the humane slaughter of nonambulatory livestock, and for other purposes.

S. 1780

At the request of Mr. SANTORUM, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 1780, a bill to amend the Internal Revenue Code of 1986 to provide incentives for charitable contributions by individuals and businesses, to improve the public disclosure of activities of exempt organizations, and to enhance the ability of low-income Americans to gain financial security by building assets, and for other purposes.

S. 1841

At the request of Mr. NELSON of Florida, the names of the Senator from South Dakota (Mr. JOHNSON), the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Illinois (Mr. OBAMA) were added as cosponsors 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. 1969

At the request of Mr. BAUCUS, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 1969, a bill to express the sense of the Senate regarding Medicaid reconciliation legislation to be reported by a conference committee during the 109th Congress.

S. 2006

At the request of Mr. INHOFE, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 2006, a bill to provide for recovery efforts relating to Hurricanes Katrina and Rita for Corps of Engineers projects.

S. 2019

At the request of Mr. SMITH, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2019, a bill to provide for a research program for remediation of closed methamphetamine production laboratories, and for other purposes.

S. 2046

At the request of Mr. DEWINE, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2046, a bill to establish a National Methamphetamine Information Clearinghouse to promote sharing information regarding successful law enforcement, treatment, environmental, social services, and other programs related to the production, use, or effects of methamphetamine and grants available for such programs, and for the other purposes.

S. RES. 302

At the request of Mr. BINGAMAN, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. Res. 302, a resolution to express the sense of the Senate regarding the impact of medicaid reconciliation legislation on the health and well-being of children.

S. RES. 319

At the request of Ms. MIKULSKI, the names of the Senator from Maryland (Mr. SARBANES), the Senator from New Mexico (Mr. BINGAMAN) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. Res. 319, a resolution commending relief efforts in response to the earthquake in South Asia and urging a commitment by the United States and the international community to help rebuild critical infrastructure in the affected areas.

AMENDMENT NO. 2365

At the request of Mr. BINGAMAN, the names of the Senator from Wisconsin (Mr. KOHL) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of amendment No. 2365 proposed to S. 1932, an original bill to provide for reconciliation pursuant to section 202(a) of the concurrent resolution on the budget for fiscal year 2006 (H. Con. Res. 95).

AMENDMENT NO. 2601

At the request of Mr. NELSON of Florida, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of amendment No. 2601 proposed to S. 2020, an original bill to provide for reconciliation pursuant to section 202(b) of the concurrent resolution on the budget for fiscal year 2006.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. CLINTON (for herself, Mr. DEWINE, Mr. OBAMA, and Mr. SMITH):

S. 2053. A bill to amend to amend the Internal Revenue Code of 1986 to provide a tax credit for property owners who remove lead-based paint hazards; to the Committee on Finance

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

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

S. 2053

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

SECTION 1. SHORT TITLE; FINDINGS; PURPOSE.

(a) SHORT TITLE.—This Act may be cited as the ''Home Lead Safety Tax Credit Act of 2005''.

(b) FINDINGS.—Congress finds that:

(1) Of the 98,000,000 housing units in the United States, 38,000,000 have lead-based paint.

(2) Of the 38,000,000 housing units with lead-based paint, 25,000,000 pose a hazard, as defined by Environmental Protection Agency and Department of Housing and Urban Development standards, due to conditions such as peeling paint and settled dust on floors and windowsills that contain lead at levels above Federal safety standards.

(3) Though the number of children in the United States ages 1 through 5 with blood levels higher than the Centers for Disease Control action level of 10 micrograms per deciliter has declined to 300,000, lead poisoning remains a serious, entirely preventable threat to a child's intelligence, behavior, and learning.

(4) The Secretary of Health and Human Services has established a national goal of ending childhood lead poisoning by 2010.

(5) Current Federal lead abatement programs, such as the Lead Hazard Control Grant Program of the Department of Housing and Urban Development, only have resources sufficient to make approximately 7,000 homes lead-safe each year. In many cases, when State and local public health departments identify a lead-poisoned child, resources are insufficient to reduce or eliminate the hazards.

(6) Old windows typically pose significant risks because wood trim is more likely to be painted with lead-based paint, moisture causes paint to deteriorate, and friction generates lead dust. The replacement of old windows that contain lead based paint significantly reduces lead poisoning hazards in addition to producing significant energy savings.

(7) Childhood lead poisoning can be dramatically reduced by the abatement or complete removal of all lead-based paint. Empirical studies also have shown substantial reductions in lead poisoning when the affected properties have undergone so-called ''interim control measures'' that are far less costly than abatement.

(c) PURPOSE.—The purpose of this section is to encourage the safe removal of lead hazards from homes and thereby decrease the number of children who suffer reduced intelligence, learning difficulties, behavioral problems, and other health consequences due to lead-poisoning.

SEC. 2. HOME LEAD HAZARD REDUCTION ACTIVITY TAX CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

''SEC. 30D. HOME LEAD HAZARD REDUCTION ACTIVITY.

''(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the lead hazard reduction activity cost paid or incurred by the taxpayer during the taxable year for each eligible dwelling unit.

''(b) LIMITATION.—The amount of the credit allowed under subsection (a) for any eligible dwelling unit for any taxable year shall not exceed—

''(1) either—

''(A) $3,000 in the case of lead hazard reduction activity cost including lead abatement measures described in clauses (i), (ii), (iv) and (v) of subsection (c)(1)(A), or

''(B) $1,000 in the case of lead hazard reduction activity cost including interim lead control measures described in clauses (i), (iii), (iv), and (v) of subsection (c)(1)(A), reduced by

''(2) the aggregate lead hazard reduction activity cost taken into account under subsection (a) with respect to such unit for all preceding taxable years.

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

''(1) LEAD HAZARD REDUCTION ACTIVITY COST.—

''(A) IN GENERAL.—The term 'lead hazard reduction activity cost' means, with respect to any eligible dwelling unit—

''(i) the cost for a certified risk assessor to conduct an assessment to determine the presence of a lead-based paint hazard,

''(ii) the cost for performing lead abatement measures by a certified lead abatement supervisor, including the removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces, windows, or fixtures, or the removal or permanent covering of soil when lead-based paint hazards are present in such paint, dust, or soil,

''(iii) the cost for performing interim lead control measures to reduce exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards, and the establishment and operation of management and resident education programs, but only if such measures are evaluated and completed by a certified lead abatement supervisor using accepted methods, are conducted by a qualified contractor, and have an expected useful life of more than 10 years,

''(iv) the cost for a certified lead abatement supervisor, those working under the supervision of such supervisor, or a qualified contractor to perform all preparation, cleanup, disposal, and clearance testing activities associated with the lead abatement measures or interim lead control measures, and

''(v) costs incurred by or on behalf of any occupant of such dwelling unit for any relocation which is necessary to achieve occupant protection (as defined under section 35.1345 of title 24, Code of Federal Regulations).

''(B) LIMITATION.—The term 'lead hazard reduction activity cost' does not include any cost to the extent such cost is funded by any grant, contract, or otherwise by another person (or any governmental agency).

''(2) ELIGIBLE DWELLING UNIT.—

''(A) IN GENERAL.—The term 'eligible dwelling unit' means, with respect to any taxable year, any dwelling unit—

''(i) placed in service before 1960,

''(ii) located in the United States,

''(iii) in which resides, for a total period of not less than 50 percent of the taxable year, at least 1 child who has not attained the age of 6 years or 1 woman of child-bearing age, and

''(iv) each of the residents of which during such taxable year has an adjusted gross income of less than 185 percent of the poverty line (as determined for such taxable year in accordance with criteria established by the Director of the Office of Management and Budget).

''(B) DWELLING UNIT.—The term 'dwelling unit' has the meaning given such term by section 280A(f)(1).

''(3) LEAD-BASED PAINT HAZARD.—The term 'lead-based paint hazard' has the meaning given such term by section 745.61 of title 40, Code of Federal Regulations.

''(4) CERTIFIED LEAD ABATEMENT SUPERVISOR.—The term 'certified lead abatement supervisor' means an individual certified by the Environmental Protection Agency pursuant to section 745.226 of title 40, Code of Federal Regulations, or an appropriate State agency pursuant to section 745.325 of title 40, Code of Federal Regulations.

''(5) CERTIFIED INSPECTOR.—The term 'certified inspector' means an inspector certified by the Environmental Protection Agency pursuant to section 745.226 of title 40, Code of Federal Regulations, or an appropriate State agency pursuant to section 745.325 of title 40, Code of Federal Regulations.

''(6) CERTIFIED RISK ASSESSOR.—The term 'certified risk assessor' means a risk assessor certified by the Environmental Protection Agency pursuant to section 745.226 of title 40, Code of Federal Regulations, or an appropriate State agency pursuant to section 745.325 of title 40, Code of Federal Regulations.

''(7) QUALIFIED CONTRACTOR.—The term 'qualified contractor' means any contractor who has successfully completed a training course on lead safe work practices which has been approved by the Department of Housing and Urban Development and the Environmental Protection Agency.

''(8) DOCUMENTATION REQUIRED FOR CREDIT ALLOWANCE.—No credit shall be allowed under subsection (a) with respect to any eligible dwelling unit for any taxable year unless—

''(A) after lead hazard reduction activity is complete, a certified inspector or certified risk assessor provides written documentation to the taxpayer that includes—

''(i) evidence that—

''(I) the eligible dwelling unit passes the clearance examinations required by the Department of Housing and Urban Development under part 35 of title 40, Code of Federal Regulations,

''(II) the eligible dwelling unit does not contain lead dust hazards (as defined by section 745.227(e)(8)(viii) of such title 40), or

''(III) the eligible dwelling unit meets lead hazard evaluation criteria established under an authorized State or local program, and

''(ii) documentation showing that the lead hazard reduction activity meets the requirements of this section, and

''(B) the taxpayer files with the appropriate State agency and attaches to the tax return for the taxable year—

''(i) the documentation described in subparagraph (A),

''(ii) documentation of the lead hazard reduction activity costs paid or incurred during the taxable year with respect to the eligible dwelling unit, and

''(iii) a statement certifying that the dwelling unit qualifies as an eligible dwelling unit for such taxable year.

