STEVENS, Mr. SUNUNU, Mr. NELSON of Florida, Mrs. HUTCHISON, Mr. INHOFE, Mr. ALLEN, and Mr. CRAIG):

S. Res. 317. A resolution expressing the sense of the Senate regarding oversight of the Internet Corporation for Assigned Names and Numbers; considered and agreed to.

ADDITIONAL COSPONSORS

S. 1112

At the request of Mr. BAUCUS, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1112, a bill to make permanent the enhanced educational savings provisions for qualified tuition programs enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001.

S. 1139

At the request of Mr. SANTORUM, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1139, a bill to amend the Animal Welfare Act to strengthen the ability of the Secretary of Agriculture to regulate the pet industry.

S. 1179

At the request of Mr. AKAKA, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1179, a bill to amend title XVIII of the Social Security Act to ensure that benefits under part D of such title have no impact on benefits under other Federal programs.

S. 1215

At the request of Mr. GREGG, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 1215, a bill to authorize the acquisition of interests in underdeveloped coastal areas in order better to ensure their protection from development.

S. 1496

At the request of Mr. CRAPO, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 1496, a bill to direct the Secretary of the Interior to conduct a pilot program under which up to 15 States may issue electronic Federal migratory bird hunting stamps.

S. 1504

At the request of Mr. ENSIGN, the names of the Senator from Florida (Mr. MARTINEZ) and the Senator from North Carolina (Mr. BURR) were added as cosponsors of S. 1504, a bill to establish a market driven telecommunications marketplace, to eliminate government managed competition of existing communication service, and to provide parity between functionally equivalent services.

S. 1791

At the request of Mr. SMITH, the names of the Senator from Georgia (Mr. CHAMBLISS), the Senator from Georgia (Mr. ISAKSON), the Senator from North Carolina (Mr. BURR) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. 1791, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for qualified timber gains.

S. 1841

At the request of Mr. NELSON of Florida, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1841, a bill to amend title XVIII of the Social Security Act to provide extended and additional protection to Medicare beneficiaries who enroll for the Medicare prescription drug benefit during 2006.

S. 1930

At the request of Mr. REID, the names of the Senator from Georgia (Mr. CHAMBLISS) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 1930, a bill to expand the research, prevention, and awareness activities of the National Institute of Diabetes and Digestive and Kidney Diseases and the Centers for Disease Control and Prevention with respect to inflammatory bowel disease.

S. 2013

At the request of Mr. STEVENS, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 2013, a bill to amend the Marine Mammal Protection Act of 1972 to implement the Agreement on the Conservation and Management of the Alaska-Chukotka Polar Bear Population.

S. CON. RES. 60

At the request of Mr. TALENT, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. Con. Res. 60, a concurrent resolution designating the Negro Leagues Baseball Museum in Kansas City, Missouri, as America's National Negro Leagues Baseball Museum.

S. CON. RES. 62

At the request of Mr. MCCONNELL, the names of the Senator from Illinois (Mr. OBAMA), the Senator from North Carolina (Mr. BURR) and the Senator from Nebraska (Mr. HAGEL) were added as cosponsors of S. Con. Res. 62, a concurrent resolution directing the Joint Committee on the Library to procure a statue of Rosa Parks for placement in the Capitol.

At the request of Mr. STEVENS, his name was added as a cosponsor of S. Con. Res. 62, supra.

At the request of Mr. DODD, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. Con. Res. 62, supra.

At the request of Mr. ROBERTS, his name was added as a cosponsor of S. Con. Res. 62, supra.

S. RES. 219

At the request of Mrs. FEINSTEIN, the names of the Senator from New York (Mr. SCHUMER), the Senator from Maryland (Ms. MIKULSKI), the Senator from Hawaii (Mr. AKAKA), the Senator from Washington (Ms. CANTWELL) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. Res. 219, a resolution designating March 8, 2006, as ''Endangered Species Day'', and encouraging the people of the United States to become educated about, and aware of, threats to species, success stories in species recovery, and the opportunity to promote species conservation worldwide.

S. RES. 316

At the request of Mr. COLEMAN, the names of the Senator from Utah (Mr. BENNETT), the Senator from Florida (Mr. NELSON) and the Senator from Arizona (Mr. KYL) were added as cosponsors of S. Res. 316, a resolution expressing the sense of the Senate that the United Nations and other international organizations should not be allowed to exercise control over the Internet.

AMENDMENT NO. 2574

At the request of Ms. SNOWE, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of amendment No. 2574 proposed to S. 1042, an original bill to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRASSLEY (for himself and Mr. SESSIONS):

S. 2016. A bill to amend chapter 3 of title 28, United States Code, to provide for 11 circuit judges on the United States Court of Appeals for the District of Columbia Circuit; to the Committee on the Judiciary.

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

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

S. 2016

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

SECTION 1. JUDGES ON THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

(a) IN GENERAL.—The table under section 44(a) of title 28, United States Code, is amended by striking the item relating to the District of Columbia and inserting the following:

''District of Columbia ..... 11''.

(b) EXISTING VACANCY NOT FILLED.—In order to comply with the amendment made under subsection (a), 1 of the vacancies of circuit judges on the United States Court of Appeals for the District of Columbia Circuit which existed on the date preceding the date of the enactment of this Act, shall not be filled.

By Mr. FEINGOLD (for himself and Ms. SNOWE):

S. 2017. A bill to amend the provisions of titles 5 and 28, United States Code, relating to equal access to justice, award of reasonable costs and fees, and administrative settlement offers, and for other purposes; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I plan to introduce the Equal Access to Justice Reform Act of 2005.

This legislation contains adjustments to the Equal Access to Justice

Act (EAJA) that will streamline and improve the process of awarding attorneys' fees to private parties who prevail in litigation against the Federal Government. This is the fifth Congress in which I have introduced EAJA reform. I believe this reform is an important step toward reducing the burden of defending government litigation for many individuals and small businesses.

I am very pleased to be joined in introducing this legislation this year by my friend from Maine, Senator OLYMPIA SNOWE, who chairs the Small Business Committee. We hope that by working together on a bipartisan basis, we will increase the chances that this important project will become law.

The legislation we are proposing today deals directly with a problem that affects small businesses and individual Americans across this country who face legal battles with the Federal Government. Even if they win in court, they may lose financially because they incur the great expense of paying their attorneys.

It is important to understand what the Equal Access to Justice Act is, and why it exists. The premise of this statute is very simple. EAJA seeks to level the playing field for individuals and small businesses that face the United States government in litigation. It establishes guidelines for the award of attorneys' fees when the individual or small business prevails in a case brought by the government. Quite simply, EAJA acknowledges that the resources available to the Federal Government in a legal dispute far outweigh those available to most Americans. This disparity is lessened by requiring the government, in certain instances, to pay the attorneys' fees of successful individual and small-business parties. By giving successful parties the right to seek attorneys' fees from the United States, EAJA seeks to prevent individuals and small business owners from having to risk their family savings or their companies' financial well-being to seek justice in court.

My interest in this issue predates my election to the Senate. It arises from my experience as both a private attorney and a Member of the State Senate in my home State of Wisconsin. While in private practice, I became aware of how the ability to recoup attorneys' fees is a significant factor, and often one of the first considered, when parties decide whether to defend a case. Upon entering the Wisconsin State Senate, I authored legislation modeled on the Federal law, which had been championed by one of my predecessors in this body from Wisconsin, Senator Gaylord Nelson. Today, Wisconsin statutes contain provisions similar to the federal EAJA statute.

It seemed to me then, as it does now, that we should do all that we can to help ease the financial burdens on people who need to have their claims reviewed and decided by impartial decision makers. The bill Senator SNOWE and I are introducing today does a number of things to make EAJA more effective for individuals and small business owners across this country.

First, this legislation eliminates the restrictive provision in current law that prevents successful parties from collecting attorneys' fees unless they can show the government's position was ''not substantially justified.'' I believe that this high threshold for obtaining attorneys' fees is unfair. If an individual or small business battles the Federal Government in an adversarial proceeding and prevails, the government should pay the fees incurred. Imagine a small business that spends time and money fighting the government and wins, only to find out that it must undertake the additional step of litigating the justification of government's litigation position just to recover attorneys' fees. For the government, with its vast resources, this second litigation over fees poses little difficulty, but for the small business or individual, it may simply not be financially feasible.

