submission and disposition of written complaints; and

''(D) requires notification to the complainant in writing of the final disposition of the complaint and the reasons for such disposition.

''(2) INITIATION OF AN INVESTIGATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an investigation based on a complaint from outside the law enforcement agency shall commence not later than 15 days after the receipt of the complaint by—

''(i) the law enforcement agency employing the law enforcement officer against whom the complaint has been made; or

''(ii) any other law enforcement agency charged with investigating such a complaint.

''(B) EXCEPTION.—Subparagraph (A) does not apply if—

''(i) the law enforcement agency determines from the face of the complaint that each allegation does not constitute a violation of law; or

''(ii) the complainant fails to comply substantially with the complaint procedure of the law enforcement agency established under this section.

''(3) COMPLAINANT OR VICTIM CONFLICT OF INTEREST.—The complainant or victim of the alleged violation of law giving rise to an investigation under this subsection may not conduct or supervise the investigation or serve as an investigator.

''(e) NOTICE OF INVESTIGATION.—

''(1) IN GENERAL.—Any law enforcement officer who is the subject of an investigation shall be notified of the investigation 24 hours before the commencement of questioning of such officer or to otherwise being required to provide information to an investigating agency.

''(2) CONTENTS OF NOTICE.—Notice given under paragraph (1) shall include—

''(A) the nature and scope of the investigation;

''(B) a description of any allegation contained in a written complaint;

''(C) a description of each violation of law alleged in the complaint for which suspicion exists that the officer may have engaged in conduct that may subject the officer to disciplinary action; and

''(D) the name, rank, and command of the officer or any other individual who will be conducting the investigation.

''(f) RIGHTS OF LAW ENFORCEMENT OFFICERS PRIOR TO AND DURING QUESTIONING INCIDENTAL TO AN INVESTIGATION.—If a law enforcement officer is subjected to questioning incidental to an investigation that may result in disciplinary action against the officer, the following minimum safeguards shall apply:

''(1) COUNSEL AND REPRESENTATION.—

''(A) IN GENERAL.—Any law enforcement officer under investigation shall be entitled to effective counsel by an attorney or representation by any other person who the officer chooses, such as an employee representative, or both, immediately before and during the entire period of any questioning session, unless the officer consents in writing to being questioned outside the presence of counsel or representative.

''(B) PRIVATE CONSULTATION.—During the course of any questioning session, the officer shall be afforded the opportunity to consult privately with counsel or a representative, if such consultation does not repeatedly and unnecessarily disrupt the questioning period.

''(C) UNAVAILABILITY OF COUNSEL.—If the counsel or representative of the law enforcement officer is not available within 24 hours of the time set for the commencement of any questioning of that officer, the investigating law enforcement agency shall grant a reasonable extension of time for the law enforcement officer to obtain counsel or representation.

''(2) REASONABLE HOURS AND TIME.—Any questioning of a law enforcement officer under investigation shall be conducted at a reasonable time when the officer is on duty, unless exigent circumstances compel more immediate questioning, or the officer agrees in writing to being questioned at a different time, subject to the requirements of subsections (e) and paragraph (1).

''(3) PLACE OF QUESTIONING.—Unless the officer consents in writing to being questioned elsewhere, any questioning of a law enforcement officer under investigation shall take place—

''(A) at the office of the individual conducting the investigation on behalf of the

law enforcement agency employing the officer under investigation; or

''(B) the place at which the officer under investigation reports for duty.

''(4) IDENTIFICATION OF QUESTIONER.—Before the commencement of any questioning, a law enforcement officer under investigation shall be informed of—

''(A) the name, rank, and command of the officer or other individual who will conduct the questioning; and

''(B) the relationship between the individual conducting the questioning and the law enforcement agency employing the officer under investigation.

''(5) SINGLE QUESTIONER.—During any single period of questioning of a law enforcement officer under investigation, each question shall be asked by or through 1 individual.

''(6) REASONABLE TIME PERIOD.—Any questioning of a law enforcement officer under investigation shall be for a reasonable period of time and shall allow reasonable periods for the rest and personal necessities of the officer and the counsel or representative of the officer, if such person is present.

''(7) NO THREATS, FALSE STATEMENTS, OR PROMISES TO BE MADE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no threat against, false or misleading statement to, harassment of, or promise of reward to a law enforcement officer under investigation shall be made to induce the officer to answer any question, give any statement, or otherwise provide information.

''(B) EXCEPTION.—The law enforcement agency employing a law enforcement officer under investigation may require the officer to make a statement relating to the investigation by explicitly threatening disciplinary action, including termination, only if—

''(i) the officer has received a written grant of use and derivative use immunity or transactional immunity by a person authorized to grant such immunity; and

''(ii) the statement given by the law enforcement officer under such an immunity may not be used in any subsequent criminal proceeding against that officer.

''(8) RECORDING.—

''(A) IN GENERAL.—All questioning of a law enforcement officer under an investigation shall be recorded in full, in writing or by electronic device, and a copy of the transcript shall be provided to the officer under investigation before any subsequent period of questioning or the filing of any charge against that officer.

''(B) SEPARATE RECORDING.—To ensure the accuracy of the recording, an officer may utilize a separate electronic recording device, and a copy of any such recording (or the transcript) shall be provided to the public agency conducting the questioning, if that agency so requests.

''(9) USE OF HONESTY TESTING DEVICES PROHIBITED.—No law enforcement officer under investigation may be compelled to submit to the use of a lie detector, as defined in section 2 of the Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001).

''(g) NOTICE OF INVESTIGATIVE FINDINGS AND DISCIPLINARY RECOMMENDATION AND OPPORTUNITY TO SUBMIT A WRITTEN RESPONSE.—

''(1) NOTICE.—Not later than 30 days after the conclusion of an investigation under this section, the person in charge of the investigation or the designee of that person shall notify the law enforcement officer who was the subject of the investigation, in writing, of the investigative findings and any recommendations for disciplinary action.

''(2) OPPORTUNITY TO SUBMIT WRITTEN RESPONSE.—

''(A) IN GENERAL.—Not later than 30 days after receipt of a notification under paragraph (1), and before the filing of any charge seeking the discipline of such officer or the commencement of any disciplinary proceeding under subsection (h), the law enforcement officer who was the subject of the investigation may submit a written response to the findings and recommendations included in the notification.

''(B) CONTENTS OF RESPONSE.—The response submitted under subparagraph (A) may include references to additional documents, physical objects, witnesses, or any other information that the law enforcement officer believes may provide exculpatory evidence.

''(h) DISCIPLINARY HEARINGS.—

''(1) NOTICE OF OPPORTUNITY FOR HEARING.—Except in a case of summary punishment or emergency suspension (subject to subsection (k)), before the imposition of any disciplinary action the law enforcement agency shall notify the officer that the officer is entitled to a due process hearing by an independent and impartial hearing officer or board.

''(2) REQUIREMENT OF DETERMINATION OF VIOLATION.—No disciplinary action may be taken against a law enforcement officer unless an independent and impartial hearing officer or board determines, after a hearing and in accordance with the requirements of this subsection, that the law enforcement officer committed a violation of law.

''(3) TIME LIMIT.—No disciplinary charge may be brought against a law enforcement officer unless—

''(A) the charge is filed not later than the earlier of—

''(i) 1 year after the date on which the law enforcement agency filing the charge had knowledge or reasonably should have had knowledge of an alleged violation of law; or

''(ii) 90 days after the commencement of an investigation; or

''(B) the requirements of this paragraph are waived in writing by the officer or the counsel or representative of the officer.

''(4) NOTICE OF HEARING.—Unless waived in writing by the officer or the counsel or representative of the officer, not later than 30 days after the filing of a disciplinary charge against a law enforcement officer, the law enforcement agency filing the charge shall provide written notification to the law enforcement officer who is the subject of the charge, of—

''(A) the date, time, and location of any disciplinary hearing, which shall be scheduled in cooperation with the law enforcement officer, or the counsel or representative of the officer, and which shall take place not earlier than 30 days and not later than 60 days after notification of the hearing is given to the law enforcement officer under investigation;

''(B) the name and mailing address of the independent and impartial hearing officer, or the names and mailing addresses of the independent and impartial hearing board members; and

''(C) the name, rank, command, and address of the law enforcement officer prosecuting the matter for the law enforcement agency, or the name, position, and mailing address of the person prosecuting the matter for a public agency, if the prosecutor is not a law enforcement officer.

''(5) ACCESS TO DOCUMENTARY EVIDENCE AND INVESTIGATIVE FILE.—Unless waived in writing by the law enforcement officer or the counsel or representative of that officer, not later than 15 days before a disciplinary hearing described in paragraph (4)(A), the law enforcement officer shall be provided with—

''(A) a copy of the complete file of the predisciplinary investigation; and

''(B) access to and, if so requested, copies of all documents, including transcripts, records, written statements, written reports, analyses, and electronically recorded information that—

''(i) contain exculpatory information;

''(ii) are intended to support any disciplinary action; or

''(iii) are to be introduced in the disciplinary hearing.

''(6) EXAMINATION OF PHYSICAL EVIDENCE.—Unless waived in writing by the law enforcement officer or the counsel or representative of that officer—

''(A) not later than 15 days before a disciplinary hearing, the prosecuting agency shall notify the law enforcement officer or the counsel or representative of that officer of all physical, non-documentary evidence; and

''(B) not later than 10 days before a disciplinary hearing, the prosecuting agency shall provide a reasonable date, time, place, and manner for the law enforcement officer or the counsel or representative of the law enforcement officer to examine the evidence described in subparagraph (A).

''(7) IDENTIFICATION OF WITNESSES.—Unless waived in writing by the law enforcement officer or the counsel or representative of the officer, not later than 15 days before a disciplinary hearing, the prosecuting agency shall notify the law enforcement officer or the counsel or representative of the officer, of the name and address of each witness for the law enforcement agency employing the law enforcement officer.

''(8) REPRESENTATION.—During a disciplinary hearing, the law enforcement officer who is the subject of the hearing shall be entitled to due process, including—

''(A) the right to be represented by counsel or a representative;

''(B) the right to confront and examine all witnesses against the officer; and

''(C) the right to call and examine witnesses on behalf of the officer.

''(9) HEARING BOARD AND PROCEDURE.—

''(A) IN GENERAL.—A State or local government agency, other than the law enforcement agency employing the officer who is subject of the disciplinary hearing, shall—

''(i) determine the composition of an independent and impartial disciplinary hearing board;

''(ii) appoint an independent and impartial hearing officer; and

''(iii) establish such procedures as may be necessary to comply with this section.

''(B) PEER REPRESENTATION ON DISCIPLINARY HEARING BOARD.—A disciplinary hearing board that includes employees of the law enforcement agency employing the law enforcement officer who is the subject of the hearing, shall include not less than 1 law enforcement officer of equal or lesser rank to the officer who is the subject of the hearing.

''(10) SUMMONSES AND SUBPOENAS.—

''(A) IN GENERAL.—The disciplinary hearing board or independent hearing officer—

''(i) shall have the authority to issue summonses or subpoenas, on behalf of—

''(I) the law enforcement agency employing the officer who is the subject of the hearing; or

''(II) the law enforcement officer who is the subject of the hearing; and

''(ii) upon written request of either the law enforcement agency or the officer, shall issue a summons or subpoena, as appropriate, to compel the appearance and testimony of a witness or the production of documentary evidence.

''(B) EFFECT OF FAILURE TO COMPLY WITH SUMMONS OR SUBPOENA.—With respect to any failure to comply with a summons or a subpoena issued under subparagraph (A)—

''(i) the disciplinary hearing officer or board shall petition a court of competent jurisdiction to issue an order compelling compliance; and

''(ii) subsequent failure to comply with such a court order issued pursuant to a petition under clause (i) shall—

''(I) be subject to contempt of a court proceedings according to the laws of the jurisdiction within which the disciplinary hearing is being conducted; and

''(II) result in the recess of the disciplinary hearing until the witness becomes available to testify and does testify or is held in contempt.

''(11) CLOSED HEARING.—A disciplinary hearing shall be closed to the public unless the law enforcement officer who is the subject of the hearing requests, in writing, that the hearing be open to specified individuals or to the general public.

''(12) RECORDING.—All aspects of a disciplinary hearing, including pre-hearing motions, shall be recorded by audio tape, video tape, or transcription.

''(13) SEQUESTRATION OF WITNESSES.—Either side in a disciplinary hearing may move for and be entitled to sequestration of witnesses.

''(14) TESTIMONY UNDER OATH.—The hearing officer or board shall administer an oath or affirmation to each witness, who shall testify subject to the laws of perjury of the State in which the disciplinary hearing is being conducted.

''(15) FINAL DECISION ON EACH CHARGE.—

''(A) IN GENERAL.—At the conclusion of the presentation of all the evidence and after oral or written argument, the hearing officer or board shall deliberate and render a written final decision on each charge.

''(B) FINAL DECISION ISOLATED TO CHARGE BROUGHT.—The hearing officer or board may not find that the law enforcement officer who is the subject of the hearing is liable for disciplinary action for any violation of law as to which the officer was not charged.

''(16) BURDEN OF PERSUASION AND STANDARD OF PROOF.—The burden of persuasion or standard of proof of the prosecuting agency shall be—

''(A) by clear and convincing evidence as to each charge alleging false statement or representation, fraud, dishonesty, deceit, moral turpitude, or criminal behavior on the part of the law enforcement officer who is the subject of the charge; and

''(B) by a preponderance of the evidence as to all other charges.

''(17) FACTORS OF JUST CAUSE TO BE CONSIDERED BY THE HEARING OFFICER OR BOARD.—A law enforcement officer who is the subject of a disciplinary hearing shall not be found guilty of any charge or subjected to any disciplinary action unless the disciplinary hearing board or independent hearing officer finds that—

''(A) the officer who is the subject of the charge could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct set forth in the charge against the officer;

''(B) the rule, regulation, order, or procedure that the officer who is the subject of the charge allegedly violated is reasonable;

''(C) the charging party, before filing the charge, made a reasonable, fair, and objective effort to discover whether the officer did in fact violate the rule, regulation, order, or procedure as charged;

''(D) the charging party did not conduct the investigation arbitrarily or unfairly, or in a discriminatory manner, against the officer who is the subject of the charge, and the charge was brought in good faith; and

''(E) the proposed disciplinary action reasonably relates to the seriousness of the alleged violation and to the record of service of the officer who is the subject of the charge.

''(18) NO COMMISSION OF A VIOLATION.—If the officer who is the subject of the disciplinary hearing is found not to have committed the alleged violation—

''(A) the matter is concluded;

''(B) no disciplinary action may be taken against the officer;

''(C) the personnel record of that officer shall not contain any reference to the charge for which the officer was found not guilty; and

''(D) any pay and benefits lost or deferred during the pendency of the disposition of the charge shall be restored to the officer as though no charge had ever been filed against the officer, including salary or regular pay, vacation, holidays, longevity pay, education incentive pay, shift differential, uniform allowance, lost overtime, or other premium pay opportunities, and lost promotional opportunities.

''(19) COMMISSION OF A VIOLATION.—

''(A) IN GENERAL.—If the officer who is the subject of the charge is found to have committed the alleged violation, the hearing officer or board shall make a written recommendation of a penalty to the law enforcement agency employing the officer or any other governmental entity that has final disciplinary authority, as provided by applicable State or local law.

''(B) PENALTY.—The employing agency or other governmental entity may not impose a penalty greater than the penalty recommended by the hearing officer or board.

''(20) APPEAL.—Any officer who has been found to have committed an alleged violation may appeal from a final decision of a hearing officer or hearing board to a court of competent jurisdiction or to an independent neutral arbitrator to the extent available in any other administrative proceeding under applicable State or local law, or a collective bargaining agreement.

''(i) WAIVER OF RIGHTS.—

''(1) IN GENERAL.—An officer who is notified that the officer is under investigation or is the subject of a charge may, after such notification, waive any right or procedure guaranteed by this section.

''(2) WRITTEN WAIVER.—A written waiver under this subsection shall be—

''(A) in writing; and

''(B) signed by—

''(i) the officer, who shall have consulted with counsel or a representative before signing any such waiver; or

''(ii) the counsel or representative of the officer, if expressly authorized by subsection (h).

''(j) SUMMARY PUNISHMENT.—Nothing in this section shall preclude a public agency from imposing summary punishment.

''(k) EMERGENCY SUSPENSION.—Nothing in this section may be construed to preclude a law enforcement agency from imposing an emergency suspension on a law enforcement officer, except that any such suspension shall—

''(1) be followed by a hearing in accordance with the requirements of subsection (h); and

''(2) not deprive the affected officer of any pay or benefit.

''(l) RETALIATION FOR EXERCISING RIGHTS.—There shall be no imposition of, or threat of, disciplinary action or other penalty against a law enforcement officer for the exercise of any right provided to the officer under this section.

''(m) OTHER REMEDIES NOT IMPAIRED.—Nothing in this section may be construed to impair any other right or remedy that a law enforcement officer may have under any constitution, statute, ordinance, order, rule, regulation, procedure, written policy, collective bargaining agreement, or any other source.

''(n) DECLARATORY OR INJUNCTIVE RELIEF.—A law enforcement officer who is aggrieved by a violation of, or is otherwise denied any right afforded by, the Constitution of the United States, a State constitution, this section, or any administrative rule or regulation promulgated pursuant thereto, may file suit in any Federal or State court of competent jurisdiction for declaratory or injunctive relief to prohibit the law enforcement agency from violating or otherwise denying such right, and such court shall have jurisdiction, for cause shown, to restrain such a violation or denial.

''(o) PROTECTION OF LAW ENFORCEMENT OFFICER PERSONNEL FILES.—

''(1) RESTRICTIONS ON ADVERSE MATERIAL MAINTAINED IN OFFICERS' PERSONNEL RECORDS.—

''(A) IN GENERAL.—Unless the officer has had an opportunity to review and comment, in writing, on any adverse material generated after the effective date of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2005 to be included in a personnel record relating to the officer, no law enforcement agency or other governmental entity may—

''(i) include the adverse material in that personnel record; or

''(ii) possess or maintain control over the adverse material in any form as a personnel record within the law enforcement agency or elsewhere in the control of the employing governmental entity.

''(B) RESPONSIVE MATERIAL.—Any responsive material provided by an officer to adverse material included in a personnel record pertaining to the officer shall be—

''(i) attached to the adverse material; and

''(ii) released to any person or entity to whom the adverse material is released in accordance with law and at the same time as the adverse material is released.

''(2) RIGHT TO INSPECTION OF, AND RESTRICTIONS ON ACCESS TO INFORMATION IN, THE OFFICER'S OWN PERSONNEL RECORDS.—

''(A) IN GENERAL.—Subject to subparagraph (B), a law enforcement officer shall have the right to inspect all of the personnel records of the officer not less than annually.

''(B) RESTRICTIONS.—A law enforcement officer shall not have access to information in the personnel records of the officer if the information—

''(i) relates to the investigation of alleged conduct that, if proven, would constitute or have constituted a definite violation of a statute providing for criminal penalties, but as to which no formal charge was brought;

''(ii) contains letters of reference for the officer;

''(iii) contains any portion of a test document other than the results;

''(iv) is of a personal nature about another officer, and if disclosure of that information in non-redacted form would constitute a clearly unwarranted intrusion into the privacy rights of that other officer; or

''(v) is relevant to any pending claim brought by or on behalf of the officer against the employing agency of that officer that may be discovered in any judicial or administrative proceeding between the officer and the employer of that officer.

''(p) STATES' RIGHTS.—

''(1) IN GENERAL.—Nothing in this section may be construed—

''(A) to preempt any State or local law, or any provision of a State or local law, in effect on the date of enactment of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2005, that confers a right or a protection that equals or exceeds the right or protection afforded by this section; or

''(B) to prohibit the enactment of any State or local law that confers a right or protection that equals or exceeds a right or protection afforded by this section.

''(2) STATE OR LOCAL LAWS PREEMPTED.—A State or local law, or any provision of a State or local law, that confers fewer rights or provides less protection for a law enforcement officer than any provision in this section shall be preempted by this section.

''(q) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in this section may be construed to—

''(1) preempt any provision in a mutually agreed-upon collective bargaining agreement, in effect on the date of enactment of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2005, that provides for substantially the same or a greater right or protection afforded under this section; or

''(2) prohibit the negotiation of any additional right or protection for an officer who is subject to any collective bargaining agreement.''.

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the item relating to section 819 the following:

''Sec. 820. Discipline, accountability, and due process of State and local law enforcement officers''.

SEC. 4. PROHIBITION OF FEDERAL CONTROL OVER STATE AND LOCAL CRIMINAL JUSTICE AGENCIES.

Nothing in this Act or the amendments made by this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control of any police force or any criminal justice agency of any State or any political subdivision thereof.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect with respect to each State on the earlier of—

(1) 2 years after the date of enactment of this Act; or

(2) the conclusion of the second legislative session of the State that begins on or after the date of enactment of this Act.

By Mr. SARBANES (for himself and Ms. MIKULSKI):

S. 719. A bill to extend Corridor O of the Appalachian Development Highway System from its currnet southern terminus at I–68 near Cumberland to Corridor H, which stretches from Weston, West Virginia, to Strasburg, Virginia; to the Committee on Environment and Public Works.

Mr. SARBANES. Mr. President, today I am introducing legislation to add a 35.5 mile segment of a proposed new highway, extending south of Interstate 68 near Cumberland, MD to Corridor H in West Virginia, to the Appalachian Development Highway System (ADHS). Joining me in co-sponsoring this legislation is my colleague Senator MIKULSKI.

The development of a north-south Appalachian highway corridor has long been a priority for elected officials, community leaders and citizens in the Potomac Highlands region of western Maryland, West Virginia and neighboring Pennsylvania counties. At least two Maryland State economic development task forces over the last decade have identified a north-south corridor as their leading priority for the region. In order to help determine the need, potential alignments as well as the projected economic benefits and the social, transportation and environmental impacts of upgrading north-south corridors, six years ago, I helped secure a grant from the Federal Highway Administration to support a multi-state study. That study was completed in 2001 and identified two corridors as having the greatest potential for benefiting Appalachian economic development the US 219 Corridor in the north from I–68 in Maryland to the Pennsylvania Turnpike and the US 220 Corridor in south from Corridor H in West Virginia to I–68 in Maryland. The study also found that upgrading US 220 South of Interstate 68 would support the largest number of potential new jobs, 7,800–8,600 jobs, with the highest relative growth—19 percent—of any of the corridors and have fewer impacts than the alternatives.

While US 220 north of I–68 is part of the ADHS, the segment south of the interstate is not currently part of the system, although it serves Appalachia. This area in Allegany County, MD—a county that has experienced some of the highest rates of unemployment and poverty in the State—has been targeted for economic development and job growth in the ''One Maryland'' economic development program. Major employers in the area—American Woodmark, Aliant Techsystems and MeadWestvaco—as well as others that might look at this region for the location of their next plant currently depend on a two-lane roadway running through residential neighborhoods and commercial areas. The area is well served by an important east and west corridor, I–68 (ADHS Corridor E), but North South transportation is inadequate and hampers the economic prosperity potential of Allegany and Garrett Counties and many of the surrounding Pennsylvania and West Virginia communities.

Over the past four years, and with additional funding provided by the Congress in the Fiscal 2003 Transportation Appropriations bill, Maryland and West Virginia have been undertaking a detailed project planning phase of the 35.5 mile segment of US 220 south that was recommended in the feasibility study. Improvements which have been proposed include a four-lane divided highway, most of which would be on a new alignment, with at-grade intersections. Fifteen miles of the proposed road improvements are in Maryland and 20.5 miles in West Virginia.

These upgrades would increase safety and alleviate traffic congestion between Cumberland and Keyser and provide an important link to the 83.2 miles of Appalachian Development Highways in Maryland and in the system of 28 corridors throughout the 13 Appalachian States. The corridor would interconnect several important ADHS corridors including the East-West Corridors P in Pennsylvania, E (I–68) in Maryland & West Virginia, H in West Virginia and Virginia along with the ADHS North-South Corridor O and Corridor N from Pennsylvania to the North. Currently ARC Corridors O & N dead end at I–68, and the closest interstate quality road continuing south is I–81 seventy miles east, or I–79 that is seventy miles to the west. The new Appalachian highway would also provide important linkages to the bi-State, Maryland and West Virginia, Greater Cumberland Airport, rail facilities in the area, and population centers of Cumberland, Maryland, Keyser, West Virginia, Romney, West Virginia, and Moorefield, West Virginia.

The Congress recognized the need to help bring the Appalachian Region into the mainstream of the American economy in 1965 when it created the Appalachian Region Commission and authorized the Appalachian Development Highway System. Now, some 40 years later, with the original ADHS more than 85 percent complete or under construction, it is time to provide critical linkages to the east-west ADHS corridors, population centers, other intermodal facilities such as air and rail, and the existing interstate system and to further boost the region's opportunity to advance towards economic parity. I hope that the Congress will swiftly approve this legislation.

By Mr. VITTER:

S. 721. A bill to authorize the Secretary of the Army to carry out a program for ecosystem restoration for the Louisiana Coastal Area, Louisiana; to the Committee on Environment and Public Works.

Mr. VITTER. 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. 721

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

SECTION. 1. LOUISIANA COASTAL AREA ECOSYSTEM RESTORATION, LOUISIANA.

(a) IN GENERAL.—The Secretary may carry out a program for ecosystem restoration, Louisiana Coastal Area, Louisiana, substantially in accordance with the report of the Chief of Engineers, dated January 31, 2005.

(b) PRIORITIES.—

(1) IN GENERAL.—In carrying out the program under subsection (a), the Secretary shall give priority to—

(A) any portion of the program identified in the report described in subsection (a) as a critical restoration feature;

(B) any Mississippi River diversion project that—

(i) protects a major population area of the Pontchartain, Pearl, Breton Sound, Barataria, or Terrebonne Basin; and

(ii) produces an environmental benefit to the coastal area of the State of Louisiana or the State of Mississippi; and

(C) any barrier island, or barrier shoreline, project that—

(i) is carried out in conjunction with a Mississippi River diversion project; and

(ii) protects a major population area.

(c) NON-FEDERAL SHARE.—

(1) CREDIT FOR INTEGRAL WORK.—The Secretary shall provide credit (including in-kind

credit) toward the non-Federal share for the cost of any work carried out by the non-Federal interest on a project that is part of the program under subsection (a) if the Secretary determines that the work is integral to the project.

(2) CARRYOVER OF CREDITS.—A credit provided under paragraph (1) may be carried over between authorized projects in the Louisiana Coastal Area ecosystem restoration program.

(3) NONGOVERNMENTAL ORGANIZATIONS.—A nongovernmental organization shall be eligible to contribute all or a portion of the non-Federal share of the cost of a project under this section.

(d) COMPREHENSIVE PLAN.—

(1) IN GENERAL.—The Secretary, in coordination with the Governor of the State of Louisiana, shall—

(A) develop a plan for protecting, preserving, and restoring the coastal Louisiana ecosystem; and

(B) not later than 1 year after the date of enactment of this Act, and every 5 years thereafter, submit to Congress the plan, or an update of the plan.

(2) INCLUSIONS.—The comprehensive plan shall include a description of—

(A) the framework of a long-term program that provides for the comprehensive protection, conservation, and restoration of the wetlands, estuaries (including the Barataria-Terrebonne estuary), barrier islands, shorelines, and related land and features of the coastal Louisiana ecosystem, including protection of a critical resource, habitat, or infrastructure from the effects of a coastal storm, a hurricane, erosion, or subsidence;

(B) the means by which a new technology, or an improved technique, can be integrated into the program under subsection (a); and

(C) the role of other Federal agencies and programs in carrying out the program under subsection (a).