''(9) BASIS REDUCTION.—The basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit (determined without regard to subsection (d)).

''(10) NO DOUBLE BENEFIT.—Any deduction allowable for costs taken into account in computing the amount of the credit for lead-based paint abatement shall be reduced by the amount of such credit attributable to such costs.

''(d) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(2) the sum of the credits allowable under subpart A and sections 27, 29, 30, 30A, 30B, and 30C for the taxable year.

''(e) CARRYFORWARD ALLOWED.—

''(1) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (d) for such taxable year (referred to as the 'unused credit year' in this subsection), such excess shall be allowed as a credit carryforward for each of the 20 taxable years following the unused credit year.

''(2) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under paragraph (1).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) of the Internal Revenue Code of 1986 is amended by striking ''and'' in paragraph (36), by striking the period and inserting '', and'' in paragraph (37), and by inserting at the end the following new paragraph:

''(38) in the case of an eligible dwelling unit with respect to which a credit for any lead hazard reduction activity cost was allowed under section 30D, to the extent provided in section 30D(c)(9).''.

(2) The table of sections for subpart B of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 30C the following new item:

''Sec. 30D. Home lead hazard reduction activity.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to lead hazard reduction activity costs incurred after December 31, 2005, in taxable years ending after that date.

Mr. OBAMA. Mr. President, today I rise in support of Senator CLINTON's bill which would provide tax credits of $1,000 to $3,000 to property owners who eliminate or contain lead-based paint hazards in homes where low-income young children or women of child-bearing age live.

Children who eat lead paint chips ingest a highly toxic substance that can produce a range of health effects including reduced IQ, reading and learning disabilities, reduced attention spans, kidney damage, and hyperactivity. The sad fact is that there are still over 400,000 children suffering from lead poisoning in this country, many of them poor and many of them minorities. My home State, Illinois, is the State with the highest number of these children.

The loss of IQ and ability to learn affects these children and their families for the rest of their lives and imposes an economic burden on the rest of us because of their reduced productivity.

I urge my colleagues to join Senators CLINTON, SMITH, DEWINE, and me in preventing future lead poisonings by giving property owners a tax incentive to eliminate this problem.

By Mr. KERRY:

S. 2055. A bill to amend titles 10 and 14, United States Code, to provide for the use of gold in the metal content of the Medal of Honor; to the Committee on Banking, Housing, and Urban Affairs.

Mr. KERRY. Mr. President, today I introduce a bill requiring that the Congressional Medal of Honor be made out of 90 percent gold instead of gold-plated brass as is currently the case.

The Congressional Medal of Honor is the highest award our country bestows for valor in action against an enemy force. Its recipients are ordinary Americans who perform extraordinary deeds in battle, often giving their lives.

This is the medal awarded posthumously to Sergeant First Class Paul R. Smith. Under attack at Baghdad International Airport, Sergeant Smith quickly organized the defense of his position, engaging a company-sized enemy force. He showed no concern for his own personal safety when in the face of hostile-fire he mounted an armored personnel carrier and manned a .50 caliber machine gun. As the citations accompanying his award put it, ''In total disregard for his own life, he maintained his exposed position in order to engage the attacking enemy force. During this action, he was mortally wounded. His courageous actions helped defeat the enemy attack, and resulted in as many as 50 enemy soldiers killed, while allowing the safe withdrawal of numerous wounded soldiers.''

This is the medal won by Captain Humbert Roque Versace. During an intense attack by the Viet Cong in the Xuyen Province, Captain Versace was wounded twice while engaging the enemy but continued to fight until exhaustion and lack of ammunition led to his capture. The citation accompanying his award reads: ''Taken prisoner by the Viet Cong, he exemplified the tenets of the Code of Conduct from the time he entered into Prisoner of War status. Captain Versace assumed command of his fellow American soldiers, scorned the enemy's exhaustive interrogation and indoctrination efforts, and made three unsuccessful attempts to escape, despite his weakened condition which was brought about by his wounds and the extreme privation and hardships he was forced to endure. During his captivity, Captain Versace was segregated in an isolated prisoner of war cage, manacled in irons for prolonged periods of time, and placed on extremely reduced ration. The enemy was unable to break his indomitable will, his faith in God, and his trust in the United States of America. Captain Versace, an American fighting man who epitomized the principles of his country and the Code of Conduct, was executed by the Viet Cong on 26 September 1965.''

This is the medal won by Marine Corps Second Lieutenant Robert Dale Reem, who on the night of November 6, 1950, after leading three separate assaults on an enemy position in the vicinity of Chinhung-ni, Korea, threw himself on top of an enemy grenade that landed amidst his men.

This is the medal won by Lieutenant, Junior Grade, Donald Gary, who, while serving aboard the U.S.S. *Franklin* on July 23, 1945, calmly led his crewmates to safety after their ship was attacked. His citation reads: ''Stationed on the third deck when the ship was rocked by a series of violent explosions set off in her own ready bombs, rockets, and ammunition by the hostile attack, Lt. (j.g.) Gary unhesitatingly risked his life to assist several hundred men trapped in a messing compartment filled with smoke, and with no apparent egress. As the imperiled men below decks became increasingly panic stricken under the raging fury of incessant explosions, he confidently assured them he would find a means of effecting their release and, groping through the dark, debris-filled corridors, ultimately discovered an escapeway. Staunchly determined, he struggled back to the messing compartment three times despite menacing flames, flooding water, and the ominous threat of sudden additional explosions, on each occasion calmly leading his men through the blanketing pall of smoke until the last one had been saved.''

As I have said previously, those who earned these medals are the stuff of legend. But they are more than legends. They are actual people whose deeds inspire humility and gratitude in all of us. In bestowing the Congressional Medal of Honor, the president enrolls the recipient in a sacred club of heroes.

The medal itself, however, while invaluable in significance and tribute, does not do enough to show our appreciation. The medal is gold in color but is actually brass plated with gold and only costs approximately $30 to produce. Other Congressional medals given to foreign dignitaries, famous entertainers, and other worthy citizens can cost $30,000 to produce. Now I will be the first to tell you that I believe the value of this medal is found in the deeds of every American who has earned it. But also believe that we can do better.

Put simply, this legislation will forge a medal more worthy of the esteem with which the Nation holds those few who have earned the Congressional Medal of Honor through valor and heroism beyond compare.

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. 2055

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

SECTION 1. GOLD CONTENT FOR MEDAL OF HONOR.

(a) REQUIREMENT FOR GOLD CONTENT.—Sections 3741, 6241, and 8741 of title 10, United States Code, and section 491 of title 14, United States Code, are each amended by inserting after ''appropriate design,'' the following: ''the metal content of which is 90 percent gold and 10 percent alloy and''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to any Medal of Honor awarded after the date of the enactment of this Act.

By Mr. ALLEN (for himself and Mr. WARNER):

S. 2056. A bill to require the Secretary of the Treasury to redesign $1 Federal reserve notes so as to incorporate the preamble of the Constitution of the United States, a list describing the Articles of the Constitution, and a list describing the amendments to the Constitution, on the reverse side of such note; to the Committee on Banking, Housing, and Urban Affairs.

Mr. ALLEN. Mr. President, I rise today to introduce a piece of legislation that is designed to honor the document allows us to all be here today. The document I am referring to is the Constitution of the United States of America, the greatest and longest lasting political document in the history of the world. Drafted in part by the great patriot Thomas Jefferson, this document sets forth both the structure of our government and the fundamental freedoms we enjoy every day. Ingenious by its simplicity, the Constitution is a living breathing document that has allowed our country to evolve from 13 colonies who banded together to win her independence from Great Britain to the most powerful Nation in the world. While this document has created a strong national government that is unrivaled in the world, it has also kept the power in the States to decide how to govern themselves. As governor of the Commonwealth of Virginia and now as United States Senator I have had the unique opportunity to experience how this ingenious system of federalism plays out in every action we take as leaders.

This legislation that I am introducing today will serve to remind all Americans of the freedoms embodied in the Constitution. For many of us, it has been a long time since we have had the opportunity to sit down and actually read this historic document. By placing the headings of the articles and the amendments on the back of the dollar bill, all people will have the chance to look at the provisions. I sincerely hope that when children take a look at the reverse side of a dollar bill, they will take the time to ask their parents about what they are reading so they can gain a better understanding of our great Nation and the principals our country was founded.

By looking at the order of the amendments to the constitution, students can also trace the history of our country. The amendments to the constitution embody the four pillars of a free and just society. The first of these pillars is freedom of religion, this important freedom is protected by the First Amendment which allows all people of all religions to freely practice their chosen religion without fear of government interference. The second pillar is the freedom of expression, which again is protected in the First Amendment. The third pillar is the private ownership of property. This important freedom is protected by the Fifth Amendment which limits the government's power to take private property. This freedom is also protected in the Third. The fourth Amendment which protects citizens from being forced to quarter solders in their homes and protects private property from unreasonable searches and seizures respectively. The fourth pillar is the rule of law. Protection of the rule of law runs throughout the Constitution, most notably in the Sixth Amendment which guarantees the right to a speedy trial and the Fifth and Fourteenth Amendments which require due process of law.

Looking at the remaining amendments one can trace the evolution of the Constitution and the United States from the Thirteenth Amendment prohibiting slavery, to the Fifteenth Amendment providing for the right to vote regardless of race, the Nineteenth Amendment granting women the right to vote and the Twenty Fourth Amendment prohibiting the poll tax.

Throughout our history, hundreds of thousands of brave men and women have laid down their lives protecting the freedoms granted to us in the constitution. Having it been Veterans Day a few days ago, I feel it is high time

that we do all we can to publicize what these freedom are that we hold so dearly.

Before I yield the floor I would like to recognize the contributions of one of my constituents, Mr. Randy Wright who teaches at Liberty Middle School in Hanover, VA. Mr. Wright brought this idea to my attention several years ago and he along with his students over the years have been instrumental is providing support for this piece of legislation. I therefore urge my colleagues to join me in support this legislation.