This additional step presents more than a financial burden on the individual or small business litigant. A 1992 study also reveals that it is unnecessary and a waste of government resources. University of Virginia Professor Harold Krent reviewed EAJA cases in 1989 and 1990 and released a study on behalf of the Administrative Conference of the United States. Professor Krent found that only a small percentage of EAJA awards were denied because of the substantial justification defense. While it is impossible to determine the exact cost of litigating the issue of substantial justification, Professor Krent found that the money saved by the government was not enough to justify the cost of the additional litigation. In short, eliminating this often-burdensome second step is a cost-effective step that will streamline recovery under EAJA and may very well save the government money in the long run.

A second improvement this bill makes to EAJA are modifications to the definition of a small business. Small businesses are currently defined for purposes of EAJA as businesses with a net worth of less than $7 million. We update that number to $10 million and also provide for an inflation adjustment every five years based on the Producer Price Index. This provision will ensure that EAJA continues to serve the small businesses it is intended to protect.

Another part of this legislation that will streamline and improve EAJA is a provision designed to encourage settlement and avoid costly and protracted litigation. Under the bill, the government can make an offer of settlement after an application for fees and other expenses has been filed. If the government's offer is rejected and the prevailing party seeking recovery ultimately wins a smaller award, that party is not entitled to the attorneys' fees and costs incurred after the date of the government's offer. Again, this will encourage settlement and speed the claims process. It will reduce the time and expense of the litigation.

This bill also requires the government agency that brought the case against the small business or individual to pay attorneys' fees from their own budgets. This provision ensures federal agencies will consider the financial impact of the actions they choose to bring against individuals and small businesses. OSHA, NLRB, EEOC, and the Mine Safety and Health Administration are exempt from this provision because they play a unique role in acting on behalf of workers to enforce the laws.

Finally, this bill will modify the definition of prevailing party to ensure that if claims filed against the government are the catalyst for a change in the position by the government that results in the individual or small business achieving a significant part of the relief sought, the individual or small business will be considered the prevailing party even if the case settles rather than going to a judgment. This reverses, in cases where fees are available under EAJA, the 2001 decision of the Supreme Court in Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources.

We all know that the American small business owner faces many challenges. Government regulation can be a formidable obstacle to conducting business, and litigation can be costly. The Equal Access to Justice Act was conceived and implemented as a check on the formidable power of the federal government. It has already helped many individual Americans and small businesses. The legislation we are offering today will make EAJA more effective and more fair. I want to thank Senator SNOWE for agreeing to work with me on this important bill. I hope our colleagues can support it.

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. 2017

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 ''Equal Access to Justice Reform Act of 2005''.

SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the Equal Access to Justice Act (Public Law 96–481; 94 Stat. 2325 et seq.) (in this section referred to as ''EAJA'') was intended to make the justice system more accessible to individuals of modest means, small businesses, and nonprofit organizations (in this section collectively referred to as ''small parties'') through limited recovery of their attorneys' fees when they prevail in disputes with the Federal Government; and

(2) although EAJA has succeeded, at modest cost, in improving access to the justice system for small parties, EAJA retains formidable barriers to attorneys' fees recovery

(even for small parties that completely prevail against the Government), as well as inefficient and costly mechanisms for determining the fees recovery.

(b) PURPOSE.—It is, therefore, the purpose of this Act to remove existing barriers and inefficiencies in EAJA in order to—

(1) equalize the level of accountability to Federal law among governments in the United States;

(2) discourage marginal Federal enforcement actions directed at small parties;

(3) reduce the practice of paying EAJA liabilities from the General Treasury, to ensure that Federal agencies properly consider the financial consequences of their actions and subsequent impact on the Federal budget;

(4) refine and improve Federal policies through adjudication;

(5) promote a fair and cost-effective process for prompt settlement and payment of attorneys' fees claims; and

(6) provide a fairer opportunity for full participation by small businesses in the free enterprise system, further increasing the economic vitality of the Nation.

(c) COMPLIANCE POLICY.—In complying with the statement of congressional policy expressed in this section, each Federal agency, to the maximum extent practicable, should—

(1) avoid unjustified enforcement actions directed at small parties covered by EAJA;

(2) encourage settlement of justified enforcement actions directed at small parties covered by EAJA; and

(3) minimize impediments to prompt resolution and payment of reasonable attorneys' fees to prevailing small parties covered by EAJA.

SEC. 3. REPORTING AND TECHNICAL ASSISTANCE BY OFFICE OF ADVOCACY.

(a) FUNCTIONS OF OFFICE OF ADVOCACY.—Section 202 of Public Law 94–305 (15 U.S.C. 634b) is amended—

(1) in paragraph (3), by inserting before the semicolon at the end the following: ''and for ensuring that the justice system remains accessible to small businesses for the resolution of disputes with the Federal Government''; and

(2) by striking paragraph (11) and inserting the following:

''(11) advise, cooperate with, and consult with the President and Attorney General with respect to section 303(b) of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b(b)) and section 504(e) of title 5, United States Code; and''.

(b) DUTIES OF OFFICE OF ADVOCACY.—Section 203 of Public Law 94–305 (15 U.S.C. 634c) is amended—

(1) in paragraph (2), by inserting before the semicolon at the end the following: '', including the resolution of disputes with the Federal Government and the role of procedures established by the Equal Access to Justice Act (Public Law 96–481; 94 Stat. 2325) in such disputes''; and

(2) in paragraph (3), by inserting after ''the Small Business Act'' the following: '', including those related to the Equal Access to Justice Act,''.

(c) REPORTS TO CONGRESS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in cooperation with the Chief Counsel for Advocacy of the Small Business Administration, shall transmit to the congressional committees specified in paragraph (2) a report containing—

(A) an analysis of the effectiveness of the Equal Access to Justice Act (Public Law 96–481; 94 Stat. 2325) (in this paragraph referred to as ''EAJA'') in achieving its purpose to ease the burden upon small businesses and other small parties covered by EAJA of engaging in dispute resolution with the Federal Government, including—

(i) the relative awareness of EAJA in the small business community;

(ii) the relative awareness of EAJA's requirements among Federal agencies;

(iii) the extent and quality of rules and regulations adopted by each Federal agency for processing, resolving, and paying attorneys' fees claims under EAJA;

(iv) the extent to which each Federal agency claims any exemptions in whole or in part from EAJA's coverage;

(v) the frequency or degree of use of EAJA's procedures by prevailing small businesses; and

(vi) an analysis of the costs and benefits of EAJA generally;

(B) an analysis of the variations in the frequency and amounts of fee awards paid by specific Federal agencies and within specific Federal circuits and districts under section 504 of title 5, United States Code, and section 2412 of title 28, United States Code, including the number and total dollar amount of all claims filed with, and all claims processed, settled, litigated, and paid by, each agency under EAJA; and

(C) recommendations for congressional oversight or legislative changes with respect to EAJA, including any recommendations for promulgation or amendment of regulations issued under EAJA by specific Federal agencies.

(2) SPECIFIED COMMITTEES.—The congressional committees referred to in paragraph (1) are the following:

(A) The Committee on the Judiciary and the Committee on Small Business of the House of Representatives.

(B) The Committee on the Judiciary and the Committee on Small Business and Entrepreneurship of the Senate.

(3) REPORT ON SMALL BUSINESS AND COMPETITION.—Section 303 of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b) is amended—

(A) in subsection (a), by striking paragraph (5) and inserting the following:

''(5) recommend a program for carrying out the policy declared in section 302 (including a policy to ensure that the justice system remains accessible to small business enterprises for the resolution of disputes with the Federal Government), together with such recommendations for legislation as the President may deem necessary or desirable.'';

(B) in subsection (b)—

(i) by striking ''(b)'' and inserting ''(b)(1)''; and

(ii) by adding at the end the following:

''(2) The President, after consultation with the Chief Counsel for Advocacy of the Small Business Administration and the Attorney General, shall transmit simultaneously as an appendix to such annual report, a report that describes, by agency and department—

''(A) the total number of claims filed, processed, settled, and litigated by small business concerns under section 504 of title 5, United States Code, and section 2412 of title 28, United States Code (originally enacted pursuant to the Equal Access to Justice Act (Public Law 96–481; 94 Stat. 2325));

''(B) the total dollar amount of all outstanding awards and settlements to small business concerns under such sections;

''(C) the total dollar amount of all claims paid to small business concerns under such sections;

''(D) the underlying legal claims involved in each controversy with small business concerns under such sections; and

''(E) any other relevant information that the President determines may aid Congress in evaluating the impact on small business concerns of such sections.

