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 3-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.

FREEDOM OF INFORMATION ACT EXEMPTIONS

Mr. ALEXANDER. I ask unanimous consent the Senate proceed to the immediate consideration of Calendar 126, S. 1181.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1181) to ensure an open and deliberate process in Congress by providing that any future legislation to establish a new exemption to section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) be stated explicitly within the text of the bill.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr President. Earlier this month, Senator CORNYN and I introduced a simple and straightforward bill to strengthen open Government and the Freedom of Information Act, or FOIA. It was the third commonsense proposal on Government openness we have offered to the Senate this year. The Senator from Texas has a long record of promoting open government, most significantly during his tenure as attorney general of Texas. He and I have forged a productive partnership in this Congress to support and strengthen FOIA. We introduced two bills earlier this year and held a hearing on our bill, S. 394, the Open Government Act, during Sunshine Week in March.

The bill we pass today simply requires that when Congress sees fit to provide a statutory exemption to FOIA, it must state its intention to do so explicitly. The language of this bill was previously introduced as section 8 of the Open Government Act.

No one argues with the notion that some Government information is appropriately kept from public view. FOIA contains a number of exemptions for national security, law enforcement, confidential business information, personal privacy, and other matters. One provision of FOIA, commonly known as the (b)(3) exemption, states that records that are specifically exempted by statute may be withheld from disclosure. Many bills that are introduced contain statutory exemptions or contain language that is ambiguous and might be interpreted as such by the courts. In recent years, we have seen more and more such exemptions offered in legislation. A 2003 Justice Department report stated that Congress has been ''increasingly active in enacting such statutory provisions.'' A June 3, 2005, article by the Cox News Service titled, ''Congress Cloaks More Information in Secrecy,'' pointed to 140 instances ''where congressional lawmakers have inserted such exemptions'' into proposed legislation.

Our shared principles of open government lead us to believe that individual statutory exemptions should be vigorously debated before lawmakers vote in favor of them. Sometimes such proposed exemptions are clearly delineated in proposed legislation, but other times they amount to a few lines within a highly complex and lengthy bill. These are difficult to locate and analyze in a timely manner, even for those of us who stand watch. As a result, such exemptions are often enacted with little scrutiny, and as soon as one is granted, others are requested.

The private sector has sought many exemptions in exchange for agreeing to share information with the Government. One example of great concern to me is the statutory exemption for critical infrastructure information that was enacted as part of the Homeland Security Act of 2002, the law that created the Department of Homeland Security. In this case, a reasonable compromise—approved by the White House—to balance the protection of sensitive information with the public's right to know was pulled out of the bill in conference. It was then replaced with text providing an overly broad statutory exemption that undermines Federal and State sunshine laws. I have introduced separate legislation, called the Restoration of Freedom of Information Act, to revert to that reasonable compromise language.

Not every statutory exemption is inappropriate, but every proposal deserves scrutiny. Congress must be diligent in reviewing new exemptions to prevent possible abuses. Focusing more sunshine on this process is an antidote to exemption creep. The American people deserve our ongoing diligence in limiting undue exemptions that only serve to clog the plumbing and limit the public's right to know.

When we introduced the Open Government Act in February, we addressed this matter with a provision that would require Congress to identify proposed statutory exemptions in newly introduced legislation in a uniform manner. Today, we pass that single section as a new bill. I urge the House to take action quickly and the President to sign this bill into law.

I want to thank the Senator from Texas for his personal dedication to these issues, and I thank all Senators for their support of this bill.

Mr. CORNYN. Mr. President, I rise to express strong support for S. 1181, concerning the Federal Freedom of Information Act—or FOIA. The bill is cosponsored by Senator LEAHY—with whom I am pleased to be working on a number of FOIA issues—as well as by Senators ALEXANDER, FEINGOLD, ISAKSON, and SPECTER. I am pleased that S. 1181 enjoys strong bipartisan support and the support of numerous organizations across the ideological spectrum. I can't imagine a more commonsense, good government bill. It should not be controversial. I am aware of any opposition to it. I am informed that the administration has no concerns about it. The Senate Judiciary Committee approved the measure by voice vote on June 9, and I am hopeful that the Senate will take up this matter shortly.