(3) CONSIDERATION.—In developing the comprehensive plan, the Secretary shall consider the advisability of integrating into the program under subsection (a)—

(A) a related Federal or State project carried out on the date on which the plan is developed;

(B) an activity in the Louisiana Coastal Area; or

(C) any other project or activity identified in—

(i) the Mississippi River and Tributaries program;

(ii) the Louisiana Coastal Wetlands Conservation Plan;

(iii) the Louisiana Coastal Zone Management Plan; or

(iv) the plan of the State of Louisiana entitled ''Coast 2050: Toward a Sustainable Coastal Louisiana''.

(e) TASK FORCE.—

(1) ESTABLISHMENT.—There is established a task force to be known as the ''Coastal Louisiana Ecosystem Protection and Restoration Task Force'' (referred to in this subsection as the ''Task Force'').

(2) MEMBERSHIP.—The Task Force shall consist of the following members (or, in the case of the head of a Federal agency, a designee at the level of Assistant Secretary or an equivalent level):

(A) The Secretary.

(B) The Secretary of the Interior.

(C) The Secretary of Commerce.

(D) The Administrator of the Environmental Protection Agency.

(E) The Secretary of Agriculture.

(F) The Secretary of Transportation.

(G) The Secretary of Energy.

(H) The Secretary of Homeland Security.

(I) 3 representatives of the State of Louisiana appointed by the Governor of that State.

(3) DUTIES.—The Task Force shall make recommendations to the Secretary regarding—

(A) policies, strategies, plans, programs, projects, and activities for addressing conservation, protection, restoration, and maintenance of the coastal Louisiana ecosystem;

(B) financial participation by each agency represented on the Task Force in conserving, protecting, restoring, and maintaining the coastal Louisiana ecosystem, including recommendations—

(i) that identify funds from current agency missions and budgets; and

(ii) for coordinating individual agency budget requests; and

(C) the comprehensive plan under subsection (d).

(4) WORKING GROUPS.—The Task Force may establish such working groups as the Task Force determines to be necessary to assist the Task Force in carrying out this subsection.

(5) APPLICATION OF THE FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Task Force or any working group of the Task Force.

(f) MISSISSIPPI RIVER GULF OUTLET.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall develop a plan for modifying the Mississippi River Gulf Outlet that addresses—

(A) wetland losses attributable to the Mississippi River Gulf Outlet;

(B) channel bank erosion;

(C) hurricane storm surges;

(D) saltwater intrusion;

(E) navigation interests; and

(F) environmental restoration.

(2) REPORT.—If the Secretary determines necessary, the Secretary, in conjunction with the Chief of Engineers, shall submit to Congress a report recommending modifications to the Mississippi River Gulf Outlet, including measures to prevent the intrusion of saltwater into the Outlet.

(g) SCIENCE AND TECHNOLOGY.—

(1) IN GENERAL.—The Secretary shall establish a coastal Louisiana ecosystem science and technology program.

(2) PURPOSES.—The purposes of the program established by paragraph (1) shall be—

(A) to identify any uncertainty relating to the physical, chemical, geological, biological, and cultural baseline conditions in coastal Louisiana;

(B) to improve knowledge of the physical, chemical, geological, biological, and cultural baseline conditions in coastal Louisiana; and

(C) to identify and develop technologies, models, and methods to carry out this subsection.

(3) WORKING GROUPS.—The Secretary may establish such working groups as the Secretary determines to be necessary to assist the Secretary in carrying out this subsection.

(4) CONTRACTS AND COOPERATIVE AGREEMENTS.—In carrying out this subsection, the Secretary may enter into a contract or cooperative agreement with an individual or entity (including a consortium of academic institutions in Louisiana and Mississippi) with scientific or engineering expertise in the restoration of aquatic and marine ecosystems for coastal restoration and enhancement through science and technology.

(h) ANALYSIS OF BENEFITS.—

(1) IN GENERAL.—Notwithstanding section 209 of the Flood Control Act of 1970 (42 U.S.C. 1962–2) or any other provision of law, in carrying out an activity to conserve, protect, restore, or maintain the coastal Louisiana ecosystem, the Secretary may determine that the environmental benefits provided by the program under this section outweigh the disadvantage of an activity under this section.

(2) DETERMINATION OF COST-EFFECTIVENESS.—If the Secretary determines that an activity under this section is cost-effective, no further economic justification for the activity shall be required.

(i) APPORTIONMENT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary, in consultation with the non-Federal interest, shall enter into a contract with the National Academy of Sciences under which the National Academy of Sciences shall conduct a study.

(2) IDENTIFICATION OF CAUSES AND SOURCES.—The study under paragraph (1) shall, to the maximum extent practicable, identify—

(A) each cause of degradation of the Louisiana Coastal Area ecosystem that is attributable to an action by the Secretary;

(B) an apportionment of the sources of such degradation;

(C) any potential reduction in the amount of Federal emergency response funds that would occur as a result of ecosystem restoration in the Louisiana Coastal Area; and

(D) the reduction in costs associated with protection and maintenance of infrastructure that is threatened or damaged as a result of coastal erosion in Louisiana that would occur as a result of ecosystem restoration in the Louisiana Coastal Area.

(j) REPORT.—Not later than July 1, 2006, the Secretary, in conjunction with the Chief of Engineers, shall submit to Congress a report describing the features included in table 3 of the report described in subsection (a).

(k) PROJECT MODIFICATIONS.—

(1) REVIEW.—The Secretary, in cooperation with any non-Federal interest, shall review each federally-authorized water resources project in the coastal Louisiana area in existence on the date of enactment of this Act to determine whether—

(A) each project is in accordance with the program under subsection (a); and

(B) the project could contribute to ecosystem restoration under subsection (a) through modification of the operations or features of the project.

(2) PUBLIC NOTICE AND COMMENT.—Before modifying an operation or feature of a project under paragraph (1)(B), the Secretary shall provide an opportunity for public notice and comment.

(3) REPORT.—

(A) IN GENERAL.—Before modifying an operation or feature of a project under paragraph (1)(B), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report describing the modification.

(B) INCLUSION.—A report under paragraph (2)(B) shall include such information relating to the timeline and cost of a modification as the Secretary determines to be relevant.

(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out modifications under this subsection $10,000,000.

Mr. SANTORUM. Mr. President, today I am introducing legislation to amend the Internal Revenue Code of 1986 to reduce the tax on beer to its pre-1991 level. In 1990, Congress raised taxes on luxury items like expensive cars, fur coats, jewelry, yachts and private airplanes and doubled the Federal excise tax on beer.

This was the single largest tax increase on beer in American history and resulted in some 60,000 people losing

their jobs in brewing, distributing, retailing and related industries. The tax burden on beer is higher than the average consumer good in the American economy, an astounding 44 percent of its retail price. As a result of this tax increase the Government collects approximately seven times more in beer taxes than the Nation's brewers make in profits.

The doubling of the beer excise tax in 1990 was regressive, and therefore unfair, because it hits lower income taxpayers the hardest. Most beer consumers have household incomes below $40,000. Regular beer drinkers—Americans raising a family—are the people most affected by the increase in the Federal excise tax on beer. Lowering the beer tax means more money in the pockets of these hard-working men and women.

The beer excise tax was first enacted as an emergency measure to help finance the Civil War. It is an anachronism in our tax code. Since its enactment, dozens of corporate and payroll taxes have been imposed on brewers just as they have on other businesses. Yet the beer excise tax remains. A rollback of just the 1990 beer tax increase would also help maintain good-paying American manufacturing jobs and will create new opportunities and a boost to the economy. The U.S. system of alcohol beverage control has been the maintenance of a domestic presence for the industry with independent supplier, wholesale and retail tiers. Brewers, wholesalers and retailers are heavily regulated and to the extent the U.S. maintains a strong domestic industry, the Federal, State and local agencies will continue to ensure accountability and responsible business practices.

The brewing industry has a major presence in many U.S. cities and provides a significant source of manufacturing jobs. The industry directly and indirectly accounts for close to 2.5 million jobs nationwide—a reduction of the beer tax would help brewers maintain or grow their workforce. Brewing, wholesaling and retail combined contribute over 41,000 jobs to the economy of my home State of Pennsylvania.

All of the other luxury taxes enacted in 1990 have been repealed. Yet the beer tax increase remains in place. It is time to roll back the Federal excise tax increase on beer and provide another measure of tax relief to America's working men and women. The Federal Government will still collect almost $3.7 billion in excise taxes and the industry will pay an additional $21 billion in Federal, State, and local taxes. This is a modest and reasonable measure of tax relief to a significant American industry.

By Ms. SNOWE (for herself, Mr. BOND, and Mr. BINGAMAN):

S. 723. A bill to amend the Internal Revenue Code of 1986 to allow small businesses to set up simple cafeteria plans to provide nontaxable employee benefits to their employees, to make changes in the requirements for cafeteria plans, flexible spending accounts, and benefits provided under such plans or accounts, and for other purposes; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce the SIMPLE Cafeteria Plan Act of 2005'' to increase the access to quality, affordable health care for millions of small business owners and their employees. I am pleased that my good friend from Missouri, Senator BOND, as well as my good friend Senator BINGAMAN from New Mexico have agreed to co-sponsor this critical piece of legislation.

Regrettably, our Nation's healthcare system is in the midst of a crisis. Each year, more and more Americans are unable to purchase health insurance, and there are no signs that things are improving. As evidence, the United States Census Bureau estimates that nearly 47 million people did not have health insurance coverage for all of 2002. Sadly, this number rose from 41.2 million uninsured persons in 2001—a 14.6 percent increase.

As if these numbers on a national scale are not alarming enough, the results are even more troubling when we look specifically at the small business sector of our economy. Analysis conducted by the Employee Benefit Research Institute, a nonpartisan group dedicated to ensuring that all workers have access to affordable health care, suggests that the highest rates of uninsured occur among either self-employed workers or workers whose employer employees fewer than 25 persons. When compared to workers in firms that employ 1,000 or more employees, where just 12.6 percent of those workers do not have health insurance, it becomes clear that the majority of uninsured Americans work for small enterprises. Clearly, these numbers suggest that there is a direct correlation among those persons who do not have health insurance and the size of their employer.

The question, then, is why are our Nation's small businesses, which are our country's job creators and the true engine of our national economy, so disadvantaged when it comes to purchasing health insurance.

The main reason that small business owners are not able to offer their employees health insurance is because many small business owners are able to pay only a portion of their employees' health insurance premiums or, even worse, cannot afford to provide any health insurance or other employee benefits at all. As a result, many small business workers must acquire health insurance from the private sector rather than the work place—an unfair, and far more expensive alternative.

Clearly, we have a problem on our hands. While we can debate among ourselves why this crisis exists and how we ended up here, what is not open for debate is that we need to start identifying ways to fix the system because it is simply unconscionable to do nothing while more and more Americans find themselves without health care.

As you know, I re-introduced a bill earlier this year that will go a long ways towards improving the situation by creating Associated Health Plans for small businesses. In general, this bill would permit small businesses throughout the country to band together for purposes of obtaining an insurance quote from an insurance company. By pooling these businesses together, they would pay lower premiums because of the increased risk pool.

Again, this bill would increase the number of Americans that would be able to afford health insurance because their insurance premiums would be based on a more reasonable number. The bill I am introducing today builds upon this and goes a step further by putting more small business owners and their employees on a level playing field when compared to workers of a larger company.

Specifically, many large companies and even the Federal government enable their employees to purchase health insurance and other qualified benefits with taxfree dollars. Larger companies are able to do this by qualifying for certain employee benefit delivery mechanisms under the tax code.

One such delivery mechanism is a cafeteria plan. As the name suggests, cafeteria plans are programs whereby employers offer their employees the opportunity to purchase certain qualified benefits of their choosing. The key here is that the employer provides the opportunity for the employee to purchase the benefit, and the employee is then free to chose whether to participate and which benefits to buy. Under current law, qualified benefits include health insurance, dependent-care reimbursement, and life and disability insurance. Typically, employer contributions, employee contributions, or a combination of the two fund these plans.

Cafeteria plans offer valuable benefits to employees and are popular for many reasons. Specifically, they offer employees great flexibility in selecting their desired benefits while enabling them to disregard those benefits that do not fit their particular needs. Participating employees are also able to exclude any wages that they contribute to a cafeteria plan from their Federal taxable income, Social Security, and Medicare, which means they are using more valuable pre-tax dollars to buy these benefits. Moreover, the employees are usually purchasing these benefits at a lower cost because employers are oftentimes able to obtain a reduced price for the benefits through a group rate after they establish a cafeteria plan.

Cafeteria plans also provide employers with valuable benefits, most notably as a recruiting tool. It certainly stands to reason that if more small business owners are able to offer their employees the chance to enjoy a variety of employee benefits, these owners

then will be more likely to attract, recruit, and retain more talented workers, which will ultimately increase the firm's business output. Too often, we hear that small businesses loose skilled employees to larger companies simply because a big firm is able to offer a more attractive benefit package. Given that small businesses are responsible for a majority of the new jobs created in this country, we need to reverse that trend, and this bill will go a long way in rectifying this inequity.

Clearly, cafeteria plans play a critical role in our Nation's health care system and economy in general. The problem, though, is that in order for companies to qualify for the tax benefits that cafeteria plans provide, they must satisfy strict nondiscrimination rules under the tax code. These rules exist to ensure that the benefits offered to highly compensated employees are offered to non-highly compensated employees as well. The rules also strive to ensure that non-highly compensated employees in fact receive a substantial portion of the benefits provided under the plan.

Now I want to be clear when I say that these non-discrimination rules serve a legitimate purpose. Indeed, we need to be sure that employers are not able to game the tax system by implementing these cafeteria plans, and that the cafeteria plans that qualify for preferential tax treatment are used by a majority of the employees in the company.

However, what I find to be unacceptable is the way the tax code attempts to implement this policy under the existing rules. Currently, many small businesses simply cannot satisfy these mechanical rules because, through no fault of their own, they have relatively few employees and a high proportion of owners or highly compensated individuals. As such, were a small business to create a cafeteria plan and violate the non-discrimination rules, certain workers within the company would be subject to a penalty and would be required to include a substantial portion of their contributions in their taxable income.

Consequently, many small companies simply do not even bother to implement a cafeteria plan for fear that they will violate the non-discrimination rules. According to the Employer's Council on Flexible Compensation, while 38.36 million U.S. workers had access to cafeteria plans in 1999, only 19 percent of those workers were employees of small businesses.

To improve the current situation, the bill I am introducing today will allow and encourage more small businesses to offer employees the opportunity to purchase health insurance with tax-free dollars just as larger companies and the federal government do. My bill accomplishes this by creating a Simple Cafeteria Plan, which is modeled after the Savings Incentive Match Plan for Employees (SIMPLE) pension plan. As with the SIMPLE pension plan, a small business employer that is willing to make a minimum contribution for all employees or who is willing to match contributions will be permitted to waive the non-discrimination rules that currently prevent these owners from otherwise offering these benefits. This structure has worked extraordinarily well in the pension area with little risk of abuse, and I am confident that it will be just as successful when it comes to broad-based benefits offered through cafeteria plans.

Under the SIMPLE Cafeteria Plan, small companies will not have to struggle with satisfying the burdensome non-discrimination rules that often prevent them from offering valuable employee benefits to their workers. As a result, more small business employers will be able to provide their workers with the employee benefits that are often reserved for larger employers and that are otherwise unavailable because of the non-discrimination rules.

In addition my bill will expand the types of qualified benefits that will be able to be offered under ALL cafeteria plans—both those that qualify under existing law as well as the new SIMPLE cafeteria plans that will be created. Specifically, my bill modifies the rules governing benefits offered under cafeteria plans, such as flexible spending accounts and dependent-care assistance plans that many larger employers offer their employees. These modifications will increase the likelihood that employees of small businesses will utilize the available benefits and that will increase the benefits provided for all employees.

For example, current rules impose a ''use it or lose it'' requirement with respect to flexible spending arrangement contributions. This means that the employee forfeits any money he or she contributes to the account but does not use during the plan. My bill would change that rule and allow employees to carry over up to $500 remaining in their account to the next plan year. The bill would also permit employees to carry-over any unused funds to a retirement account such as a 401(k) plan.

In either case, any carried over contributions will reduce the amount that the employee otherwise would be able to contribute to the spending arrangement in the following year so that the carry-over option will not produce a greater dollar benefit for any employee. As a result, more employees are likely to participate in these spending arrangements because they will ultimately be able to use any funds that they contribute without any fear of forfeiting them simply because the funds were not used in the year of contribution.

Additionally, this legislation modifies rules that pertain to employer-provided, dependent-care assistance plans. First, it would increase the current $5,000 annual contribution limitation of these plans to $10,000 if the contributing employee claims two or more dependents on his or her tax return. This increase is significant because it will provide these taxpayers with an opportunity to care for not only their children but also an elderly family member who is a dependent of an employee—a scenario that will become increasingly more likely as the current baby-boomer generation continues to age.

Second, this bill would amend the current non-discrimination rules that dependent-care assistance plans must satisfy. As is often the case with the majority of small business owners who cannot, through any fault of their own, satisfy the non-discrimination rules for establishing a cafeteria plan, these rules often prevent the owner from offering this valuable benefit to their employees. To remedy this inequity, this bill would change the current mechanical thresholds such that more small businesses can provide dependent-care assistance plans to their employees but in a manner that does not encourage the type of abuse that the non-discrimination rules are intended to prevent.

Small businesses are the backbone of the American economy. According to the Small Business Administration, small businesses represent 99 percent of all employers, employ 51 percent of the private-sector workforce, and contribute 51 percent of the private-sector output. It is therefore critical that small businesses owners are able to offer their employees the benefits that cafeteria plans provide so that more of our nation's workers have the opportunity to purchase quality healthcare and provide security for their families.

The ''SIMPLE Cafeteria Plan Act of 2005'' achieves those objectives, and it does so in a manner that the employers and employees are able to afford. Although the use of pre-tax dollars to acquire these benefits reduces current federal revenues, the opportunity to provide small business employees these same benefits to workers and their families rather than relying on the public sector more than justifies this minimal investment. Therefore, I urge my colleagues to join me in supporting this important legislation as we work with you to enact this bill into law.

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. 723

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

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''SIMPLE Cafeteria Plan Act of 2005'' .

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

SEC. 2. ESTABLISHMENT OF SIMPLE CAFETERIA PLANS FOR SMALL BUSINESSES.

(a) IN GENERAL.—Section 125 (relating to cafeteria plans) is amended by redesignating

subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following new subsection:

''(h) SIMPLE CAFETERIA PLANS FOR SMALL BUSINESSES.—

''(1) IN GENERAL.—An eligible employer maintaining a simple cafeteria plan with respect to which the requirements of this subsection are met for any year shall be treated as meeting any applicable nondiscrimination requirement with respect to benefits provided under the plan during such year.

''(2) SIMPLE CAFETERIA PLAN.—For purposes of this subsection, the term 'simple cafeteria plan' means a cafeteria plan—

''(A) which is established and maintained by an eligible employer, and

''(B) with respect to which the contribution requirements of paragraph (3), and the eligibility and participation requirements of paragraph (4), are met.

''(3) CONTRIBUTIONS REQUIREMENTS.—

''(A) IN GENERAL.—The requirements of this paragraph are met if, under the plan—

''(i) the employer makes matching contributions on behalf of each employee who is eligible to participate in the plan and who is not a highly compensated or key employee in an amount equal to the elective plan contributions of the employee to the plan to the extent the employee's elective plan contributions do not exceed 3 percent of the employee's compensation, or

''(ii) the employer is required, without regard to whether an employee makes any elective plan contribution, to make a contribution to the plan on behalf of each employee who is not a highly compensated or key employee and who is eligible to participate in the plan in an amount equal to at least 2 percent of the employee's compensation.

''(B) MATCHING CONTRIBUTIONS ON BEHALF OF HIGHLY COMPENSATED AND KEY EMPLOYEES.—The requirements of subparagraph (A)(i) shall not be treated as met if, under the plan, the rate of matching contribution with respect to any elective plan contribution of a highly compensated or key employee at any rate of contribution is greater than that with respect to an employee who is not a highly compensated or key employee.

''(C) SPECIAL RULES.—

''(i) TIME FOR MAKING CONTRIBUTIONS.—An employer shall not be treated as failing to meet the requirements of this paragraph with respect to any elective plan contributions of any compensation, or employer contributions required under this paragraph with respect to any compensation, if such contributions are made no later than the 15th day of the month following the last day of the calendar quarter which includes the date of payment of the compensation.

''(ii) FORM OF CONTRIBUTIONS.—Employer contributions required under this paragraph may be made either to the plan to provide benefits offered under the plan or to any person as payment for providing benefits offered under the plan.

''(iii) ADDITIONAL CONTRIBUTIONS.—Subject to subparagraph (B), nothing in this paragraph shall be treated as prohibiting an employer from making contributions to the plan in addition to contributions required under subparagraph (A).

''(D) DEFINITIONS.—For purposes of this paragraph—

''(i) ELECTIVE PLAN CONTRIBUTION.—The term 'elective plan contribution' means any amount which is contributed at the election of the employee and which is not includible in gross income by reason of this section.

''(ii) HIGHLY COMPENSATED EMPLOYEE.—The term 'highly compensated employee' has the meaning given such term by section 414(q).

''(iii) KEY EMPLOYEE.—The term 'key employee' has the meaning given such term by section 416(i).

''(4) MINIMUM ELIGIBILITY AND PARTICIPATION REQUIREMENTS.—

''(A) IN GENERAL.—The requirements of this paragraph shall be treated as met with respect to any year if, under the plan—

''(i) all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate, and

''(ii) each employee eligible to participate in the plan may, subject to terms and conditions applicable to all participants, elect any benefit available under the plan.

''(B) CERTAIN EMPLOYEES MAY BE EXCLUDED.—For purposes of subparagraph (A)(i), an employer may elect to exclude under the plan employees—

''(i) who have less than 1 year of service with the employer as of any day during the plan year,

''(ii) who have not attained the age of 21 before the close of a plan year,

''(iii) who are covered under an agreement which the Secretary of Labor finds to be a collective bargaining agreement if there is evidence that the benefits covered under the cafeteria plan were the subject of good faith bargaining between employee representatives and the employer, or

''(iv) who are described in section 410(b)(3)(C) (relating to nonresident aliens working outside the United States).

A plan may provide a shorter period of service or younger age for purposes of clause (i) or (ii).

''(5) ELIGIBLE EMPLOYER.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'eligible employer' means, with respect to any year, any employer if such employer employed an average of 100 or fewer employees on business days during either of the 2 preceding years. For purposes of this subparagraph, a year may only be taken into account if the employer was in existence throughout the year.

''(B) EMPLOYERS NOT IN EXISTENCE DURING PRECEDING YEAR.—If an employer was not in existence throughout the preceding year, the determination under subparagraph (A) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current year.

''(C) GROWING EMPLOYERS RETAIN TREATMENT AS SMALL EMPLOYER.—If—

''(i) an employer was an eligible employer for any year (a 'qualified year'), and

''(ii) such employer establishes a simple cafeteria plan for its employees for such year, then, notwithstanding the fact the employer fails to meet the requirements of subparagraph (A) for any subsequent year, such employer shall be treated as an eligible employer for such subsequent year with respect to employees (whether or not employees during a qualified year) of any trade or business which was covered by the plan during any qualified year. This subparagraph shall cease to apply if the employer employs an average of 200 more employees on business days during any year preceding any such subsequent year.

''(D) SPECIAL RULES.—The rules of section 220(c)(4)(D) shall apply for purposes of this paragraph.

''(6) APPLICABLE NONDISCRIMINATION REQUIREMENT.—For purposes of this subsection, the term 'applicable nondiscrimination requirement' means any requirement under subsection (b) of this section, section 79(d), section 105(h), or paragraph (2), (3), (4), or (8) of section 129(d).

''(7) COMPENSATION.—The term 'compensation' has the meaning given such term by section 414(s).''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2004.

SEC. 3. MODIFICATIONS OF RULES APPLICABLE TO CAFETERIA PLANS.

(a) APPLICATION TO SELF-EMPLOYED INDIVIDUALS.—

(1) IN GENERAL.—Section 125(d) (defining cafeteria plan) is amended by adding at the end the following new paragraph:

''(3) EMPLOYEE TO INCLUDE SELF-EMPLOYED.—

''(A) IN GENERAL.—The term 'employee' includes an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

''(B) LIMITATION.—The amount which may be excluded under subsection (a) with respect to a participant in a cafeteria plan by reason of being an employee under subparagraph (A) shall not exceed the employee's earned income (within the meaning of section 401(c)) derived from the trade or business with respect to which the cafeteria plan is established.''

(2) APPLICATION TO BENEFITS WHICH MAY BE PROVIDED UNDER CAFETERIA PLAN.—

(A) GROUP-TERM LIFE INSURANCE.—Section 79 (relating to group-term life insurance provided to employees) is amended by adding at the end the following new subsection:

''(f) EMPLOYEE INCLUDES SELF-EMPLOYED.—

''(1) IN GENERAL.—For purposes of this section, the term 'employee' includes an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

''(2) LIMITATION.—The amount which may be excluded under the exceptions contained in subsection (a) or (b) with respect to an individual treated as an employee by reason of paragraph (1) shall not exceed the employee's earned income (within the meaning of section 401(c)) derived from the trade or business with respect to which the individual is so treated.''

(B) ACCIDENT AND HEALTH PLANS.—Section 105(g) is amended to read as follows:

''(g) EMPLOYEE INCLUDES SELF-EMPLOYED.—

''(1) IN GENERAL.—For purposes of this section, the term 'employee' includes an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

''(2) LIMITATION.—The amount which may be excluded under this section by reason of subsection (b) or (c) with respect to an individual treated as an employee by reason of paragraph (1) shall not exceed the employee's earned income (within the meaning of section 401(c)) derived from the trade or business with respect to which the accident or health insurance was established.''

(C) CONTRIBUTIONS BY EMPLOYERS TO ACCIDENT AND HEALTH PLANS.—

(i) IN GENERAL.—Section 106, as amended by subsection (b), is amended by adding after subsection (b) the following new subsection:

''(c) EMPLOYER TO INCLUDE SELF-EMPLOYED.—

''(1) IN GENERAL.—For purposes of this section, the term 'employee' includes an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

''(2) LIMITATION.—The amount which may be excluded under subsection (a) with respect to an individual treated as an employee by reason of paragraph (1) shall not exceed the employee's earned income (within the meaning of section 401(c)) derived from the trade or business with respect to which the accident or health insurance was established.''

(ii) CLARIFICATION OF LIMITATIONS ON OTHER COVERAGE.—The first sentence of section 162(l)(2)(B) is amended to read as follows:

''Paragraph (1) shall not apply to any taxpayer for any calendar month for which the taxpayer participates in any subsidized health plan maintained by any employer (other than an employer described in section 401(c)(4)) of the taxpayer or the spouse of the taxpayer.

(b) LONG-TERM CARE INSURANCE PERMITTED TO BE OFFERED UNDER CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.—

(1) CAFETERIA PLANS.—The last sentence of section 125(f) (defining qualified benefits) is amended to read as follows: ''Such term shall include the payment of premiums for any qualified long-term care insurance contract (as defined in section 7702B) to the extent the amount of such payment does not exceed the eligible long-term care premiums (as defined in section 213(d)(10)) for such contract''.

(2) FLEXIBLE SPENDING ARRANGEMENTS.—Section 106 (relating to contributions by employer to accident and health plans) is amended by striking subsection (c).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 4. MODIFICATION OF RULES APPLICABLE TO FLEXIBLE SPENDING ARRANGEMENTS.