''(3) Each agency shall provide the President with such information as is necessary for the President to comply with the requirements of this subsection.''; and

(C) in subsection (d)—

(i) by striking ''(d)'' and inserting ''(d)(1)''; and

(ii) by adding at the end the following:

''(2) All reports concerning the Equal Access to Justice Act (Public Law 96–481; 94 Stat. 2325), or the congressional policy to ensure that the justice system remains accessible to small business enterprises for the resolution of disputes with the Federal Government, shall be transmitted to the following congressional committees:

''(A) The Committee on the Judiciary and the Committee on Small Business of the House of Representatives.

''(B) The Committee on the Judiciary and the Committee on Small Business and Entrepreneurship of the Senate.''.

SEC. 4. EQUAL ACCESS FOR SMALL PARTIES IN CIVIL AND ADMINISTRATIVE PROCEEDINGS.

(a) ELIMINATION OF SUBSTANTIAL JUSTIFICATION STANDARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) in subsection (a)(1), by striking '', unless the adjudicative officer'' and all that follows through the period at the end and inserting a period; and

(B) in subsection (a)(2), by striking ''The party shall also allege that the position of the agency was not substantially justified.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412 of title 28, United States Code, is amended—

(A) in subsection (d)(1)(A), by striking '', unless the court'' and all that follows through the period at the end and inserting a period;

(B) in subsection (d)(1)(B), by striking ''The party shall also allege'' and all that follows through the period at the end and inserting a period; and

(C) in subsection (d)(3), by striking '', unless the court'' and all that follows through the period at the end and inserting a period.

(b) ELIGIBILITY OF SMALL BUSINESSES FOR FEE AWARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—

(A) IN GENERAL.—Section 504(b)(1)(B)(ii) of title 5, United States Code, is amended by striking ''$7,000,000'' and inserting ''$10,000,000''.

(B) ADJUSTMENT IN NET WORTH LIMITATION.—Section 504(b) of title 5, United States Code, is amended by adding at the end the following:

''(3) Beginning on January 1 of the 5th year following the date of enactment of this paragraph, and on January 1 every 5 years thereafter, the dollar amount under paragraph (1)(B)(ii) shall be adjusted by the Producer Price Index as determined by the Secretary of the Treasury, in collaboration with the Bureau of Labor Statistics.''.

(2) JUDICIAL PROCEEDINGS.—

(A) IN GENERAL.—Section 2412(d)(2)(B)(ii) of title 28, United States Code, is amended by striking ''$7,000,000'' and inserting ''$10,000,000''.

(B) ADJUSTMENT IN NET WORTH LIMITATION.—Section 2412(d) of title 28, United States Code, is amended by adding at the end the following:

''(5) Beginning on January 1 of the 5th year following the date of enactment of this paragraph, and on January 1 every 5 years thereafter, the dollar amount under paragraph (2)(B)(ii) shall be adjusted by the Producer Price Index as determined by the Secretary of the Treasury, in collaboration with the Bureau of Labor Statistics.''.

(c) ELIMINATION OF RATE CAP.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(b)(1)(A) of title 5, United States Code, is amended—

(A) by striking ''(i)''; and

(B) by striking ''by the agency involved'' and all that follows through ''a higher fee'' and inserting ''by the agency involved''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(2)(A) of title 28, United States Code, is amended—

(A) by striking ''(i)''; and

(B) by striking ''by the United States'' and all that follows through ''a higher fee'' and inserting ''by the United States''.

(d) OFFERS OF SETTLEMENT.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(a) of title 5, United States Code, as amended by this section, is further amended by adding at the end the following:

''(5)(A) At any time after an agency receives an application submitted under paragraph (2), the agency may serve upon the applicant a written offer of settlement of the claims made in the application. If within 10 business days after such service the applicant serves written notice that the offer is accepted, either the agency or the applicant may then file the offer and notice of acceptance together with proof of service thereof.

''(B) An offer not accepted within the time allowed shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for fees or other expenses incurred (in relation to the application for fees and expenses) after the date of the offer.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(1) of title 28, United States Code, as amended by this section, is further amended by adding at the end the following:

''(E)(i) At any time after an agency receives an application submitted under subparagraph (B), the agency may serve upon the applicant a written offer of settlement of the claims made in the application. If within 10 business days after such service the applicant serves written notice that the offer is accepted, either the agency or the applicant may then file the offer and notice of acceptance together with proof of service thereof.

''(ii) An offer not accepted within the time allowed shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for fees or other expenses incurred (in relation to the application for fees and expenses) after the date of the offer.''.

(e) DECLARATION OF INTENT TO SEEK FEE AWARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(a)(2) of title 5, United States Code, as amended by this section, is further amended by inserting before the first sentence the following: ''At any time after the commencement of an adversary adjudication, the adjudicative officer may (and if requested by a party shall) require a party to declare whether such party intends to seek an award of fees and expenses against the agency should such party prevail.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(1)(B) of title 28, United States Code, as amended by this section, is further amended by inserting before the first sentence the following: ''At any time after the commencement of an adversary adjudication, as defined in subsection (b)(1)(C) of section 504 of title 5, United States Code, the court may (and if requested by a party shall) require a party to declare whether such party intends to seek an award of fees and expenses against the agency should such party prevail.''.

(f) PAYMENT OF ATTORNEYS' FEES FROM AGENCY APPROPRIATIONS.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(d) of title 5, United States Code, is amended to read as follows:

''(d)(1) Fees and other expenses awarded under this section shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

''(2) Fees and expenses awarded under this section may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.

''(3) Paragraph (2) shall not apply to the National Labor Relations Board, the Occupational Safety and Health Administration, the Mine Safety and Health Administration, or the Equal Employment Opportunity Commission.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(4) of title 28, United States Code, is amended to read as follows:

''(4)(A) Fees and other expenses awarded under this subsection shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

''(B) Fees and expenses awarded under this section may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.

''(C) Subparagraph (B) shall not apply to the National Labor Relations Board, the Occupational Safety and Health Administration, the Mine Safety and Health Administration, or the Equal Employment Opportunity Commission.''.

(g) ELIGIBILITY OF TAXPAYERS FOR FEE AWARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, as amended by this section, is further amended by striking subsection (f).

(2) JUDICIAL PROCEEDINGS.—Section 2412 of title 28, United States Code, as amended by this section, is further amended by striking subsection (e) and redesignating subsection (f) as subsection (e).

(h) CONFORMING AMENDMENT RELATING TO REPORTING REQUIREMENT UNDER SMALL BUSINESS ACT.—Section 504(e) of title 5, United States Code, is amended to read as follows:

''(e)(1) The Attorney General, after consultation with the Chief Counsel for Advocacy of the Small Business Administration, shall report annually to the Congress on the amount of fees and other expenses awarded to individuals during the preceding fiscal year pursuant to this section and section 2412 of title 28. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards for individuals engaged in disputes with Federal agencies. Each agency shall provide the Attorney General with such information as is necessary for the Attorney General to comply with the requirements of this subsection.

''(2) A requirement that the President report annually on proceedings affecting small business concerns under this section and under section 2412 of title 28 is provided in section 303(b) of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b(b)).''.

(i) APPLICABILITY.—The provisions of this section and the amendments made by this section shall apply to any proceeding pending on, or commenced on or after, the effective date of this Act.

SEC. 5. DEFINITION OF PREVAILING PARTY IN EAJA CASES.

(a) TITLE 5.—Section 504(b)(1) of title 5, United States Code, is amended by adding at the end the following:

''(G) 'prevailing party' includes, in addition to a party who prevails through a judicial or administrative judgment or order, a party whose pursuit of a nonfrivolous claim or defense was a catalyst for a voluntary or unilateral change in position by the opposing party that provides any significant part of the relief sought.''.