On February 16, shortly before the President's Day recess, the Senator from Vermont and I introduced the OPEN Government Act of 2005, S. 394—bipartisan legislation to promote accountability, accessibility, and openness in government, principally by strengthening and enhancing the Federal law commonly known as the Freedom of Information Act. On March 15, the Terrorism subcommittee convened a hearing on that legislation. Like S. 1181, the OPEN Government Act is a good bill to strengthen and enhance FOIA. But I recognize that the OPEN Government Act will take some time to work through.

When I served as attorney general of Texas, it was my responsibility to enforce Texas's open government laws. I am pleased to report that Texas is known for having one of the strongest set of open government laws in our Nation. And since that experience, I have long believed that our Federal Government could use "a little Texas sunshine." I am thus especially enthusiastic about the OPEN Government Act because that bill attempts to incorporate some of the most important principles and elements of Texas law into the Federal Freedom of Information Act. And I am gratified that Senators ALEXANDER, FEINGOLD, ISAKSON, and NELSON of Nebraska are cosponsors of this bipartisan Cornyn-Leahy legislation.

The OPEN Government Act is the culmination of months of extensive discussions between the offices of Senators CORNYN and LEAHY and members of the requestor community. It is supported by Texas Attorney General Greg Abbott and a broad coalition of organizations across the ideological spectrum, including:

American Association of Law Libraries; American Civil Liberties Union; American Library Association: American Society of Newspaper Editors; Associated Press Managing Editors; Association of Alternative Newsweeklies; Association of Health Care Journalists; Center for Democracy & Technology; Coalition of Journalists for Open Government; Committee of Concerned Journalists; Common Cause; Defenders of Property Rights; Education Writers Association; Electronic Privacy Information Center; Federation of American Scientists/Project on Government Secrecy; Free Congress Foundation/Center for Privacy & Technology Policy; Freedom of Information Center, Univ. of Mo.; The Freedom of Information Foundation of TX; The Heritage Foundation/Center for Media and Public Policy; Information Trust; League of Women Voters of the United States; Liberty Legal Institute; Magazine Publishers of America; National Conference of Editorial Writers; National Freedom of Information Coalition; National Newspaper Association; National Press Club; National Security Archive/Geo. Wash. Univ.; Newspaper Association of America; OMB Watch; One Nation Indivisible; OpenTheGovernment.org; People for the American Way; Project on Government Oversight; Radio-Television News Directors Association; Reporters Committee for Freedom of the Press; Society of Environmental Journalists.

I am particularly pleased to report the recent endorsements of three conservative public interest groups—one devoted to the defense of property rights—Defenders of Property Rights, led by Nancie G. Marzulla—one devoted to the issue of racial preferences in affirmative action programs—One Nation Indivisible, led by Linda Chavez—and one devoted to the protection of religious liberty—Liberty Legal Institute, led by Kelly Shackelford.

This broad and diverse support across political parties and across the ideological spectrum is important because it demonstrates that the cause of open government is neither a Republican nor a Democrat issue—neither a conservative nor a liberal issue. Rather, it is an American issue. Accordingly, I look forward to future Senate action on the OPEN Government Act.

In the meantime, S. 1181 should be very easy for the Senate to approve today. It simply implements section 8 of the OPEN Government Act. It would simply help to ensure an open and deliberate process in Congress by providing that any future legislation to establish a new exemption to the Federal Freedom of Information Act must be stated explicitly within the text of the bill. Specifically, any future attempt to create a new so-called "(b)(3) exemption" to the Federal FOIA law must specifically cite section (b)(3) of FOIA if it is to take effect.

The justification for this provision is simple: Congress should not establish new secrecy provisions through secret means. If Congress is to establish a new exemption to FOIA, it should do so in the open and in the light of day. FOIA establishes a presumption of disclosure. But if documents are to be kept secret pursuant to a future act of Congress, as is sometimes appropriate and necessary, we should at least make sure that that act of Congress itself not be undertaken in secret.