By Mrs. CLINTON (for herself, Mr. HARKIN, Mr. DURBIN, Mr. KENNEDY, Mr. KERRY, Ms. LANDRIEU, Mr. LAUTENBERG, and Mr. INOUYE):

S. 2057. A bill to establish State infrastructure banks for education, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, I rise today to introduce legislation co-sponsored with Senator HARKIN that would begin to rebuild America's schools. If approved, the Investing for Tomorrow's Schools Act would enable states to develop State Infrastructure Banks—a flexible and inexpensive way to finance school construction and renovation. This approach offers an innovative solution to the urgent problem of fixing deteriorating schools. Every dollar invested to create State Infrastructure Banks would be reused to support project after project in the form of loans and credit support.

According to the National Center for Education Statistics, three in four schools in America need assistance to come into ''good overall condition.'' Repairs and modernizations will cost, according to the National Education Association, $322 billion. New York State has a greater need than any other state—estimated at $51 billion. Just in New York City, schools are estimated to need $21 billion. The city's schools are so old that they would nearly qualify for social security, averaging 61-years-old.

Acute need for school repair and modernization exists nationwide. Need is estimated at $33 billion in California, $25 billion in Ohio, $22 billion in New Jersey, $13 billion in Texas, and $10 billion each in Illinois, Massachusetts, Michigan, Pennsylvania, and Utah. Nation-wide costs add up to $322 billion.

In 2005, an estimated $19.6 billion was spent nation-wide on school construction. At that rate, it will take more than 16 years to modernize school buildings. Last year in New York, $984 million was spent on school construction. At that rate, it will take more than 50 years to modernize New York's schools—and that's assuming that in the meantime we don't need to build more new schools and that no schools fall apart!

When students attend schools in disrepair, the consequences are all too clear.

An article from 2004 in the Poughkeepsie Journal described how, in Hyde Park, New York along the Hudson River, ventilation problems at the 45-year-old Franklin D. Roosevelt High School sickened students and staff causing watery eyes, headaches, nausea, and dizziness. I would like to include this article in the CONGRESSIONAL RECORD. State Infrastructure Banks would make funding available to address environmental hazards including poor ventilation and bad air quality. They would help more schools become healthy and high-performing.

An article in Newsday newspaper described how, in Hempstead New York, on Long Island, Prospect Elementary, a 100-year-old school, was closed in the fall of 2003 after administrators discovered a rodent problem, mold in the cafeteria, and a crumbling chimney in a classroom.

The Marguerite Golden Rhodes Elementary School was closed after state education officials found a gap between where the paint on the walls ended and where the ceiling began—an indication that either the wall or the ceiling was moving.

Hempstead High School was closed for a week, after a blackboard fell off a wall exposing asbestos left over from a botched cleanup in 1990. 1'd like to include this article in the CONGRESSIONAL RECORD.

The school closures worsened overcrowding, as parents Celia Ridely and Olive Warner pointed out to Newsday and the New York Times. With schools in such poor condition, is it surprising that just 38 percent of students in Hempstead graduate from high school?

In Washingtonville, 54 miles north of New York City, the roof over a classroom in 44–year-old Taft Elementary collapsed. Fortunately the catastrophic collapse occurred in August of 2004, before the school year began, and no one was injured.

Unfortunately, the U-shaped joist which contributed to the collapse was popular in school construction across New York and throughout America from 1900 to the early 1970s. Many of these schools are still in operation. New York's Department of Education took the precaution of advising school districts to check similar joists to make sure they are in good condition.

The lack of funding for school construction can lead school districts to put off maintenance. Paul Abramson, a consultant based in Westchester County, New York told a school construction website, ''What happens, unfortunately, is [that] school districts cut down on maintenance.''

Barbara Knisely-Michelman of the American Association of School Administrators said, ''It comes down to the issue of resource. If school administrators had unlimited resources, [maintenance] would be at the top of the agenda.''

We can do better. Schoolchildren should not have to contend with falling-down schools. The lack of adequate school buildings hampers today' s most promising and innovative efforts to boost student achievement.

Charter schools hold the promise of expanding the supply of high-quality public schools, especially in disadvantaged communities. But most charter schools have limited credit histories and lack access to public school facilities or traditional funding streams such as bonds. One in three charter school operators report that school construction costs are a major obstacle to their schools' success.

The No Child Left Behind Act promised that children in underperforming schools would have the opportunity to transfer to better public schools. But in many communities, more students seek transfers than are spaces available. In New York City last year, 33,000 students applied to transfer out of underperforming schools but only 7,000 could be accommodated.

Charter school operators should have access to affordable financing for school construction. Schoolchildren promised public school choice should be able to exercise that right. Innovative reforms should not be blocked by inadequate school buildings.

In 2004, an editorialist for Newsday newspaper on Long Island wrote, ''School construction is one area where the federal government could do more. Little . . . has been heard on the subject since the late 90s—that's a shame. . . . Money must be found to keep schools safe, functional, and welcoming places.''

Senator HARKIN and I agree. That's why today we are introducing the Investing for Tomorrow's Schools Act. At the heart of our proposal is the creation of State Infrastructure Banks, which would improve financing for school construction. This financing mechanism has been used since the Reagan Administration to help local communities fund water treatment and clean water facilities and transportation projects. For example, my own State of New York received $2.48 billion in Federal support for its Clean Water State Revolving Fund between 1989 and 2004. It leveraged that money into more than $10 billion of loans to local communities.

For example, State Infrastructure Banks would offer school districts a flexible menu of loan and credit enhancement assistance, such as low interest loans, bond-financing security, loan guarantees, and credit support for financing projects, which result in lower interest rates.

State Infrastructure Banks would not strain Federal Treasury or the American taxpayer. After initial funding, they would require no ongoing federal appropriations. As each loan is repaid, the money can be offered as a new loan.

Passage of this bill would lay the groundwork for a robust system of State Infrastructure Banks that provide immediate aid to the neediest schools and help local communities

fund affordable construction far into the future.

This modest proposal is one piece of the school construction solution. I ask my Senate colleagues to join me today to pass this legislation without delay.

Mr. President, I ask unanimous consent that 2 articles be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From Poughkeepsie Journal, Dec. 9, 2004.]

VENTILATION BLAMED FOR FDR HIGH ILLNESSES

(By John Davis)

Ventilation problems were the cause of a rash of complaints about the air at Franklin D. Roosevelt High School in October and November, according to health officials.

After weeks of testing and monitoring conditions at the Hyde Park high school, Dutchess County Health Commissioner Dr. Michael Caldwell recently relayed his findings in a letter to Hyde Park schools Superintendent Carole Pickering.

''The reported symptoms and effects among students and staff in the school are consistent with those reported in a building with inadequate ventilation,'' Caldwell wrote.

In response to the complaints by students and staff reporting headaches, dizziness and watery eyes, the county health department considered a number of factors as being the source of the problem.

The health department has ruled out mold, toxic agents or germs as being the culprit.

''Recent modifications made to the school's ventilation system appear to have had a beneficial effect upon the FDR high school community,'' Caldwell noted in his letter.

Pickering expressed sympathy Wednesday for those who suffered during the period of the air problem.

''I regret that even one single person was ill due to the air quality problems over the last seven weeks,'' Pickering said in a prepared statement Wednesday. ''We will continue to monitor FDR and to proactively assess heating and ventilation systems in all our buildings.''

[From Daily News (New York), Nov. 21, 2004.]

IT'S A FOUL SCHOOL STEW—FIRINGS, PROBES AND LAWSUITS IN HEMPSTEAD

(By Laura Williams)

It already seemed more than the Hempstead School District could bear. Asbestos and mold forced school closings. The school board abruptly fired the superintendent. Board members were suing each other amid accusations of corruption.

Then last week came word that the State Education Department is launching an investigation into financial hanky-panky by school board members. That revelation, in fact, was welcome news to fed-up parents.

Board members ''cannot get through a school board meeting without arguing about which friend is going to benefit and how they're going to get money back from the district,'' said Ron Mazile, co-chairman of Hempstead Parents Community United.

The investigation will be conducted in addition to an in-depth audit of the district's books being done by State Controller Alan Hevesi.

As if all that weren't enough, a Hempstead High student was stabbed to death near the school Tuesday. A former gang member was arrested, and cops were seeking two more suspects last week.

And there's still more: the school district is facing $100 million worth of lawsuits, included in these are suits filed by school employees making charges of sexual harassment and discrimination. In addition, school board member Thomas Parsley is suing colleague Ralph Schneider over something personal.

Parsley himself was charged in September with stealing an ATM card from a principal, though he has said the charge was politically motivated.

Neither the district superintendent nor any of the five board members returned repeated calls.

The 6,800-student district is struggling with the problems that plague so many financially-strapped communities. Almost three-quarters of the Hempstead district's students qualify for free lunch.

Less than 40% of its high school students graduate, compared to wealthy next-door neighbor Garden City, where 99% graduate. Reading and math scores continue to lag behind the county average.

And school buildings have not been properly maintained.

Prospect Elementary was closed last year after mold was discovered in the cafeteria. Marguerite Golden Rhodes Elementary School also was closed after it appeared the building was shifting dangerously. Both schools' students are attending classes held in trailers.

Last year, a problem with the hot water heater sickened staffers and students at Alverta Bray Schultz Middle School, which also was found to be serving spoiled food in its cafeteria. And Hempstead High was shut down for a week last year after a chalkboard fell, exposing asbestos.

Amid all these problems, the school board last month fired Superintendent Nathaniel Clay, replacing him with Susan Johnson.

Johnson, who was fired as the district's director of personnel just two months before getting the top job, had launched her own lawsuit against the district, charging wrongful termination.

Parents are planning a Dec. 4 rally and march—from Village Hall to school district offices—in an attempt to get local school leaders to perform dutifully.

''Taxpayers, parents and students are fuming,'' Mazile said. ''We're going to hold their feet to fire.''

By Mr. FEINGOLD:

S. 2058. A bill to promote transparency and reduce anti-competitive practices in the radio and concert industries; to the Committee on Commerce, Science, and Transportation.