(b) TITLE 28.—Section 2412 of title 28, United States Code, is amended—

(1) in subsection (d)(2)(H), by inserting after ''means'' the following: '', subject to subsection (g),''; and

(2) by adding at the end the following:

''(g) For the purposes of this section, the term 'prevailing party' includes, in addition to a party who prevails through a judicial or administrative judgment or order, a party whose pursuit of a nonfrivolous claim or defense was a catalyst for a voluntary or unilateral change in position by the opposing party that provides any significant part of the relief sought.''.

SEC. 6. EFFECTIVE DATE.

The provisions of this Act and the amendments made by this Act shall take effect 30 days after the date of the enactment of this Act.

Ms. SNOWE. Mr. President, as Chair of the Senate Committee on Small Business and Entrepreneurship, I have fought to ensure that small businesses across the country are treated fairly by the Federal Government. Unfortunately, in far too many cases, Federal agencies take arbitrary or abusive enforcement actions against small businesses. Few repercussions deter the Federal Government from taking these unwarranted and unjust actions, which can irreparably injure the reputation and financial viability of a small business.

Enacted in 1980 on a bipartisan basis, the Equal Access to Justice Act (EAJA) intended to allow small businesses to collect legal fees after prevailing in litigation against the Federal Government. However, a number of barriers and inefficiencies exist within EAJA that prevent its effectiveness.

For example, EAJA currently requires a small business that has prevailed in litigation against the Federal Government to enter into a costly second proceeding with the government. At the second proceeding, the government can assert a ''substantial justification'' defense to prevent the small business from recovering its legal costs, even though the small business prevailed on the merits of the underlying case in court. Even in instances when the Federal Government based its actions entirely on erroneous facts or without any legal basis, if the Federal Government can show that it was ''substantially justified'' in taking its actions, then a small business will be barred from EAJA recovery.

In practice, courts typically give a very wide berth to the government's substantially justified defense—a reality that means that prevailing small businesses can rarely, if ever, recover their legal fees under EAJA. And while

a second proceeding may be in the best interest of the Federal agency—especially because its case is being funded by the General Treasury—the second proceeding may ultimately be more costly and more time consuming to the small business than the original, underlying case.

I believe that this is a flawed system. Small businesses are a driving force of the United States economy, representing 99.7 percent of all employer firms and generating approximately 75 percent of net new jobs annually. It is in our Nation's best interest to protect and watch over small businesses, as their success and vitality are key to America's economy and job growth.

It's plain and simple: We should not idly stand by while the Federal Government mistreats our Nation's small businesses.

That is why today I introduce with my colleague Senator FEINGOLD the Equal Access to Justice Reform Act of 2005 (EAJRA). This bill would ensure that small businesses are adequately protected from unreasonable regulations and actions, as well as update EAJA to better serve today's small businesses.

Under our legislation, small parties would be more likely to recover their legal fees when they prevail in litigation against the Federal Government. First, the EAJRA would eliminate the ''substantial justification'' defense, which would increase the likelihood that small businesses will be able to recover their legal costs after their winning their case.

Second, our legislation would modernize the EAJA by updating eligibility qualifications for small businesses. It would raise the threshold for qualifying small businesses from $7 million to $10 million net worth, and index that threshold for inflation. Given modern economic realities, a net worth of $7 million is no longer sufficient.

Third, the EAJRA would remove the hourly rate cap on attorney's fees. The current hourly rate cap of $125 was set during EAJA's enactment in 1980, and has yet to be adjusted for inflation. However, the market rate for competent legal services, especially for complex and high-risk litigation against the Federal Government, is far greater than the cap of $125 per hour. This limit prevents small businesses from receiving fair and just reimbursement of attorney's fees, placing them at a notable disadvantage.

Finally, the EAJRA would require agencies that lose lawsuits, other than the National Labor Relations Board, the Occupational Safety and Health Administration, the Mine Safety and Health Administration, and the Equal Employment Opportunity Commission, to pay legal fees awarded under EAJA out of their own budgets and not the General Treasury. This would eliminate inefficient uses of Federal agency resources and would discourage marginal or abusive Federal enforcement actions directed at small parties. In addition, the Federal budget would no longer be unnecessarily burdened.

The EAJRA creates a fair and even playing field. It would equalize the level of accountability to Federal law among governments in the United States. It is a ''good government'' statute that would promote justice and equality of treatment between small and large entities, and would greatly increase transparency in the Federal Government.

This legislation is absolutely necessary. I urge my colleagues to support the Equal Access to Justice Reform Act so that we can ensure that our nation's small businesses are protected from unfair and unreasonable governmental actions.

By Mr. SMITH (for himself and Mr. BAUCUS):

S. 2019. A bill to provide for a research program for remediation of closed methamphetamine production laboratories, and for other purposes; to the Committee on Environment and Public Works.

Mr. BAUCUS. Mr. President, I am pleased to introduce with Senator SMITH a bill that would provide for the establishment of voluntary, ''health-based'' remediation guidelines for former methamphetamine laboratories, an issue of great importance to Montana, Oregon, and all of rural America.

The material and chemical byproducts of methamphetamine production pose novel risks to the environment and public health. These risks are compounded by the sheer number of meth labs and the vulnerability of police, social service workers, and children exposed to meth production. The DEA estimated that there were as many as 16,000 meth labs in operation in 2004. Additionally, thousands of meth labs have been busted over the years but never properly remediated. Producing one pound of meth leaves behind six pounds of hazardous waste. In addition to bulk waste, cooking meth infuses toxic chemicals into the walls, carpeting, and ventilation systems of the homes, apartments, motel rooms, and parks where meth is produced.

Unremediated methamphetamine labs pose significant public health risks. The Department of Health and Human Services has reported that law enforcement officials and social service workers exposed to meth labs, or even just individuals removed from meth labs, have complained of severe headaches, eye and respiratory irritations, nausea, and burns. The need for remediation guidelines is clear.

Currently, eight States, including Montana, have ''feasibility-based'' remediation standards. ''Feasibility-based'' standards consider cost as a key factor in determining what level of remediation is desirable. While such standards are a start, we need greater certainty that our public servants and children are adequately protected.

Our bill provides a remedy. It directs the Assistant Administrator for Research and Development of the EPA to establish voluntary remediation guidelines, based on the best available scientific knowledge. To further this effort, our bill provides for a program of research to identify methamphetamine laboratory-related chemicals of concern, assess the types and levels of exposure to chemicals of concern—including routine and accidental exposures—that may present a significant risk of adverse biological effects, and evaluate the performance of various methamphetamine laboratory cleanup and remediation techniques. Our bill does not regulate States. The remediation guidelines are purely voluntary, meant to put States, remediation consultants, homeowners, and realtors on the same page.

Methamphetamine production poisons not only users but also spouses, children, public servants, and any future owners of properties exposed to meth production. To protect the public we need consistent, scientifically-based remediation guidelines.

By Mr. CHAMBLISS:

S. 2021. A bill to amend title 38, United States Code, to establish in the Department of Veterans Affairs an Office of National Veterans Sports Programs and Special Events; to the Committee on Veterans' Affairs.

Mr. CHAMBLISS. Mr. President, I rise today to introduce my bill, the ''Disabled Veterans Sports and Special Events Promotion Act of 2005''.

We discovered during World War II that sports and physical activity play a vital role in the rehabilitation of recently disabled military personnel. Young service members who had just returned from WWII and were undergoing rehabilitation were drawn to sports and other team activities. The appeal of sports for these veterans served as more than just a rehabilitation technique. In fact, sports served as a source of motivation as well as a path to a fuller life for young people in the aftermath of a disability. As would be expected, many of these veterans became exceptional athletes and sought opportunities for competition and excellence in the new world of competitive Paralympic sports.

With the onset of hostilities in Afghanistan and Iraq, a new generation of U.S. military personnel with disabilities has emerged. These newly-disabled men and women are young, ambitious, goal-oriented and in their physical prime. Sport, which played a fundamental role for returning veterans of World War II, Korea, and Vietnam, has the capacity to assist military personnel in adjusting to life with a disability. The United States Olympic Committee (USOC) and its Paralympic partners recognize the opportunity to play a key role in the lives of returning military personnel with newly acquired disabilities.

The USOC Paralympic Military Program is a collaborative effort among the USOC, military installations and

commands, Veterans' Affairs (VA) offices and programs, and Paralympic organizations nationwide that are conducting Paralympic sport programs for active duty military personnel and veterans who have physical disabilities.