I want to be clear: This bill does not affect current law in any way, and it does not affect the executive branch in any direct way. It only applies to the process through which Congress must enact any FOIA exemption in the future. For those who are interested in the technical aspects of this bill, I will point out that this provision is modeled after other Federal laws—such as the War Powers Resolution—50 U.S.C. §1547(a)—and the Federal Vacancies Reform Act—5 U.S.C. §3347—which also require Congress to act in an explicit fashion in order to carry out particular objectives. Think of it as a direction to the courts—a canon of interpretation, advising on how to construe future acts of Congress.

Senator LEAHY and I firmly believe that all of the provisions of the OPEN Government Act are important—and that, as a recent Cox News Service report demonstrates, section 8 in particular is a worthy provision that can and should be quickly enacted into law.

July 4 is the anniversary of the 1966 enactment of the original Federal Freedom of Information Act. Accordingly, we have devoted our efforts this month to getting section 8 approved by Congress and submitted to the President for his signature by that anniversary date. Toward that end, we ask our Senate colleagues to support this measure. And we look forward to working with our colleagues in the House—including Representatives LAMAR SMITH and BRAD SHERMAN, the lead sponsors of the OPEN Government Act in the House, H.R. 867; Chairman TOM DAVIS, who leads the House Committee on Government Reform; Chairman TODD PLATTS, who leads the House Government Reform Subcommittee that recently held a hearing to review the Federal FOIA law; and Representatives HENRY WAXMAN and EDOLPHUS TOWNS, the ranking members of the committee and subcommittee.

S. 1181 is a commonsense, uncontroversial provision that deserves the support of every Member of Congress. I hope that it can be enacted into law quickly, and that Congress will then move to consider the other important provisions of the OPEN Government Act.

I ask unanimous consent that a copy of the news report I previously mentioned be printed in the RECORD.

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

[From the Cox News Service, Jun. 3, 2005]

CONGRESS CLOAKS MORE INFORMATION IN SECRECY

(By Rebecca Carr)

WASHINGTON.—Few would argue with the need for a national livestock identification system to help the federal government handle a disease outbreak such as mad cow.

But pending legislation calling for the nation's first electronic livestock tracking system would prohibit the public from finding out anything about animals in the system, including the history of a cow sick with bovine spongiform encephalopathy.

The only way the public can find out such details is if the secretary of agriculture makes the information public.

That's because the legislation, sponsored by Rep. Collin C. Peterson, D–Minn., includes a provision that exempts information about the system from being released under the Freedom of Information Act.

Formally called the ''third exemption,'' it is one of nine exemptions the government can use to deny the release of information requested under the FOI Act.

Open government advocates say it is the most troubling of the nine exemptions because it allows Congress to cloak vital information in secrecy through legislation, often without a public hearing or debate. They say Congress frequently invokes the exemption to appease private sector businesses, which argue it is necessary to protect proprietary information.

''It is an easy way to slap a secrecy stamp on the information,'' said Rick Blum, director of openthegovernment.org, a coalition of more than 30 groups concerned about government secrecy.

The legislative intent of Congress is far more difficult to challenge than a federal agency's denial for the release of information, said Kevin M. Goldberg, general counsel to the American Society of Newspaper Editors.

''This secrecy is often perpetuated in secret as most of the (third exemption) provisions consist of one or two paragraphs tucked into a much larger bill with no notice that the Freedom of Information Act will be affected at all,'' Goldberg said.

There are at least 140 cases where congressional lawmakers have inserted such exemptions, according to a 2003 Justice Department report.

The report notes that Congress has been ''increasingly active in enacting such statutory provisions.''

The exemptions have become so popular that finding them in proposed legislation is ''like playing a game of Wackamole,'' one staffer to Sen. Patrick Leahy, D–Vt., joked. ''As soon as you handle one, another one pops up.''

Congress used the exemption in its massive Homeland Security Act three years ago, granting businesses protection from information disclosure if they agreed to share information about the vulnerabilities of their facilities.

And in another twist on the exemption, Congress inserted a provision into the Consolidated Appropriations Act of 2004 that states that ''no funds appropriated under this or any other act may be used to disclose'' records about firearms tracking to the public.