Mr. FEINGOLD. Mr. President, I am pleased to introduce legislation today that will promote openness and fair competition in the radio and concert industries.

I have followed the changes in the radio and concert industries since the 1996 Telecommunication Act with great concern. For years, I have heard complaints from my constituents about the increasing concentration of ownership in the radio and concert industries and, in turn, the increasingly uneven playing field for small radio stations and independent concert promoters. For consumers this has meant less diversity, less local content and growing dissatisfaction with the radio and concerts they are offered.

Most recently in the last Congress, I introduced broad legislation to address ownership consolidation and the anti-competitive practices common in the industry. These practices include tacit or explicit pay-for-play, or ''payola,'' payments, and corporate radio stations putting untoward pressure on artists to play at the same corporation's venues use affiliated concert promoters. While I continue to be concerned by consolidation and believe this centralization exacerbates the potential for abuse, the bill I introduce today focuses instead on the anti-competitive practices, whether they occur at a radio station group of a handful of stations or one that owns thousands of stations.

Some might question why we need added scrutiny and accountability for the radio and concert industries specifically. Besides the unique role radio plays for communication and entertainment in each American's life, radio also is, in a sense, a public-private partnership. With radio's use of the public airwaves, it also has a responsibility to serve the public good.

The abuses within the radio and concert industry are not entirely new. In fact, problems have occasionally sprung up almost throughout the entire history of the medium. There almost seems to be a cyclical pattern as the payola is rooted out and then several years later is reincarnated in slightly different form to grow to become pervasive again. So while the original payola practices predated the recent rapid consolidation in the industry, the concentration of power has made the problem more widespread and its effects possibly more severe on local stations, promoters, artists and consumers.

While paying a radio station or radio station employee to play a certain song without telling the audience has a long history in radio, this does not make the fraud and bribery any more acceptable. In the 1950s, the practice was relatively simple. Artists, their labels or managers would often directly bribe DJs to play their songs either in cash or through other consideration. When this practice became public, there were investigations and Congress and the Federal Communications Commission (FCC) took actions to block this payola.

The most recent incarnation of payola takes a more complicated and sophisticated—corporate, if you will—approach to skirt the current rules that prevent direct pay-for-play. Indirect payments through independent music promoters have been an open secret, as have more direct payments, as the ground-breaking investigation of New York Attorney General Eliot Spitzer demonstrates. While the Spitzer investigation is ongoing, he has already uncovered significant abuses and this summer reached a $10 million settlement with a record label.

While not traditionally considered payola, there are other abuses of power over airplay decisions by radio stations and their corporate parents, especially when the conglomerate also owns concert promoters and venues. This cross-

ownership sets up a situation where the same corporation that is negotiating a contract for an artist to perform at its concert also controls the lifeblood of that artist's success—airplay of his or her songs. The result can be intense pressure on artists to play radio station-promoted shows and, often, to do so for less than the normal rate. This practice hurts the artist, hurts competing independent stations and promoters and, ultimately, hurts the listening public, which ends up choosing from songs on the radio that have been selected based on where and for whom the artist is performing a concert, and for the songs' artistic merit. Moreover, for any artist who deigns to refuse the direct or implied extortion from the conglomerate, as Don Henley's courageous testimony in a 2003 Commerce Committee hearing clearly explained, there is the risk of retaliation—either immediately or by boycotting the next single or album the artist produces. And with the consolidation in the industry, that boycott might not just be in one station in one market; it could be forty stations in many markets. Facing this kind of potential threat, you can see why even the most popular acts are afraid to speak publicly.

The bill I introduce today proposes a multi-faceted approach to the various entrenched forms of payola. The bill would simultaneously strengthen the FCC's ability to prove and punish violators, close the loophole allowing indirect payola, prevent cross-ownership from hindering fair competition, and, perhaps most importantly, increase transparency through disclosure of the payments to radio stations from artists, labels, promoters and others who may have an interest in improperly influencing airplay decisions.

The bill improves the FCC's ability to enforce payola violations through several means. It requires radio stations to make transactions with entities like record labels that might have an interest in influencing airplay on an ''arm's length basis.'' Moreover the bill requires record-keeping of such transactions and makes the records available to the FCC in the event of an investigation. In addition, the bill significantly increases penalties for payola violations and allows the FCC to consider revoking a station's license. As we have seen in the realm of indecency, multimillion dollar companies do not blink at the current fines of $10,000 per violation, but the prospect of putting a license in jeopardy will get their attention.

As I've already mentioned, the current payola rules were put in place for an earlier, simpler incarnation of the practice—the direct bribing of DJs and stations. Payola has changed, often going through third parties such as independent music promoters or under the guise of a legitimate transaction. The bill broadens the current rules to include these indirect payments, so no matter what tortured path money or other consideration travels, if it is for airplay and not disclosed, it is payola.

Cross-ownership of radio stations and concert promoters or venues poses a serious problem for fair competition. Without controls, the relationship injects the profitability of a concert and not artistic merit into airplay decisions. The bill would either prohibit this, in the case of cross-ownership, or place controls to ensure fair competition in the concert promotion industry.

The final element of the bill—increased transparency—hopefully will have the biggest impact by deterring payola in all its past, present and future incarnations. The bill requires radio stations to disclose all receipts of payments or consideration that could be used as a front for payola along with a list of the songs played every month, broken down by label and artist. While corporations may not fear the current hard-to-prove $10,000 fines, they do understand public relations. The potential for consumers and the media to use these records to connect the dots should have a chilling effect on the practice and may mean that the FCC Enforcement Bureau will rarely even need to be involved. But if problems persist, this bill will provide the Bureau with better powers and evidence to combat payola in all its forms.

Finally let me put this in context and remind my colleagues that radio stations use a public resource, the airwaves, to reach their listeners. With this use comes a responsibility to the public and an understanding that they accept a degree of increased scrutiny. My legislation strives to ensure that the public knows when it hears a song on the radio that it is because the station, the DJ, the public, or even a focus group, believes it has artistic merit and that it is something the listeners will enjoy. Too often, today's radio listeners are left to wonder whether a song was played because the station manager got a new laptop or because the station's parent company is producing the artist's upcoming concert.

It boils down to choices. This bill will reinstate choices, the fundamental basis of competition; choice for the artists to pick which concerts to play and who they want to promote their concerts; choices for the radio stations to play songs based on merit, or at least not based on narrow financial interests; and ultimately choices for consumers as artistic merit instead of the ability to pay carefully disguised bribes broadens the field of artists who can compete.

I am pleased that my bill has been endorsed by the following groups, and I am grateful for the input they have provided about problems in the radio and concert industries: the American Association of Independent Music/A2IM; the American Federation of Television and Radio Artists; the American Federation of Musicians of the United States and Canada; Consumers Union; Free Press; the Future of Music Coalition; the National Academy of Recording Arts and Sciences, Inc.; and the Recording Artists' Coalition. I urge my colleagues to join me and support this legislation to promote fair competition in the radio and concert industries. I urge my colleagues to join me and support this legislation to promote fair competition in the radio and concert industries.

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. 2058

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 ''Radio and Concert Disclosure and Competition Act of 2005''.

SEC. 2. DISCLOSURE REGULATIONS.

(a) MODIFICATION OF REGULATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Federal Communications Commission shall modify its regulations under sections 317 and 507 of the Communications Act of 1934 (47 U.S.C. 317 and 508), to prohibit the licensee or permittee of any radio station, including any employee or affiliate of such licensee or permittee, from receiving money, services, or other valuable consideration, whether directly or indirectly, from a record company, recording artist, concert promoter, music promoter, or music publisher, or an agent or representative thereof, unless the licensee or permittee discloses at least monthly the receipt of such money, services, or other consideration to the Federal Communications Commission (in this Act referred to as the ''Commission'') and the public in a manner that the Commission shall specify.

(2) EXCEPTION.—The Commission in modifying its regulations as required under paragraph (1) may create an exception to the prohibition described under paragraph (1) for—

(A) transactions provided at nominal cost; or

(B) paid broadcasting disclosed under section 317 of the Communications Act of 1934 (47 U.S.C. 317), if the monthly disclosure described in paragraph (1) includes the proportion of total airplay considered paid broadcasting.

(b) PLAYLIST.—The monthly disclosure by a radio station licensee or permittee required under subsection (a) shall include a list of songs and musical recordings aired during the disclosure period, indicating the artist, record label, and number of times the song was aired.

SEC. 3. ARM'S LENGTH TRANSACTIONS.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Federal Communications Commission shall modify its regulations under sections 317 and 507 of the Communications Act of 1934 (47 U.S.C. 317 and 508), to require that all transactions between a licensee or permittee of any radio station, including any employee or affiliate of such licensee or permittee, and a record company, recording artist, concert promoter, music promoter, or music publisher, or an agent or representative thereof, shall be conducted at an arm's length basis with any such transaction reduced to writing and retained by the licensee or permittee for the period of the license term or 5 years, whichever is greater.

(b) RECORDS.—A record of each transaction described under subsection (a) shall be—

(1) made available upon request to—

(A) the Commission; and

(B) any State enforcement agency; and

(2) subject to a random audit by the Commission to ensure compliance on a basis to be determined by the Commission.

(c) EXEMPTION.—The Commission may create an exemption to the record keeping requirement described in subsection (b)—

(1) for a transaction that is of a nominal value; and

(2) for a radio station that is a small business, as recognized by the Commission and established by the Small Business Administration under section 121 of title 13, Code of Federal Regulations, if the Commission determines that such record keeping poses an undue burden to that small business.

SEC. 4. COMPETITION REGULATIONS.

Not later than 1 year after the date of the enactment of this Act, the Federal Communications Commission shall modify its regulations under sections 317 and 507 of the Communications Act of 1934 (47 U.S.C. 317 and 508), to accomplish the following:

(1) GENERAL PROHIBITION.—To prohibit the licensee of any radio station, including any parent, subsidiary, or affiliated entity of such licensee, from using its control over any non-advertising matter broadcast by such licensee to extract or receive money or any other form of consideration, whether directly or indirectly, from a record company, artist, concert promoter, or any agent or representative thereof.