The Program has been established to enable severely injured service members and veterans to enhance their rehabilitation, readiness and lifestyle through participation in Paralympic sports. The Program is designed for recently injured service members, 2001 and after, Paralympic-eligible disabilities; however, other service members and veterans with physical disabilities who are able to engage in program activities are welcome. Paralympic-eligible disabilities are: amputations, visual impairments, Brain injuries affecting physical mobility, spinal cord injuries and, other mobility-impairing disabilities.

This bill would establish within the Department of Veterans Affairs an Office of National Veterans Sports Programs and Special Events which would establish and carry out sports programs for disabled veterans. In addition, the office would arrange for the VA to sponsor sports programs for disabled veterans conducted by other groups if the Secretary detennines that the programs are consistent with the VA's goals and missions. The office would provide for, facilitate, and encourage disabled veterans to participate in these programs. Finally, the office will cooperate with the USOC and their Paralympic Military Program to promote participation of disabled veterans in the Paralympics.

This bill allows those injured in service to our country the option to regain a healthy, active lifestyle through sport and competition. Competing in sports such as cycling, fencing, shooting, sled hockey, table tennis, and sitting volleyball gives these injured veterans the opportunity to rehabilitate their bodies and minds while competing at the highest level. It is my hope that as we proceed with this bill, we keep the people at the receiving end of our decisions and deliberations foremost in our minds.

I ask my colleagues to support this bill.

By Mr. COLEMAN (for himself and Mr. BINGAMAN):

S. 2022. A bill to amend title XVIII of the Social Security Act to provide for coverage of remote patient management services for chronic health care conditions under the Medicare program; to the Committee on Finance.

Mr. COLEMAN. Mr. President, constituents across the country in rural areas face serious health care issues, not only in terms of illness but also in lack of easily accessible services. One out of every five Americans lives in rural areas however only one out of every ten physicians practice in rural areas. Forty percent of our rural population lives in a medically underserved area. With access to care an average of thirty miles away, rural areas have much to gain from the ability to access healthcare information at a distance. We depend on our farmers and ranchers—they are the lifeblood of America and take care of the essentials in our lives such as feeding us and clothing us. We should make sure to take care of them as well.

Today, I am proud to be joined by my friend, Senator BINGAMAN in introducing the Remote Monitoring Access Act of 2005 to overcome the barriers to more rapid diffusion of innovative new technologies that will improve quality and access to care for Medicare beneficiaries, by implementing changes in Medicare fee-for-service reimbursements. Our legislation would create a new benefit category for remote patient management services in the Medicare physician fee schedule. Under this category, Medicare would cover physician services involved with the remote management of specific medical conditions.

New technology that collects, analyzes, and transmits clinical health information is in development or has recently been introduced to the market. The promise of this remote management technology is clear: better information on the patient's condition—collected and stored electronically, analyzed for clinical value, and transmitted to the physician or the patient—should improve patient care and access.

Remote monitoring technology is also emerging to extend the provision of health care services to areas where there is a shortage of physicians. This technology allows physicians to monitor and treat patients without a face-to-face office visit, thereby increasing access to physicians for patients living in rural areas.

In its March 2001 report, ''Crossing the Quality Chasm,'' the Institute of Medicine stated that the automation of clinical and other health transactions was an essential factor for improving quality, preventing errors, enhancing consumer confidence in the health care system, and improving efficiency, yet ''health care delivery has been relatively untouched by the revolution in information technology that has been transforming nearly every other aspect of society.''

Three major areas in which remote management technologies are emerging in health care are the treatment of congestive heart failure (CHF), diabetes and cardiac arrhythmia.

Despite these innovations and their ability to improve care, many new clinical information and remote management technologies have failed to diffuse rapidly. A significant barrier to wider adoption and evolution of the technologies is the relative lack of payment mechanisms in fee-for-service Medicare to reimburse for remote, non-face-to-face management and disease management services provided by a physician.

Under existing Medicare fee schedules, physicians generally receive a fixed, predetermined amount for a given service. The cost of devices used or supplied in the service is usually bundled into the payment, and payments are primarily provided for face-to-face interactions between the physician and patient. The payment structure creates at least two problems for the wider adoption of patient management approaches using remote management technology.

To overcome the barriers to more rapid diffusion of innovative new technology for Medicare beneficiaries, changes in Medicare fee-for-service reimbursements are necessary. This legislation would create a new benefit category for remote patient management services in the Medicare physician fee schedule. Under this category, Medicare would cover physician services involved with the remote management of specific medical conditions.

The quality of care provided through remote management would allow physicians to qualify for bonus payments conditioned on specific quality measures. This legislation directs the Secretary, through the Agency for Health Care Research and Quality (AHRQ) to develop standards of care and quality standards for the remote management services provided for each medical condition covered. AHRQ would develop these standards working in conjunction with appropriate physician groups. The Secretary is also given the authority to develop guidelines on the frequency of billing for remote patient management services.

I urge my fellow colleagues to join me in ensuring rural Americans have the access to remote monitoring and the opportunity to keep pace with health technology by supporting the Remote Monitoring Access Act of 2005.

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. 2022

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 ''Remote Monitoring Access Act of 2005''.

SEC. 2. COVERAGE OF REMOTE PATIENT MANAGEMENT SERVICES FOR CHRONIC HEALTH CARE CONDITIONS.

(a) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

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

(2) in subparagraph (Z), by inserting ''and'' at the end; and

(3) by inserting after subparagraph (Z) the following new subparagraph:

''(AA) remote patient management services (as defined in subsection (bbb));''.

(b) SERVICES DESCRIBED.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

''Remote Patient Management Services

''(bbb)(1) The term 'remote patient management services' means the remote monitoring and management of an individual

with a covered chronic health condition (as defined in paragraph (2)) through the utilization of a system of technology that allows a remote interface to collect and transmit clinical data between the individual and the responsible physician or supplier for the purposes of clinical review or response by the physician or supplier.

''(2) For purposes of paragraph (1), the term 'covered chronic health condition' includes—

''(A) heart failure;

''(B) diabetes;

''(C) cardiac arrhythmia; and

''(D) any other chronic condition determined by the Secretary to be appropriate for treatment through remote patient management services.

''(3)(A) The Secretary, in consultation with appropriate physician groups, may develop guidelines on the frequency of billing for remote patient management services. Such guidelines shall be determined based on medical necessity and shall be sufficient to ensure appropriate and timely monitoring of individuals being furnished such services.

''(B) The Secretary, acting through the Agency for Health Care Research and Quality, shall do the following:

''(i) Not later than 1 year after the date of enactment of the Remote Monitoring Access Act of 2005, develop, in consultation with appropriate physician groups, a standard of care and quality standards for remote patient management services for the covered chronic health conditions specified in subparagraphs (A), (B), and (C) of paragraph (2).

''(ii) If the Secretary makes a determination under paragraph (2)(D) with respect to a chronic condition, develop, in consultation with appropriate physician groups, a standard of care and quality standards for remote patient management services for such condition within 1 year of such determination.

''(iii) Periodically review and update such standards of care and quality standards under this subparagraph as necessary.''.

(c) PAYMENT UNDER THE PHYSICIAN FEE SCHEDULE.—Section 1848 of the Social Security Act (42 U.S.C. 1395w–4) is amended—

(1) in subsection (c)(2)—

(A) in subparagraph (B)—

(i) in clause (ii)(II), by striking ''clause (iv)'' and inserting ''clauses (iv) and (v)''; and

(ii) by adding at the end the following new clause:

''(v) BUDGETARY TREATMENT OF CERTAIN SERVICES.—The additional expenditures attributable to services described in section 1861(s)(2)(AA) shall not be taken into account in applying clause (ii)(II) for 2006.''; and

(B) by adding at the end the following new paragraph:

''(7) TREATMENT OF REMOTE PATIENT MANAGEMENT SERVICES.—In determining relative value units for remote patient management services (as defined in section 1861(bbb)), the Secretary, in consultation with appropriate physician groups, shall take into consideration—

''(A) costs associated with such services, including physician time involved, installation and information transmittal costs, costs of remote patient management technology (including devices and software), and resource costs necessary for patient monitoring and follow-up (but not including costs of any related item or non-physician service otherwise reimbursed under this title); and

''(B) the level of intensity of services provided, based on—

''(i) the frequency of evaluation necessary to manage the individual being furnished the services;

''(ii) the amount of time necessary for, and the complexity of, the evaluation, including the information that must be obtained, reviewed, and analyzed; and

''(iii) the number of possible diagnoses and the number of management options that must be considered.''; and

(2) in subsection (j)(3), by inserting ''(2)(AA),'' after ''(2)(W),''.