(a) IN GENERAL.—Section 125, as amended by section 2, is amended by redesignating subsections (i) and (j) as subsections (j) and (k), respectively, and by inserting after subsection (h) the following new subsection:

''(i) SPECIAL RULES APPLICABLE TO FLEXIBLE SPENDING ARRANGEMENTS.—

''(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a flexible spending or similar arrangement solely because under the plan or arrangement—

''(A) the amount of the reimbursement for covered expenses at any time may not exceed the balance in the participant's account for the covered expenses as of such time,

''(B) except as provided in paragraph (4)(A)(ii), a participant may elect at any time specified by the plan or arrangement to make or modify any election regarding the covered benefits, or the level of covered benefits, of the participant under the plan, and

''(C) a participant is permitted access to any unused balance in the participant's accounts under such plan or arrangement in the manner provided under paragraph (2) or (3).

''(2) CARRYOVERS AND ROLLOVERS OF UNUSED BENEFITS IN HEALTH AND DEPENDENT CARE ARRANGEMENTS.—

''(A) IN GENERAL.—A plan or arrangement may permit a participant in a health flexible spending arrangement or dependent care flexible spending arrangement to elect—

''(i) to carry forward any aggregate unused balances in the participant's accounts under such arrangement as of the close of any year to the succeeding year, or

''(ii) to have such balance transferred to a plan described in subparagraph (E).

Such carryforward or transfer shall be treated as having occurred within 30 days of the close of the year.

''(B) DOLLAR LIMIT ON CARRYFORWARDS.—

''(i) IN GENERAL.—The amount which a participant may elect to carry forward under subparagraph (A)(i) from any year shall not exceed $500. For purposes of this paragraph, all plans and arrangements maintained by an employer or any related person shall be treated as 1 plan.

''(ii) COST-OF-LIVING ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2005, the $500 amount under clause (i) shall be increased by an amount equal to—

''(I) $500, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting '2004' for '1992' in subparagraph (B) thereof.

If any dollar amount as increased under this clause is not a multiple of $100, such amount shall be rounded to the next lowest multiple of $100.

''(C) EXCLUSION FROM GROSS INCOME.—No amount shall be required to be included in gross income under this chapter by reason of any carryforward or transfer under this paragraph.

''(D) COORDINATION WITH LIMITS.—

''(i) CARRYFORWARDS.—The maximum amount which may be contributed to a health flexible spending arrangement or dependent care flexible spending arrangement for any year to which an unused amount is carried under this paragraph shall be reduced by such amount.

''(ii) ROLLOVERS.—Any amount transferred under subparagraph (A)(ii) shall be treated as an eligible rollover under section 219, 223(f)(5), 401(k), 403(b), or 457, whichever is applicable, except that—

''(I) the amount of the contributions which a participant may make to the plan under any such section for the taxable year including the transfer shall be reduced by the amount transferred, and

''(II) in the case of a transfer to a plan described in clause (ii) or (iii) of subparagraph (E), the transferred amounts shall be treated as elective deferrals for such taxable year.

''(E) PLANS.—A plan is described in this subparagraph if it is—

''(i) an individual retirement plan,

''(ii) a qualified cash or deferred arrangement described in section 401(k),

''(iii) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

''(iv) an eligible deferred compensation plan described in section 457, or

''(v) a health savings account described in section 223.

''(3) DISTRIBUTION UPON TERMINATION.—

''(A) IN GENERAL.—A plan or arrangement may permit a participant (or any designated heir of the participant) to receive a cash payment equal to the aggregate unused account balances in the plan or arrangement as of the date the individual is separated (including by death or disability) from employment with the employer maintaining the plan or arrangement.

''(B) INCLUSION IN INCOME.—Any payment under subparagraph (A) shall be includible in gross income for the taxable year in which such payment is distributed to the employee.

''(4) TERMS RELATING TO FLEXIBLE SPENDING ARRANGEMENTS.—

''(A) FLEXIBLE SPENDING ARRANGEMENTS.—

''(i) IN GENERAL.—For purposes of this subsection, a flexible spending arrangement is a benefit program which provides employees with coverage under which specified incurred expenses may be reimbursed (subject to reimbursement maximums and other reasonable conditions).

''(ii) ELECTIONS REQUIRED.—A plan or arrangement shall not be treated as a flexible spending arrangement unless a participant may at least 4 times during any year make or modify any election regarding covered benefits or the level of covered benefits.

''(B) HEALTH AND DEPENDENT CARE ARRANGEMENTS.—The terms 'health flexible spending arrangement' and 'dependent care flexible spending arrangement' means any flexible spending arrangement (or portion thereof) which provides payments for expenses incurred for medical care (as defined in section 213(d)) or dependent care (within the meaning of section 129), respectively.''

(b) CONFORMING AMENDMENT.—

(1) The heading for section 125 is amended by inserting ''AND FLEXIBLE SPENDING ARRANGEMENTS'' after ''PLANS''.

(2) The item relating to section 125 in the table of sections for part III of subchapter B of chapter 1 is amended by inserting ''and flexible spending arrangements'' after ''plans''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2004.

SEC. 5. RULES RELATING TO EMPLOYER-PROVIDED HEALTH AND DEPENDENT CARE BENEFITS.

(a) HEALTH BENEFITS.—Section 106, as amended by section 3, is amended by adding at the end the following new subsection:

''(e) LIMITATION ON CONTRIBUTIONS TO HEALTH FLEXIBLE SPENDING ARRANGEMENTS.—

''(1) IN GENERAL.—Gross income of an employee for any taxable year shall include employer-provided coverage provided through 1 or more health flexible spending arrangements (within the meaning of section 125(i)) to the extent that the amount otherwise excludable under subsection (a) with regard to such coverage exceeds the applicable dollar limit for the taxable year.

''(2) APPLICABLE DOLLAR LIMIT.—For purposes of this subsection—

''(A) IN GENERAL.—The applicable dollar limit for any taxable year is an amount equal to the sum of—

''(i) $7,500, plus

''(ii) if the arrangement provides coverage for 1 or more individuals in addition to the employee, an amount equal to one-third of the amount in effect under clause (i) (after adjustment under subparagraph (B)).

''(B) COST-OF-LIVING ADJUSTMENT.—In the case of taxable years beginning in any calendar year after 2005, the $7,500 amount under subparagraph (A) shall be increased by an amount equal to—

''(i) $7,500, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting '2004' for '1992' in subparagraph (B) thereof.

If any dollar amount as increased under this subparagraph is not a multiple of $100, such dollar amount shall be rounded to the next lowest multiple of $100.''

(b) DEPENDENT CARE.—

(1) EXCLUSION LIMIT.—

(A) IN GENERAL.—Section 129(a)(2) (relating to limitation on exclusion) is amended—

(i) by striking ''$5,000'' and inserting ''the applicable dollar limit'', and

(ii) by striking ''$2,500'' and inserting ''one-half of such limit''.

(B) APPLICABLE DOLLAR LIMIT.—Section 129(a) is amended by adding at the end the following new paragraph:

''(3) APPLICABLE DOLLAR LIMIT.—For purposes of this subsection—

''(A) IN GENERAL.—The applicable dollar limit is $5,000 ($10,000 if dependent care assistance is provided under the program to 2 or more qualifying individuals of the employee).

''(B) COST-OF-LIVING ADJUSTMENTS.—

''(i) $5,000 AMOUNT.—In the case of taxable years beginning after 2005, the $5,000 amount under subparagraph (A) shall be increased by an amount equal to—

''(I) $5,000, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting '2004' for '1992' in subparagraph (B) thereof.

If any dollar amount as increased under this clause is not a multiple of $100, such dollar amount shall be rounded to the next lowest multiple of $100.

''(ii) $10,000 AMOUNT.—The $10,000 amount under subparagraph (A) for taxable years beginning after 2005 shall be increased to an

amount equal to twice the amount the $5,000 amount is increased to under clause (i).''

(2) AVERAGE BENEFITS TEST.—

(A) IN GENERAL.—Section 129(d)(8)(A) (relating to benefits) is amended—

(i) by striking ''55 percent'' and inserting ''60 percent'', and

(ii) by striking ''highly compensated employees'' the second place it appears and inserting ''employees receiving benefits''.

(B) SALARY REDUCTION AGREEMENTS.—Section 129(d)(8)(B) (relating to salary reduction agreements) is amended—

(i) by striking ''$25,000'' and inserting ''$30,000'', and

(ii) by adding at the end the following: ''In the case of years beginning after 2005, the $30,000 amount in the first sentence shall be adjusted at the same time, and in the same manner, as the applicable dollar amount is adjusted under subsection (a)(3)(B).''

(3) PRINCIPAL SHAREHOLDERS OR OWNERS.—Section 129(d)(4) (relating to principal shareholders and owners) is amended by adding at the end the following: ''In the case of any failure to meet the requirements of this paragraph for any year, amounts shall only be required by reason of the failure to be included in gross income of the shareholders or owners who are members of the class described in the preceding sentence.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

By Mr. DODD (for himself, Mr. DURBIN, and Mr. SALAZAR):

S. 724. A bill to improve the No Child Left Behind Act of 2001, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, today I am pleased to introduce with Senators DURBIN and SALAZAR a very important piece of legislation, ''The No Child Left Behind Reform Act.'' This legislation makes three basic changes to the No Child Left Behind Act which was signed into law in January of 2002.

The No Child Left Behind Act received the support of this Senator and eighty-six of our colleagues. Like most, if not all, of our colleagues who supported this bill, I supported it because I care about improving the quality of education in America for all of our children. I believed that this law would help to achieve that goal by establishing more rigorous standards for measuring student achievement, by helping teachers do a better job of instructing students, and last but not least, by providing the resources desperately needed by our schools for even the most basic necessities to help put the reforms we passed into place.

Regrettably, the high hopes that I and many others had for this law have not been realized. The law is being implemented by the Administration in a manner that is inflexible, unreasonable and unhelpful to students. Furthermore, the law is not only failing to help teachers do their best in the classroom, it also reflects, along with other Administration policies and pronouncements, a neglect and even hostility towards members of the teaching profession.

Worse still, the Administration's promise of sufficient resources to implement No Child Left Behind's much needed reforms is a promise that has yet to be kept. Indeed, the current budget proposed by the Bush Administration underfunds No Child Left Behind by $12 billion. Since passage three years ago, the law has been funded at a level that is more than $39 billion below what was promised when the President signed the Act into law.

As a result of the failures of the current Administration to fulfill its commitment to our nation's school children under this law, those children and their teachers are today shouldering new and noteworthy hardships. Throughout the State of Connecticut, for example, students, teachers, administrators and parents are struggling to implement requirements that are often confusing, inflexible and unrealistic. And they are struggling to do so without the additional resources they were promised to put them into place. According to a recent report put together by the Connecticut State Department of Education, through 2008, it will cost the State of Connecticut $41.6 million over and above what the Federal Government is going to supply to meet the requirements of No Child Left Behind. Of that $41.6 million, $8 million will need to spent on testing alone. That is a significant amount of money—a significant amount of money that is going to fall on Connecticut taxpayers trying to simultaneously pay for their mortgage, basic health care and the rising cost of their children's tuition.

As I have said on numerous occasions in the past, resources without reforms are a waste of money. By the same token, reforms without resources are a false promise—a false promise that has left students and their teachers grappling with new burdens and little help to bear them.

The legislation I am introducing today proposes to make three changes to the No Child Left Behind Act. These changes will ease current burdens on our students, our teachers and our administrators without dismantling the fundamental underpinnings of the law.

First, the No Child Left Behind Reform Act will allow schools to be given credit for performing well on measures other than test scores when calculating student achievement. Test scores are an important measure of student knowledge. However, they are not the only measure. There are others. These include dropout rates, the number of students who participate in advanced placement courses, and individual student improvement over time. Unfortunately, current law does not allow schools to use these additional ways to gauge school success in a constructive manner. Additional measures can only be used to further indicate how a school is failing, not how a school is succeeding. This legislation will allow schools to earn credit for succeeding.

Second, the No Child Left Behind Reform Act will allow schools to target school choice and supplemental services to the students that actually demonstrate a need for them. As the current law is being implemented by the Administration, if a school is in need of improvement, it is expected to offer school choice and supplemental services to all students—even if not all students have demonstrated a need for them. That strikes me as a wasteful and imprecise way to help a school improve student performance. For that reason, this legislation will allow schools to target resources to the students that actually demonstrate that they need them. Clearly, this is the most efficient way to maximize their effect.

Finally, the No Child Left Behind Reform Act introduces a greater degree of reasonableness to the teacher certification process. As it is being implemented, the law requires teachers to be ''highly qualified'' to teach every subject that they teach. Certainly none of us disagree with this policy as a matter of principle. But as a matter of practice, it is causing confusion and hardship for teachers, particularly secondary teachers and teachers in small school districts. For example, as the law is being implemented by the Administration, a high school science teacher could be required to hold degrees in biology, physics and chemistry to be considered highly qualified. In small schools where there may be only one 7th or 8th grade teacher teaching all subjects, these teachers could similarly be required to hold degrees in every subject area.

Such requirements are unreasonable at a time when excellent teachers are increasingly hard to find. The legislation I introduce today will allow states to create a single assessment to cover multiple subjects for middle grade level teachers and allow states to issue a broad certification for science and social studies.

In my view, the changes I propose will provide significant assistance to schools struggling to comply with the No Child Left Behind law all across America. As time marches on and more deadlines set by this law approach—including additional testing, a highly qualified teacher in every classroom and 100% proficiency for all students—we have a responsibility to reassess the law and do what we can to make sure that it is implemented in a reasonable manner. In doing so, we must also preserve the basic tenets of the law—providing a world class education for all American students and closing the achievement gap across demographic and socioeconomic lines. Again, no child should left behind—no special education student, no English language learning student, no minority student and no low-income student. I stand by this commitment.

Obviously, funding this law is beyond the scope of this bill. I would note, however, that efforts to increase education funding to authorized levels have thus far been unsuccessful. Despite this, I remain committed to work to change this outcome as well. Clearly, our children deserve the resources

needed to make their dreams for a better education a reality.

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. 724

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 ''No Child Left Behind Reform Act''.

SEC. 2. ADEQUATE YEARLY PROGRESS.

(a) DEFINITION OF ADEQUATE YEARLY PROGRESS.—Section 1111(b)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)) is amended—

(1) in subparagraph (C)(vii)—

(A) by striking ''such as'';

(B) by inserting ''such as measures of individual or cohort growth over time based on the academic assessments implemented in accordance with paragraph (3),'' after ''described in clause (v),''; and

(C) by striking ''attendance rates,''; and

(2) in subparagraph (D)—

(A) by striking clause (ii);

(B) by striking ''the State'' and all that follows through ''ensure'' and inserting ''the State shall ensure''; and

(C) by striking ''; and'' and inserting a period.

(b) ACADEMIC ASSESSMENT AND LOCAL EDUCATIONAL AGENCY AND SCHOOL IMPROVEMENT.—Section 1116(a)(1)(B) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(a)(1)(B)) is amended by striking '', except that'' and all that follows through ''action or restructuring''.

SEC. 3. GRANTS FOR INCREASING DATA CAPACITY FOR PURPOSES OF AYP.

Subpart 1 of part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) is amended by adding at the end the following:

''SEC. 1120C. GRANTS FOR INCREASING DATA CAPACITY FOR PURPOSES OF AYP.

''(a) GRANT AUTHORITY.—The Secretary may award grants, on a competitive basis, to State educational agencies to enable the State educational agencies—

''(1) to develop or increase the capacity of data systems for accountability purposes; and

''(2) to award subgrants to increase the capacity of local educational agencies to upgrade, create, or manage information databases for the purpose of measuring adequate yearly progress.

''(b) PRIORITY.—In awarding grants under this section the Secretary shall give priority to State educational agencies that have created, or are in the process of creating, a growth model or proficiency index as part of their adequate yearly progress determination.

''(c) STATE USE OF FUNDS.—Each State that receives a grant under this section shall use—

''(1) not more than 20 percent of the grant funds for the purpose of increasing the capacity of, or creating, State databases to collect information related to adequate yearly progress; and

''(2) not less than 80 percent of the grant funds to award subgrants to local educational agencies within the State to enable the local educational agencies to carry out the authorized activities described in subsection (d).

''(d) AUTHORIZED ACTIVITIES.—Each local educational agency that receives a subgrant under this section shall use the subgrant funds to increase the capacity of the local educational agency to upgrade databases or create unique student identifiers for the purpose of measuring adequate yearly progress, by—

''(1) purchasing database software or hardware;

''(2) hiring additional staff for the purpose of managing such data;

''(3) providing professional development or additional training for such staff; and

''(4) providing professional development or training for principals and teachers on how to effectively use such data to implement instructional strategies to improve student achievement.

''(e) STATE APPLICATION.—Each State educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(f) LEA APPLICATION.—Each local educational agency desiring a subgrant under this section shall submit an application to the State educational agency at such time, in such manner, and containing such information as the State educational agency may require. Each such application shall include, at a minimum, a demonstration of the local educational agency's ability to put such a database in place.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this part $80,000,000 for each of fiscal years 2006, 2007, and 2008.''

SEC. 4. TARGETING TRANSFER OPTIONS AND SUPPLEMENTAL SERVICES.

(a) TARGETING TRANSFER OPTIONS AND SUPPLEMENTAL SERVICES.—Section 1116 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316) is amended—

(1) in paragraphs (1)(E)(i), (5)(A), (7)(C)(i), and (8)(A)(i) of subsection (b), by striking the term ''all students enrolled in the school'' each place such term appears and inserting ''all students enrolled in the school, who are members of a group described in section 1111(b)(2)(C)(v) that fails to make adequate yearly progress as defined in the State's plan under section 1111(b)(2),'';

(2) in subsection (b)(1), by adding at the end the following:

''(G) MAINTENANCE OF LEAST RESTRICTIVE ENVIRONMENT.—A student who is eligible to receive services under the Individuals with Disabilities Education Act and who uses the option to transfer under subparagraph (E), paragraph (5)(A), (7)(C)(i), or (8)(A)(i), or subsection (c)(10)(C)(vii), shall be placed and served in the least restrictive environment appropriate, in accordance with the Individuals with Disabilities Education Act.'';

(3) in clause (vii) of subsection (c)(10)(C), by inserting '', who are members of a group described in section 1111(b)(2)(C)(v) that fails to make adequate yearly progress as defined in the State's plan under section 1111(b)(2),'' after ''Authorizing students''; and

(4) in subparagraph (A) of subsection (e)(12), by inserting '', who is a member of a group described in section 1111(b)(2)(C)(v) that fails to make adequate yearly progress as defined in the State's plan under section 1111(b)(2)'' after ''under section 1113(c)(1)''.

(b) STUDENT ALREADY TRANSFERRED.—A student who transfers to another public school pursuant to section 1116(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)) before the effective date of this section and the amendments made by this section, may continue enrollment in such public school after the effective date of this section and the amendments made by this section.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall be effective for each fiscal year for which the amount appropriated to carry out title I of the Elementary and Secondary Education Act of 1965 for the fiscal year, is less than the amount authorized to be appropriated to carry out such title for the fiscal year.

SEC. 5. DEFINITION OF HIGHLY QUALIFIED TEACHERS.

Section 9101(23)(B)(ii) of the Elementary and Secondary Act of 1965 (20 U.S.C. 7801(23)(B)(ii)) is amended—

(1) in subclause (I), by striking ''or'' after the semicolon;

(2) in subclause (II), by striking ''and'' after the semicolon; and

(3) by adding at the end the following:

''(III) in the case of a middle school teacher, passing a State approved middle school generalist exam when the teacher receives the teacher's license to teach middle school in the State;

''(IV) obtaining a State social studies certificate that qualifies the teacher to teach history, geography, economics, and civics in middle or secondary schools, respectively, in the State; or

''(V) obtaining a State science certificate that qualifies the teacher to teach earth science, biology, chemistry, and physics in middle or secondary schools, respectively, in the State; and''.

By Mr. DODD (for himself, Ms. SNOWE, Mr. KENNEDY, Ms. COLLINS, Mrs. MURRAY, Mr. DURBIN, Mrs. CLINTON, Mr. INOUYE, Mr. LEVIN, Mr. LAUTENBERG, and Mr. JOHNSON):

S. 725. A bill a improve the Child Care Access Means Parents in School Program; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. PresIdent, I am pleased to rise today with Senators SNOWE, KENNEDY, COLLINS, MURRAY, DURBIN, CLINTON, INOUYE, LEVIN, LAUTENBERG and JOHNSON to introduce legislation which would supply greatly needed support to college students struggling to balance their roles as parents with their roles as students. The Child Care Access Means Parents in School Act (CCAMPIS) would increase access to, support for, and retention of low-income, nontraditional students who are struggling to complete college degrees while caring for their children.

The typical college student is no longer an 18-year-old recent high school graduate. According to a 2002 study by the National Center for Education Statistics, only 27 percent of undergraduates meet the ''traditional'' undergraduate criteria of earning a high school diploma, enrolling full-time, depending on parents for financial support and not working or working part-time. This means that 73 percent of today's students are considered non-traditional in some way. Clearly, non-traditional students—older students, students with children and students with various job and life experiences—are filling the ranks of college classes. Why? Because they recognize the importance of college to future success. It is currently estimated that a full-time worker with a bachelor's degree earns about 60 percent more than a full-time worker with only a high school diploma. This amounts to a lifetime gap in earnings of more than $1 million.

Today's non-traditional students face barriers unheard of by traditional college students of earlier years. Many are parents and must provide for their children while in school. Access to affordable, quality and convenient child care is a necessity for these students. But obtaining the child care that they need is often difficult because of their limited income and non-traditional schedules, compounded by declining assistance for child care through other supports. Campus-based child care can fill the gap. It is conveniently located, available during the right hours, and of high quality and lower cost. Unfortunately, it is unavailable at many campuses. Even when programs do exist, they are often available to only a fraction of the eligible students. That is where the Dodd-Snowe CCAMPIS Act comes in.

The Dodd-Snowe CCAMPIS Act increases and expands the availability of campus-based child care in three ways. First, it raises the minimum grant amount from $10,000 to $30,000. For most institutions of higher education, $10,000 has proven too small relative to the cost and effort required to complete a federal application.

Second, the Dodd-Snowe CCAMPIS Act ensures that a wider range of students are able to access services. Present language defines low-income students as students eligible to receive a Federal Pell Grant. This language excludes graduate students, international students, and students who may be low-income but make slightly more than is allowed to qualify for Pell grants. CCAMPIS will open eligibility for these additional populations.

Third, the CCAMPIS Act raises the program's current authorization level from $45 million to $75 million so that we not only expand existing programs, but create new ones as well.

Research demonstrates that campus-based child care is of high quality and that it increases the educational success of both parents and students. Furthermore, recipients of campus-based child care assistance who are on public assistance are more likely to never return to welfare and to obtain jobs paying good wages.

Currently, there are approximately 1,850 campus-based child care programs but over 6,000 colleges and universities eligible to participate in the CCAMPIS program. Currently, CCAMPIS funds only 427 programs in states and the District of Columbia. Meanwhile, the number of non-traditional students across America is increasing. As these numbers increase, the need for campus-based child care will increase as well.

Just last week in Connecticut, I went to Eastern Connecticut State University where I met a number of students who would benefit from this legislation. One woman is attending part-time as an accounting major. She works as a restaurant supervisor and just gave birth to her first child. She is balancing work, family and school. Another woman is a junior social work major with two children. Having already received an associate's degree, she is now working towards a bachelor's degree to increase her competitiveness in the job market. A third woman is pursuing her second degree in physical and health education. A stay-at-home mom prior to re-enrolling, she has three children at home. These are the students that need our assistance—hard working parents trying to improve their lot in life for the good of their children.

This is a modest measure that will make a major difference to students. It will offer them new hope for starting and staying in school. I am hopeful that it can be considered and enacted as part of the Higher Education Act. I look forward to working with my colleagues to move this important measure forward.

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. 725

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

SECTION 1. CHILD CARE ACCESS MEANS PARENTS IN SCHOOL PROGRAM.

(a) MINIMUM GRANT.—Section 419N(b)(2)(B) of the Higher Education Act of 1965 (20 U.S.C. 1070e(b)(2)(B)) is amended by striking ''$10,000'' and inserting ''$30,000''.

(b) DEFINITION OF LOW-INCOME STUDENT.—Section 419N(b)(7) of such Act is amended to read as follows:

''(7) DEFINITION OF LOW-INCOME STUDENT.—For the purpose of this section, the term 'low-income student' means a student who—

''(A) is eligible to receive a Federal Pell Grant for the fiscal year for which the determination is made; or

''(B) would otherwise be eligible to receive a Federal Pell Grant for the fiscal year for which the determination is made, except that the student fails to meet the requirements of—

''(i) section 401(c)(1) because the student is enrolled in a graduate or first professional course of study; or

''(ii) section 484(a)(5) because the student is in the United States for a temporary purpose.''.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 419N(g) of such Act is amended by striking ''$45,000,000 for fiscal year 1999'' and inserting ''$75,000,000 for fiscal year 2006''.

By Mr. ALEXANDER (for himself and Mr. JOHNSON):

S. 726. A bill to promote the conservation and production of natural gas; to the Committee on Energy and Natural Resources.

By Mr. ALEXANDER (for himself and Mr. JOHNSON):

S. 727. A bill to provide tax incentives to promote the conservation and production of natural gas; to the Committee on Finance.

Mr. ALEXANDER. Mr. President, today I am introducing the Natural Gas Price Reduction Act of 2005 and the ''Tax Provisions for Natural Gas Price Reduction Act of 2005.'' I send to the desk two pieces of legislation. One is the substantive provisions of the bill and one is the tax provisions of the bill.

Mr. President, I offer the legislation on behalf of myself and the Senator from South Dakota, Mr. JOHNSON, who is the lead Democratic sponsor on the legislation. I do so with appreciation to the chairman of our Energy and Natural Resources Committee, Chairman PETE DOMENICI, and the staff of that committee who have worked very closely with us on the development of this comprehensive piece of legislation, and with thanks to my own staff, Sharon Segner, who has worked on it for several months.

This is a piece of legislation to address aggressively and comprehensively the rising cost of natural gas in the United States. This is legislation for the blue-collar worker, for the American farmer, and for the American homeowner.

Natural gas prices in the United States are at record levels. We have gone from having the lowest natural gas prices in the industrial world to the highest. These high prices are threatening millions of our jobs. Our farmers are getting a 10-percent pay cut. Homeowners are having a hard time paying their heating and cooling bills because of our contradictory policies.

Our policies boil down to this: We are restricting the supply of natural gas, and we are encouraging the use of natural gas. You do not have to go very far in an economics class at the University of Oklahoma or the University of Tennessee to know that if you restrict supply and encourage demand, the inevitable result is higher prices. And higher prices is a very serious problem for U.S. workers, U.S. homeowners, and U.S. farmers.

Only an ambitious and comprehensive approach that both increases supply and controls demand can lower the price of natural gas and keep our economy growing. This is not a question of tweaking our natural gas policy. It is time, aggressively, to revamp it. We need aggressive conservation. We need aggressive use of alternative fuels. We need aggressive research and development. We need aggressive production. And, for the time being, we need aggressive importation of liquefied natural gas from other parts of the world.

Here on this chart is an idea of where we are today. This is the United States of America: $7 per unit for natural gas—the highest in the industrialized world. Until recently, we had the lowest natural gas prices in the world.

What that means is large parts of our industries—the chemical industry, for example—were built on the idea of $1.50 or $2 for natural gas, but today it is $7.

A million Americans work in those blue-collar manufacturing jobs in every State in our country. Now, if they are paying $7 here, and it is $5.55 in Canada and $5.15 in the United Kingdom and $2.65 in Turkey and $1.70 in the Ukraine, where do you suppose,

though, a million blue-collar jobs are going to be 5 years from now, if we do not do something about the $7 price? They are not going to be in the United States. They are going to be moving out of the United States, to the United Kingdom, to Germany, to the Ukraine, to other parts of the world. And people are going to be writing their Congressmen and saying: Why didn't you do something?