Government agencies have also sought protection from information disclosure.

For example, Congress passed an amendment to the National Security Act in 1984 that exempted the CIA from having to comply with the search and review requirements of the FOI Act for its ''operational files.''

Most of the information in those files, which included records about foreign and counterintelligence operations, was already protected from disclosure under the other exemptions in the FOI Act.

But before Congress granted the exemption, the agency had to search and review each document to justify withholding the information, which cost time and money.

Open government advocates say many of the exemptions inserted into legislation are not justified.

''This is back door secrecy,'' said Thomas Blanton, executive director of the National Security Archive at George Washington University, a nonprofit research institute based in Washington.

When an industry wants to keep information secret, it seeks the so-called third exemption, he said.

''It all takes place behind the sausage grinder,'' Blanton said. ''You don't know what gristle is going through the spout, you just have to eat it.''

But Daniel J. Metcalfe, co-director of the Justice Department's Office of lnformation and Privacy, said the exemption is crucial to the FOI Act's structure.

In the case of the animal identification bill, the exemption is critical to winning support from the cattle industry and on Capitol Hill.

''If we are going to develop an animal ID system that's effective and meaningful, we have to respect participants' private information,'' said Peterson, the Minnesota lawmaker who proposed the identification system. ''The goal of a national animal I.D. system is to protect livestock owners as well as the public.''

As the livestock industry sees it, it is providing information that will help protect the public health. In exchange for proprietary information about their herds, they believe they should receive confidence that their business records will not be shared with the public.

''The producers would be reluctant to support the bill without the protection,'' said Bryan Dierlam, executive director of government affairs at the National Cattleman's Beef Association.

The animal identification bill provides the government with the information it needs to protect the public in the event of a disease outbreak, Dierlam said. ''But it would protect the producers from John Q. Public trying to willy-nilly access their information.''

Food safety experts agree there is a clear need for an animal identification system to protect the public, but they are not certain that the exemption to the FOI Act is necessary.

''It's sad that Congress feels they have to give away something to the cattle industry to achieve it,'' said Caroline Smith DeWaal, director of the food safety program at the Center for Science in the Public Interest, a nonprofit organization based in Washington.

Slipping the exemption into legislation without notice is another problem cited by open government advocates.

It has become such a problem that the Senate's strongest FOI Act supporters, Sen. John Cornyn, R–Texas, and Sen. Patrick Leahy, D–Vt., proposed that lawmakers be required to uniformly identify the exemption in all future bills.

''If Congress wants to create new exemptions, it must do so in the light of day,'' Cornyn said. ''And it must do so in a way that provides an opportunity to argue for or against the new exemption—rather than have new exemptions creep into the law unnoticed.''

Leahy agreed, saying that Congress must be diligent in reviewing new exemptions to prevent possible abuses.

''In Washington, loopholes tend to beget more loopholes, and it's the same with FOI Act exemptions,'' Leahy said. ''Focusing more sunshine on this process is an antidote to exemption creep.''

Mr. ALEXANDER. Mr. President, I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

The bill (S. 1181) was read the third time and passed, as follows:

S. 1181

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

SECTION 1. SPECIFIC CITATIONS IN EXEMPTIONS.

Section 552(b) of title 5, United States Code, is amended by striking paragraph (3) and inserting the following:

''(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute—

''(A) if enacted after July 1, 2005, specifically cites to this section; and

''(B)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

''(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;''.

Mr. ALEXANDER. Are we in morning business?

The PRESIDING OFFICER. The Senator is correct.

Mr. ALEXANDER. I ask unanimous consent to speak for as much time as I may require on energy.

The PRESIDING OFFICER. The Senator is recognized.

ENERGY POLICY ACT OF 2005

Mr. ALEXANDER. Mr. President, late last night the Senate finished work on what I call the Clean Energy Act of 2005. For Americans who watch the legislative process, this is not likely to have been the front-page news, but it is by far one of most important things we have done in this Senate because it affects millions of Americans. Our final vote is on Tuesday. I anticipate it will be a strong, bipartisan vote in support, just as the work that was done here was strong and bipartisan.