(d) INCENTIVE PAYMENTS.—Section 1833 of the Social Security Act (42 U.S.C. 1395l) is amended by adding at the end the following new subsection:

''(v) INCENTIVE FOR MEETING CERTAIN STANDARDS OF CARE AND QUALITY STANDARDS IN THE FURNISHING OF REMOTE PATIENT MANAGEMENT SERVICES.—In the case of remote patient management services (as defined in section 1861(bbb)) that are furnished by a physician who the Secretary determines meets or exceeds the standards of care and quality standards developed by the Secretary under paragraph (3)(B) of such section for such services, in addition to the amount of payment that would otherwise be made for such services under this part, there shall also be paid to the physician (or to an employer or facility in cases described in clause (A) of section 1842(b)(6)) (on a monthly or quarterly basis) from the Federal Supplementary Medical Insurance Trust Fund an amount equal to 10 percent of the payment amount for the service under this part.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2006.

By Ms. MURKOWSKI:

S. 2024. A bill to raise the minimum State allocation under section 217(b)(2) of the Cranston-Gonzalez National Affordable Housing Act; to the Committee on Banking, Housing, and Urban Affairs.

Ms. MURKOWSKI. Mr. President, I rise to introduce a bill that will increase the minimum funding level for low population States for the U.S. Department of Housing and Urban Development's HOME Investment Partnerships Program.

This program was created when the Cranston-Gonzalez National Affordable Housing bill was signed into law in 1990. Funds were first appropriated for this program in 1992. HOME program funds are disbursed to State and local governments for the purpose of assisting with the expansion of housing for low-income families. These governmental entities have a great deal of flexibility when using these funds to implement the program's purpose.

When this program was created, a minimum funding level of $3 million was created for States that would normally receive a small amount of HOME funds under the allocation formula, which is based on a State's population, among other parameters. Five States—Alaska, Delaware, Nevada, Hawaii, and North Dakota—received this level of funding for this program in fiscal year 2005. Bearing in mind inflation between 1992—when this program was first funded—and 2005, a $3 million allocation in 1992 dollars decreased in value to $2,215,235 in 2005.

This is unacceptable. My State is one of the most expensive areas in the country to develop housing, especially when one takes into account the cost to transport building materials to extremely remote areas of my State.

This legislation increases the minimum State funding level for the HOME program to $5 million. Based on fiscal year 2005 allocations for this program, eight States received less than $5 million. Those States are: Alaska, Delaware, Nevada, Hawaii, Montana, North Dakota, Utah, and Wyoming. My proposed increase in funding would be offset by an overall decrease in allocations to other States. If a $5 million minimum funding level had been in place in fiscal year 2005, the other 42 States would only have experienced an overall decrease of less than $13 million. Bearing in mind that the amount appropriated in fiscal year 2005 for this program is $1.865 billion, such a decrease in funds seems reasonable considering no changes have been made to the minimum State funding level since the HOME program was first funded in 1992.

In addition, the congressionally appointed, bipartisan Millennium Housing Commission recommended increasing the minimum State funding level for the HOME program to $5 million in their May 30, 2002, report to Congress.

It is imperative that we address this important issue so that we can address the housing needs of a greater amount of low-income families in low-population States.

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. 2024

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 ''Small State HOME Program Equity Act of 2005''.

SEC. 2. ALLOCATION OF RESOURCES.

Section 217(b)(2)(A) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(b)(2)(A)) is amended by striking ''$3,000,000'' each place it occurs and inserting ''$5,000,000''.

By Mr. BAYH (for himself, Mr. BROWNBACK, Mr. LIEBERMAN, Mr. COLEMAN, Mr. GRAHAM, Mr. SALAZAR, Mr. SESSIONS, Mr. NELSON of Florida, Mr. LUGAR, and Mr. OBAMA):

S. 2025. A bill to promote the national security and stability of the United States economy by reducing the dependence of the United States on oil through the use of alternative fuels and new technology, and for other purposes; to the Committee on Finance.

Mr. LIEBERMAN. Mr. President, our dependence on foreign oil is sapping America's power and independence as a nation. It is urgent we begin now to diversify the fuels we use to power our vehicles or risk ceding our national power to the rulers of faraway deserts, distant tundras, steaming rain forests or off-shore, drilling platforms half a world away.

I rise today as part of a bipartisan group of 10 Senators who represent the American Northeast, South, Midwest and West to introduce the Vehicle and Fuel Choices for America Security Act.

We chose this title because nothing less than our national security is at stake.

Besides myself, the rest of the ''Gang of Ten,'' or the ''Energy Security Ten,'' as some call us are Senators SAM BROWNBACK of Kansas, EVAN BAYH of Indiana, NORM COLEMAN of Minnesota, LINDSEY GRAHAM of South Carolina, KEN SALAZAR of Colorado, JEFF SESSIONS of Alabama, BILL NELSON of Florida, RICHARD LUGAR of Indiana and BARACK OBAMA of Illinois. And we expect even more of our colleagues from both sides of the aisle will be joining us soon.

I hope that in the future we all look back on the day this bill was introduced as the beginning of a major shift in our national security strategy. I hope that history will say we saw a challenge to our national security and prosperity and then met it and mastered it.

A recent report by the International Energy Agency, IEA, sums up the urgent need for our legislation.

According to the IEA, global demand for oil—now about 85 million barrels a day—will increase by more than 50 percent to 130 million barrels a day between now and 2030 if nothing is done.

The industrialized world's dependence on oil heightens global instability. The authors of the IEA report note that the way things are going ''we are ending up with 95 percent of the world relying for its economic well-being on decisions made by five or six countries in the Middle East.''

Besides the Mideast, I would add that Nigeria is roiled by instability, Venezuela's current leadership is hostile to us and Russia's resurgent state power has ominous overtones.

In fact, we are just one well-orchestrated terrorist attack or political upheaval away from a $100-a-barrel overnight price spike that would that would send the global economy tumbling and the industrialized world, including China and India, scrambling to secure supplies from the remaining and limited number of oil supply sites.

History tells us that wars have started over such competition.

Left unchecked, I fear that we are literally watching the slow but steady erosion of America's power and independence as a nation—our economic and military power and our political independence.

We are burning it up in our automobile engines and spewing it from our tailpipes because of our absolute dependence on oil to fuel our cars and trucks.

That dependence on oil—and that means foreign oil because our own reserves are less than 1 percent of the world's oil reserves—puts us in jeopardy in three key ways—a convergence forming a perfect storm that is extremely dangerous to America's national security and economy.

First, the structure of the global oil market deeply affects—and distorts—our foreign policy. Our broader interests and aspirations must compete with our own need for oil and the growing thirst for it in the rest of the world—especially by China and India.

As a study in the journal Foreign Affairs makes clear, China is moving aggressively to compete for the world's limited supplies of oil not just with its growing economic power, but with its growing military and diplomatic power as well.

Second, today we must depend for our oil on a global gallery of nations that are politically unstable, unreliable, or just plain hostile to us.

All that and much more should make us worry because if we don't change—it is within their borders and under their earth and waters that our economic and national security lies.

Doing nothing about our oil dependency will make us a pitiful giant—like Gulliver in Lilliput—tied down by smaller nations and subject to their whims. And we will have given them the ropes and helped them tie the knots.

We can take on this problem now and stand tall as the free and independent giant we are by moving our nation—and the world—on to energy independence, by setting America free from its dependence on oil.

There is only one way to do this. We need to transform our total transportation infrastructure from the refinery to the tailpipe and each step in between because transportation is the key to energy independence.

Barely 2 percent of our electricity comes from oil.

Ninety six percent of the energy used to power our cars comes from oil—literally millions of barrels of oil per day. This is unsustainable and dangerous.

The Vehicle and Fuel Choices for America Security Act aims to strengthen America's security by transforming transportation from the refinery to the tailpipe and each step in between, thus breaking our dependence on foreign oil.

We start by making it our national policy to cut consumption by 10 million barrels a day over the next 25 years.