So here is what we can do. By aggressive conservation, I mean setting stronger appliance and equipment standards for natural gas efficiency so that a commercial air conditioner will cool the same while using less natural gas doing it. Those standards have been generally agreed upon by environmental groups with the industry. If they were put in place, by a rough estimate, they might save the equivalent energy that could be produced by 30 or 35 powerplants.

By aggressive use of alternative fuels, I mean, for example, fully commercializing coal gasification. Coal gasification is taking this abundant supply of coal we have in the United States—we are the ''OPEC,'' the ''Saudi Arabia'' of coal; we have a 400- or 500-year supply—and finding a clean way to use it instead of importing oil from a part of the world where people are blowing each other up.

That means starting with support so we can have six coal gasification plants in this country by the year 2013. Coal gasification means, you burn the coal to create gas, and then you burn the gas to create power. If we can do that commercially, we will not only be passing a clean energy bill, we will be passing a clean air bill, because if you do that, you remove most of the mercury, most of the nitrogen, most of the sulfur. And by additional research, we may be able to find a way to recapture the carbon that is produced and put that in the ground and solve the carbon problems that a lot of people are talking about around the world.

In addition to helping ourselves, we would help ourselves by helping others. China and India and other parts of the world are building hundreds of coal plants. We would much rather them build a coal gasification plant, one that is clean and does not contribute to air pollution. Because if China and India and Brazil build dirty coal plants, that air blows around the world, and it blows into Tennessee and it blows into South Carolina. It blows into Oklahoma.

So aggressive alternative fuels is a part of a natural gas supply. Aggressive research and development includes investment and research in gas hydrates. Gas hydrates is gas that is in the ground. Methane hydrates hold tremendous potential to provide abundant supplies of natural gas. Hydrates are like ice solid structures, consisting of water and gases, mainly methane, compressed to greater than normal densities.

Coastal U.S. areas are rich in this resource. The United States is estimated to contain one-fourth of the world's supply. We need to find a way to use that gas so we do not have $7 per unit natural gas prices. That sends millions of jobs overseas. That cuts the income of farmers. And that raises home heating prices and cooling prices for residential Americans.

Aggressive production means, among other things, allowing States to selectively waive the Federal moratoria on offshore production of gas and collect significant revenues from such production. Let me give you an example. Within the last few weeks, the legislature of Virginia decided it might like to explore the idea of drilling for gas offshore. Now, why would Virginia want to do that? Because there is probably a lot of gas offshore. What would that mean for Virginia? Well, they could put a gas rig out in the ocean, beyond 20 miles, so nobody in Virginia or North Carolina could see it, run a pipeline underground to Virginia, and take their share of the revenues. And they can lower taxes in Virginia and put the rest of the money in a trust fund to build the best colleges and universities in America. That is what they could do in Virginia.

If Tennessee had a coastline, and I were Governor of Tennessee, that is what I would be asking the Congress to let me do.

I think as other Governors and other legislatures and other people look at Texas and Louisiana and Alabama and see what they are doing and decide that they can in an environmentally sensitive way exercise a State option to drill for gas in Federal waters so far out you can't see it, that they will find that a good option because it will help lower the price of gas. It can build up the schools and keep taxes down, and it can avoid other worse forms of energy.

For example, you would have to have 46 square miles of windmills, these things that are 100 yards tall, in order to equal one gas rig that you couldn't see out in the ocean. This is a State option. Aggressive importation of liquefied natural gas starts with giving the Federal Energy Regulatory Commission exclusive authority for siting and regulating what we call LNG terminals. This means importing liquefied natural gas from other parts of the world. There is a lot of it around the world. They freeze it and put it in tankers, and they bring it here and put it in our pipelines, and then we have it.

That seems like a pretty big waste of effort when we have plenty of natural gas here in the United States that we don't have access to. But if we want an adequate supply of natural gas, we are going to have to import some from around the world, and that means we are going to need terminals to which to bring it. Some of them may be offshore. They might be 10, 12, 14 miles offshore. Some of them, like the four we have today, may need to be onshore. There is no silver bullet. There is no single answer. That is why we need aggressive conservation. If, for example, the United States adopted the conservation attitudes towards natural gas that California did a few years ago, it might equal what 50 powerplants could produce in the United States. If that is so, we ought to do it today. That would begin to bring this $7 figure down.

Aggressive use of alternative fuels such as coal gasification. I also would say nuclear power is the most obvious alternative fuel to natural gas. If we had more nuclear power, we would use less natural gas. In our country today, what do you suppose we are using to create electricity when we need more electricity even though the cost of it is $7 a unit, the highest in the world? Natural gas, because natural gas plants can be built for a few hundred million dollars, and we have created an environment where we can't use nuclear.

We haven't built a new nuclear plant since the 1970s, even though we invented the technology, even though France has 80 percent of its power now produced by nuclear power, even though Japan builds a new nuclear plant every year or so. We invented it. Our Navy has operated nuclear reactors since the 1950s without ever having a single accident. It is a clean, obvious alternative to $7 natural gas, and we haven't built a plant since the 1970s. So we need to think seriously about aggressive conservation, aggressive use of alternative fuels, aggressive research and development for solar, for methane hydrates, aggressive production, and that includes giving States the option of deciding whether they would like to drill offshore and take some of the revenues and put some of the revenues into a conservation fund, and aggressive importation of liquefied natural gas from overseas at least for the time being.

In March of 2002, the Secretary of Energy requested that the National Petroleum Council undertake an extensive study on the natural gas crisis. That advisory council produced a study. It talked about the results I have described. Our Senate Energy Committee, under the chairman, Senator DOMENICI, has paid a lot of attention to that report. Senator DOMENICI hosted what we called a natural gas roundtable that was well attended by Senators and went on for 3 or 4 hours. There were more than 100 proposals presented.

I am chairman of the subcommittee of that full committee, and so my purpose today is to take many of the ideas that we heard that made the most sense, some of which people haven't been willing to advocate, and put them into the discussion. Again, because I do not want to be a Senator who 10 years from now somebody comes up to and says: How did you let farmers get a 20–percent pay cut because of $7, $8, $9 natural gas; how did you let millions of jobs in the chemical industry, the auto industry go overseas because of $7, $8, and $9 natural gas; how did you let prices of natural gas for home heating

or cooling get so high that middle-income Americans can't even afford to heat their homes? I don't want to be that kind of Senator. So I am here today with a comprehensive proposal across the board even though some of the ideas will create that kind of controversy.

I have summarized in a few words the provisions of a 250-page piece of legislation.

We were ambushed in the United States on September 11, 2001. Even though you could argue that we might have known it was coming, terrorism wasn't new on September 11, 2001.

I remember being in a meeting with Prime Minister Rabin of Israel in 1994. At the end of a long day, I asked him: What is the greatest challenge threatening the world? And he said terrorism. That was many years before we were attacked. He was right. He was dead within a few months at the hands of terrorists within his own country. We didn't see the terrorism coming. We were ambushed, and we have paid a terrible price—in lives, in dollars. We have had to create whole new departments. We have had to interrupt the lives of thousand of national guardsmen and Army reservists and send them overseas, some to die and some to be wounded, because of terrorism. Maybe we couldn't have seen exactly that act coming, but we knew it was out there.

We are about to have another big surprise. That is to our standard of living. We are 5 to 6 percent of all the people in the world. Yet we produce a third of all the money in the world. We could wake up 10 years from now and that picture could be very changed. One way is if we lose our brainpower advantage. And we could lose it. Half of our new jobs have been created by science and technology since the end of World War II. And if we go through our budget balancing, deficit controlling exercise for the next 10 years and we don't double investments for the physical sciences and retake the lead in advanced computing, and if we don't see that we have plenty of graduate students in science and engineering, we are going to find most of the R&D will be done in other parts of the world. We are going to find most of the engineers who produce this brainpower that creates jobs in other parts of the world.

They are thinking in China, and they are thinking in India. There is no real good reason why the United States should make a third of all the money in the world every year with just 5 or 6 percent of the people, and we have so little. So they are keeping their bright people home. They are building up their universities. They are doing what we need to keep doing. That is one place we could get a big surprise.

But the other is in energy. We have taken energy for granted for a long time. I know I come from Tennessee. We have had the Tennessee Valley Authority. It has sat there since the 1930s, and it has produced reliable, low-cost electricity. Homes that have never been lit, barns that have never been lit, rural areas that have never been lit have enjoyed that. That is within my lifetime.

And then while I was Governor in the 1990s, I remember that one of the big attractions for Saturn and Nissan and the automobile industry coming into Tennessee was low-cost reliable power. But when I had a natural gas roundtable last fall in Tennessee, there was the president of Saturn, the president of Nissan, the head of the Tennessee Farm Bureau. There was the head of the University of Tennessee. They were all saying: We can't live in Tennessee on $7 natural gas. What do they do if they can't? It is very easy what they do. They don't have to have those jobs in Tennessee or South Carolina. They can move them to Germany, they can move them to Mexico, they can move them to Canada, and they are doing it every day.

And Tennessee Eastman in the upper part of east Tennessee, which we think is just like the great Smokey Mountains, has been there so long. There are 12,000 people there, real good incomes. What do they use to make chemicals there? They use natural gas.

How long are they going to be there? If we have $7 gas and they have $3 and $4 gas in other parts of the world, I am afraid they are not going to be there too long. And somebody is going to say to me: What did you do about it? At least my answer is I stood up on the floor of the Senate and said this is not the time to tweak our natural gas policy.

We do not need to sit around and wait for a big surprise on energy like we had a big surprise on September 11 on terrorism. We need an aggressive policy. We need a comprehensive policy. We need aggressive conservation. That is where we should start. We need aggressive alternative fuels. That means nuclear and that means coal gasification. We need aggressive research and development, whether it is hydrogen or whether it is solar, or whether it is methane gas hydrates. We need aggressive production. We have lots of gas in the United States. We should be using it if we have $7 gas.

For the time being, we need to create the terminals that will permit us to import enough liquefied natural gas to get that $7 price down to $6 or $5 or $4.

Mr. President, I thank Senator JOHNSON from South Dakota for joining me in this comprehensive aggressive approach. I thank Senator DOMENICI for taking the lead on an energy bill. I thank Senator BINGAMAN, who is the ranking Democrat on our committee, because I notice on our committee a greater sense of urgency, a greater sense of bipartisan cooperation on coming up with an energy bill this year. Our blue-collar workers, our farmers, our homeowners in Tennessee and across this country expect it from us.

Senator JOHNSON's and my contribution today is to introduce this comprehensive 250-page bill and to get on the table all the aggressive ideas we can think of that make sense about how to reduce the price of natural gas for workers, for farmers, and for homeowners. We hope it contributes to the discussion. We hope we find lots of these provisions in an ambitious energy bill.

I look forward to working with my colleagues, as I know Senator JOHNSON does, on a bipartisan basis to help lower the price of natural gas, keep our jobs, keep our homes cool and warm, and make it possible for farmers to make a living.

Natural gas prices are at record levels and the highest of any industrialized country. High natural gas prices are threatening our jobs, our farms, and hurting Americans who are trying to heat and cool their homes. Only an ambitious, comprehensive approach that both increases supply and controls demand can lower the price of natural gas and keep our growing economic recovery from becoming recent history.

This is not a question of tweaking our natural gas policy. It is time to aggressively revamp it. We need aggressive conservation, aggressive use of alternative fuels, aggressive research and development, aggressive production and for the time being, aggressive imports of liquefied natural gas.

Aggressive conservation, for example, means setting stronger appliance and equipment standards for natural gas efficiency so that a commercial air conditioner will cool the same while using less natural gas to do it.

Aggressive use of alternative fuels, for example, means fully commercializing coal gasification, starting with support for the deployment of six coal gasification plants by 2013. Coal gasification means that you burn coal to produce power but get the much lower pollution output of using natural gas.

Aggressive research and development includes investment in research of gas hydrates. Methane hydrates hold tremendous potential to provide abundant supplies of natural gas. Hydrates are ice-like solid structures consisting of water and gases, mainly methane, compressed to greater than normal densities. Coastal U.S. areas are rich in this resource. The U.S. is estimated to contain one-fourth of the world's supply.

Aggressive production means, among other changes, allowing states to selectively waive the federal moratoria on off-shore production and collect significant revenues from such production.

And aggressive importation of liquefied natural gas starts with giving the Federal Energy Regulatory Commission exclusive authority for siting and regulating LNG terminals, while still preserving states' authorities under the Coastal Zone Management Act and other acts.

In March 2002, Secretary of Energy Abraham requested that the National Petroleum Council undertake an extensive study on the natural gas crisis.

That council, a Federal advisory committee to the Secretary of Energy, produced in late 2003 one of the most extensive policy studies and recommendations on the natural gas crisis to date. Since that time, other prominent groups, such as the National Commission on Energy Policy, have also produced extensive studies on the natural gas crisis. In October 2004, I held a roundtable on the impact of soaring natural gas prices on Tennessee farmers and jobs. The Senate Energy Committee has held numerous hearings over the last 2 years and recently held an extensive natural gas roundtable on the subject on January 24, 2005. Over 100 proposals were submitted to the Senate Energy Committee on natural gas issues.

The conclusion of all of these forums has been clear.

High natural gas prices are threatening our country's economic competitiveness and costing us jobs. For example, high natural gas prices have been the equivalent of a 10 percent pay cut to American farmers.

The situation is urgent.

There are no silver bullets. We cannot conserve our way out of this problem, nor can we drill our way out of this problem. We will need to be aggressive on all fronts, in order to keep our industries competitive.

High natural gas costs are also tied to high oil prices. We need to address both natural gas and oil prices in order to lower natural gas costs.

Our country has contradictory policies on natural gas—on one hand, we encourage its use. On the other hand, we limit access to its supply. We need to amend our contradictory natural gas and environmental policies.

That's why I am introducing the ''Natural Gas Price Reduction Act.'' It is an aggressive, bold approach to tackle this issue. This 250-page legislation is an attempt to start a very difficult, but balanced, legislative discussion in the United States Senate on natural gas prices. I have taken the best ideas that I have heard in these roundtable discussions and from the various policy studies. I have met with hundreds of people in the past year discussing natural gas prices. This legislation is an attempt to be more aggressive on all areas impacting natural gas prices—energy efficiency and fuel diversity, natural gas supply, and improved infrastructure for importation of liquefied natural gas.

Half our Nation's increase in natural gas demand in the last decade has come from the power sector. So to conserve natural gas, one must not only reduce consumption of gas itself, but also of electricity. And, as I noted, since oil prices affect natural gas prices, conserving oil is also important. My bill addresses conservation in five ways.

The bill creates a 4-year national consumer education program on the urgent need for energy conservation. A statewide California effort to educate energy consumers resulted in savings of 10 percent at peak usage—the equivalent of five-and-a-half 1,000 Megawatt coal-powered power plants. My bill aims to take that effort to the entire nation.

The legislation sets higher appliance and equipment standards for natural gas efficiency. These standards have been negotiated between consumer and industry representatives and are codified in the bill. For example, the standards would require a new kitchen oven to produce the same heat while using less natural gas to do it. The American Council for an Energy-Efficient Economy estimates that these standards will reduce natural gas use by about 125 BCF in 2010 and 525 BCF in 2020. In addition these standards will reduce peak electric demand by about 33,500 MW in 2020, equivalent to 34 coal power plants of 1000 MW each, and will save consumers and businesses more than $60 billion.

The bill creates tax incentives and provides regulatory relief to enable manufacturing facilities to more easily produce their own power and steam from a single source—a process called cogeneration or CHP which saves money and energy while also reducing pollutants. A CHP system can produce the same electrical and thermal output at 75 percent fuel conversion efficiency as compared to 49 percent separate steam and power. This is a 50 percent gain in overall efficiency, resulting in a 35 percent fuel savings. Large industrial plants, such as International Paper, Alcoa and Eastman in my home State of Tennessee all use cogeneration in their manufacturing processes. More companies could do the same, and the bill particularly focuses on providing incentive for smaller cogeneration projects.

The Alexander bill provides incentive for public utilities to utilize their natural gas plants based on efficiency. The process of activating different power plants to meet demand during a given day is called ''dispatching.'' For example, on a hot summer day in Tennessee, the demand for electricity, for air conditioning, might be highest in the early afternoon, so then a power company would have to dispatch the most power plants to provide the energy. But during the cooler night, they might dispatch less plants since less power is needed. If power companies dispatched their most efficient plants first, this would save us a significant amount of natural gas. As you can see, the highest saving will be in the medium-term—2010–2015—but real savings continue for many years.

Our reliance on foreign oil is the silent elephant in the room when it comes to high natural gas prices. My legislation includes a provision that requires the President report to Congress annually on efforts to reduce U.S. dependence on imported petroleum 1.75 million barrels a day from projected 2013 levels, almost 10 percent. As I noted earlier, oil and gas are usually produced together; and, typically, there is a 6:1 ratio between natural gas and oil prices. Reducing dependence on foreign oil will help bring natural gas prices down.

Conservation of natural gas and related energy sources is critical to lowering prices and keeping our manufacturing and farming jobs here in the United States. But conservation alone is not enough. The second focus must be to develop alternative sources of energy. The ''Keep Manufacturing and Farming Jobs in the United States Act'' encourages the use of three alternative fuels:

The bill initiates a national coal gasification strategy. Eastman Chemical in Kingsport, TN, has been using coal gasification with a 95% availability factor for the past 20 years. Tampa Electric has successfully demonstrated large-scale coal gasification. It is time for this process to be more widely used. Coal gasification is a process whereby gas derived from burning coal is used as a source of energy or a raw material. When used in a power plant, coal gasification means that you burn coal but get the much lower pollution output of using natural gas. My legislation provides up to $2 billion in tax or other incentives to support the construction of six new coal gasification power plants. Similarly, the legislation provides up to $2 billion in assistance for industrial gasification projects. The bill also provides streamlined permitting for coal gasification facilities. Coal is an abundant resource in the United States; we should use it to produce clean energy and raw material for industrial applications.

Solar energy is another clean, alternative fuel source that could be developed further. Solar energy can be used directly for heating as well as to create electricity. To push an aggressive solar energy strategy, the Alexander legislation provides tax incentives for investment in solar power generation. Specifically, it provides businesses a tax credit for investing in geothermal or solar heating and/or power generation—10 percent heating, 25 percent for generating or displacing electricity.

My bill also contains language to invest in new technologies to use hydrogen to power fuel cell vehicles. The language in this bill mirrors language I offered in the last session of Congress on the Energy Bill that would have enacted President Bush's Hydrogenl/Fuel Cell Initiative. When I visited Japan last year, I visited a hydrogen fuel station—that looked much like a gas station—and saw fuel cell vehicles that range from small cars to SUVs. These cars not only allow us to use an alternative fuel source but are also great for the environment—their only byproduct is water vapor. The bill invests in research and development of technologies and infrastructure for 2 hydrogen and fuel cell vehicles.

Methane hydrates hold tremendous potential to provide abundant supplies of natural gas. Hydrates are ice-like solid structures consisting of water and

gases—mainly methane—compressed to greater than normal densities. Coastal US areas are rich in this resource—the U.S. is estimated to contain one-fourth of the world's supply. My bill invests $200 million over the next 4 years in research for this promising new resource, a number consistent with recommendations from the National Commission on Energy Policy.

Conserving natural gas and using alternative fuels will take us a long way to reducing gas prices and keeping jobs here in the U.S., but we must also address the other side of the equation: supply. As Energy Committee members learned at our Natural Gas Roundtable, our current policy encourages consumption of natural gas while restricting the supply. We need to stop putting unnecessary restrictions on production and supply of natural gas, and my legislation does so by addressing production off-shore and in the Rocky Mountains as well as the importation of liquid natural gas from abroad.

We have plenty of natural gas here in the U.S., we just cannot get to it. There are large fields off the coasts, especially the Atlantic, and in the Rocky Mountains. There is no reason for natural gas prices here in the U.S. to be so high when we have so much available here—if only we would use it.

Today, there are two moratoria on our outer continental shelf, OCS—a congressional moratorium and a Presidential moratorium. The Atlantic Coast—40 miles off the coast is believed to be largely natural gas-prone. The Pacific Coast is believed—to be mainly oil-prone. The Gulf of Mexico is both. Today, when production is greater than 9 miles offshore, a State that has oil and gas production gets zero percent of the production revenues. This is radically different than onshore production; on Federal lands, States get 50 percent of the production revenues. Alaska gets 90 percent of the production revenues. In order to have a constructive dialogue on OCS production, the right framework needs to be established.

My legislation provides the Department of the Interior with the legal authority to issue natural gas only leases. Currently, Interior can only issue combination gas and oil leases. Since there is greater hesitation about the environmental impact of producing oil off-shore, issuing natural gas-only leases may alleviate some concerns.

It also instructs the Secretary of the Interior to draw the state boundary between Alabama and Florida regarding Lease 181—a disputed area off the coast of both states in the Gulf of Mexico in which Alabama may wish to permit production while Florida may not. The boundaries shall be drawn using established international law. Under my bill, portions of Lease 181, which are not in the state of Florida and greater than 30 miles off of the coast of Alabama, shall be leased by December 31, 2007. However, of those portions of Lease 181 that are in the State of Florida, the State of Florida may keep the moratoria. Leasing would not be allowed to interfere with U.S. military operations in the Gulf Coast.

Finally, under the bill, States will have the authority to request studies of natural gas resources off their coasts and be permitted to waive Federal moratoria on offshore production. The states shall not have the authority to lift the moratoria at National Marine Sanctuaries or National Wildlife Refuge Area. The State of Virginia recently engaged on this issue, and the state ought to have the ability to license off-shore production—especially if it is far enough off-shore that you cannot even see it from land. My bill also allows States to collect significant revenue from such production, and designates that a portion of revenues also go to a conservation royalty. The conservation royalty would be shared equally by the Federal land and water conservation fund, state land and water conservation fund and wildlife grants.

Importing liquefied natural gas—LNG—requires the infrastructure to receive it. LNG comes to the U.S. by ship, and terminals to receive these ships and unload LNG must be built and appropriate infrastructure developed to transport gas from those terminals to users across the country.

My bill streamlines the development of offshore liquefied natural gas terminals. The siting of LNG terminals has become a difficult issue since we all want cheaper natural gas, but no one seems to want an LNG terminal in ''their backyard.'' The Alexander legislation gives FERC clear authority for regulating liquid natural gas terminals, but, unlike a related House bill, still preserves States' authorities under the Coastal Zone Management Act and other acts. I hope this will provide some balance so that LNG terminals can be sited, but environmental concerns will play a significant role in choosing their sites. In an effort to speed the siting of pipelines that allow natural gas to reach all parts of the country, the bill also requires that FERC grant or deny a terminal or pipeline application within one year.

Our country is facing an energy crisis. We are consuming more and more electricity. Gasoline prices are poised to reach all time highs. The price of oil is up. And so, too, is the price of natural gas.

The bill I introduce today, the ''Natural Gas Price Reduction Act,'' addresses high natural gas prices. Natural gas is not just used for heating homes, a source of electricity, it is a raw material for industries, and it is an important component in fertilizers used by farmers. High natural gas prices have cost farmers a 10-percent pay cut and are shipping manufacturing and chemical jobs overseas. We can not afford to let this problem fester any longer.

Bold action is required, and that is what my legislation provides. This bill takes a comprehensive approach to addressing the problem by encouraging conservation, developing alternative fuel sources, and reducing roadblocks to the production and importation of natural gas. I urge my colleagues to support it.

By Mr. BOND (for himself, Mr. INHOFE, Mr. VITTER, Mr. WARNER, Mr. VOINOVICH, Mr. ISAKSON, Mr. THUNE, Ms. MURKOWSKI, Mr. OBAMA, Ms. LANDRIEU, Mr. GRASSLEY, Mr. HARKIN, Mr. TALENT, Mr. CORNYN, Mr. COCHRAN, Mr. DOMENICI, and Mr. COLEMAN):

S. 728. A bill to provide for the consideration and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes; to the Committee on Environment and Public Works.

Mr. BOND. Mr. President, I rise today to introduce, with Senators INHOFE, VITTER, WARNER, VOINOVICH, ISAKSON, THUNE, MURKOWSKI, OBAMA, LANDRIEU, GRASSLEY, HARKIN, TALENT, CORNYN, COCHRAN, DOMENICI, and COLEMAN, the 2005 Water Resources Development Act.

The programs administered by the U.S. Army Corps of Engineers are invaluable to this Nation. They provide drinking water, electric power production, river transportation, environmental protection and restoration, protection from floods, emergency response, and recreation. Few agencies in the Federal Government touch so many citizens and they do it on a relatively small budget. They provide one-quarter of our Nation's total hydropower output; operate 456 lakes in 43 States hosting 33 percent of all freshwater lake fishing; move 630 million tons of cargo valued at over $73 billion annually through our inland system; manage over 12 million acres of land and water; provide 3 trillion gallons of water for use by local communities and business; and have prevented an estimated $706 billion in flood damage within the past 25 years with an investment one-seventh that value. During the 1993 flood alone, an estimated $19.1 billion in flood damage was prevented by flood control facilities in place at that time. Our ports move over 95 percent of U.S. overseas trade by weight and 75 percent by value. Between 1970 and 2003, the value of U.S. trade increased 24 fold, and 70 percent since 1994. That was an average annual growth rate of 10.2 percent, which was nearly double the pace of the Gross Domestic Product growth during the same period. Unfortunately, the American Society of Civil Engineers grades navigable waterways infrastructure D– with over 50 percent of the locks ''functionally obsolete'' despite increased demand.

This bipartisan bill is one that traditionally is produced by the Congress

every two years, however, we have not passed a WRDA bill since 2000 and the longer we wait, the more unmet needs pile up and the more complicated the demands upon the bill become making it harder and harder to win approval. For some, this bill is too small and for others, too big. For some, the new regulations are too onerous and for others, the new regulations are not onerous enough. Nevertheless, I believe we have struck a balance here that disciplines the new projects to criteria fairly applied while addressing a great number of water resources priorities.

With the new regulations, we have embraced a common sense bipartisan proposal by Senators LANDRIEU and COCHRAN similar to the bi-partisan House agreement that requires major projects to be subject to independent peer review and requires that necessary mitigation for projects be completed at the same time the project is completed, or, in special cases, no longer than one year after project completion. This will impose a cost on communities, particularly smaller communities, but it is not as onerous as the new regulations proposed last year which ultimately prevented a final agreement from being reached between the House and Senate.

The commanding feature of the bill is its landmark environmental and ecosystem restoration authorities. Nearly 60 percent of the bill authorizes such efforts, including environmental restoration of the Everglades, Coastal Louisiana, Chesapeake Bay, Missouri River, Long Island Sound, Salton Sea, Upper Connecticut, and the Illinois and Mississippi Rivers, and others.

Additionally, it is important to understand the budget implications of this legislation in the real world. We are contending with difficult budget realities currently and it is critical that we be mindful of those realities as we make investments in the infrastructure that supports the people in our nation who make and grow and buy and sell things so that we can grow our economy, create jobs, and secure our future. This is an authorization bill. It does not spend one dollar. I repeat, it does not spend one dollar. It makes projects eligible for funding through the appropriations process that operates within the restrictions of the budget Congress provides it. With the allocation provided, the Appropriations Committee and the Congress and the President will fund such projects deemed of the highest priority and those remaining will not be funded because the budget will not permit it. This WRDA process simply permits project consideration during the process of appropriations and I expect some will measure up and others will not. I hear some suggest that we should not authorize anything new until all other previously-authorized projects are funded. That, of course, is nonsense because it assumes falsely that all projects authorized five and 10 and 50 years ago are higher priority than those in this package. We have de-authorized a great number of projects in this bill and I expect there will be more added as we proceed and then the remainder will have to face the stingy budget process that will prioritize the rest.