(2) RADIO STATION CONCERTS.—

(A) IN GENERAL.—To prohibit a licensee or permittee of a commercial radio station, or affiliate thereof, from—

(i) engaging, receiving, making an offer for, or directly profiting from concert services of any musician or recording artist unless the licensee or permittee does not discriminate, in whole or in part, about the broadcast of non-advertising matter, including any sound recording, by that particular artist upon whether or not that artist performs at the radio station affiliated concert; and

(ii) engaging or receiving concert services of any musician or recording artist unless the licensee or permittee provides the musician or recording artist with compensation for such services at the fair market value for the performance.

(B) DEFINITION.—For purposes of subparagraph (A), the term ''fair market value'' shall include such factors as—

(i) the rate typically charged by the musician or recording artist for a concert of the size being put on for the station;

(ii) the expenses of the musician or recording artist to travel to, and perform at, the concert location; and

(iii) the length of the performance in relation to the standard duration for a concert by the musician or recording artist.

(C) LIMITATIONS AND EXCLUSIONS.—The provisions of this paragraph shall not—

(i) prohibit consideration for the concert services being made in the form of promotional value, cash, or a combination of both; or

(ii) apply to—

(I) a radio station that is a small business, as recognized by the Commission and established by the Small Business Administration under section 121 of title 13, Code of Federal Regulations;

(II) in-studio live interviews and performances; or

(III) concerts whose proceeds are intended and provided for charitable purposes.

(3) RADIO AND CONCERT CROSS-OWNERSHIP.—

(A) IN GENERAL.—To prohibit a licensee or permittee of a radio station, or affiliate thereof, from owning or controlling a concert promoter or venue primarily used for live concert performances.

(B) WAIVER.—The Commission may waive the prohibition required under subparagraph (A) if—

(i) the Commission determines that because of the nature of the cross-ownership and market served—

(I) the affected radio station, concert promoter, or venue would be subjected to undue economic distress or would not be economically viable if such provisions were enforced; and

(II) the anti-competitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the needs of the community to be served; and

(ii) the affected radio station, concert promoter, or venue demonstrates to the Commission that decisions regarding the broadcast of matter, including any sound recording, will be made at arm's length and not based, in whole or in part, upon whether or not the creator, producer, or promoter of such matter engages the services of the licensee or permittee, or an affiliate thereof.

SEC. 5. REVIEW OF TRANSACTIONS.

(a) IN GENERAL.—Upon petition by a musician, recording artist, or interested party, the Commission shall review any transaction entered into under section 3 or section 4.

(b) COPY OF PETITION.—A copy of any petition submitted to Commission under subsection (a) shall be provided by the person filing such petition to the licensee or permittee, or musician or recording artist, as applicable.

(c) PUBLIC DISCLOSURE.—If the Commission, after reviewing a petition submitted under subsection (a) finds a transaction violated any provision of this paragraph or section 3, the Commission shall publicly, after all parties have had a reasonable opportunity to comment, disclose its finding and grant appropriate relief.

SEC. 6. PENALTIES.

The regulations promulgated under sections 2, 3 and 4 shall set forth appropriate penalties for violations including an immediate hearing before the Commission upon the issuance of a notice of apparent liability or violation, with possible penalties to include license revocation.

SEC. 7. REPORT.

Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, the Commission shall issue a report to Congress and the public that—

(1) summarizes the disclosures made by licensees and permittees as required under section 2;

(2) summarizes the audits conducted by the Commission as required under section 3(b)(2);

(3) summarizes the cross-ownership waivers, if any, awarded by the Commission under section 4(3)(B);

(4) evaluates ownership concentration and market power in the radio industry in a manner similar to the most recent in the discontinued series of FCC reports, ''Radio Industry Review 2002: Trends in Ownership, Format, and Finance''; and

(5) describes any violations of section 2, 3, or 4, and penalty proceedings under section 6, and includes recommendations for any additional statutory authority the Commission determines would improve compliance with regulations issued under this Act.

SEC. 8. LICENSE REVOCATION.

Section 312(a) of the Communications Act of 1934 (47 U.S.C. 312) is amended—

(1) in paragraph (6), by striking ''; or'' and inserting a semicolon;

(2) in paragraph (7), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(8) for violation of or failure to follow any regulation established in accordance with section 2, 3, 4, or 6 of the Radio and Concert Disclosure and Competition Act of 2005.''.

SEC. 9. INCREASED MAXIMUM PENALTIES.

(a) PENALTIES FOR DISCLOSURE OF PAYMENTS TO INDIVIDUALS CONNECTED WITH BROADCASTS.—Section 507(g)(1) of the Communications Act of 1934 (47 U.S.C. 508(g)(1)) is amended by striking ''$10,000'' and inserting ''$50,000''.

(b) PENALTIES FOR PROHIBITED PRACTICES IN CONTESTS OF KNOWLEDGE, SKILL, OR CHANCE.—Section 508(c)(1) of the Communications Act of 1934 (47 U.S.C. 509(c)(1)) is amended—

(1) by striking ''$10,000'' and inserting ''$50,000''; and

(2) by inserting '', for each violation'' before the period.

By Mr. VOINOVICH (for himself and Mr. AKAKA):

S. 2060. A bill to extend the District of Columbia College Access Act of 1999 and make certain improvements; to the Committee on Homeland Security and Governmental Affairs.

Mr. VOINOVICH. Mr. President, today I rise to introduce legislation to reauthorize the District of Columbia Tuition Assistance Grant (D.C. TAG) program for five additional years. This program has had a tremendously beneficial impact on promoting higher education for high school graduates in our Nation's capital.

The aim of this program is to assist District students, who do not have access to state-supported education systems, in attending college. D.C. TAG scholarships are used by District residents to pay the difference between in-State and out-of-State tuition at State universities nationwide, up to $10,000 per student per school year, with a cumulative cap of $50,000 per student. In addition, since March 2002, District students attending private institutions in Maryland and Virginia, as well as Historically Black Colleges and Universities nationwide, started receiving tuition grants under the program of $2,500 per student per school year, with a cumulative cap of $12,500 per student.

Since the first grants were awarded in 2000, the program has dispersed over $98 million to 8,454 District students; many are the first in their family to attend college. Moreover, District high school graduating seniors have seen a 28 percent increase in college attendance. Seventy five percent of District students said that D.C. TAG made a difference in their decision to continue their education beyond high school. Sixty five percent of District students have indicated that D.C. TAG has enabled them to choose a college that best suits their educational needs.

Because of the great success and positive impact of this program, I propose to expand the program to private schools nationwide, thereby creating greater equity between all private colleges, while establishing a cap on program funding at the current appropriation of $33.2 million annually. In addition, this legislation will require the Mayor of the District of Columbia to submit an annual report to Congress on the program's status.

As Chairman of the District of Columbia authorizing subcommittee, leveling the playing field for high school graduates in the District and enhancing their educational opportunities continues to be a top priority. I urge all of my colleagues to support this legislation.

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

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

S. 2060

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

SECTION 1. 5-YEAR REAUTHORIZATION OF TUITION ASSISTANCE PROGRAMS.

(a) PUBLIC SCHOOL PROGRAM.—Section 3(i) of the District of Columbia College Access Act of 1999 (sec. 38–2702(i), D.C. Official Code) is amended by striking ''each of the 7 succeeding fiscal years'' and inserting ''each of the 11 succeeding fiscal years''.

(b) PRIVATE SCHOOL PROGRAM.—Section 5(f) of such Act (sec. 38–2704(f), D.C. Official Code) is amended by striking ''each of the 7 succeeding fiscal years'' and inserting ''each of the 11 succeeding fiscal years''.

SEC. 2. EXPANSION TO PRIVATE SCHOOLS NATIONWIDE.

Section 5(c)(1)(A)(i) of the District of Columbia College Access Act of 1999 (sec. 38–2704(c)(1)(A)(i); D.C. Official Code) is amended by striking ''the main campus'' through the end and inserting ''located in the United States;''.

SEC. 3. CAPPED FUNDING.

Section 7 of the District of Columbia College Access Act of 1999 (sec. 38–2706; D.C. Official Code) is amended—

(1) in paragraph (2), by striking ''or'' after the semicolon;

(2) in paragraph (3), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(4) $33,200,000, in the case of the aggregate amount for fiscal year 2006 and each succeeding fiscal year.''.

SEC. 4. MAYOR'S REPORT.

Section 3(g) of the District of Columbia College Access Act of 1999 (sec. 38–2703(g); D.C. Official Code) is amended to read as follows:

''(g) MAYOR'S REPORT.—Not later than August 1, the Mayor shall report to Congress annually regarding:

''(1) The number of students applying for the program and the number of students graduating from the program.

''(2) The number of eligible students attending each eligible institution and the amount of the grant awards paid to those institutions on behalf of the eligible students.

''(3) The extent, if any, to which a ratable reduction was made in the amount of tuition and fee payments made on behalf of eligible students.

''(4) The progress in obtaining recognized academic credentials of the cohort of eligible students for each year.''.

By Mr. ENZI (for himself, Mr. ISAKSON, Mr. CRAIG, Mr. BURR, Mr. ROBERTS, Mr. SESSIONS, Mr. WARNER, and Mr. GREGG):

S. 2065. A bill to amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ENZI (for himself, Mr. ISAKSON, Mr. CRAIG, Mr. BURR, Mr. ROBERTS, Mr. SESSIONS, Mr. GREGG, Mr. WARNER, and Mr. DEMINT):

S. 2066. A bill to amend the Occupational Safety and Health Act of 1970 to further improve the safety and health of working environments, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ENZI (for himself, Mrs. MURRAY, Mr. ISAKSON, Mr. BURR, Mr. SESSIONS, and Mr. GREGG):

S. 2067. A bill to assist chemical manufacturers and importers in preparing material safety data sheets pursuant to the requirements of the Hazard Communication standard and to establish a Commission to study and make recommendations regarding the implementation of the Globally Harmonized System of Classification and Labeling of Chemicals; to the Committee on Health, Education, Labor, and Pensions.