First, we need to rethink and then remake our fuel supplies. Gasoline is not the only portable source of stored energy. Tons of agricultural waste and millions of acres of idle grassland can be used to create billions of barrels of new fuels.

Our farmers could soon be measuring production in barrels of energy as well as bushels of food.

Then we must remake our automobile engines as well. Vehicles that get 500 miles per gallon—or that use no refined crude oil—are within our grasp. I know that sounds unbelievable. I am going to tell you how we can do it.

To help us get there, our bill also requires that by 2012, 10 percent of all vehicles sold in the U.S. be hybrid, hybrid-electric plug-in or alternative fuel vehicles. That number will rise by 10 percent a year until it reaches 50 percent in 2016.

To help spur this market along, our bill amends our current energy policy to require that one quarter of federal vehicles purchased must be hybrids or plug-in hybrids.

My bill will detail how we can get there with available technology and previously unavailable Federal Government leadership. Coupling these new programs with the explicit oil-savings goals for the Federal Government is the key to the effectiveness of this proposal.

I can almost hear colleagues murmur, So, Senator LIEBERMAN, what else is new? We've been hearing this for years and nothing has happened.

I can't blame you if you are skeptical. The struggle for oil independence has been going on at least since Jimmy Carter was President.

But things have changed since the days of Jimmy Carter and even since last summer. There is a new understanding of the depth of the crisis that our oil dependence is creating.

This summer's doubling of gasoline and crude oil prices hit tens of millions of Americans with the global reality of oil demand and pricing. And Hurricane Katrina reminded us how vulnerable our supplies can become.

This reality is bipartisan. And, along with my colleagues cosponsoring this bill, I think Americans are ready to set the serious goals that eluded us in the past and take the bold steps necessary to reach those goals.

Now let me give you more details.

The bill I will propose puts our Nation's transportation system on a new road—a road where the tanks are filled with more home-grown fuel—and I do mean grown—not just American corn, but from American sugar, prairie grass, and agricultural waste.

We will push harder for more and quicker production and commercialization of biomass-based fuels.

The Energy bill signed into law last summer created a new set of incentives for these fuel alternatives, including their commercial production.

What my bill would do—again, by including a mass-production mandate for alternative fuel vehicles—is ensure that the investments would be made in the facilities to produce and market these new fuels by providing big demand for them.

The bill would also create a program to guarantee that filling stations had the pumps to provide the fuel to keep pace with the growing alternative-fuel fleet produced by the mandate.

Is there a model to give us confidence we can achieve this transformation? Yes.

Brazil is now enjoying substantial immunity from current high world oil prices, thanks to a long-term strategy, launched during the oil shocks of the 1970s, to integrate sugar cane ethanol into its fuel supply. They started initially with a mandate that all fuel sold in the country contain 25 percent alcohol. They are now up to 40 percent biofuels.

In addition to the fuel mandate, Brazil offered low-interest loans and tax breaks for the building of distilleries and subsidized a fuel distribution network.

Brazil has the advantage of a substantial sugar cane industry already in place. But we have our own vast potential to develop our own biofuel supply, using feedstock like corn, crop waste, switch grass, sugarcane and fast-growing trees and shrubs such as hybrid poplars and willows.

According to the Department of Energy, if two-thirds of the Nation's idled cropland were used to grow these kinds of energy crops, the result could be dramatic. Those 35 million acres could produce between 15 and 35 billion gallons of ethanol each year to fuel cars, trucks, and buses.

That is about 2.2 million barrels of fuel a day from right here in the U.S.A.

What Brazil offers us, more importantly, is a case study of government leadership to combine technology mandates and subsidies to wean its transportation sector from foreign oil to a domestic alternative.

From this January through this July—before this summer's fuel spike—we have sent almost $100 billion out of the country to purchase oil, while the Brazilians are now relying on homegrown fuel.

The key to their success is that they responded 30 years ago to the first storm warnings. We did not, and now the storm is at our shores, slapping against the levees of our economic strength and national security. We have to mobilize and lead a similar response as Brazil did.

If we do this right, our farmers could soon be measuring production in barrels of energy as well as bushels of food. Our energy would be guaranteed ''Made in America'' and the profits would be guaranteed ''Kept in America.''

For all these new fuels to be effective, we need the flexible fuel vehicles that can take advantage of them.

As I said earlier, our bill also requires that 50 percent of all vehicles sold in the U.S. be hybrid, hybrid-electric plug-in, or alternative fuel vehicles by 2016.

Sound ambitious? It is not. It has already happened in Brazil. Several automakers selling cars in Brazil, including our own General Motors and Ford, already manufacture a fleet that is more than 50-percent flexible fuel cars that can run on any combination of gasoline and biofuels.

The technology exists now and adds a negligible cost—about $150—to the price of each vehicle. For this we get the flexibility to power a car with fuel made from corn, prairie grass, or agricultural waste from our own heartland that will cost a lot less than gasoline does today.

Maximizing fuel efficiency and promoting energy independence even further would be a new generation of flexible-fuel hybrid cars known as plug-ins because you can plug them in at night to recharge the battery.

Hybrids that use a use both a gasoline engine and electric motor for power are already getting 50 miles per gallon. Making them flexible fuel cars, as I've already said, can save us more than 2 million barrels of gasoline a day.

But we can do even better—dramatically better—with the plug-in hybrid that is just now on the threshold of commercialization. Like the present hybrids, it would use both a gasoline and electric motor. But the plug-in hybrid would be able to use the battery exclusively for the first 30 miles of a trip.

Think of that for a minute. Although Americans drive about 2.2 trillion miles a year, according the Census, the vast majority of those trips are less than 15 miles.

That means a plug-in hybrid would use zero—zero—gallons of gas or any combustible fuel for the vast majority of its trips. And experts tell me it could effectively get the 500 miles per gallon on longer trips.

Plugging in your car during off peak hours—when power is in surplus and cheaper—would soon just become part of the modem daily routine, like plugging in your cell phone or PDA before you go to bed.

And off-peak electricity can be the equivalent of 50 cent a gallon gasoline, I repeat—the equivalent of 50 cent a gallon fuel is feasible.

Of course, electricity does not come magically through the wires to our homes. That power would come from coal, natural gas, nuclear, solar, wind or other sources—sources that we have in abundance here at home—and a little—very little—would come from oil.

This isn't pie in the sky. These vehicles could be in your garage within a couple of years. Some of the incentives for achieving this were included in the Energy bill signed into law in August. But they did not go nearly far enough.

We need to couple these incentives with real performance standards and sales requirements to ensure that as soon as possible new cars are running not just on gasoline but on biofuels and electricity.

As always, there is a do-nothing crowd that says the ever-rising price of gasoline and crude oil are the cure—that with higher prices people will reduce consumption and the market will respond with greater investments in the supply of oil to bring prices down.

But all that would do is perpetuate the problem. Market-driven oil-dependency is still dependency on foreign oil, driving us further down the current path toward national insecurity and economic and environmental troubles.

Some say that we can ease the crisis through greater domestic drilling—in places like the Arctic Refuge and other public lands or off our shores.

But that won't make a dent in the problem. In the world of oil, geology is destiny and the U.S. today has only 1 percent of the world's oil reserves. And that small new supply wouldn't matter much in the global market, since the price of oil produced within the United States rises and falls with the global market, regardless of where it is produced.

We just don't have enough oil in the U.S. anymore. And no matter how much more we drill, we will still be paying the world price of oil—not an American price.

Our present energy and transportation systems were born at the end of the 19th and the beginning of the 20th centuries with the twin discoveries of oil extraction and the internal combustion engine. Those systems have served us well bringing growth to our Nation and the world.

But it is now the 21st century, and it is time to move on. The era of big oil is over. It is time to revolutionize our entire energy infrastructure, from the refinery to the tailpipe, and begin a new era of energy independence.

It is time to set America free by cutting our dependence on foreign oil and by doing so strengthen our security, preserve our independence and energize our economy.

By Mr. LAUTENBERG (for himself, Mr. KERRY, Mr. DORGAN, and Mr. DAYTON):

S. 2026. A bill to amend title XVIII of the Social Security Act to require that a prescription drug plan or an MA–PD plan that has an initial coverage limit obtain a signed certification prior to enrolling beneficiaries under the plan under part D of such title; to the Committee on Finance.