While the majority of this legislation is for environmental protection and restoration, a key bipartisan economic initiative we include provides transportation efficiency and environmental sustainability on the Mississippi and Illinois Rivers.

As the world becomes more competitive, we must also. In the heartland, the efficiency, reliability, capacity, and safety of our transportation options are critical—often make-or-break. In Missouri alone, we ship 34.7 million tons of commodities with a combined value of more than $4 billion which include coal, petroleum, aggregates, grain, chemicals, iron, steel, minerals and other commodities.

As we look 50 years into the future, and as we anticipate and try to promote commercial and economic growth, we have to ask ourselves a fundamental question: should we have a system that permits and promotes growth, or should we be satisfied to restrict our growth to the confines of a transportation straight jacket designed not for 2050, but for 1950 for paddle wheel boats?

Further, we must ask ourselves if dramatic investments should be made to address environmental problems and opportunities that exist on these great waterways. In both cases, the answer is, ''Of course we should modernize and improve.''

We have a system which is in environmental and economic decline. Jobs and markets and the availability of habitat for fish and wildlife are at stake. We cannot be for increased trade, commercial growth, and job creation without supporting the basic transportation infrastructure necessary to move goods from buyers to sellers. New efficiency helps give our producers an edge that can make or break opportunities in the international marketplace.

Seventy years ago, some argued that a transportation system on the Mississippi River was not justified. Congress decided that its role was not to try to predict the future but to shape the future and decided to invest in a system despite the naysayers. Over 84 million tons per year later, it is clear that the decision was wise.

Now, that system that was designed for paddlewheel boats and to last 50 years is nearly 70 years old and we must make decisions that will shape the next 50–70 years. As we look ahead, we must promote growth policies that help Americans who produce and employ.

We must work for policies that promote economic growth, job creation, and environmental sustainability. We know that trade and economic growth can be fostered or it can be discouraged by policies and other realities which include the quality of our transportation infrastructure.

So in 20 and 30 and 40 and 50 years, where will the growth in transportation occur to accommodate the growth in demand for commercial shipping? The Department of Transportation suggests that congestion on our roads and rails will double in the next quarter century. The fact of the matter is that the great untapped capacity is on our water.

This is good news because water transportation is efficient, it is safe, it conserves fuel, and it protects the air and the environment. One medium-sized barge tow can carry the freight of 870 trucks. That fact alone speaks volumes to the benefits of water. If we can, would we rather have 870 diesel engines on the roads of downtown St. Louis, or two diesel engines on the water.

The veteran Chief Economist at USDA testified that transportation efficiency and the ability of farmers to win markets are higher prices are ''fundamentally related.'' He predicts that corn exports over the next 10 years will rise 45 percent, 70 percent of which will travel down the Mississippi.

Over the past 35 years, waterborne commerce on the Upper Mississippi River has more than tripled. The system currently carries 60 percent of our Nation's corn exports and 45 percent of our Nation's soybean exports and it does so at two-thirds the cost of rail—when rail is available.

Over the previous 12 years, the U.S. Army Corps of Engineers have spent $70 million completing a six year study. During that period, there have been 35 meetings of the Governors Liaison Committee, 28 meetings on the Economic Coordinating Committee, among the States along the Upper Mississippi and Illinois waterways, and there have been 44 meetings of the Navigation and Environmental Coordination Committee. Additionally, there have been 130 briefings for special interest groups, 24 newsletters. There have been six sets of public meetings in 46 locations with over 4,000 people in attendance. To say the least, this has been a very long, very transparent, and very representative process.

However, while we have been studying, our competitors have been building. Given the extraordinary delay so far, and given the reality that large scale construction takes not weeks or months, but decades, further delay is no longer an option. This is why I am pleased to be joined by a bipartisan group of Senators who agree that we must improve the efficiency and the environmental sustainability of our great resources.

This plan gets the Corps back in the business of building the future, rather than just haggling about predicting the future. More will need to be done later on ecosystem and lock expansions further upstream, but this begins the improvement schedule underway.

In this legislation, we authorize $1.58 billion for ecosystem restoration-almost 2 times the federal cost of lock capacity expansion which we authorize on locks 20–25 on the Mississippi River and Peoria and LaGrange on the Illinois. The new 1,200 foot locks on the Mississippi River will provide equal capacity in the bottleneck region below the 1,200 foot lock 19 at Keokuk and above locks 26 and 27 near St. Louis. Half the cost of the new locks will be paid for by private users who pay into the Inland Waterways Trust fund. Additional funds will be provided for mitigation and small scale and nonstructural measures to improve efficiency.

As we look ahead, the locks at 14–18 will have to be addressed as will further investments to ecosystem restoration efforts.

This effort is supported by a broad-based group of the States, farm groups, shippers, labor, and those who pay taxes into the Trust Fund for improvements. Of particular note, I appreciate the strong support from the carpenters, corngrowers, farm bureau, soybeans, the diverse membership of MARC2000.

I thank my colleagues and their staff for the hard work devoted to this difficult matter and I thank particularly chairman INHOFE for his forbearance. I believe that if members work cooperatively and aim for the center and not the fringe, that we can get a bill completed this year. If demands exist that the bill be away from the center toward the fringe, we will go another Congress without completing our work as we witnessed last year.

Mr. INHOFE. Mr. President, first, I would like to thank Senator BOND for the leadership he and his subcommittee staff have demonstrated in bringing this piece of legislation together.

I have great hopes for getting a WRDA bill passed this session. We have not enacted a WRDA bill since 2000, and the water resources are in much need of this authorization. We made great progress and were very close to finishing a bill at the end of the 108th Congress. That effort has provided a great stepping stone toward quick completion this year.

The Army Corps of Engineers has provided a valuable service to the Nation for over 200 years. It has been instrumental in creating one of the most dynamic inland waterway systems in the world. For example, the Corps activities have provided Tulsa, OK with one of the Nation's most inland ports and provides the dredging needed to keep the San Francisco Bay navigable. There is not a State in the Union that does not reap the benefits of the Army Corps.

I am well aware of the stacks of requests that have come in from every State for projects to be included in the bill. While it is important that we insure the Corps is capable of meeting our future water resource needs, it is also very important that we do not demand more of the Corps than it is capable of providing. No Federal agency could complete all of the projects requested by all of the Senators. Considering the limited staff and budget of the Corps, an ''authorize everything'' approach may leave everyone with nothing. While I know that each Senator has his or her own priorities, we all must understand the limitations with which we reside. I look forward to working with my colleagues to ensure that we give clear direction to the Corps to focus on completing the highest priority and most beneficial projects.

By Mr. DURBIN:

S. 729. A bill to establish the Food Safety Administration to protect the public health by preventing food-borne illness, ensuring the safety of food, improving research on contaminants leading to food-borne illness, and improving security of food from intentional contamination, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. DURBIN. Mr. President, a single food safety agency with authority to protect the food supply based on sound scientific principles would provide this country with the greatest hope of reducing foodborne illnesses and preventing or minimizing the harm from a bioterrorist attack on our food supply. Right now, our food is the safest in the world, but there are widening gaps in our food safety net due to emerging threats and the fact that food safety oversight has evolved over time to spread across several agencies. This mismatched, piecemeal approach to food safety could spell disaster if we do not act quickly and decisively.

But don't take it from me. Former HHS Secretary Tommy Thompson told reporters in December as he resigned that he worries ''every single night'' about a massive attack on the U.S. food supply. ''I, for the life of me, cannot understand why the terrorists have not, you know, attacked our food supply, because it is so easy to do,'' Thompson said. ''And we are importing a lot of food from the Middle East, and it would be easy to tamper with that,'' he said.

No wonder he feels that way. Several Federal agencies, all with different and conflicting missions, work to ensure our food is safe. For example, there is no standardization for inspections—processed food facilities may see a Food and Drug Administration inspector once every 5 to 6 years, while meat and poultry operations are inspected daily by the U.S. Department of Agriculture.

The Centers for Disease Control and Prevention (CDC) estimates that as many as 76 million people suffer from food poisoning each year. Of those individuals, approximately 325,000 will be hospitalized, and more than 5,000 will die. Factors such as emerging pathogens, an aging population at high risk for foodborne illnesses, an increasing volume of food imports, and people eating outside their homes more often underscore the need for us to take charge and shed the old bureaucratic shackles that have tied us to the overlapping and inefficient ad hoc food safety system of the past.

That is why I come to the Senate floor today to introduce the Safe Food Act of 2005. My House counterpart, Representative ROSA DELAURO, is introducing the bill in the other body. This legislation would create a single, independent Federal food safety agency to administer all aspects of Federal food safety inspections, enforcement, standards-setting and research in order to protect public health. The components of the agencies now charged with protecting the food supply, primarily housed at the Food and Drug Administration and the Agriculture Department, would be transferred to this new agency.

The new Food Safety Administrator would be responsible for the safety of the food supply, and would fulfill that charge by implementing the registration and recordkeeping requirements of the 2002 bioterrorism law; ensuring slaughterhouses and food processing plants have procedures in place to prevent and reduce food contamination; regularly inspecting domestic food facilities, with inspection frequency based on risk; and centralizing the authority to detain, seize, condemn and recall food that is adulterated or misbranded. The Administrator would be charged with requiring food producers to code their products so those products could be traced in the event of a foodborne illness outbreak in order to minimize the health impact of such an event.

The Administrator would also have the power examine the food safety practices of foreign countries and work with the states to impose various civil and criminal penalties for serious violations of the food safety laws. The Administrator would also actively oversee public education and research programs on foodborne illness.

It is time to create a single food safety agency in this country. I am encouraged by a February 2005 Government Accountability Office report in which government officials in seven other high-income countries who have consolidated their food safety systems consistently state that the benefits of consolidation outweigh the costs.

In this era of limited budgets, it is our responsibility to streamline the Federal food safety system. The United States simply cannot afford to continue operating multiple redundant systems. This is not about more regulation, a super agency, or increased bureaucracy. It is about common sense and the more effective marshaling of our existing resources.

I urge my colleagues to join me in cosponsoring this legislation.

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

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

S. 729

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 ''Safe Food Act of 2005''.

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

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the safety of the food supply of the United States is vital to the public health, to public confidence in the food supply, and to the success of the food sector of the Nation's economy;

(2) lapses in the protection of the food supply and loss of public confidence in food safety are damaging to consumers and the food industry, and place a burden on interstate commerce;

(3) the safety and security of the food supply requires an integrated, system-wide approach to preventing food-borne illness, a thorough and broad-based approach to basic and applied research, and intensive, effective, and efficient management of the Nation's food safety program;

(4) the task of preserving the safety of the food supply of the United States faces tremendous pressures with regard to—

(A) emerging pathogens and other contaminants and the ability to detect all forms of contamination;

(B) an aging and immune compromised population, with a growing number of people at high-risk for food-borne illnesses, including infants and children;

(C) an increasing volume of imported food, without adequate monitoring and inspection; and

(D) maintenance of rigorous inspection of the domestic food processing and food service industries;

(5) Federal food safety standard setting, inspection, enforcement, and research efforts should be based on the best available science and public health considerations and food safety resources should be systematically deployed in ways that most effectively prevent food-borne illness;

(6) the Federal food safety system is fragmented, with at least 12 Federal agencies sharing responsibility for food safety, and operates under laws that do not reflect current conditions in the food system or current scientific knowledge about the cause and prevention of food-borne illness;

(7) the fragmented Federal food safety system and outdated laws preclude an integrated, system-wide approach to preventing food-borne illness, to the effective and efficient operation of the Nation's food safety program, and to the most beneficial deployment of food safety resources;

(8) the National Academy of Sciences recommended in the report ''Ensuring Safe Food from Production to Consumption'' that Congress establish by statute a unified and central framework for managing Federal food safety programs, and recommended modifying Federal statutes so that inspection, enforcement, and research efforts are based on scientifically supportable assessments of risks to public health; and

(9) the lack of a single focal point for food safety leadership in the United States undercuts the ability of the United States to exert food safety leadership internationally, which is detrimental to the public health and the international trade interests of the United States.

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

(1) to establish a single agency to be known as the ''Food Safety Administration'' to—

(A) regulate food safety and labeling to strengthen the protection of the public health;

(B) ensure that food establishments fulfill their responsibility to produce food in a manner that protects the public health of all people in the United States;

(C) lead an integrated, system-wide approach to food safety and to make more effective and efficient use of resources to prevent food-borne illness;

(D) provide a single focal point for food safety leadership, both nationally and internationally; and

(E) provide an integrated food safety research capability, utilizing internally-generated, scientifically and statistically valid studies, in cooperation with academic institutions and other scientific entities of the Federal and State governments, to achieve the continuous improvement of research on food-borne illness and contaminants;

(2) to transfer to the Food Safety Administration the food safety, labeling, inspection, and enforcement functions that, as of the day before the effective date of this Act, are performed by other Federal agencies; and

(3) to modernize and strengthen the Federal food safety laws to achieve more effective application and efficient management of the laws for the protection and improvement of public health.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATION.—The term ''Administration'' means the Food Safety Administration established under section 101(a)(1).

(2) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of Food Safety appointed under section 101(a)(3).

(3) ADULTERATED.—

(A) IN GENERAL.—The term ''adulterated'' has the meaning described in subsections (a) through (c) of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342).

(B) INCLUSION.—The term ''adulterated'' includes bearing or containing a contaminant that causes illness or death among sensitive populations.

(4) AGENCY.—The term ''agency'' has the meaning given that term in section 551 of title 5, United States Code.

(5) CATEGORY 1 FOOD ESTABLISHMENT.—The term ''category 1 food establishment'' means a food establishment that slaughters animals for food.

(6) CATEGORY 2 FOOD ESTABLISHMENT.—The term ''category 2 food establishment'' means a food establishment that processes raw meat, poultry, seafood products, regardless of whether the establishment also has a kill step, and animal feed and other products that the Administrator determines by regulation to be at high risk of contamination and the processes of which do not include a step validated to destroy contaminants.

(7) CATEGORY 3 FOOD ESTABLISHMENT.—The term ''category 3 food establishment'' means a food establishment that processes meat, poultry, seafood products, and other products that the Administrator determines by regulation to be at high risk of contamination and whose processes include a step validated to destroy contaminants.

(8) CATEGORY 4 FOOD ESTABLISHMENT.—The term ''category 4 food establishment'' means a food establishment that processes all other categories of food products not described in paragraphs (5) through (7).

(9) CATEGORY 5 FOOD ESTABLISHMENT.—The term ''category 5 food establishment'' means a food establishment that stores, holds, or transports food products prior to delivery for retail sale.

(10) CONTAMINANT.—The term ''contaminant'' includes a bacterium, chemical, natural or manufactured toxin, virus, parasite, prion, physical hazard, or other human pathogen that when found on or in food can cause human illness, injury, or death.

(11) CONTAMINATION.—The term ''contamination'' refers to a presence of a contaminant in food.

(12) FOOD.—

(A) IN GENERAL.—The term ''food'' means a product intended to be used for food or drink for a human or an animal.

(B) INCLUSIONS.—The term ''food'' includes any product (including a meat food product, as defined in section 1(j) of the Federal Meat Inspection Act (21 U.S.C. 601(j))), capable for use as human food that is made in whole or in part from any animal, including cattle, sheep, swine, or goat, or poultry (as defined in section 4 of the Poultry Products Inspection Act (21 U.S.C. 453)), and animal feed.

(C) EXCLUSION.—The term ''food'' does not include dietary supplements, as defined in section 201(ff) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(ff)).

(13) FOOD ESTABLISHMENT.—

(A) IN GENERAL.—The term ''food establishment'' means a slaughterhouse, factory, warehouse, or facility owned or operated by a person located in any State that processes food or a facility that holds, stores, or transports food or food ingredients.

(B) EXCLUSIONS.—For the purposes of registration, the term ''food establishment'' does not include a farm, restaurant, other retail food establishment, nonprofit food establishment in which food is prepared for or served directly to the consumer, or fishing vessel (other than a fishing vessel engaged in processing, as that term is defined in section 123.3 of title 21, Code of Federal Regulations).

(14) FOOD PRODUCTION FACILITY.—The term ''food production facility'' means any farm, ranch, orchard, vineyard, aquaculture facility, or confined animal-feeding operation.

(15) FOOD SAFETY LAW.—The term ''food safety law'' means—

(A) the provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) related to and requiring the safety, labeling, and inspection of food, infant formulas, food additives, pesticide residues, and other substances present in food under that Act;

(B) the provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and of any other Act that are administered by the Center for Veterinary Medicine of the Food and Drug Administration;

(C) the Poultry Products Inspection Act (21 U.S.C. 451 et seq.);

(D) the Federal Meat Inspection Act (21 U.S.C. 601 et seq.);

(E) the Egg Products Inspection Act (21 U.S.C. 1031 et seq.);

(F) the Sanitary Food Transportation Act of 1990 (49 U.S.C. App. 2801 et seq.);

(G) the provisions of the Humane Methods of Slaughter Act of 1978 (Public Law 95–448) administered by the Food Safety and Inspection Service;

(H) the provisions of this Act; and

(I) such other provisions of law related to and requiring food safety, labeling, inspection, and enforcement as the President designates by Executive order as appropriate to include within the jurisdiction of the Administration.

(16) FOREIGN FOOD ESTABLISHMENT.—The term ''foreign food establishment'' means a slaughterhouse, factory, warehouse, or facility located outside the United States that processes food for consumption that is imported into the United States or food ingredients.

(17) INTERSTATE COMMERCE.—The term ''interstate commerce'' has the meaning given that term in section 201(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(b)).

(18) MISBRANDED.—The term ''misbranded'' has the meaning given that term in section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343).

(19) PROCESS.—The term ''process'' or ''processing'' means the commercial harvesting, slaughter, packing, preparation, or manufacture of food.

(20) SAFE.—The term ''safe'' refers to human and animal health.

(21) STATE.—The term ''State'' means—

(A) a State;

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico; and

(D) any other territory or possession of the United States.

(22) VALIDATION.—The term ''validation'' means the obtaining of evidence that the food hygiene control measure or measures selected to control a hazard in food is capable of effectively and consistently controlling the hazard.

(23) STATISTICALLY VALID.—With respect to a study, the term ''statistically valid'' means evaluated and conducted under standards set by the National Institute of Standards and Technology.

TITLE I—ESTABLISHMENT OF FOOD SAFETY ADMINISTRATION

SEC. 101. ESTABLISHMENT OF FOOD SAFETY ADMINISTRATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established in the executive branch an agency to be known as the ''Food Safety Administration''.

(2) STATUS.—The Administration shall be an independent establishment (as defined in section 104 of title 5, United States Code).

(3) HEAD OF ADMINISTRATION.—The Administration shall be headed by the Administrator of Food Safety, who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) DUTIES OF ADMINISTRATOR.—The Administrator shall—

(1) administer and enforce the food safety law;

(2) serve as a representative to international food safety bodies and discussions;

(3) promulgate regulations to ensure the security of the food supply from all forms of contamination, including intentional contamination; and

(4) oversee—

(A) implementation of Federal food safety inspection, enforcement, and research efforts, to protect the public health;

(B) development of consistent and science-based standards for safe food;

(C) coordination and prioritization of food safety research and education programs with other Federal agencies;

(D) prioritization of Federal food safety efforts and deployment of Federal food safety resources to achieve the greatest possible benefit in reducing food-borne illness;

(E) coordination of the Federal response to food-borne illness outbreaks with other Federal and State agencies; and

(F) integration of Federal food safety activities with State and local agencies.

SEC. 102. CONSOLIDATION OF SEPARATE FOOD SAFETY AND INSPECTION SERVICES AND AGENCIES.

(a) TRANSFER OF FUNCTIONS.—For each Federal agency specified in subsection (b), there are transferred to the Administration all functions that the head of the Federal agency exercised on the day before the effective date of this Act (including all related functions of any officer or employee of the Federal agency) that relate to administration or enforcement of the food safety law, as determined by the President.

(b) TRANSFERRED AGENCIES.—The Federal agencies referred to in subsection (a) are—

(1) the Food Safety and Inspection Service of the Department of Agriculture;

(2) the Center for Food Safety and Applied Nutrition of the Food and Drug Administration;

(3) the part of the Agriculture Marketing Service that administers shell egg surveillance services established under the Egg Products Inspection Act (21 U.S.C. 1031 et seq.);

(4) the resources and facilities of the Office of Regulatory Affairs of the Food and Drug Administration that administer and conduct inspections of food establishments and imports;

(5) the resources and facilities of the Office of the Commissioner of the Food and Drug Administration that support—

(A) the Center for Food Safety and Applied Nutrition;

(B) the Center for Veterinary Medicine; and

(C) the Office of Regulatory Affairs facilities and resources described in paragraph (4);

(6) the Center for Veterinary Medicine of the Food and Drug Administration;

(7) the resources and facilities of the Environmental Protection Agency that control and regulate pesticide residues in food;

(8) the part of the Research, Education, and Economics mission area of the Department of Agriculture related to food safety and animal feed research;

(9) the part of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration of the Department of Commerce that administers the seafood inspection program;

(10) the Animal and Plant Inspection Health Service of the Department of Agriculture; and

(11) such other offices, services, or agencies as the President designates by Executive order to carry out this Act.

SEC. 103. ADDITIONAL DUTIES OF THE ADMINISTRATION.

(a) OFFICERS AND EMPLOYEES.—The Administrator may—

(1) appoint officers and employees for the Administration in accordance with the provisions of title 5, United States Code, relating to appointment in the competitive service; and

(2) fix the compensation of those officers and employees in accordance with chapter 51 and with subchapter III of chapter 53 of that title, relating to classification and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—The Administrator may—

(1) procure the services of temporary or intermittent experts and consultants as authorized by section 3109 of title 5, United States Code; and

(2) pay in connection with those services the travel expenses of the experts and consultants, including transportation and per diem in lieu of subsistence while away from the homes or regular places of business of the individuals, as authorized by section 5703 of that title.

(c) BUREAUS, OFFICES, AND DIVISIONS.—The Administrator may establish within the Administration such bureaus, offices, and divisions as the Administrator determines are necessary to perform the duties of the Administrator.

(d) ADVISORY COMMITTEES.—

(1) IN GENERAL.—The Administrator shall establish advisory committees that consist of representatives of scientific expert bodies, academics, industry specialists, and consumers.

(2) DUTIES.—The duties of an advisory committee established under paragraph (1) may include developing recommendations with respect to the development of new processes, research, communications, performance standards, and inspection.

TITLE II—ADMINISTRATION OF FOOD SAFETY PROGRAM

SEC. 201. ADMINISTRATION OF NATIONAL PROGRAM.

(a) IN GENERAL.—The Administrator shall—

(1) administer a national food safety program (referred to in this section as the ''program'') to protect public health; and

(2) ensure that persons who produce or process food meet their responsibility to prevent or minimize food safety hazards related to their products.

(b) COMPREHENSIVE ANALYSIS.—The program shall be based on a comprehensive analysis of the hazards associated with different food and with the processing of different food, including the identification and evaluation of—

(1) the severity of the potential health risks;

(2) the sources and specific points of potential contamination extending from the farm or ranch to the consumer that may render food unsafe;

(3) the potential for persistence, multiplication, or concentration of naturally occurring or added contaminants in food;

(4) opportunities across the food production, processing, distribution, and retail system to reduce potential health risks; and

(5) opportunities for intentional contamination.

(c) PROGRAM ELEMENTS.—In carrying out the program, the Administrator shall—

(1) adopt and implement a national system for the registration of food establishments and foreign food establishments and regular unannounced inspection of food establishments;

(2) enforce the adoption of process controls in food establishments, based on best available scientific and public health considerations and best available technologies;

(3) establish and enforce science-based standards for—

(A) substances that may contaminate food; and

(B) safety and sanitation in the processing and handling of food;

(4) implement a statistically valid sampling program to ensure that industry programs and procedures that prevent food contamination are effective on an ongoing basis and that food meets the standards established under this Act;

(5) implement procedures and requirements to ensure the safety and security of imported food;

(6) coordinate with other agencies and State or local governments in carrying out inspection, enforcement, research, and monitoring;

(7) have access to the surveillance data of the Centers for Disease Control and Prevention, and other Federal Government agencies, in order to implement a national surveillance system to assess the health risks associated with the human consumption of food or to create surveillance data and studies;

(8) develop public education risk communication and advisory programs;

(9) implement a basic and applied research program to further the purposes of this Act; and

(10) coordinate and prioritize food safety research and educational programs with other agencies, including State or local agencies.

SEC. 202. REGISTRATION OF FOOD ESTABLISHMENTS AND FOREIGN FOOD ESTABLISHMENTS.

(a) IN GENERAL.—The Administrator shall by regulation require that any food establishment or foreign food establishment engaged in processing food in the United States be registered with the Administrator.

(b) REGISTRATION REQUIREMENTS.—

(1) IN GENERAL.—To be registered under subsection (a)—

(A) in the case of a food establishment, the owner, operator, or agent in charge of the food establishment shall submit a registration to the Administrator; and

(B) in the case of a foreign food establishment, the owner, operator, or agent in charge of the foreign food establishment shall—

(i) submit a registration to the Administrator; and

(ii) provide the name, address, and emergency contact information of the United States agent for the foreign food establishment.

(2) REGISTRATION.—A food establishment or foreign food establishment shall submit a registration under paragraph (1) to the Administrator that—

(A) identifies the name, address, and emergency contact information of each food establishment or foreign food establishment that the registrant operates under this Act and all trade names under which the registrant conducts business relating to food;

(B) lists the primary purpose and business activity of each food establishment or foreign food establishment, including the dates of operation if the food establishment or foreign food establishment is seasonal;

(C) lists the types of food processed or sold at each food establishment or, for foreign food establishments selling food for consumption in the United States, identifies the specific food categories of that food as listed under section 170.3 of title 21, Code of Federal Regulations; and

(D) not later than 30 days after a change in the products, function, or legal status of the food establishment or foreign food establishment (including cessation of business activities), notifies the Administrator of the change.

(3) PROCEDURE.—Upon receipt of a completed registration described in paragraph (1), the Administrator shall notify the registrant of the receipt of the registration, designate each establishment as a category 1, 2, 3, 4, or 5 food establishment, and assign a registration number to each food establishment and foreign food establishment.

(4) LIST.—The Administrator shall compile and maintain an up-to-date list of food establishments and foreign food establishments that are registered under this section. The Administrator may establish regulations by which such list may be shared with other governmental authorities.

(5) DISCLOSURE EXEMPTION.—The disclosure requirements under section 552 of title 5, United States Code, shall not apply to—

(A) the list compiled under paragraph (4); and

(B) information derived from the list under paragraph (4), to the extent that it discloses the identity or location of a specific registered person.

(6) SUSPENSION OF REGISTRATION.—

(A) IN GENERAL.—The Administrator may suspend the registration of a food establishment or foreign food establishment, including the facility of an importer, for violation of a food safety law.

(B) NOTICE AND OPPORTUNITY FOR HEARING.—The Administrator shall provide notice to a registrant immediately upon the suspension of the registration of the facility and provide registrant with an opportunity for a hearing within 3 days of the suspension.

(7) REINSTATEMENT.—A registration that is suspended under this section may be reinstated pursuant to criteria published in the Federal Register by the Administrator.

SEC. 203. PREVENTATIVE PROCESS CONTROLS TO REDUCE ADULTERATION OF FOOD.