Mr. ENZI. Mr. President, I am pleased today to announce the introduction of legislation designed to improve our workplace health and safety. The Senate Committee on Health, Education, Labor and Pensions, that I Chair, has a broad range of responsibilities. None of them is more important than the oversight of our occupational safety and health laws.

In the past decade or so we have witnessed steady progress toward safer and healthier workplaces. For example, in 1992, approximately 9 out of every 100 American workers suffered a workplace injury. By 2003, that injury rate had been cut nearly in half. Over the same period we have seen more than a 20 percent decline in the annual rate of fatalities from workplace injuries.

As encouraging as this progress is, however, it should not be cause for anyone to become complacent. The number of work-related deaths and injuries remains unacceptably high. For example, last year, despite the efforts of all concerned, some 4.4 million workers suffered work-related injuries, with 1.3 million of those injuries involving lost work days. Such workplace injuries continue to bring hardship to employees and their families and to impose significant burdens on our economy. We need to continue our efforts to improve workplace safety.

If we are to be successful in our efforts we must be prepared to cast aside old assumptions, be willing to embrace new ideas, and be candid enough to agree on some fundamental realities. First among these realities is that the overwhelming number of employers are concerned about the welfare of their employees and are fully prepared to comply with laws aimed at enhancing their safety on the job. The notion that employers care little about worker safety, or are prepared to sacrifice worker health in the pursuit of higher profits is a dangerously inaccurate myth. It is dangerous because it promotes and perpetuates an adversarial relationship between employers and government safety agencies at the very time that we need precisely the opposite. Cooperation, not confrontation is essential in making our workplaces safer.

It is fortunate that most employers want to do the right thing since without the cooperation of the employer community there is little realistic hope of continuing to improve workplace safety. That is the second fundamental reality we must accept. Where the vast majority of employers are committed to establishing and maintaining a safe workplace, it makes little sense to perpetuate a system built largely on a system of inspections and sanctions. Any system aimed at fostering workplace safety that relies principally on such measures is not only improperly focused; it cannot, as a practical matter, even hope to achieve its intended goal.

Simple mathematics makes it clear that we cannot inspect or sanction our way to greater job safety. Today, the total number of OSHA inspectors, including those employed by the states, as well as those employed by the Federal Government, is less than 2,400. Each of these individuals conducts an average of about 40 inspections a year. In other words, there will be less than 100,000 work sites inspected by State and Federal OSHA combined in any given year. At the present time, there are well over seven million worksites in the United States. At current inspection rates, we would need nearly 170,000 OSHA inspectors in order to inspect all U.S. work sites just once a year. In addition, since most industrial accidents occur in a split second, and since many are caused by unsafe acts rather than unsafe conditions, even an army of inspectors could not adequately address the issue.

It is my view that any practical approach to addressing the issue of workplace safety must recognize these realities and be designed to encourage and assist employers in achieving this end—not merely punish them for failing to do so. For these reasons, the legislation that I have introduced today contains a number of provisions designed to enhance voluntary compliance, and to provide technical assistance to the vast majority of employers that strive every day to ensure the health and safety of their employees. Thus, these bills contain provisions that encourage employers to engage the services of highly qualified third-party safety consultants to assist them in creating safer workplaces. The legislation also seeks to extend the benefits of such worthwhile initiatives as the current Voluntary Protection Plan to smaller employers; and it increases the level of government outreach and technical help to employers seeking assistance in making their workplaces safer. It also provides for increased training of OSHA personnel and fosters a greater understanding of specific workplace

safety issues through a unique cross-training and exchange program between OSHA and the business community. These last two initiatives are predicated on the common sense notion that the more we know and the more we collaborate toward a common goal, the more likely it is that we will achieve the desired result.

While I believe that the interests of workplace safety compel us to dramatically increase our efforts at encouraging voluntary compliance, we cannot be unmindful that the Occupational Safety and Health Act is a regulatory statute; and that, like all regulation, there are points at which the process becomes adversarial. I certainly believe there should be a less adversarial process, however, when it does occur I believe it needs to be fair and regular. In the regulatory context, the power and resources of the Federal Government can be overwhelming, particularly to small businesses. We need to make sure that the adversarial playing field is a level one, and that the legitimate expectations of fairness and regularity of process are adequately met. For this reason, the bills which I have introduced today contain a number of provisions aimed at ensuring this result. Thus, the bill provides for the recovery of attorney's fees by small businesses that prevail in litigation against the government in an OSHA claim, and codifies procedural flexibility and fairness in the issuance and processing of disputed claims. The legislation also recognizes that no one, least of all employees, are well served by lengthy delays in the resolution of contested claims by increasing the size of the Review Commission and making additional changes designed to insure the issuance of more timely decisions. The legislation also returns the Review Commission to the status of a fully independent adjudicatory body as envisioned in the original OSHA legislation by insuring that its decisions are accorded appropriate legal deference. The legislation also injects some much needed flexibility into the administration and enforcement of the statute by permitting the use of alternative, site-specific compliance methods, giving inspectors a degree of compliance discretion, and encouraging the prompt correction of certain non-serious violations.

In addition to these changes that are based upon procedural and regulatory fairness, the legislation also contains provisions designed to address the root cause of many industrial injuries, and others aimed at bringing a much-needed measure of simplicity and uniformity to our workplace safety laws.

In the first instance, for too long we have held the one-dimensional view that work conditions and employer practices are the principal, if not exclusive, factors in workplace safety. The reality is that unsafe individual behavior also has an extraordinary impact. For example, it is estimated that 47 percent of all serious workplace accidents, and 40 percent of all workplace fatalities involve drugs or alcohol. Some 38 to 50 percent of all workers' compensation claims are related to drug or alcohol abuse in the workplace. An industrial accident typically takes only a split second to occur. The safest conceivable conditions and systems can be rendered useless in that instant by an employee whose judgment or reactions are impaired.

Apart from substance abuse, we also cannot ignore the fact that any employer's safety policies and procedures can be rendered useless whenever someone breaks the rules.

If we are serious about workplace safety we have to understand that the employer is not the only factor in the equation. And, if we propose to achieve workplace safety solely by regulating employer conduct, then we fail to adequately address the entire issue. At a minimum, we need to provide employers some tools and encouragement to control the safety-related behavior of others. We cannot mandate that employers take disciplinary action against their employees who violate safety rules, but we can encourage them to enforce such rules appropriately and consistently. We likewise cannot compel employers to institute drug and alcohol testing programs, but we can remove the legal barriers to their doing so. Today's legislation, by codifying the third party misconduct defense, and authorizing the establishment of substance testing, provides exactly the type of tools and encouragement that are necessary.

It may be the employer's workplace, but workplace safety is everybody's job. We need laws that reflect the fact that a safer workplace is everybody's responsibility. For this reason today's legislation also contains a provision that allows OSHA to issue citations and impose limited fines on employees that violate rules and procedures regarding the use of company-supplied personal protective equipment. As noted, the authority here, although limited, is nonetheless intended to make clear the notion that safety is everybody's responsibility.

Lastly, our current law provides that employers must communicate workplace hazards to their employees. This is an important, and appropriate goal. ''Communication,'' however, requires the delivery of clear, and meaningful information to the recipient. Unfortunately, in many respects our hazard communication efforts have become so complicated that the complexity stands in the way of the original notion that employees need plain information about workplace hazards so that they can take adequate precautions to protect themselves. This process has become even more complicated by the globalization of our economy, and the fact that many hazardous substances routinely in use in our workplaces originate outside our borders. These are likewise realities that we must address, and that the legislation offered today does. Thus, the HazCom Simplification and Modernization Act that is a part of the legislative package introduced today provides for the simplification of current hazard communication standards and it creates a commission designed to review and make recommendations regarding the implementation of the global harmonization of chemical labeling, hazard communication and a variety of related issues. I am particularly proud of the fact that this bill is the product of considerable bi-partisan effort, and I am particularly pleased to have Senator MURRAY as its cosponsor. I am deeply grateful for all her efforts in bringing this legislation to this point.

It is my belief that the three bills introduced today reflect the correct and balanced approach to the goal of increased work place safety that all of us want to achieve.

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

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 2065

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

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Occupational Safety Partnership Act''.

(b) REFERENCE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

SEC. 2. PURPOSE.

Section 2(b) of the Act (29 U.S.C. 651(b)) is amended—

(1) in paragraph (13), by striking the period and inserting ''; and''; and

(2) by adding at the end the following:

''(14) by increasing the joint cooperation of employers, employees, and the Secretary of Labor in the effort to ensure safe and healthful working conditions for employees.''.

SEC. 3. THIRD PARTY CONSULTATION SERVICES PROGRAM.

(a) PROGRAM.—The Act (29 U.S.C. 651 et seq.) is amended by inserting after section 8 the following:

''SEC. 8A. THIRD PARTY CONSULTATION SERVICES PROGRAM.

''(a) PURPOSE.—It is the purpose of this section to encourage employers to conduct voluntary safety and health audits using the expertise of qualified safety and health consultants and to proactively seek individualized solutions to workplace safety and health concerns.

''(b) ESTABLISHMENT OF PROGRAM.—

''(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Secretary shall establish and implement, by regulation, a program that qualifies individuals to provide consultation services to employers to assist employers in the identification and correction of safety and health hazards in the workplaces of employers.

''(2) ELIGIBILITY.—The following individuals shall be eligible to be qualified under this program as certified safety and health consultants:

''(A) An individual who is licensed by a State authority as a physician, industrial hygienist, professional engineer, safety engineer, safety professional, or registered nurse.

''(B) An individual who has been employed as an inspector for a State plan State or as a Federal occupational safety and health inspector for not less than a 5-year period.

''(C) An individual who is qualified in an occupational health or safety field by an organization whose program has been accredited by a nationally recognized private accreditation organization or by the Secretary.

''(D) An individual who has not less than 10 years experience in workplace safety and health.

''(E) Other individuals determined to be qualified by the Secretary.