Mr. LAUTENBERG. Mr. President, I rise to introduce the Medicare Prescription Drug Gap Disclosure Act with my colleagues, Senators KERRY, DORGAN and DAYTON. This important legislation will require Medicare beneficiaries enrolling in a Medicare Prescription Drug Plan, PDP, or Medicare Advantage Drug Plan, MA–PD, with a potential coverage gap to sign a short, easy to read, statement indicating that they are aware of the potential loss of coverage.

Yesterday, 42 million Medicare beneficiaries became eligible to sign up for the new Medicare prescription drug benefit, scheduled to start on January 1, 2006. However, too many seniors are understandably confused about this complicated change to Medicare, and I fear that many may sign up for drug plans without understanding the major pitfalls of the program. The biggest pitfall in the drug plan is the notorious ''coverage gap'' also known as the ''donut hole.''

In the coverage gap, beneficiaries pay 100 percent of prescription costs after they exceed a certain level of out-of-pocket spending and before protection kicks in against catastrophic drug expenses. They also continue to pay 100 percent of their monthly premiums.

We need to make sure that seniors are aware of the threat that the coverage gap poses, and it should not be

hidden in a mountain of paperwork. My legislation would require plan providers to have beneficiaries sign the following certification before enrollment:

I understand that the Medicare Prescription Drug Plan or MA–PD Plan that I am signing up for may result in a gap in coverage during a given year. I understand that if subject to this gap in coverage, I will be responsible for paying 100 percent of the costs of my prescription drugs and will continue to be responsible for paying the plan's monthly premium while subject to this gap in coverage. For specific information on the potential coverage gap under this plan, I understand that I should contact [prescription drug plan] at [toll free phone number].

The bottom line is that, after months of trying to explain this new drug benefit to Medicare beneficiaries, many do not understand the ramifications of the coverage gap. Unfortunately, millions of Medicare beneficiaries may learn about the coverage gap the hard way—when the pharmacist at the cash register tells them sometime next year that they are suddenly required to pay the full cost of their prescriptions.

Mr. President, a study by the Commonwealth Fund found that 38 percent of Medicare enrollees are likely to experience this costly interruption in care. Moreover, the benefits must be renewed each year, meaning that the coverage gap repeats itself if beneficiaries reach the coverage gap again.

A recent survey by the Kaiser Foundation and the Harvard School of Public Health, found that only 35 percent of people 65 and older said they understood the new drug benefit. In addition, the numerous media stories in recent days contain anecdotal evidence that illustrates the confusion around the new drug benefit.

I therefore urge my colleagues to support this bill. Only with such a clear, separate disclaimer will seniors have a fair opportunity to be warned of the risks posed by this gap in drug coverage.

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. 2026

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 ''Medicare Prescription Drug Gap Disclosure Act''.

SEC. 2. REQUIREMENT OF SIGNED CERTIFICATION PRIOR TO PLAN ENROLLMENT UNDER PART D.

(a) IN GENERAL.—Section 1860D–1(b)(1) of the Social Security Act (42 U.S.C. 1395w–101) is amended by adding at the end the following new subparagraph:

''(D) SPECIAL RULE FOR PLANS WITH AN INITIAL COVERAGE LIMIT.—

''(i) IN GENERAL.—The process for enrollment established under subparagraph (A) shall include, in the case of a prescription drug plan or an MA–PD plan that has an initial coverage limit (as described in section 1860D–2(b)(3)), a requirement that, prior to enrolling a part D eligible individual in the plan, the plan must obtain a certification signed by the enrollee or the legal guardian of the enrollee that meets the requirements described in clause (ii) and includes the following text: 'I understand that the Medicare Prescription Drug Plan or MA–PD Plan that I am signing up for may result in a gap in coverage during a given year. I understand that if subject to this gap in coverage, I will be responsible for paying 100 percent of the cost of my prescription drugs and will continue to be responsible for paying the plan's monthly premium while subject to this gap in coverage. For specific information on the potential coverage gap under this plan, I understand that I should contact (insert name of the sponsor of the prescription drug plan or the sponsor of the MA–PD plan) at (insert toll free phone number for such sponsor of such plan).'.

''(ii) CERTIFICATION REQUIREMENTS DESCRIBED.—The certification required under clause (i) shall meet the following requirements:

''(I) The certification shall be printed in a typeface of not less than 18 points.

''(II) The certification shall be printed on a single piece of paper separate from any matter not related to the certification.

''(III) The certification shall have a heading printed at the top of the page in all capital letters and bold face type that states the following: 'WARNING: POTENTIAL MEDICARE PRESCRIPTION DRUG COVERAGE GAP'.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of enactment of this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 317—EXPRESSING THE SENSE OF THE SENATE REGARDING OVERSIGHT OF THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

Mr. BURNS (for himself, Mr. LEAHY, Mr. INOUYE, Mr. SMITH, Mr. STEVENS, Mr. SUNUNU, Mr. NELSON of Florida, Mrs. HUTCHISON, Mr. INHOFE, Mr. ALLEN, and Mr. CRAIG) submitted the following resolution; which was considered and agreed to:

S. RES. 317

Whereas the origins of the Internet can be found in United States Government funding of research to develop packet-switching technology and communications networks, starting with the ''ARPANET'' network established by the Department of Defense's Advanced Research Projects Agency in the 1960s and carried forward by the National Science Foundation's ''NSFNET'';

Whereas in subsequent years the Internet evolved from a United States Government research initiative to a global tool for information exchange as in the 1990s it was commercialized by private sector investment, technical management and coordination;

Whereas since its inception the authoritative root zone server—the file server system that contains the master list of all top level domain names made available for routers serving the Internet—has been physically located in the United States;

Whereas today the Internet is a global communications network of inestimable value;

Whereas the continued success and dynamism of the Internet is dependent upon continued private sector leadership and the ability for all users to participate in its continued evolution;

Whereas in allowing people all around the world freely to exchange information, communicate with one another, and facilitate economic growth and democracy, the Internet has enormous potential to enrich and transform human society;

Whereas existing structures have worked effectively to make the Internet the highly robust medium that it is today;

Whereas the security and stability of the Internet's underlying infrastructure, the domain name and addressing system, must be maintained;

Whereas the United States has been committed to the principles of freedom of expression and the free flow of information, as expressed in Article 19 of the Universal Declaration of Human Rights, and reaffirmed in the Geneva Declaration of Principles adopted at the first phase of the World Summit on the Information Society;

Whereas the U.S. Principles on the Internet's Domain Name and Addressing System, issued on June 30, 2005, represent an appropriate framework for the coordination of the system at the present time;

Whereas the Internet Corporation for Assigned Names and Numbers popularly known as ICANN, is the proper organization to coordinate the technical day-to-day operation of the Internet's domain name and addressing system;

Whereas all stakeholders from around the world, including governments, are encouraged to advise ICANN in its decision-making;

Whereas ICANN makes significant efforts to ensure that the views of governments and all Internet stakeholders are reflected in its activities;

Whereas governments have legitimate concerns with respect to the management of their country code top level domains;

Whereas the United States Government is committed to working successfully with the international community to address those concerns, bearing in mind the need for stability and security of the Internet's domain name and addressing system;

Whereas the topic of Internet governance, as currently being discussed in the United Nations World Summit on the Information Society is a broad and complex topic;

Whereas it is appropriate for governments and other stakeholders to discuss Internet governance, given that the Internet will likely be an increasingly important part of the world economy and society in the 21st Century;

Whereas Internet governance discussions in the World Summit should focus on the real threats to the Internet's growth and stability, and not recommend changes to the current regime of domain name and addressing system management and coordination on political grounds unrelated to any technical need; and

Whereas market-based policies and private sector leadership have allowed this medium the flexibility to innovate and evolve: Now, therefore, be it

Resolved by the Senate, That it is the sense of the Senate that—

(1) it is incumbent upon the United States and other responsible governments to send clear signals to the marketplace that the current structure of oversight and management of the Internet's domain name and addressing service works, and will continue to deliver tangible benefits to Internet users worldwide in the future; and

(2) therefore the authoritative root zone server should remain physically located in the United States and the Secretary of Commerce should maintain oversight of ICANN so that ICANN can continue to manage the day-to-day operation of the Internet's domain name and addressing system well, remain responsive to all Internet stakeholders