(a) IN GENERAL.—The Administrator shall, upon the basis of best available public health, scientific, and technological data, promulgate regulations to ensure that food establishments carry out their responsibilities to—

(1) process food in a sanitary manner so that it is free of dirt and filth;

(2) limit the presence of potentially harmful contaminants in food;

(3) implement appropriate measures of preventative process control to minimize and reduce the presence and growth of contaminants in food and meet the performance standards established under section 204;

(4) process all fully processed or ready-to-eat food in a sanitary manner, using reasonably available techniques and technologies to eliminate any potentially harmful contaminants; and

(5) label food intended for final processing outside commercial food establishments with instructions for handling and preparation for consumption that will destroy contaminants.

(b) REGULATIONS.—Not later than 1 year after the effective date of this Act, the Administrator shall promulgate regulations that—

(1) require all food establishments to adopt preventative process controls that are—

(A) adequate to protect the public health;

(B) meet relevant regulatory and food safety standards; and

(C) limit the presence and growth of contaminants in food prepared in a food establishment;

(2) set standards for sanitation;

(3) meet any performance standards for contaminants established under section 204;

(4) require recordkeeping to monitor compliance;

(5) require sampling and testing at a frequency and in a manner sufficient to ensure that process controls are effective on an ongoing basis and that regulatory standards are being met; and

(6) provide for agency access to records kept by food establishments and submission of copies of the records to the Administrator, as the Administrator determines appropriate.

(c) PROCESSING CONTROLS.—The Administrator may require any person with responsibility for or control over food or food ingredients to adopt process controls, if the process controls are needed to ensure the protection of the public health.

SEC. 204. PERFORMANCE STANDARDS FOR CONTAMINANTS IN FOOD.

(a) IN GENERAL.—To protect the public health, the Administrator shall establish by regulation and enforce performance standards that define, with respect to specific food-borne contaminants and foods, the level of food safety performance that a person responsible for producing, processing, or selling food shall meet.

(b) IDENTIFICATION OF CONTAMINANTS; PERFORMANCE STANDARDS.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Administrator shall identify the food-borne contaminants and food that contribute significantly to the risk of food-borne illness.

(2) PERFORMANCE STANDARDS.—As soon as practicable after the identification of the contaminants under paragraph (1), the Administrator shall establish appropriate performance standards to protect against all food-borne contaminants.

(3) SIGNIFICANT CONTAMINANTS.—The Administrator shall establish performance standards for the 5 contaminants that contribute to the greatest number of illnesses or deaths associated with raw meat, poultry, and seafood not later than 3 years after the date of enactment of this Act. The Administrator shall revise such standards not less often than every 3 years.

(c) PERFORMANCE STANDARDS.—

(1) IN GENERAL.—The performance standards established under this section shall include—

(A) health-based standards that set the level of a contaminant that can safely and lawfully be present in food;

(B) zero tolerances, including zero tolerances for fecal matter, in addition to any zero-tolerance standards in effect on the day before the date of enactment of this Act, when necessary to protect against significant adverse health outcomes;

(C) process standards, such as log reduction criteria for cooked products, when sufficient to ensure the safety of processed food; and

(D) in the absence of data to support a performance standard described in subparagraph (A), (B), or (C), standards that define required performance in terms of ''best reasonably achievable performance'', using best

available technologies, interventions, and practices.

(2) BEST REASONABLY ACHIEVABLE PERFORMANCE STANDARDS.—In developing best reasonably achievable performance standards, the Administrator shall collect, or contract for the collection of, data on current best practices and food safety outcomes related to the contaminants and foods in question, as the Administrator determines necessary.

(3) REVOCATION BY ADMINISTRATOR.—All performance standards, tolerances, action levels, or other similar standards in effect on the date of enactment of this Act shall remain in effect until revised or revoked by the Administrator.

(d) ENFORCEMENT.—

(1) IN GENERAL.—Not later than 1 year after the promulgation of a performance standard under this section, the Administrator shall implement a statistically significant sampling program to determine whether food establishments are complying with the performance standards promulgated under this section. The program established under this paragraph shall be at least as stringent as the Hazard Analysis and Critical Control Point System requirements established under part 417 of title 9, Code of Federal Regulations (or successor regulation).

(2) INSPECTIONS.—If the Administrator determines that a food establishment fails to meet a standard promulgated under this section, and such establishment fails to take appropriate corrective action as determined by the Administrator, the Administrator shall, as appropriate—

(A) detain, seize, or condemn food from the food establishment under section 402;

(B) order a recall of food from the food establishment under section 403;

(C) increase the inspection frequency for the food establishment;

(D) withdraw the mark of inspection from the food establishment, if in use; or

(E) take other appropriate enforcement action concerning the food establishment, including withdrawal of registration.

(e) NEWLY IDENTIFIED CONTAMINANTS.—Notwithstanding any other provision of this section, the Administrator shall promulgate interim performance standards for newly identified contaminants as necessary to protect the public health.

SEC. 205. INSPECTIONS OF FOOD ESTABLISHMENTS.

(a) IN GENERAL.—The Administrator shall establish an inspection program, which shall include sampling and testing of food and food establishments, to determine if each food establishment—

(1) is operating in a sanitary manner;

(2) has continuous systems, interventions, and processes in place to minimize or eliminate contaminants in food;

(3) is in compliance with applicable performance standards established under section 203, and other regulatory requirements;

(4) is processing food that is safe and not adulterated or misbranded;

(5) maintains records of process control plans under section 203, and other records related to the processing, sampling, and handling of food; and

(6) is in compliance with the requirements of the food safety law.

(b) ESTABLISHMENT CATEGORIES AND INSPECTION FREQUENCIES.—The resource plan required under section 209, including the description of resources required to carry out inspections of food establishments, shall be based on the following categories and inspection frequencies, subject to subsections (c), (d), and (e):

(1) CATEGORY 1 FOOD ESTABLISHMENTS.—A category 1 food establishment shall be subject to antemortem, postmortem, and continuous inspection of each slaughter line during all operating hours, and other inspection on a daily basis, sufficient to verify that—

(A) diseased animals are not offered for slaughter;

(B) the food establishment has successfully identified and removed from the slaughter line visibly defective or contaminated carcasses, has avoided cross-contamination, and destroyed or reprocessed them in a manner acceptable to the Administrator; and

(C) that applicable performance standards and other provisions of the food safety law, including those intended to eliminate or reduce pathogens, have been satisfied.

(2) CATEGORY 2 FOOD ESTABLISHMENTS.—A category 2 food establishment shall be randomly inspected at least daily.

(3) CATEGORY 3 FOOD ESTABLISHMENTS.—A category 3 food establishment shall—

(A) have ongoing verification that its processes are controlled; and

(B) be randomly inspected at least monthly.

(4) CATEGORY 4 FOOD ESTABLISHMENTS.—A category 4 food establishment shall be randomly inspected at least quarterly.

(5) CATEGORY 5 FOOD ESTABLISHMENTS.—A category 5 food establishment shall be randomly inspected at least annually.

(c) ESTABLISHMENT OF INSPECTION PROCEDURES.—The Administrator shall establish procedures under which inspectors or safety officers shall take random samples, photographs, and copies of records in food establishments.

(d) ALTERNATIVE INSPECTION FREQUENCIES.—With respect to a category 2, 3, 4, or 5 food establishment, the Administrator may establish alternative increasing or decreasing inspection frequencies for subcategories of food establishments or individual establishments, to foster risk-based allocation of resources, subject to the following criteria and procedures:

(1) Subcategories of food establishments and their alternative inspection frequencies shall be defined by regulation, subject to paragraphs (2) and (3).

(2) Regulations of alternative inspection frequencies for subcategories of food establishments under paragraph (1) and for a specific food establishment under paragraph (4) shall provide that—

(A) category 2 food establishments shall be inspected at least monthly; and

(B) category 3, 4, and 5 food establishments shall be inspected at least annually.

(3) In defining subcategories of food establishments and their alternative inspection frequencies under paragraphs (1) and (2), the Administrator shall consider—

(A) the nature of the food products being processed, stored, or transported;

(B) the manner in which food products are processed, stored, or transported;

(C) the inherent likelihood that the products will contribute to the risk of food-borne illness;

(D) the best available evidence concerning reported illnesses associated with the foods produced in the proposed subcategory of establishments; and

(E) the overall record of compliance with the food safety law among establishments in the proposed subcategory, including compliance with applicable performance standards and the frequency of recalls.

(4) The Administrator may adopt alternative inspection frequencies for increased or decreased inspection for a specific establishment, subject to paragraphs (2) and (5) and shall periodically publish a list of establishments subject to alternative inspections.

(5) In adopting alternative inspection frequencies for a specific establishment, the Administrator shall consider—

(A) the criteria in paragraph (3);

(B) whether products from the specific establishment have been associated with a case or an outbreak of food-borne illness; and

(C) the record of the establishment of compliance with the food safety law, including compliance with applicable performance standards and the frequency of recalls.

(6) Before establishing decreased alternative inspection frequencies for subcategories of establishments or individual establishments, the Administrator shall—

(A) determine, based on the best available evidence, that the alternative uses of the resources required to carry out the inspection activity would make a greater contribution to protecting the public health and reducing the risk of food-borne illness than the use of resources described in subsection (b);

(B) describe the alternative uses of resources in general terms when issuing the regulation or order that establishes the alternative inspection frequency;

(C) consider the supporting evidence that an individual food establishment shall submit related to whether an alternative inspection frequency should be established for such establishment by the Administrator; and

(D) include a description of the alternative uses in the annual resource plan required in section 209.

(e) INSPECTION TRANSITION.—The Administrator shall manage the transition to the inspection system described in this Act as follows:

(1) In the case of a category 1 or 2 food establishment, the Administrator shall continue to implement the applicable inspection mandates of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) until—

(A) regulations required to implement this section have been promulgated;

(B) the performance standards required by section 204(c) have been promulgated and implemented for 1 year; and

(C) the establishment has achieved compliance with the other applicable provisions of the food safety law.

(2) In the case of a category 1 or 2 food establishment that, within 2 years after the promulgation of the performance standards required by section 204(c), has not achieved compliance with the food safety law, the Administrator shall—

(A) issue an order prohibiting the establishment from operating pending a demonstration by the establishment that sufficient changes in facilities, procedures, personnel, or other aspects of the process control system have been made such that the Administrator determines that compliance with the food safety law is achieved; and

(B) following the demonstration required in subparagraph (A), issue an order authorizing the food establishment to operate subject, at a minimum, to—

(i) the inspection requirement applicable to the establishment under subsection (b) (1) or (2); and

(ii) such other inspection or compliance measures determined by the Administrator necessary to assure compliance with the applicable food safety law.

(3) In the case of a category 3 food establishment, the Administrator shall continue to implement the applicable inspection mandates of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) until—

(A) the regulations required to implement this section have been promulgated;

(B) the first resource plan under section 209 has been submitted; and

(C) for individual establishments, compliance with the food safety law has been demonstrated.

(4) In the case of a category 3 food establishment that, within 1 year after the promulgation of the regulations required to implement this section, have not demonstrated compliance with the food safety law, the Administrator shall—

(A) issue an order prohibiting the establishment from operating, pending a demonstration by the establishment that sufficient changes in facilities, procedures, personnel, or other aspects of the process control system have been made such that the Administrator determines that compliance with the food safety law is achieved; and

(B) following the demonstration required in subparagraph (A), issue an order authorizing the establishment to operate subject, at a minimum, to—

(i) the inspection requirement applicable to the establishment under subsection (b)(3); and

(ii) such other inspection or compliance measures determined by the Administrator necessary to assure compliance with the food safety law.

(5) In the case of a category 4 or 5 food establishment, the inspection requirements of this Act shall be implemented as soon as possible after—

(A) the promulgation of the regulations required to implement this section;

(B) the publication of the first resource plan under section 209; and

(C) the commencement of the first fiscal year in which the Administration is operating with budgetary resources that Congress has appropriated following consideration of the resource plan under section 209.

(f) OFFICIAL MARK.—

(1) IN GENERAL.—

(A) ESTABLISHMENT.—Before the completion of the transition process under paragraphs (1) through (3) of subsection (e), the Administrator shall by regulation establish an official mark that shall be affixed to a food product produced in a category 1, 2, or 3 establishment, subject to subparagraph (B).

(B) PREREQUISITE.—The official mark required under subparagraph (A) shall be affixed to a food product by the Administrator if the establishment has been inspected by the Administrator in accordance with the inspection frequencies under this section and the establishment is in compliance with the food safety law.

(C) REMOVAL OF OFFICIAL MARK.—The Administrator shall promulgate regulations that provide for the removal of the official mark under this subsection if the Administrator makes a finding that the establishment is not in compliance with the food safety law.

(2) CATEGORY 1, 2, OR 3 FOOD ESTABLISHMENTS.—In the case of products produced in a category 1, 2, or 3 food establishment—

(A) products subject to Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), the Egg Products Inspection Act (21 U.S.C. 1031 et seq.), and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) as of the date of enactment of this Act shall remain subject to the requirement under those Acts that they bear the mark of inspection pending completion of the transition process under paragraphs (1) through (3) of subsection (e);

(B) the Administrator shall publicly certify on a monthly basis that the inspection frequencies required under this Act have been achieved; and

(C) a product from an establishment that has not been inspected in accordance with the required frequencies under this section shall not bear the official mark and shall not be shipped in interstate commerce.

(3) CATEGORY 4 AND 5 FOOD ESTABLISHMENTS.—In the case of a product produced in a category 4 or 5 food establishment the Administrator shall provide by regulation for the voluntary use of the official mark established under paragraph (1), subject to—

(A) such minimum inspection frequencies as determined appropriate by the Administrator;

(B) compliance with applicable performance standards and other provisions of the food safety law; and

(C) such other requirements the Administrator considers appropriate.

(g) IMPLEMENTATION.—Not later than 1 year after the effective date of this Act, the Administrator shall issue regulations to implement subsections (b) through (e).

(h) MAINTENANCE AND INSPECTION OF RECORDS.—

(1) IN GENERAL.—

(A) RECORDS.—A food establishment shall—

(i) maintain such records as the Administrator shall require by regulation, including all records relating to the processing, distributing, receipt, or importation of any food; and

(ii) permit the Administrator, in addition to any authority of the food safety agencies in effect on the day before the date of enactment of this Act, upon presentation of appropriate credentials and at reasonable times and in a reasonable manner, to have access to and copy all records maintained by or on behalf of such food establishment representative in any format (including paper or electronic) and at any location, that are necessary to assist the Administrator—

(I) to determine whether the food is contaminated or not in compliance with the food safety law; or

(II) to track the food in commerce.

(B) REQUIRED DISCLOSURE.—A food establishment shall have an affirmative obligation to disclose to the Administrator the results of testing or sampling of food, equipment, or material in contact with food, that is positive for any contaminant.

(2) MAINTENANCE OF RECORDS.—The records in paragraph (1) shall be maintained for a reasonable period of time, as determined by the Administrator.

(3) REQUIREMENTS.—The records in paragraph (1) shall include records describing—

(A) the origin, receipt, delivery, sale, movement, holding, and disposition of food or ingredients;

(B) the identity and quantity of ingredients used in the food;

(C) the processing of the food;

(D) the results of laboratory, sanitation, or other tests performed on the food or in the food establishment;

(E) consumer complaints concerning the food or packaging of the food;

(F) the production codes, open date codes, and locations of food production; and

(G) other matters reasonably related to whether food is unsafe, is adulterated or misbranded, or otherwise fails to meet the requirements of this Act.

(i) PROTECTION OF SENSITIVE INFORMATION.—

(1) IN GENERAL.—The Administrator shall develop and maintain procedures to prevent the unauthorized disclosure of any trade secret or confidential information obtained by the Administrator.

(2) LIMITATION.—The requirement under this subsection does not—

(A) limit the authority of the Administrator to inspect or copy records or to require the establishment or maintenance of records under this Act;

(B) have any legal effect on section 1905 of title 18, United States Code;

(C) extend to any food recipe, financial data, pricing data, personnel data, or sales data (other than shipment dates relating to sales);

(D) limit the public disclosure of distribution records or other records related to food subject to a voluntary or mandatory recall under section 403; or

(E) limit the authority of the Administrator to promulgate regulations to permit the sharing of data with other governmental authorities.

(j) BRIBERY OF OR GIFTS TO INSPECTOR OR OTHER OFFICERS AND ACCEPTANCE OF GIFTS.—Section 22 of the Federal Meat Inspection Act (21 U.S.C. 622) shall apply under this Act.

SEC. 206. FOOD PRODUCTION FACILITIES.

In carrying out the duties of the Administrator and the purposes of this Act, the Administrator shall have the authority, with respect to food production facilities, to—

(1) visit and inspect food production facilities in the United States and in foreign countries to investigate bioterrorism threats and for other critical food safety purposes;

(2) review food safety records as required to be kept by the Administrator to carry out traceback and for other critical food safety purposes;

(3) set good practice standards to protect the public and animal health and promote food safety;

(4) conduct monitoring and surveillance of animals, plants, products, or the environment, as appropriate; and

(5) collect and maintain information relevant to public health and farm practices.

SEC. 207. FEDERAL AND STATE COOPERATION.

(a) IN GENERAL.—The Administrator shall work with the States to carry out activities and programs that create a national food safety program so that Federal and State programs function in a coordinated and cost-effective manner.

(b) STATE ACTION.—The Administrator shall work with States to—

(1) continue, strengthen, or establish State food safety programs, especially with respect to the regulation of retail commercial food establishments, transportation, harvesting, and fresh markets;

(2) continue, strengthen, or establish inspection programs and requirements to ensure that food under the jurisdiction of the State is safe; and

(3) support recall authorities at the State and local levels.

(c) ASSISTANCE.—To assist in planning, developing, and implementing a food safety program, the Administrator may provide and continue to a State—

(1) advisory assistance;

(2) technical and laboratory assistance and training (including necessary materials and equipment); and

(3) financial, in kind, and other aid.

(d) SERVICE AGREEMENTS.—

(1) IN GENERAL.—The Administrator may, under agreements entered into with Federal, State, or local agencies, use on a reimbursable basis or otherwise, the personnel and services of those agencies in carrying out this Act.

(2) TRAINING.—Agreements with a State under this subsection may provide for training of State employees.

(3) MAINTENANCE OF AGREEMENTS.—The Administrator shall maintain any agreement that is in effect on the day before the date of enactment of this Act until the Administrator evaluates such agreement and determines whether to maintain or substitute such agreement.

(e) AUDITS.—

(1) IN GENERAL.—The Administrator shall annually conduct a comprehensive review of each State program that provides services to

the Administrator in carrying out the responsibilities under this Act, including mandated inspections under section 205.

(2) REQUIREMENTS.—The review shall—

(A) include a determination of the effectiveness of the State program; and

(B) identify any changes necessary to ensure enforcement of Federal requirements under this Act.

(f) NO FEDERAL PREEMPTION.—Nothing in this Act shall be construed to preempt the enforcement of State food safety laws and standards that are at least as stringent as those under this Act.

SEC. 208. IMPORTS.

(a) IN GENERAL.—Not later than 2 years after the effective date of this Act, the Administrator shall establish a system under which a foreign government or foreign food establishment seeking to import food to the United States shall submit a request for certification to the Administrator.

(b) CERTIFICATION STANDARD.—A foreign government or foreign food establishment requesting a certification to import food to the United States shall demonstrate, in a manner determined appropriate by the Administrator, that food produced under the supervision of a foreign government or by the foreign food establishment has met standards for food safety, inspection, labeling, and consumer protection that are at least equivalent to standards applicable to food produced in the United States.

(c) CERTIFICATION APPROVAL.—

(1) REQUEST BY FOREIGN GOVERNMENT.—Prior to granting the certification request of a foreign government, the Administrator shall review, audit, and certify the food safety program of a requesting foreign government (including all statutes, regulations, and inspection authority) as at least equivalent to the food safety program in the United States, as demonstrated by the foreign government.

(2) REQUEST BY FOREIGN FOOD ESTABLISHMENT.—Prior to granting the certification request of a foreign food establishment, the Administrator shall certify, based on an onsite inspection, the food safety programs and procedures of a requesting foreign firm as at least equivalent to the food safety programs and procedures of the United States.

(d) LIMITATION.—A foreign government or foreign firm approved by the Administrator to import food to the United States under this section shall be certified to export only the approved food products to the United States for a period not to exceed 5 years.

(e) WITHDRAWAL OF CERTIFICATION.—The Administrator may withdraw certification of any food from a foreign government or foreign firm—

(1) if such food is linked to an outbreak of human illness;

(2) following an investigation by the Administrator that finds that the foreign government programs and procedures or foreign food establishment is no longer equivalent to the food safety programs and procedures in the United States; or

(3) following a refusal to allow United States officials to conduct such audits and investigations as may be necessary to fulfill the requirements under this section.

(f) RENEWAL OF CERTIFICATION.—The Administrator shall audit foreign governments and foreign food establishments at least every 5 years to ensure the continued compliance with the standards set forth in this section.

(g) REQUIRED ROUTINE INSPECTION.—The Administrator shall routinely inspect food and food animals (via a physical examination) before it enters the United States to ensure that it is—

(1) safe;

(2) labeled as required for food produced in the United States; and

(3) otherwise meets requirements under the food safety law.

(h) ENFORCEMENT.—The Administrator is authorized to—

(1) deny importation of food from any foreign government that does not permit United States officials to enter the foreign country to conduct such audits and inspections as may be necessary to fulfill the requirements under this section;

(2) deny importation of food from any foreign government or foreign firm that does not consent to an investigation by the Administration when food from that foreign country or foreign firm is linked to a foodborne illness outbreak or is otherwise found to be adulterated or mislabeled; and

(3) promulgate rules and regulations to carry out the purposes of this section, including setting terms and conditions for the destruction of products that fail to meet the standards of this Act.

(i) DETENTION AND SEIZURE.—Any food imported for consumption in the United States may be detained, seized, or condemned pursuant to section 402.

SEC. 209. RESOURCE PLAN.

(a) IN GENERAL.—The Administrator shall prepare and update annually a resource plan describing the resources required, in the best professional judgment of the Administrator, to develop and fully implement the national food safety program established under this Act.

(b) CONTENTS OF PLAN.—The resource plan shall—

(1) describe quantitatively the personnel, financial, and other resources required to carry out the inspection of food establishments under section 205 and other requirements of the national food safety program;

(2) allocate inspection resources in a manner reflecting the distribution of risk and opportunities to reduce risk across the food supply to the extent feasible based on the best available information, and subject to section 205; and

(3) describe the personnel, facilities, equipment, and other resources needed to carry out inspection and other oversight activities, at a total resource level equal to at least 50 percent of the resources required to carry out inspections in food establishments under section 205—

(A) in foreign establishments;

(B) at the point of importation; and

(C) at the point of production on farms, ranches, and feedlots.

(c) GRANTS.—The resource plan shall include recommendations for funding to provide grants to States and local governments to carry out food safety activities in retail and food service facilities and the required inspections in food establishments.

(d) SUBMISSION OF PLAN.—The Administrator shall submit annually to the Committee on Appropriations of the Senate, the Committee on Appropriations of the House of Representatives, and other relevant committees of Congress, the resource plan required under this section.

SEC. 210. TRACEBACK.

(a) IN GENERAL.—The Administrator, in order to protect the public health, shall establish requirements for a national system for tracing food and food producing animals from point of origin to retail sale, subject to subsection (b).

(b) APPLICABILITY.—Traceability requirements shall—

(1) be established in accordance with regulations and guidelines issued by the Administrator; and

(2) apply to food production facilities and food establishments.

(c) RELATIONSHIP TO COUNTRY OF ORIGIN LABELING.—Nothing contained in this section prevents or interferes with implementation of the country of origin labeling requirements of subtitle D of the Agricultural Marketing Act of 1946 (7 U.S.C. 1638 et seq.).

TITLE III—RESEARCH AND EDUCATION

SEC. 301. PUBLIC HEALTH ASSESSMENT SYSTEM.

(a) IN GENERAL.—The Administrator, acting in coordination with the Director of the Centers for Disease Control and Prevention and with the Research Education and Economics mission area of the Department of Agriculture, shall—

(1) have access to the applicable data systems of the Centers for Disease Control and Prevention and to the databases made available by a State;

(2) maintain an active surveillance system of food, food products, and epidemiological evidence submitted by States to the Centers for Disease Control and Prevention based on a representative proportion of the population of the United States;

(3) assess the frequency and sources of human illness in the United States associated with the consumption of food;

(4) maintain a state-of-the-art DNA matching system and epidemiological system dedicated to food-borne illness identification, outbreaks, and containment; and

(5) have access to the surveillance data created via monitoring and statistical studies conducted as part of its own inspection.

(b) PUBLIC HEALTH SAMPLING.—

(1) IN GENERAL.—Not later than 1 year after the effective date of this Act, the Administrator shall establish guidelines for a sampling system under which the Administrator shall take and analyze samples of food—

(A) to assist the Administrator in carrying out this Act; and

(B) to assess the nature, frequency of occurrence, and quantities of contaminants in food.

(2) REQUIREMENTS.—The sampling system described in paragraph (1) shall provide—

(A) statistically valid monitoring, including market-based studies, on the nature, frequency of occurrence, and quantities of contaminants in food available to consumers; and

(B) at the request of the Administrator, such other information, including analysis of monitoring and verification samples, as the Administrator determines may be useful in assessing the occurrence of contaminants in food.

(c) ASSESSMENT OF HEALTH HAZARDS.—

(1) IN GENERAL.—Through the surveillance system referred to in subsection (a) and the sampling system described in subsection (b), the Administrator shall—

(A) rank food categories based on the hazard to human health presented by the food category;

(B) identify appropriate industry and regulatory approaches to minimize hazards in the food supply; and

(C) assess the public health environment for emerging diseases, including zoonosis, for their risk of appearance in the United States food supply.

(2) COMPONENTS OF ANALYSIS.—The analysis under subsection (b)(1) may include—

(A) a comparison of the safety of commercial processing with the health hazards associated with food that is harvested for recreational or subsistence purposes and prepared noncommercially;

(B) a comparison of the safety of food that is domestically processed with the health hazards associated with food that is processed outside the United States;

(C) a description of contamination originating from handling practices that occur prior to or after the sale of food to consumers; and

(D) use of comparative risk assessments.

SEC. 302. PUBLIC EDUCATION AND ADVISORY SYSTEM.

(a) PUBLIC EDUCATION.—

(1) IN GENERAL.—The Administrator, in cooperation with private and public organizations, including the cooperative extension services and building on the efforts of appropriate State and local entities, shall establish a national public education program on food safety.

(2) REQUIREMENTS.—The program shall provide—

(A) information to the public regarding Federal standards and best practices and promotion of public awareness, understanding, and acceptance of those standards and practices;

(B) information for health professionals—

(i) to improve diagnosis and treatment of food-related illness; and

(ii) to advise individuals at special risk for food-related illnesses; and

(C) such other information or advice to consumers and other persons as the Administrator determines will promote the purposes of this Act.

(b) HEALTH ADVISORIES.—The Administrator, in consultation with other Federal departments and agencies as the Administrator determines necessary, shall work with the States and other appropriate entities—

(1) to develop and distribute regional and national advisories concerning food safety;

(2) to develop standardized formats for written and broadcast advisories;

(3) to incorporate State and local advisories into the national public education program established under subsection (a); and

(4) to present prompt, specific information regarding foods found to pose a threat to the public health.

SEC. 303. RESEARCH.

(a) IN GENERAL.—The Administrator shall conduct research to carry out this Act, including studies to—

(1) improve sanitation and food safety practices in the processing of food;

(2) develop improved techniques to monitor and inspect food;

(3) develop efficient, rapid, and sensitive methods to detect contaminants in food;

(4) determine the sources of contamination of contaminated food;

(5) develop food consumption data;

(6) identify ways that animal production techniques could improve the safety of the food supply;

(7) draw upon research and educational programs that exist at the State and local level;

(8) utilize the DNA matching system and other processes to identify and control pathogens;

(9) address common and emerging zoonotic diseases;

(10) develop methods to reduce or destroy harmful pathogens before, during, and after processing;

(11) analyze the incidence of antibiotic resistence as it pertains to the food supply and develop new methods to reduce the transfer of antibiotic resistance to humans; and

(12) conduct other research that supports the purposes of this Act.