''(3) GEOGRAPHICAL SCOPE OF CONSULTATION SERVICES.—A consultant qualified under this program may provide consultation services in any State.

''(4) LIMITATION BASED ON EXPERTISE.—A consultant qualified under this program may only provide consultation services to an employer with respect to a worksite if the work performed at that worksite coincides with the particular expertise of the individual.

''(c) SAFETY AND HEALTH REGISTRY.—The Secretary shall develop and maintain a registry that includes all consultants that are qualified under the program under subsection (b)(1) to provide the consultation services described in subsection (b) and shall publish and make such registry readily available to the general public.

''(d) DISCIPLINARY ACTIONS.—The Secretary may revoke the status of a consultant, or the participation of an employer in the third party consultation program, if the Secretary determines that the consultant or employer—

''(1) has failed to meet the requirements of the program; or

''(2) has committed malfeasance, gross negligence, collusion or fraud in connection with any consultation services provided by the qualified consultant.

''(e) PROGRAM REQUIREMENTS.—

''(1) GENERAL REQUIREMENTS.—The consultation services described in subsection (b), and provided by a consultant qualified under this program shall, at a minimum, consist of the following elements:

''(A) A comprehensive, on-site, survey and audit of the participating employer's workplace and operations by the consultant.

''(B) The preparation of a consultation report by the consultant.

The Secretary may, by regulation, prescribe additional requirements for qualifying services.

''(2) CONSULTATION REPORT.—

''(A) IN GENERAL.—Following the consultant's physical survey of the employer's workplace and operations, the consultant shall prepare and deliver to the employer a written report summarizing the consultant's health and safety findings and recommendations. Such consultation report shall, at a minimum, contain the following elements:

''(i) The findings of the consultant's health and safety audit, and, where applicable, appropriate remedial recommendations.

''(ii) A recommended health and safety program and an action plan as described in this paragraph.

The Secretary may, by regulation, prescribe additional required elements for qualifying reports.

''(B) AUDIT AND RECOMMENDATIONS.—The consultation report shall include an evaluation of the workplace of the participating employer to determine if the employer is in compliance with the requirements of this Act, including any regulations promulgated pursuant to this Act. The report shall identify any practice or condition the consultant believes to be a violation of this Act, and will set out any appropriate corrective measures to address such identified practice or condition.

''(C) SAFETY AND HEALTH PROGRAM.—The consultation report shall contain a recommended safety and health plan designed to reduce injuries, illness, and fatalities and to otherwise manage workplace health and safety. Such safety and health program shall—

''(i) be appropriate to the conditions of the workplace involved;

''(ii) be in writing, and contain policies, procedures, and practices designed to recognize and protect employees from occupational safety and health hazards, such procedures to include provisions for the identification, evaluation, and prevention or control of workplace hazards;

''(iii) be based upon the professional judgment of the consultant and include such elements as are necessary to the specific worksite involved as determined by the consultant and employer;

''(iv) contain provisions for the periodic review and modification of the program as circumstances warrant;

''(v) be developed and implemented with the participation of affected employees;

''(vi) make provision for the effective safety and health training of all personnel, and the dissemination of appropriate health and safety information to all personnel; and

''(vii) contain appropriate procedures for the reporting of potential hazards, accidents and near accidents

The Secretary may, by regulation, prescribe additional specific elements that may be required for any qualifying program.

''(D) ACTION PLAN.—The consultation report shall also contain a written action plan that shall—

''(i) outline the specific steps that must be accomplished by the employer prior to receiving a certificate of compliance;

''(ii) be established in consultation with the employer; and

''(iii) address in detail—

''(I) the employer's correction of all identified safety and health conditions or practices that are in violation of this Act, with applicable timeframes; and

''(II) the steps necessary for the employer to implement an effective safety and health program, with applicable timeframes.

''(3) CERTIFICATE OF COMPLIANCE.—Upon completion of the steps described in the Action Plan the qualified consultant shall issue to the employer a Certificate of Compliance in a form prescribed by the Secretary.

''(f) EXEMPTION FROM CIVIL PENALTIES FOR COMPLIANCE.—

''(1) IN GENERAL.—If an employer receives a certificate of compliance, the employer shall be exempt from the assessment of any civil penalty under section 17 for a period of 2 years after the date on which the employer receives such certificate.

''(2) EXCEPTIONS.—An employer shall not be exempt under paragraph (1)—

''(A) if the employer has not made a good faith effort to remain in compliance as required under the certificate of compliance; or

''(B) if there has been a fundamental change in the hazards of the workplace after the issuance of the certificate.

''(g) RIGHT TO INSPECT.—Nothing in this section shall be construed to affect the rights of the Secretary to inspect and investigate worksites covered by a certificate of compliance.

''(h) RENEWAL REQUIREMENTS.—An employer that is granted a certificate of compliance under this section may receive a 2 year renewal of the certificate if a qualified consultant conducts a complete onsite safety and health survey to ensure that the safety and health program has been effectively maintained or improved, workplace hazards are under control, and elements of the safety and health program are operating effectively.

''(i) NON-FIXED WORKSITES.—With respect to employer worksites that do not have a fixed location, a certificate of compliance shall only apply to that worksite which satisfies the criteria under this section and such certificate shall not be portable to any other worksite. This section shall not apply to employers that perform essentially the same work, utilizing the same equipment, at each non-fixed worksite.

''(j) ACCESS TO RECORDS.—Any records relating to consultation services provided by an individual qualified under this program, or records, reports, or other information prepared in connection with safety and health inspections, audits, or reviews conducted by or for an employer and not required under this Act, shall not be admissible in a court of law or administrative proceeding or enforcement proceeding against the employer except that such records may be used as evidence for purposes of a disciplinary action under subsection (d).''.

SEC. 4. PREVENTION OF ALCOHOL AND SUBSTANCE ABUSE.

The Act (29 U.S.C. 651 et seq.) is amended by adding at the end the following:

''SEC. 34. ALCOHOL AND SUBSTANCE ABUSE TESTING.

''(a) PROGRAM PURPOSE.—In order to secure a safe workplace, employers may establish and carry out an alcohol and substance abuse testing program in accordance with subsection (b).

''(b) FEDERAL GUIDELINES.—

''(1) REQUIREMENTS.—An alcohol and substance abuse testing program described in subsection (a) shall meet the following requirements:

''(A) SUBSTANCE ABUSE.—A substance abuse testing program shall permit the use of onsite or offsite testing.

''(B) ALCOHOL.—The alcohol testing component of the program shall take the form of alcohol breath analysis and shall conform to any guidelines developed by the Secretary of Transportation for alcohol testing of mass transit employees under the Department of Transportation and Related Agencies Appropriations Act, 1992.

''(2) DEFINITION.—For purposes of this section the term 'alcohol and substance abuse testing program' means any program under which test procedures are used to take and analyze blood, breath, hair, urine, saliva, or other body fluids or materials for the purpose of detecting the presence or absence of alcohol or a drug or its metabolites. In the case of urine testing, the confirmation tests must be performed in accordance with the mandatory guidelines for Federal workplace testing programs published by the Secretary of Health and Human Services on April 11, 1988, at section 11979 of title 53, Code of Federal Regulations (including any amendments to such guidelines). Proper laboratory protocols and procedures shall be used to assure accuracy and fairness, and, laboratories must be subject to the requirements of subpart B of the mandatory guidelines, State certification, the Clinical Laboratory Improvements Act of the College of American Pathologists.

''(c) TEST REQUIREMENTS.—This section shall not be construed to prohibit an employer from requiring—

''(1) an applicant for employment to submit to and pass an alcohol or substance abuse test before employment by the employer; or

''(2) an employee, including managerial personnel, to submit to and pass an alcohol or substance abuse test—

''(A) on a for-cause basis or where the employer has reasonable suspicion to believe

that such employee is using or is under the influence of alcohol or a controlled substance;

''(B) where such test is administered as part of a scheduled medical examination;

''(C) in the case of an accident or incident, involving the actual or potential loss of human life, bodily injury, or property damage;

''(D) during the participation of an employee in an alcohol or substance abuse treatment program, and for a reasonable period of time (not to exceed 5 years) after the conclusion of such program; or

''(E) on a random selection basis in work units, locations, or facilities.

''(d) CONSTRUCTION.—Nothing in this section shall be construed to require an employer to establish an alcohol and substance abuse testing program for applicants or employees or make employment decisions based on such test results.

''(e) PREEMPTION.—The provisions of this section shall preempt any provision of State law to the extent that such State law is inconsistent with this section.

''(f) INVESTIGATIONS.—The Secretary is authorized to conduct testing of employees (including managerial personnel) of an employer for use of alcohol or controlled substances during any investigations of a work-related fatality or serious injury. Such testing shall be done as soon as practicable after the incident giving rise to such work-related fatality or serious injury.''.

SEC. 5. VOLUNTARY PROTECTION PROGRAMS.

(a) COOPERATIVE AGREEMENTS.—The Secretary of Labor shall establish cooperative agreements with employers to encourage the establishment of comprehensive safety and health management systems that include—

(1) requirements for systematic assessment of hazards;

(2) comprehensive hazard prevention, mitigation, and control programs;

(3) active and meaningful management and employee participation in the voluntary program described in subsection (b); and

(4) employee safety and health training.

(b) VOLUNTARY PROTECTION PROGRAM.—

(1) IN GENERAL.—The Secretary of Labor shall establish and carry out a voluntary protection program (consistent with subsection (a)) to encourage excellence and recognize the achievement of excellence in both the technical and managerial protection of employees from occupational hazards.

(2) PROGRAM REQUIREMENT.—The voluntary protection program shall include the following:

(A) APPLICATION.—Employers who volunteer under the program shall be required to submit an application to the Secretary of Labor demonstrating that the worksite with respect to which the application is made meets such requirements as the Secretary of Labor may require for participation in the program.

(B) ONSITE EVALUATIONS.—There shall be onsite evaluations by representatives of the Secretary of Labor to ensure a high level of protection of employees. The onsite visits shall not result in enforcement of citations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(C) INFORMATION.—Employers who are approved by the Secretary of Labor for participation in the program shall assure the Secretary of Labor that information about the safety and health program shall be made readily available to the Secretary of Labor to share with employees.