(b) CONTRACT AUTHORITY.—The Administrator may enter into contracts and agreements with any State, university, Federal Government agency, or person to carry out this section.

TITLE IV—ENFORCEMENT

SEC. 401. PROHIBITED ACTS.

It is prohibited—

(1) to manufacture, introduce, deliver for introduction, or receive into interstate commerce any food that is adulterated, misbranded, or otherwise unsafe;

(2) to adulterate or misbrand any food in interstate commerce;

(3) for a food establishment or foreign food establishment to fail to register under section 202, or to operate without a valid registration;

(4) to refuse to permit access to a food establishment for the inspection and copying of a record as required under section 205(h);

(5) to fail to establish or maintain any record or to make any report as required under section 205(h);

(6) to refuse to permit entry to or inspection of a food establishment as required under section 205;

(7) to fail to provide to the Administrator the results of a testing or sampling of a food, equipment, or material in contact with contaminated food under section 205(i);

(8) to fail to comply with a provision, regulation, or order of the Administrator under section 202, 203, 204, or 208;

(9) to slaughter an animal that is capable for use in whole or in part as human food at a food establishment processing any such food for commerce, except in compliance with the food safety law;

(10) to transfer food in violation of an administrative detention order under section 402 or to remove or alter a required mark or label identifying the food as detained;

(11) to fail to comply with a recall or other order under section 403; or

(12) to otherwise violate the food safety law.

SEC. 402. FOOD DETENTION, SEIZURE, AND CONDEMNATION.

(a) ADMINISTRATIVE DETENTION OF FOOD.—

(1) EXPANDED AUTHORITY.—The Administrator shall have authority under section 304 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 334) to administratively detain and seize any food that the Administrator has reason to believe is unsafe, is adulterated or misbranded, or otherwise fails to meet the requirements of the food safety law.

(2) DETENTION AUTHORITY.—If, during an inspection conducted in accordance with section 205 or 208, an officer, employee, or agent of the Administration making the inspection has reason to believe that a domestic food, imported food, or food offered for import is unsafe, is adulterated or misbranded, or otherwise fails to meet the requirements of this Act, the officer or employee may order the food detained.

(3) PERIOD OF DETENTION.—

(A) IN GENERAL.—A food may be detained for a reasonable period, not to exceed 20 days, unless a longer period, not to exceed 30 days, is necessary for the Administrator to institute a seizure action.

(B) PERISHABLE FOOD.—The Administrator shall provide by regulation for procedures to institute a seizure action on an expedited basis with respect to perishable food.

(4) SECURITY OF DETAINED FOOD.—

(A) IN GENERAL.—A detention order—

(i) may require that the food be labeled or marked as detained; and

(ii) shall require that the food be removed to a secure facility, if appropriate.

(B) FOOD SUBJECT TO AN ORDER.—A food subject to a detention order shall not be transferred by any person from the place at which the food is removed, until released by the Administrator or until the expiration of the detention period applicable under the order, whichever occurs first.

(C) DELIVERY OF FOOD.—This subsection does not authorize the delivery of a food in accordance with execution of a bond while the article is subject to the order.

(b) APPEAL OF DETENTION ORDER.—

(1) IN GENERAL.—A person who would be entitled to be a claimant for a food subject to a detention order if the food were seized under section 304 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 334), may appeal the order to the Administrator.

(2) ACTION BY THE ADMINISTRATOR.—Not later than 5 days after an appeal is filed under paragraph (1), the Administrator, after providing an opportunity for an informal hearing, shall confirm, modify, or terminate the order involved.

(3) FINAL AGENCY ACTION.—Confirmation, modification, or termination by the Administrator under paragraph (2) shall be considered a final agency action for purposes of section 702 of title 5, United States Code.

(4) TERMINATION.—The order shall be considered to be terminated if, after 5 days, the Administrator has failed—

(A) to provide an opportunity for an informal hearing; or

(B) to confirm, modify, or terminate the order.

(5) EFFECT OF INSTITUTING COURT ACTION.—If the Administrator initiates an action under section 302 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 332) or section 304(a) of that Act (21 U.S.C. 334(a)), the process for the appeal of the detention order shall terminate.

(c) CONDEMNATION OF FOOD.—

(1) IN GENERAL.—After confirming a detention order, the Administrator may order the food condemned.

(2) DESTRUCTION OF FOOD.—Any food condemned shall be destroyed under the supervision of the Administrator.

(3) RELEASE OF FOOD.—If the Administrator determines that, through reprocessing, relabeling, or other action, a detained food can be brought into compliance with this Act, the food may be released following a determination by the Administrator that the relabeling or other action as specified by the Administrator has been performed.

(d) TEMPORARY HOLDS AT PORTS OF ENTRY.—

(1) IN GENERAL.—If an officer or qualified employee of the Administration has reason to believe that a food is unsafe, is adulterated or misbranded, or otherwise fails to meet the requirements of this Act, and the officer or qualified employee is unable to inspect, examine, or investigate the food when the food is offered for import at a port of entry into the United States, the officer or qualified employee shall request the Secretary of Homeland Security to hold the food at the port of entry for a reasonable period of time, not to exceed 24 hours, to enable the Administrator to inspect or investigate the food as appropriate.

(2) REMOVAL TO SECURE FACILITY.—The Administrator shall work in coordination with the Secretary of Homeland Security to remove a food held in accordance with paragraph (1) to a secure facility as appropriate.

(3) PROHIBITION ON TRANSFER.—During the period in which the food is held, the food shall not be transferred by any person from the port of entry into the United States, or from the secure facility to which the food has been removed.

(4) DELIVERY IN ACCORDANCE WITH A BOND.—The delivery of the food in accordance with the execution of a bond while the food is held is not authorized.

(5) PROHIBITION ON REEXPORT.—A food found unfit for human or animal consumption shall be prohibited from reexport without further processing to remove the contamination and reinspection by the Administration.

SEC. 403. NOTIFICATION AND RECALL.

(a) NOTICE TO ADMINISTRATOR OF VIOLATION.—

(1) IN GENERAL.—A person that has reason to believe that any food introduced into or in

interstate commerce, or held for sale (whether or not the first sale) after shipment in interstate commerce, may be in violation of the food safety law shall immediately notify the Administrator of the identity and location of the food.

(2) MANNER OF NOTIFICATION.—Notification under paragraph (1) shall be made in such manner and by such means as the Administrator may require by regulation.

(b) RECALL AND CONSUMER NOTIFICATION.—

(1) VOLUNTARY ACTIONS.—If the Administrator determines that food is in violation of the food safety law when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce and that there is a reasonable probability that the food, if consumed, would present a threat to public health, as determined by the Administrator, the Administrator shall give the appropriate persons (including the manufacturers, importers, distributors, or retailers of the food) an opportunity to—

(A) cease distribution of the food;

(B) notify all persons—

(i) processing, distributing, or otherwise handling the food to immediately cease such activities with respect to the food; or

(ii) to which the food has been distributed, transported, or sold, to immediately cease distribution of the food;

(C) recall the food;

(D) in conjunction with the Administrator, provide notice of the finding of the Administrator—

(i) to consumers to whom the food was, or may have been, distributed; and

(ii) to State and local public health officials; or

(E) take any combination of the measures described in this paragraph, as determined by the Administrator to be appropriate in the circumstances.

(2) MANDATORY ACTIONS.—If a person referred to in paragraph (1) refuses to or does not adequately carry out the actions described in that paragraph within the time period and in the manner prescribed by the Administrator, the Administrator shall—

(A) have authority to control and possess the food, including ordering the shipment of the food from the food establishment to the Administrator—

(i) at the expense of the food establishment; or

(ii) in an emergency (as determined by the Administrator), at the expense of the Administration; and

(B) by order, require, as the Administrator determines to be necessary, the person to immediately—

(i) cease distribution of the food; and

(ii) notify all persons—

(I) processing, distributing, or otherwise handling the food to immediately cease such activities with respect to the food; or

(II) if the food has been distributed, transported, or sold, to immediately cease distribution of the food.

(3) NOTIFICATION TO CONSUMERS BY ADMINISTRATOR.—The Administrator shall, as the Administrator determines to be necessary, provide notice of the finding of the Administrator under paragraph (1)—

(A) to consumers to whom the food was, or may have been, distributed; and

(B) to State and local public health officials.

(4) NONDISTRIBUTION BY NOTIFIED PERSONS.—A person that processes, distributes, or otherwise handles the food, or to which the food has been distributed, transported, or sold, and that is notified under paragraph (1)(B) or (2)(B) shall immediately cease distribution of the food.

(5) AVAILABILITY OF RECORDS TO ADMINISTRATOR.—Each person referred to in paragraph (1) that processed, distributed, or otherwise handled food shall make available to the Administrator information necessary to carry out this subsection, as determined by the Administrator, regarding—

(A) persons that processed, distributed, or otherwise handled the food; and

(B) persons to which the food has been transported, sold, distributed, or otherwise handled.

(c) INFORMAL HEARINGS ON ORDERS.—

(1) IN GENERAL.—The Administrator shall provide any person subject to an order under subsection (b) with an opportunity for an informal hearing, to be held as soon as practicable but not later than 2 business days after the issuance of the order.

(2) SCOPE OF THE HEARING.—In a hearing under paragraph (1), the Administrator shall consider the actions required by the order and any reasons why the food that is the subject of the order should not be recalled.

(d) POST-HEARING RECALL ORDERS.—

(1) AMENDMENT OF ORDER.—If, after providing an opportunity for an informal hearing under subsection (c), the Administrator determines that there is a reasonable probability that the food that is the subject of an order under subsection (b), if consumed, would present a threat to the public health, the Administrator, as the Administrator determines to be necessary, may—

(A) amend the order to require recall of the food or other appropriate action;

(B) specify a timetable in which the recall shall occur;

(C) require periodic reports to the Administrator describing the progress of the recall; and

(D) provide notice of the recall to consumers to whom the food was, or may have been, distributed.

(2) VACATION OF ORDERS.—If, after providing an opportunity for an informal hearing under subsection (c), the Administrator determines that adequate grounds do not exist to continue the actions required by the order, the Administrator shall vacate the order.

(e) REMEDIES NOT EXCLUSIVE.—The remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available.

SEC. 404. INJUNCTION PROCEEDINGS.

(a) JURISDICTION.—The district courts of the United States, and the United States courts of the territories and possessions of the United States, shall have jurisdiction, for cause shown, to restrain a violation of section 202, 203, 204, 207, or 401 (or a regulation promulgated under that section).

(b) TRIAL.—In a case in which violation of an injunction or restraining order issued under this section also constitutes a violation of the food safety law, trial shall be by the court or, upon demand of the accused, by a jury.

SEC. 405. CIVIL AND CRIMINAL PENALTIES.

(a) CIVIL SANCTIONS.—

(1) CIVIL PENALTY.—

(A) IN GENERAL.—Any person that commits an act that violates the food safety law (including a regulation promulgated or order issued under a Federal food safety law) may be assessed a civil penalty by the Administrator of not more than $10,000 for each such act.

(B) SEPARATE OFFENSE.—Each act described in subparagraph (A) and each day during which that act continues shall be considered a separate offense.

(2) OTHER REQUIREMENTS.—

(A) WRITTEN ORDER.—The civil penalty described in paragraph (1) shall be assessed by the Administrator by a written order, which shall specify the amount of the penalty and the basis for the penalty under subparagraph (B) considered by the Administrator.

(B) AMOUNT OF PENALTY.—Subject to paragraph (1)(A), the amount of the civil penalty shall be determined by the Administrator, after considering—

(i) the gravity of the violation;

(ii) the degree of culpability of the person;

(iii) the size and type of the business of the person; and

(iv) any history of prior offenses by the person under the food safety law.

(C) REVIEW OF ORDER.—The order may be reviewed only in accordance with subsection (c).

(b) CRIMINAL SANCTIONS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a person that knowingly produces or introduces into commerce food that is unsafe or otherwise adulterated or misbranded shall be imprisoned for not more than 1 year or fined not more than $10,000, or both.

(2) SEVERE VIOLATIONS.—A person that commits a violation described in paragraph (1) after a conviction of that person under this section has become final, or commits such a violation with the intent to defraud or mislead, shall be imprisoned for not more than 3 years or fined not more than $100,000, or both.

(3) EXCEPTION.—No person shall be subject to the penalties of this subsection—

(A) for having received, proffered, or delivered in interstate commerce any food, if the receipt, proffer, or delivery was made in good faith, unless that person refuses to furnish (on request of an officer or employee designated by the Administrator)—

(i) the name, address and contact information of the person from whom that person purchased or received the food;

(ii) copies of all documents relating to the person from whom that person purchased or received the food; and

(iii) copies of all documents pertaining to the delivery of the food to that person; or

(B) if that person establishes a guaranty signed by, and containing the name and address of, the person from whom that person received in good faith the food, stating that the food is not adulterated or misbranded within the meaning of this Act.

(c) JUDICIAL REVIEW.—

(1) IN GENERAL.—An order assessing a civil penalty under subsection (a) shall be a final order unless the person—

(A) not later than 30 days after the effective date of the order, files a petition for judicial review of the order in the United States court of appeals for the circuit in which that person resides or has its principal place of business or the United States Court of Appeals for the District of Columbia; and

(B) simultaneously serves a copy of the petition by certified mail to the Administrator.

(2) FILING OF RECORD.—Not later than 45 days after the service of a copy of the petition under paragraph (1)(B), the Administrator shall file in the court a certified copy of the administrative record upon which the order was issued.

(3) STANDARD OF REVIEW.—The findings of the Administrator relating to the order shall be set aside only if found to be unsupported by substantial evidence on the record as a whole.

(d) COLLECTION ACTIONS FOR FAILURE TO PAY.—

(1) IN GENERAL.—If any person fails to pay a civil penalty assessed under subsection (a) after the order assessing the penalty has become a final order, or after the court of appeals described in subsection (b) has entered final judgment in favor of the Administrator, the Administrator shall refer the matter to the Attorney General, who shall institute in a United States district court of competent

jurisdiction a civil action to recover the amount assessed.

(2) LIMITATION ON REVIEW.—In a civil action under paragraph (1), the validity and appropriateness of the order of the Administrator assessing the civil penalty shall not be subject to judicial review.

(e) PENALTIES PAID INTO ACCOUNT.—The Administrator—

(1) shall deposit penalties collected under this section in an account in the Treasury; and

(2) may use the funds in the account, without further appropriation or fiscal year limitation—

(A) to carry out enforcement activities under food safety law; or

(B) to provide assistance to States to inspect retail commercial food establishments or other food or firms under the jurisdiction of State food safety programs.

(f) DISCRETION OF THE ADMINISTRATOR TO PROSECUTE.—Nothing in this Act requires the Administrator to report for prosecution, or for the commencement of an action, the violation of the food safety law in a case in which the Administrator finds that the public interest will be adequately served by the assessment of a civil penalty under this section.

(g) REMEDIES NOT EXCLUSIVE.—The remedies provided in this section may be in addition to, and not exclusive of, other remedies that may be available.

SEC. 406. PRESUMPTION.

In any action to enforce the requirements of the food safety law, the connection with interstate commerce required for jurisdiction shall be presumed to exist.

SEC. 407. WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—No Federal employee, employee of a Federal contractor or subcontractor, or any individual employed by a company (referred to in this section as a ''covered individual''), may be discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against, because of any lawful act done by the covered individual to—

(1) provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct that the covered individual reasonably believes constitutes a violation of any law, rule, or regulation, or that the covered individual reasonably believes constitutes a threat to the public health, when the information or assistance is provided to, or the investigation is conducted by—

(A) a Federal regulatory or law enforcement agency;

(B) a Member or committee of Congress; or

(C) a person with supervisory authority over the covered individual (or such other individual who has the authority to investigate, discover, or terminate misconduct);

(2) file, cause to be filed, testify, participate in, or otherwise assist in a proceeding or action filed or about to be filed relating to a violation of any law, rule, or regulation; or

(3) refused to violate or assist in the violation of any law, rule, or regulation.

(b) ENFORCEMENT ACTION.—

(1) IN GENERAL.—A covered individual who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c) by filing a complaint with the Secretary of Labor. If the Secretary of Labor has not issued a final decision within 180 days after the date on which the complaint is filed and there is no showing that such delay is due to the bad faith of the claimant, the claimant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(2) PROCEDURE.—

(A) IN GENERAL.—An action under paragraph (1) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

(B) EXCEPTION.—Notification under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the person's employer.

(C) BURDENS OF PROOF.—An action brought under paragraph (1) shall be governed by the legal burdens of proof set for in section 42121(b) of title 49, United States Code.

(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

(c) REMEDIES.—

(1) IN GENERAL.—A covered individual prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the covered individual whole.

(2) COMPENSATORY DAMAGES.—Relief for any action described in paragraph (1) shall include—

(A) reinstatement with the same seniority status that the covered individual would have had, but for the discrimination;

(B) the amount of any back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(d) RIGHTS RETAINED BY THE COVERED INDIVIDUAL.—Nothing in this section shall be construed to diminish the rights, privileges, or remedies of any covered individual under any Federal or State law, or under any collective bargaining agreement.

SEC. 408. ADMINISTRATION AND ENFORCEMENT.

(a) IN GENERAL.—For the efficient administration and enforcement of the food safety law, the provisions (including provisions relating to penalties) of sections 6, 8, 9, and 10 of the Federal Trade Commission Act (15 U.S.C. 46, 48, 49, and 50) (except subsections (c) through (h) of section 6 of that Act), relating to the jurisdiction, powers, and duties of the Federal Trade Commission and the Attorney General to administer and enforce that Act, and to the rights and duties of persons with respect to whom the powers are exercised, shall apply to the jurisdiction, powers, and duties of the Administrator and the Attorney General in administering and enforcing the provisions of the food safety law and to the rights and duties of persons with respect to whom the powers are exercised, respectively.

(b) INQUIRIES AND ACTIONS.—

(1) IN GENERAL.—The Administrator, in person or by such agents as the Administrator may designate, may prosecute any inquiry necessary to carry out the duties of the Administrator under the food safety law in any part of the United States.

(2) POWERS.—The powers conferred by sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50) on the United States district courts may be exercised for the purposes of this chapter by any United States district court of competent jurisdiction.

SEC. 409. CITIZEN CIVIL ACTIONS.

(a) CIVIL ACTIONS.—A person may commence a civil action against—

(1) a person that violates a regulation (including a regulation establishing a performance standard), order, or other action of the Administrator to ensure the safety of food; or

(2) the Administrator (in his or her capacity as the Administrator), if the Administrator fails to perform an act or duty to ensure the safety of food that is not discretionary under the food safety law.

(b) COURT.—

(1) IN GENERAL.—The action shall be commenced in the United States district court for the district in which the defendant resides, is found, or has an agent.

(2) JURISDICTION.—The court shall have jurisdiction, without regard to the amount in controversy, or the citizenship of the parties, to enforce a regulation (including a regulation establishing a performance standard), order, or other action of the Administrator, or to order the Administrator to perform the act or duty.

(3) DAMAGES.—The court may—

(A) award damages, in the amount of damages actually sustained; and

(B) if the court determines it to be in the interest of justice, award the plaintiff the costs of suit, including reasonable attorney's fees, reasonable expert witness fees, and penalties.

(c) REMEDIES NOT EXCLUSIVE.—The remedies provided for in this section shall be in addition to, and not exclusive of, other remedies that may be available.

TITLE V—IMPLEMENTATION

SEC. 501. DEFINITION.

For purposes of this title, the term ''transition period'' means the 12-month period beginning on the effective date of this Act.

SEC. 502. REORGANIZATION PLAN.

(a) SUBMISSION OF PLAN.—Not later than 180 days after the effective date of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following:

(1) The transfer of agencies, personnel, assets, and obligations to the Administration pursuant to this Act.

(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Administration pursuant to this Act.

(b) PLAN ELEMENTS.—The plan transmitted under subsection (a) shall contain, consistent with this Act, such elements as the President determines appropriate, including the following:

(1) Identification of any functions of agencies designated to be transferred to the Administration pursuant to this Act that will not be transferred to the Administration under the plan.

(2) Specification of the steps to be taken by the Administrator to organize the Administration, including the delegation or assignment of functions transferred to the Administration among the officers of the Administration in order to permit the Administration to carry out the functions transferred under the plan.

(3) Specification of the funds available to each agency that will be transferred to the Administration as a result of transfers under the plan.

(4) Specification of the proposed allocations within the Administration of unexpended funds transferred in connection with transfers under the plan.

(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.

(6) Specification of the proposed allocations within the Administration of the functions of the agencies and subdivisions that are not related directly to ensuring the safety of food.

(c) MODIFICATION OF PLAN.—The President may, on the basis of consultations with the appropriate congressional committees, modify, or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The reorganization plan described in this section, including any modifications or revisions of the plan under

subsection (c), shall become effective for an agency on the earlier of—

(A) the date specified in the plan (or the plan as modified pursuant to subsection (c)), except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a); or

(B) the end of the transition period.

(2) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed to require the transfer of functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.

(3) SUPERCEDES EXISTING LAW.—Paragraph (1) shall apply notwithstanding section 905(b) of title 5, United States Code.

SEC. 503. TRANSITIONAL AUTHORITIES.

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Administration, any official having authority over or function relating to the agency immediately before the effective date of this Act shall provide the Administrator such assistance, including the use of personnel and assets, as the Administrator may request in preparing for the transfer and integration of the agency to the Administration.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Administrator, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—

(1) IN GENERAL.—During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues to be in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act.

(2) COMPENSATION.—While acting pursuant to paragraph (1), such officers shall receive compensation at the higher of—

(A) the rates provided by this Act for the respective offices in which they act; or

(B) the rates provided for the offices held at the time of designation.

(3) LIMITATION.—Nothing in this Act shall be construed to require the advice and consent of the Senate to the appointment by the President to a position in the Administration of any officer whose agency is transferred to the Administration pursuant to this Act and whose duties following such transfer are germane to those performed before such transfer.

(d) TRANSFER OF PERSONNEL, ASSETS, OBLIGATIONS, AND FUNCTION.—

(1) IN GENERAL.—Consistent with section 1531 of title 31, United States Code, the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds that relate to the functions transferred under subsection (a) from a Federal agency shall be transferred to the Administration.

(2) UNEXPENDED FUNDS.—Unexpended funds transferred under this subsection shall be used by the Administration only for the purposes for which the funds were originally authorized and appropriated.

SEC. 504. SAVINGS PROVISIONS.

(a) COMPLETED ADMINISTRATIVE ACTIONS.—The enactment of this Act or the transfer of functions under this Act shall not affect any order, determination, rule, regulation, permit, personnel action, agreement, grant, contract, certificate, license, registration, privilege, or other administrative action issued, made, granted, or otherwise in effect or final with respect to that agency on the day before the transfer date with respect to the transferred functions

(b) PENDING PROCEEDINGS.—Subject to the authority of the Administrator under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Administration, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such order shall continue in effect until amended, modified, superceded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) PENDING CIVIL ACTIONS.—Subject to the authority of the Administrator under this Act, any civil action commenced with regard to that agency pending before that agency on the day before the transfer date with respect to the transferred functions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Administration.

(d) REFERENCES.—

(1) IN GENERAL.—After the transfer of functions from a Federal agency under this Act, any reference in any other Federal law, Executive order, rule, regulation, directive, document, or other material to that Federal agency or the head of that agency in connection with the administration or enforcement of the food safety laws shall be deemed to be a reference to the Administration or the Administrator, respectively.

(2) STATUTORY REPORTING REQUIREMENTS.—Statutory reporting requirements that applied in relation to such an agency immediately before the effective date of this Act shall continue to apply following such transfer if they refer to the agency by name.

SEC. 505. CONFORMING AMENDMENTS.

(a) EXECUTIVE SCHEDULE.—Section 5313 of title 5, United States Code, is amended by inserting at the end the following new item:

''Administrator of Food Safety.''.

(b) REPEAL OF CERTAIN PROVISIONS.—Section 18 of the Poultry Products Inspection Act (21 U.S.C. 467), section 401 of the Federal Meat Inspection Act (21 U.S.C. 671), and section 18 of the Egg Products Inspection Act (21 U.S.C. 1047) are repealed.

SEC. 506. ADDITIONAL TECHNICAL AND CONFORMING AMENDMENTS.

Not later than 60 days after the submission of the reorganization plan under section 502, the President shall prepare and submit proposed legislation to Congress containing necessary and appropriate technical and conforming amendments to the Acts listed in section 3(15) of this Act to reflect the changes made by this Act.

SEC. 507. REGULATIONS.

The Administrator may promulgate such regulations as the Administrator determines are necessary or appropriate to perform the duties of the Administrator.

SEC. 508. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

SEC. 509. LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.

For the fiscal year that includes the effective date of this Act, the amount authorized to be appropriated to carry out this Act shall not exceed—

(1) the amount appropriated for that fiscal year for the Federal agencies identified in section 102(b) for the purpose of administering or enforcing the food safety law; or

(2) the amount appropriated for those agencies for that purpose for the preceding fiscal year, if, as of the effective date of this Act, appropriations for those agencies for the fiscal year that includes the effective date have not yet been made.

SEC. 510. EFFECTIVE DATE.

This Act takes effect on the date of enactment of this Act.

By Mr. LEAHY (for himself and Ms. SNOWE):

S. 730. A bill to amend the Clean Air Act to establish requirements concerning the operation of fossil fuel-fired electric utility steam generating units, commercial and industrial boiler units, solid waste incineration units, medical waste incinerators, hazardous waste combustors, chlor-alkali plants, and Portland cement plants to reduce emissions of mercury to the environment, and for other purposes; to the Committee on Environment and Public Works.

Mr. LEAHY. Mr. President, today I again will discuss mercury pollution and the serious and immediate health risks it poses to the health of citizens across our Nation.

This is not a new issue. We have known about mercury pollution for decades, and it remains one of, if not the last, major toxic pollutant without a comprehensive plan to control its release. We know where the sources mercury pollution are, we know where the pollution deposits, and we definitely know what harm it causes to people and to wildlife.

We need to confront mercury pollution because it is a threat to pregnant women and children. The Environmental Protection Agency's own scientists estimate that one of every six women of child-bearing age has elevated levels of mercury in her body above safe thresholds.

Mercury can cause neurological harm to children exposed to increased mercury levels while in the womb and during the first few years of their lives, which can lead to increased risk for learning disabilities, developmental delays, and other serious problems.

Just last year EPA scientists nearly doubled the previous estimate of the number of children at increased risk from exposure to elevated mercury levels in their mothers' wombs from 300,000 to over 600,000. This finding should alarm all of us and spur this Administration to promptly develop strong controls on mercury pollution from power plants that meet the requirements of the Clean Air Act and that fully protect women and children.

Yet unfortunately, this Administration has not done that. The Administration's new mercury rule and the so-

called ''Clear Skies'' proposal turn back progress, ignore available clean air technology, and will leave more toxic mercury in our air, water, and fish and for a longer time than is necessary.

Because of this, on behalf of Senator SNOWE and myself, I am reintroducing legislation today that will confront this problem directly and that will reduce mercury pollution from all sources.

Our bill will reduce mercury emissions from coal-fired power plants by 90 percent by 2010. The cap-and-trade approach the Administration is pushing for in both the mercury rule and the President's Clear Skies proposal would only reduce emissions by less than 50 percent in the near future and possibly 70 percent over the next 15 years.

I introduce this legislation on the heels of two recent reports about the proposed EPA mercury rule, one from the Government Accountability Office and one from the EPA Inspector General. Both the IG and GAO reports severely criticize this Administration's mercury rulemaking process, saying it violated EPA policy, OMB guidance, Presidential Executive Orders and, in some instances, important provisions of the Clean Air Act.

I find this extremely troublesome. These are serious problems that greatly undermine the credibility of this Administration and that led them to create policies that fail to adequately protect the children in my state of Vermont and those all across the country. Rather than develop unbiased science-based limits on mercury pollution, they instead developed limits to fit predetermined numbers found in the President's industry friendly Clear Skies proposal.

The GAO found critical flaws with the economic analysis that basically prevent anyone from actually verifying the supposed benefits of the cap-and-trade approach proposed in both EPA's rule and in the Clear Skies plan. In simple terms you could call it another example of the smoke and mirrors this Administration has used to support its flawed dirty air pollution policies.

Not only were the supposed benefits of the cap-and-trade proposal virtually undocumented, they did not even bother to analyze whatsoever the health benefits to women and children from controlling toxic mercury. If protecting the health of women and children is truly important to this Administration, then why would they skip such an important analysis?

Not surprisingly, the EPA Inspector General confirmed what the GAO found. That EPA staff were directed to ignore the Clean Air Act and instead write a mercury rule to fit the weak mercury caps in the President's Clear Skies initiative.

Rather than let EPA's capable scientists and engineers do their jobs, they decided to play politics and bow to special interest groups. How else did industry favorable policies and analyses found in memos written by industry lobbyists make it into the rule, verbatim?

Both the GAO and IG reports make it clear that EPA staff were pressured to ignore parts of the Clean Air Act and to propose weaker mercury reductions than what are technically feasible and required under the law.

The President's Clear Skies proposal formed the basis for the flawed mercury rule, so it obviously shares the same flaws. These two reports confirm what many of us already suspected, that Clear Skies is based on biased analyses, inadequate and faulty justifications.

This Administration must stop the shenanigans. They need to stop downplaying the health risks of mercury pollution and stop catering to the special interests of the power industry and their lobbyists.

The clarity and diversity of voices opposed to their poor mercury policies are unprecedented in the 30-year history of EPA. Now is the time for them to listen to the voices of more than 600,000 citizens and more than one million sportsmen and women nationwide that sent EPA letters opposing the weak mercury rule.

Now is the time to listen to the nearly 100 national and local church leaders, representing dozens of denominations and millions of congregants, who sent a letter to President Bush expressing ''grave moral concern'' about his misleadingly titled Clear Skies Initiative.

I call on the Administration to take immediate action to correct the serious problems in EPA's proposed power plant mercury rules. Instead, I hope that we can begin to meet the targets set out in this bill and start protecting the health of women and children.

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

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

OVERVIEW OF THE OMNIBUS MERCURY EMISSIONS REDUCTION ACT OF 2005

Sponsored by Senators Patrick Leahy and Olympia Snowe

What will the Omnibus Mercury Emissions Reduction Act of 2005 do?

The Omnibus Mercury Emissions Reduction Act of 2005 mandates substantial reductions in mercury emissions from all major sources in the United States. It is the only comprehensive legislation to control mercury emissions from all major sources. It directs EPA to issue new standards for unregulated sources and to monitor and report on the progress of currently regulated sources. It sets an aggressive timetable for these reductions so that mercury emissions are reduced as soon as possible.

With these emissions reductions, the bill requires the safe disposal of mercury recovered from pollution control systems, so that the hazards of mercury are not merely transferred from one environmental medium to another. It requires annual public reporting—in both paper and electronic form—of facility-specific mercury emissions. It phases out mercury use in consumer products, requires product labeling, and mandates international cooperation. It supports research into the retirement of excess mercury, the handling of mercury waste, the effectiveness of fish consumption advisories, and the magnitude of previously uninventoried sources.

Section 3. Mercury emission standards for fossil fuel-fired electric utility steam generating units

The EPA's Mercury Study Report to Congress estimated 52 tons of mercury emissions occur per year from coal- and oil-fired electric utility steam generating units. More recently, an EPA inventory estimated 48 tons of mercury from coal-fired power plants. Collectively, these power plants constitute the largest source of mercury emissions in the United States. In December 2000, the EPA issued a positive determination to regulate these mercury emissions. But these rules will take years to write and implement, and there is already vigorous industry opposition. It is uncertain what form these rules will take or how long they may be delayed. This section requires EPA to set a Amaximum achievable control technology (MACT) standard for these emissions, such that nationwide emissions decrease by at least 90 percent.

Section 4. Mercury emission standards for coal- and oil-fired commercial and industrial boiler units

The EPA's report on its study estimates that 29 tons of mercury is emitted per year from coal- and oil-fired commercial and industrial boiler units. This section requires EPA to set a MACT standard for these mercury emissions, such that nationwide emissions decrease by at least 90 percent.

Section 5. Reduction of mercury emissions from solid waste incineration units

The EPA study estimates that 30 tons of mercury emissions are released each year from municipal waste combustors. These emissions result from the presence of mercury-containing items such as fluorescent lamps, fever thermometers, thermostats and switches, in municipal solid waste streams. In 1995, EPA promulgated final rules for these emissions, and these rules took effect in 2000. This section reaffirms those rules and requires stricter rules for units that do not comply. The most effective way to reduce mercury emissions from incinerators is to reduce the volume of mercury-containing items before they reach the incinerator. That is why this section also requires the separation of mercury-containing items from the waste stream, the labeling of mercury-containing items to facilitate this separation, and the phase-out of mercury in consumer products within three years, allowing for the possibility of exceptions for essential uses.

Section 6. Mercury emission standards for chlor-alkali plants

The EPA study estimates that 7 tons of mercury emissions are released per year from chlor-alkali plants that use the mercury cell process to produce chlorine. EPA has not issued rules to regulate these emissions. This section requires each chlor-alkali plant that uses the mercury cell process to reduce its mercury emissions by 95 percent. The most effective way to meet this standard would be to switch to the more energy efficient membrane cell process, which many plants already use.

Section 7. Mercury emission standards for Portland cement plants

The EPA study estimates that 5 tons of mercury emissions are released each year from Portland cement plants. In 1999 EPA promulgated final rules for emissions from cement plants, but these rules did not include mercury. This section requires each

Portland cement plant to reduce its mercury emissions by 95 percent.

Section 8. Report on implementation of mercury emission standards for medical waste incinerators

The EPA study estimates that 16 tons of mercury emissions are released per year from medical waste incinerators. In 1997 EPA issued final rules for emissions from hospital/medical/infectious waste incinerators. This section requires EPA to report on the success of these rules in reducing these mercury emissions.

Section 9. Report on implementation of mercury emission standards for hazardous waste combustors

The EPA study estimates that 7 tons of mercury emissions are released each year from hazardous waste incinerators. In 1999 EPA promulgated final rules for these emissions. This section requires EPA to report on the success of these rules in reducing these mercury emissions.

Section 10. Defense activities

This section requires the Department of Defense to report on its use of mercury, including the steps it is taking to reduce mercury emissions and to stabilize and recycle discarded mercury. This section also prohibits the Department of Defense from returning the nearly 5,000 tons of mercury in the National Defense Stockpile to the global market.

Section 11. International activities

This section directs EPA to work with Canada and Mexico to study mercury pollution in North America, including the sources of mercury pollution, the pathways of the pollution, and options for reducing the pollution.

Section 12. Mercury research

This section supports a variety of mercury research projects. First, it promotes accountability by mandating an interagency report on the effectiveness of this act in reducing mercury pollution. Second, it mandates an EPA study on mercury sedimentation trends in major bodies of water. Third, it directs EPA to evaluate and improve state-level mercury data and fish consumption advisories. Fourth, it mandates a National Academy of Sciences report on the retirement of excess mercury, such as stockpiled industrial mercury that is no longer needed due to plant closures or process changes. Fifth, it mandates an EPA study of mercury emissions from electric arc furnaces, a source not studied in the EPA's study report. Finally, it authorizes $2,000,000 for modernization and expansion of the Mercury Deposition Network, plus $10,000,000 over ten years for operational support of that network.

By Mr. CONRAD (for himself, Mr. BURNS, Mr. JOHNSON, Mr. DORGAN, Mr. KOHL, Mr. DOMENICI, Mr. BINGAMAN, and Mr. THUNE):

S. 731. A bill to recruit and retain more qualified individuals to teach in Tribal Colleges or Universities; to the Committee on Indian Affairs.

Mr. CONRAD. Mr. President, three years ago, Senator BURNS and I formed the bipartisan Task Force on Tribal Colleges and Universities to raise awareness of the important role that the tribal colleges and universities play in their respective communities as educational, economic, and cultural centers. The Task Force seeks to advance initiatives that help improve the quality education the colleges provide.

For more than three decades, tribal colleges have been providing a quality education to help Native Americans of all ages reach their fullest potential. More than 30,000 students from 250 tribes nationwide attend tribal colleges. Tribal colleges serve young people preparing to enter the job market, dislocated workers learning new skills, and people seeking to move off welfare. I am a strong supporter of our Nation's tribal colleges because, more than any other factor, they are bringing hope and opportunity to America's Indian communities.

Over the years, I have met with many tribal college students, and I am always impressed by their commitment to their education, their families and their communities. Tribal colleges and universities have been highly successful in helping Native Americans obtain a higher education. Congress has recognized the importance of these institutions and the significant gains they have achieved in helping more individuals obtain their education. While Congress has steadily increased its financial support of these institutions, many challenges still remain.

One of the challenges that the tribal college presidents have expressed to me is the frustration and difficulty they have in attracting qualified individuals to teach at the colleges. Recruitment and retention are difficult for many of the colleges because of their geographic isolation and low faculty salaries.

To help tackle the challenges of recruiting and retaining qualified teachers, I am introducing the Tribal Colleges and Universities Teacher Loan Forgiveness Act. This legislation will provide student loan forgiveness to individuals who commit to teach for up to five years in one of the tribal colleges nationwide. Individuals who have Perkins, Direct, or Guaranteed loans may qualify to receive up to $15,000 in loan forgiveness. This program will provide these institutions with extra help in attracting qualified teachers, and thus help ensure that deserving students receive a quality education.

I would be remiss if I did not recognize that former Senator Daschle was responsible for spearheading this initiative for a number of years. The tribal colleges lost a true champion, but I am pleased to carry forward his vision and support for the colleges.

I am pleased that Senators BURNS, JOHNSON, DORGAN, KOHL, DOMENICI, and BINGAMAN are original cosponsors of this bill, and I look forward to working with my colleagues to pass this important legislation.

Mr. BURNS. Mr. President, I am pleased to join my colleague, Senator CONRAD, in sponsoring legislation to provide student loan forgiveness to educators who commit to teaching in our tribal colleges. This legislation will provide up to $15,000 in loan forgiveness—a strong recruitment and retention tool for tribal colleges which often can't pay the same salaries as larger institutions.

I am, and have been for years, a strong supporter of Montana's tribal colleges as well as tribal colleges nationwide. They contribute greatly to our Native American communities, providing the tools for our tribal children to succeed in the world of higher education. Graduates often continue their education at Montana State or the University of Montana and take this knowledge and expertise back to their communities. These students strengthen and improve both our tribal communities and our State as a whole. They add to the social, economic, political and cultural fabric that is unique to Indian Country.

I know how hard our tribal colleges work to achieve success and to maintain high standards. A talented faculty is key to those goals, but too often tight budgets for tribal colleges limit their ability to recruit and retain faculty. Our tribal colleges and their students deserve quality teachers, and providing loan forgiveness will help attract and keep good faculty in what can be very rural areas.

In addition to forgiveness for Perkins, direct or guaranteed loans, this legislation will also provide assistance for nursing faculty at tribal colleges. The nursing shortage is a nationwide problem, particularly in rural areas and specifically in Indian Country. Graduates of tribal colleges often stay near or return home, and that holds true for nursing graduates as well. Supporting nursing programs at tribal colleges addresses that shortage by training professionals who are familiar with the acute medical needs and cultural differences in rural areas and are often willing to stay and wage the battles. This legislation will provide nursing loan forgiveness to nursing instructors at tribal colleges and will help strengthen a valuable program in Montana and around the country.

By Mr. INHOFE:

S. 732. A bill to authorize funds to Federal aid highways, highway safety programs, and transit programs, and for other purposes; from the Committee on Environment and Public Works; placed on the calendar.

Mr. INHOFE. Mr. President, I am introducing today the Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2005, SAFETEA, which the Committee on Environment and Public Works reported out on March 16, 2005. This bill reauthorizes the Federal aid highway program which has been operating on extensions since it expired on September 30, 2003. The bill I am introducing today is essentially S. 1072 as passed by the Senate in the 108th Congress, with the exception that the overall funding level has been changed from $318 billion over 6 years to reflect the President's proposed funding level of $283.9 billion over 6 years.

Last year, this body voted 76 to 21 to adopt S. 1072. Clearly, there was overwhelming support for this measure

then, and in conversations with Members this year, I am confident that there is a real desire to get this bill done. We are already to take the bill up on the Senate floor just as soon as it is scheduled by the leadership.

It has been nearly 18 months since the current program, Transportation Equity Act for the 21 Century—TEA–21, expired. To date, we have done a total of six extensions with the current extension due to expire on May 31. This next deadline is fast approaching, and in addition to completing action on the floor, we still must conference with the House which has a very different formula program than proposed last year. We will have more challenging issues to address and need as much time as possible to do so.

Briefly, as in the bill passed by the Senate last year, the bill I am introducing today will address several critical issues in our transportation system. Specifically, the language improves on the existing program in the following areas:

Safety: Nearly 43,000 people died in 2002 on our Nation's highways. This represents the single greatest cause of accidental death in America. The Environment and Public Works Committee bill addresses this by creating a new core safety program and funding it accordingly.

Congestion: According to the Department of Transportation, time spent in congestion increased from 31.7 percent in 1992 to 33.1 percent in 2000. Based on this rate, a typical ''rush hour'' in an urbanized area is 5.3 hours per day. The problem is not in just urban areas; cities with populations less than 500,000 have experienced the greatest growth in travel delays, according to the DOT. Under this proposal, we would address the congestion problem by establishing a new Transportation Freight Gateway program which targets bottlenecks around ports and intermodal facilities.

Environment: This bill addresses the need to reduce delays in project delivery in several ways. The bill contains carefully balanced language on incorporating environmental concerns into planning and project review as early as practicable, while ensuring that disagreements over such concerns don't indefinitely delay much needed transportation projects. The language on the section 4(f) process will also help reduce unnecessary delays by enabling projects with de minimis impacts on 4(f) resources to proceed in a timely manner.

Also, the bill seeks to correct the inconsistencies between the transportation planning and air quality planning that must take place in areas in nonattainment under the Clean Air Act. The bill rationalizes the schedules for developing transportation plans and demonstrating conformity and aligns the length of the transportation plan considered under conformity with the length of the air quality plan.

Equity: The bill provides all States at least 10 percent growth over TEA–21 while increasing the rate of return for donor States from the current 90.5 percent to 92 percent by 2009. We maintain the TEA–21 scope of 92.5 percent.

The longer we delay enactment of a multiyear bill, we are negatively affecting economic growth. According to DOT estimates, every $1 billion of Federal Funds invested in highway improvements creates 47,000 jobs. The same $1 billion investment yields $500 million in new orders for the manufacturing sector and $500 million spread throughout other sectors of the economy.

States contract awards for the 2005 spring and summer construction season are going out to bid. If we fail to pass this bill soon, States will not know what to expect in Federal funding and the uncertainty will potentially force States to delay putting these projects out for bid. According to the American Association of State Highway Transportation Officials, AASHTO, an estimated 90,000 jobs are at stake. This problem is exacerbated for northern States which have shorter construction seasons. Many State transportation departments have advanced State dollars to construct projects eligible for Federal funding in anticipation of our action to reauthorize the program. Without a new bill, States are essentially left ''holding the bag.''

Over the past 6 years under TEA–21, we have made great progress in preserving and improving the overall physical condition and operation of our transportation system; however, more needs to be done. A safe, effective transportation system is the foundation of our economy. We are past due to fulfill an obligation to this country and the American people.

As mentioned earlier, the bill is essentially the same bill that was passed on the Senate floor last year—a bipartisan product of many months of hard work and compromise. It remains a very good piece of legislation.

The most significant difference with this bill, of course, is that it is drafted at the $283.9 billion level over 6 years. Since 2004 is behind us, the Environment and Public Works Committee bill includes only years 2005 to 2009 which is effectively $283.9 minus fiscal year 2004. S. 1072 passed the Senate last year and guaranteed all donor States a rate of return of 95 percent. At a lower funding level, we were able only to achieve a 92-percent rate of return but kept the 10 percent floor over TEA–21.

I am certain my colleagues share my strong desire to get a transportation reauthorization bill passed and signed into law by the President. I urge the leadership to schedule consideration of this bill this month so we can get it done.

By Mr. SPECTER:

S. 738. A bill to provide relief for the cotton shirt industry; to the Committee on Finance.

Mr. SPECTER. Mr. President, today I seek recognition to introduce legislation entitled the ''Cotton Shirt Industry Tariff Relief and Technical Corrections Act.'' This legislation will strengthen our domestic dress shirt manufacturers and the pima cotton growers. My bill is a technical correction that levels the playing field by correcting an anomaly from previous trade agreements that has unfairly advantaged foreign producers and sent hundreds of jobs offshore.

This legislation reduces duties levied on cotton shirting fabric that is not made in the United States. Currently, U.S. law recognizes this lack of fabric availability and grants special favorable trade concessions to manufacturers in Canada, Mexico, the Caribbean, the Andean region, and Africa. The U.S. has allowed shirts to enter this country duty-free from many other countries, while we have failed to reduce tariffs on those manufacturers that stayed in the U.S. and were forced to compete on these uneven terms. My bill will correct this inequity.

This legislation also recognizes the need to creatively promote the U.S. shirting manufacturing and textiles sectors, and does so through the creation of a Cotton Competitiveness grant program, which is funded through a portion of previously collected duties.

Our country has experienced an enormous loss of jobs in the manufacturing sector. It is critical that our domestic manufacturers are able to compete on a level playing field. In the case of the domestic dress shirt industry, the problem is our own government imposing a tariff of up to eleven percent upon the import of fabric made from U.S. pima cotton. My legislation is a concrete step that this Congress can take to reduce the hemorrhaging of U.S. manufacturing jobs.

One group of beneficiaries of this amendment is a Gitman Brothers factory in Ashland, PA. The Ashland Shirt and Pajama factory was built in 1948 and employs 265 workers. This factory in the Lehigh Valley turns out world class shirts with such labels as Burberry and Saks Fifth Avenue that are shipped across the U.S. Currently, Gitman pays an average tariff of eleven percent on the fabric it imports to make shirts. Their shirts are made of pima cotton that is grown in the Southwestern U.S., but spun into fabric only by special mills in Western Europe. Gitman must compete against Canadian shirt companies that import the same fabric tariff-free and who can then ship their shirts into the U.S. tariff-free under NAFTA. These workers and their families deserve trade laws that do not chase their jobs offshore.

This legislation enjoys the support of the domestic shirting industry, UNITE, and the Pima cotton associations. I offer this legislation on behalf of the men and women of the Gitman factory in Ashland, the domestic dress shirting industry, and the pima cotton growers, so that for them free trade will indeed be fair trade as well.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 97—COMMENDING PATRICIA SUE HEAD SUMMITT, HEAD WOMEN'S BASKETBALL COACH AT THE UNIVERSITY OF TENNESSEE, FOR THREE DECADES OF EXCELLENCE AS A PROVEN LEADER, MOTIVATED TEACHER, AND ESTABLISHED CHAMPION

Mr. FRIST (for himself and Mr. ALEXANDER) submitted the following resolution; which was considered and agreed to:

S. RES. 97

Whereas Pat Summitt, in her 31st year as head coach of the Lady Volunteers (the ''Lady Vols''), has become the Nation's all-time winningest NCAA basketball coach (men's or women's) with her 880th career victory, surpassing the legendary coach Dean Smith of the University of North Carolina;

Whereas Pat Summitt, at the age of 22, took over the women's program at Tennessee in 1974, when there were no scholarships and she had to wash the uniforms and drive the team van;

Whereas Pat Summitt won her first game on January 10, 1975, and continued to win games as she became the youngest coach in the nation to reach 300 wins (34 years old), 400 wins (37 years old), 500 wins (41 years old), 600 wins (44 years old), 700 wins (47 years old), and 800 wins (50 years old);

Whereas Pat Summitt has coached the Lady Vols to 15 30-plus win seasons, including a perfect season of 39–0, 13 Southeastern Conference (SEC) regular-season titles, and 11 SEC tournament championships;

Whereas Pat Summitt has appeared in more NCAA tournament games (107), and has won more tournament games (89), than any other collegiate coach, including a record of 36–0 in the first two rounds, 16 NCAA Final Four appearances, and 6 NCAA Championship Titles, including the NCAA's first back-to-back-to-back women's titles in 1996, 1997, and 1998;

Whereas Pat Summitt played on the 1976 United States Olympic team and later coached the United States women's basketball team to its first Olympic gold medal in 1984;

Whereas Pat Summitt has been named SEC coach of the year 6 times and national coach of the year by several associations, including the Sporting News Coach of the Year, the Naismith Coach of the Year, and the Associated Press Coach of the Year;

Whereas Pat Summitt and the Lady Vols were selected by ESPN as the ''Team of the Decade'' (1990s), sharing the honor with the Florida State University Seminole's football team, and Summitt became the first female coach to appear on the cover of Sports Illustrated;

Whereas Pat Summitt was officially accepted to the Women's Basketball Hall of Fame in 1999, and was then inducted to the Basketball Hall of Fame on October 13, 2000, as only the 4th women's basketball coach to earn Hall of Fame honors;

Whereas Pat Summitt's Lady Vols have a remarkable graduation rate, as each student-athlete who has completed her eligibility at Tennessee has received her degree or is in the process of completing all of the requirements; and

Whereas Pat Summitt has recently been honored by the University of Tennessee, as the court at Thompson-Boling Arena will be named ''The Summitt'': Now, therefore, be it

Resolved, That the Senate commends the University of Tennessee women's basketball coach, Patricia Sue Head Summitt, for three decades of excellence as a proven leader, motivated teacher, and established champion.

SENATE RESOLUTION 98—COMMENDING THE UNIVERSITY OF NORTH CAROLINA MEN'S BASKETBALL TEAM FOR WINNING THE 2005 NATIONAL COLLEGIATE ATHLETIC ASSOCIATION DIVISION I MEN'S BASKETBALL CHAMPIONSHIP

Mr. BURR (for himself and Mrs. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 98

Whereas on April 4, 2005, the North Carolina Tar Heels defeated the Illinois Fighting Illini 75–70 in the finals of the National Collegiate Athletic Association (''NCAA'') Division I Men's Basketball Tournament in St. Louis, Missouri;

Whereas the Tar Heels now hold 5 men's basketball titles, including 4 NCAA tournament titles—the fourth-most in NCAA history;

Whereas the Tar Heels' men's team has won championships in 1924, 1957, 1982, 1993, and 2005;

Whereas Tar Heels head coach and Asheville, North Carolina, native Roy Williams won his first NCAA title in just his second year coaching the team, improving to 470–116 in 17 seasons as a head coach, and has the best record of any active coach in men's basketball;

Whereas seniors Jawad Williams, Jackie Manuel, Melvin Scott, Charlie Everett, and C.J. Hooker celebrated 4 years at North Carolina with a ''Final Four'' win;

Whereas Sean May was named Most Outstanding Player of the tournament, scoring 26 points and collecting 10 rebounds in the final game;

Whereas Tar Heels Raymond Felton and Rashad McCants joined Sean May on the All-Tournament Team, along with Illini players Luther Head and Deron Williams;

Whereas the North Carolina Tar Heels finished the 2004–2005 season with 33 wins and just 4 losses, and won the championship by defeating an Illinois team that tied an NCAA record for wins in a season at 37;

Whereas freshman Tar Heel Marvin Williams helped seal the victory with a tip-in with 1 minute and 26 seconds left to play;

Whereas the Tar Heel defense held Illinois to 27 percent from the field in the first half and prevented the Illini from scoring during the last 2 minutes and 37 seconds;

Whereas North Carolina defeated Michigan State 87–71 to earn a spot in the final contest;

Whereas the Tar Heels defeated Oakland and Iowa State in Charlotte, North Carolina, then Villanova and Wisconsin in Syracuse, New York, to advance to the ''Final Four'';

Whereas Albemarle, North Carolina, native Woody Durham has been the radio play-by-play voice of North Carolina's basketball programs since 1971, and this was his 11th ''Final Four'' with the Tar Heels and third national championship call;

Whereas the Tar Heel team members are excellent representatives of a fine university that is a leader in higher education, producing 38 Rhodes scholars, as well as many fine student-athletes and other leaders;

Whereas each player, coach, trainer, manager, and staff member dedicated this season and their efforts to ensure the North Carolina Tar Heels reached the summit of college basketball;

Whereas the Tar Heels showed tremendous dedication to each other, appreciation to their fans, sportsmanship to their opponents, and respect for the game of basketball throughout the 2005 season; and

Whereas residents of the Old North State and North Carolina fans worldwide are to be commended for their long-standing support, perseverance and pride in the team: Now, therefore, be it

Resolved, That the Senate—

(1) commends the champion North Carolina Tar Heels for their historic win in the 2005 National Collegiate Athletic Association Division I Men's Basketball Tournament;

(2) recognizes the achievements of the players, coaches, students, and support staff who were instrumental in helping the University of North Carolina Tar Heels win the tournament; and

(3) directs the Secretary of the Senate to transmit a copy of this resolution to University of North Carolina Chancellor James Moeser and head coach Roy Williams for appropriate display.

SENATE RESOLUTION 99—EXPRESSING THE SENSE OF THE SENATE TO CONDEMN THE INHUMANE AND UNNECESSARY SLAUGHTER OF SMALL CETACEANS, INCLUDING DALL'S PORPOISE, THE BOTTLENOSE DOLPHIN, RISSO'S DOLPHIN, FALSE KILLER WHALES, PILOT WHALES, THE STRIPED DOLPHIN, AND THE SPOTTED DOLPHIN IN CERTAIN NATIONS

Mr. LAUTENBERG (for himself, Mr. LEVIN, Mr. SARBANES, and Mr. LIEBERMAN) submitted the following resolution; which was referred to the Committee on Foreign Relations::

S. RES. 99

Whereas the United States has consistently worked to increase protections for marine mammals, such as dolphins and whales, since the enactment of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.);

Whereas dolphins and whales are found worldwide, including in both of the polar regions, throughout the high seas, and along most coastal areas;

Whereas these unique, highly social, and intelligent animals have caught the imagination of the public not only in the United States, but in many nations around the world;

Whereas the over-exploitation of small cetaceans for decades has resulted in the serious decline, and in some cases, the commercial extinction, of those species;

Whereas each year tens of thousands of small cetaceans are herded into small coves in certain nations, are slaughtered with spears and knives, and die as a result of blood loss and hemorrhagic shock;

Whereas in many cases, those responsible for the slaughter prevent documentation or data from the events from being recorded or made public;

Whereas the deficient information on hunt yields and small cetacean populations indicates a lack of commitment to maintaining sustainable populations and prevents scrutiny of humaneness of killing methods;

Whereas for at least the past 4 years toxicologists have issued warnings regarding high levels of mercury and other contaminants in meat from small cetaceans caught off coastal regions;

Whereas some nations that participate in small cetacean slaughter are members of the United Nations Convention on the Law of