(D) REEVALUATIONS.—Periodic reevaluations by the Secretary of Labor of the employers shall be required for continued participation in the program.

(3) EXEMPTIONS.—A site with respect to which a program has been approved shall, during participation in the program be exempt from inspections or investigations and certain paperwork requirements to be determined by the Secretary of Labor, except that this paragraph shall not apply to inspections or investigations arising from employee complaints, fatalities, catastrophes, or significant toxic releases.

SEC. 6. EXPANDED ACCESS TO VVP FOR SMALL BUSINESSES.

The Secretary of Labor shall establish and implement, by regulation, a program to increase participation by small businesses (as the term is defined by the Administrator of the Small Business Administration) in the voluntary protection program through outreach and assistance initiatives and the development of program requirements that address the needs of small businesses.

SEC. 7. TECHNICAL ASSISTANCE PROGRAM.

(a) IN GENERAL.—Section 21(c) of the Act (29 U.S.C. 670(c)) is amended—

(1) by striking ''(c) The'' and inserting ''(c)(1) The'';

(2) by striking ''(1) provide'' and inserting ''(A) provide'';

(3) by striking ''(2) consult'' and inserting ''(B) consult''; and

(4) by adding at the end the following:

''(2)(A) The Secretary shall, through the authority granted under section 7(c) and paragraph (1), enter into cooperative agreements with States for the provision of consultation services by such States to employers concerning the provision of safe and healthful working conditions.

''(B)(i) As provided in clause (ii), the Secretary shall reimburse a State that enters into a cooperative agreement under subparagraph (A) in an amount that equals 90 percent of the costs incurred by the State for the provision of consultation services under such agreement.

''(ii) A State shall be reimbursed by the Secretary for 90 percent of the costs incurred by the State for the provision of—

''(I) training approved by the Secretary for State personnel operating under a cooperative agreement; and

''(II) specified out-of-State travel expenses incurred by such personnel.

''(iii) A reimbursement paid to a State under this subparagraph shall be limited to costs incurred by such State for the provision of consultation services under this paragraph and the costs described in clause (ii).''.

(b) PILOT PROGRAM.—Section 21 of the Act (29 U.S.C. 670) is amended by adding at the end the following:

''(e)(1) Not later than 90 days after the date of enactment of this subsection, the Secretary shall establish and carry out a pilot program in 3 States to provide expedited consultation services, with respect to the provision of safe and healthful working conditions, to employers that are small businesses (as the term is defined by the Administrator of the Small Business Administration). The Secretary shall carry out the program for a period not to exceed 2 years.

''(2) The Secretary shall provide consultation services under paragraph (1) not later than 4 weeks after the date on which the Secretary receives a request from an employer.

''(3) The Secretary may impose a nominal fee to an employer requesting consultation services under paragraph (1). The fee shall be in an amount determined by the Secretary. Employers paying a fee shall receive priority consultation services by the Secretary.

''(4) In lieu of issuing a citation under section 9 to an employer for a violation found by the Secretary during a consultation under paragraph (1), the Secretary shall permit the employer to carry out corrective measures to correct the conditions causing the violation. The Secretary shall conduct not more than 2 visits to the workplace of the employer to determine if the employer has carried out the corrective measures. The Secretary shall issue a citation as prescribed under section 5 if, after such visits, the employer has failed to carry out the corrective measures.

''(5) Not later than 90 days after the termination of the program under paragraph (1), the Secretary shall prepare and submit a report to the appropriate committees of Congress that contains an evaluation of the implementation of the pilot program.''.

SEC. 8. CONTINUING EDUCATION AND PROFESSIONAL CERTIFICATION FOR CERTAIN OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION PERSONNEL.

Section 8 of the Act (29 U.S.C. 657) is amended by adding at the end the following:

''(i) Any Federal employee responsible for enforcing this Act shall, not later than 2 years after the date of enactment of this subsection or 2 years after the initial employment of the employee involved, meet the eligibility requirements prescribed under subsection (b)(2) of section 8A.

''(j) The Secretary shall ensure that any Federal employee responsible for enforcing this Act who carries out inspections or investigations under this section, receive professional education and training at least every 5 years as prescribed by the Secretary.''.

SEC. 9. OSHA AND INDUSTRY TRAINING EXCHANGE DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary of Labor, acting through the Occupational Safety and Health Administration, is authorized to develop and implement at least one training and educational exchange program with a specialty trade in the construction industry for the purpose of—

(1) facilitating the exchange of expertise and ideas related to the interpretation, application, and implementation of Federal occupational safety and health standards and regulations applicable to the specialty trade involved (referred to in this section as ''OSHA Rules'');

(2) improving collaboration and coordination between the Occupational Safety and Health Administration and such specialty trade regarding OSHA Rules;

(3) identifying OSHA Rules which the specialty trade and Occupational Safety and Health Administration compliance officers have repeatedly found to be difficult to interpret, apply, or implement;

(4) allowing qualified safety directors from the specialty trade to train such compliance officers and others within the Administration responsible for writing and interpreting OSHA Rules, both on the jobsite and off, on the unique nature of the specialty trade and the difficulties contractors and safety directors encounter when attempting to comply with OSHA Rules as well as the best practices within the specialty trade;

(5) seeking the means to ensure greater compliance with the identified OSHA Rules, and reducing the number of citations based on any misunderstanding by such compliance officers as to the scope and application of an OSHA Rule or the unique nature of the workplace construction; and

(6) establishing within the Occupational Safety and Health Administration Training Institute a trade-specific curriculum to be taught jointly by qualified trade safety directors and compliance officers.

(b) INITIAL PROGRAM.—The initial training and educational exchange program shall be established under subsection (a) with the masonry construction industry.

(c) REPORTS.—Upon the expiration of the 2-year program under subsection (a), the Administrator of the Occupational Safety and Health Administration, jointly with specialty trades that participate in programs under such subsection, shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Workforce of the House of Representatives a report on the activities and results of the training and educational exchange program.

(d) DEFINITION.—In this section, the term ''qualified safety director'' means an individual who has, at a minimum, taken the 10-hour Occupational Safety and Health Administration course and been employed a minimum of 5 years as a safety director in the construction industry.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this section.

(f) TERMINATION.—The programs established under subsection (a) shall terminate on the date that is 2 years after the date on which the first program is so established.

S. 2066

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

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Occupational Safety Fairness Act''.

(b) REFERENCE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

SEC. 2. WORKSITE-SPECIFIC COMPLIANCE METHODS.

Section 9 of the Act (29 U.S.C. 658) is amended by adding at the end the following:

''(d) A citation issued under subsection (a) to an employer who violates section 5, any standard, rule, or order promulgated pursuant to section 6, or any regulation promulgated under this Act shall be vacated if such employer demonstrates that the employees of such employer were protected by alternative methods that are substantially equivalent or more protective of the safety and health of the employees than the methods required by such standard, rule, order, or regulation in the factual circumstances underlying the citation.

''(e) Subsection (d) shall not be construed to eliminate or modify other defenses that may exist to any citation.''.

SEC. 3. DISCRETIONARY COMPLIANCE ASSISTANCE.

Subsection (a) of section 9 of the Act (29 U.S.C. 658(a)) is amended—

(1) by striking the last sentence;

(2) by striking ''If, upon'' and inserting ''(1) If, upon''; and

(3) by adding at the end the following:

''(2) Nothing in this Act shall be construed as prohibiting the Secretary or the authorized representative of the Secretary from providing technical or compliance assistance to an employer in correcting a violation discovered during an inspection or investigation under this Act without issuing a citation, as prescribed in this section.

''(3) The Secretary or the authorized representative of the Secretary—

''(A) may issue a warning in lieu of a citation with respect to a violation that has no significant relationship to employee safety or health; and

''(B) may issue a warning in lieu of a citation in cases in which an employer in good faith acts promptly to abate a violation if the violation is not a willful or repeated violation.''.

SEC. 4. EXPANDED INSPECTION METHODS.

(a) PURPOSE.—It is the purpose of this section to empower the Secretary of Labor to achieve increased employer compliance by using, at the Secretary's discretion, more efficient and effective means for conducting inspections.

(b) GENERAL.—Section 8(f) of the Act (29 U.S.C. 657(f) is amended—

(1) by adding at the end the following:

''(3) The Secretary or an authorized representative of the Secretary may, as a method of investigating an alleged violation or danger under this subsection, attempt, if feasible, to contact an employer by telephone, facsimile, or other appropriate methods to determine whether—

''(A) the employer has taken corrective actions with respect to the alleged violation or danger; or

''(B) there are reasonable grounds to believe that a hazard exists.

''(4) The Secretary is not required to conduct an inspection under this subsection if the Secretary believes that a request for an inspection was made for reasons other than the safety and health of the employees of an employer or that the employees of an employer are not at risk.''.

SEC. 5. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

(a) INCREASE IN NUMBER OF MEMBERS AND REQUIREMENT FOR MEMBERSHIP.—Section 12 of the Act (29 U.S.C. 661) is amended—

(1) in the second sentence of subsection (a)—

(A) by striking ''three members'' and inserting ''five members''; and

(B) by inserting ''legal'' before ''training'';

(2) in the first sentence of subsection (b), by striking ''except that'' and all that follows through the period and inserting the following: ''except that the President may extend the term of a member for no more than 365 consecutive days to allow a continuation in service at the pleasure of the President after the expiration of the term of that member until a successor nominated by the President has been confirmed to serve. Any vacancy caused by the death, resignation, or removal of a member before the expiration of a term for which a member was appointed shall be filled only for the remainder of such term.''; and

(3) by striking subsection (f), and inserting the following:

''(f) For purposes of carrying out its functions under this Act, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least a majority of the members participating but in no case fewer than two.''.

(b) NEW POSITIONS.—Of the two vacancies for membership on the Occupational Safety and Health Review Commission created by subsection (a)(1)(A), one shall be appointed by the President for a term expiring on April 27, 2009, and the other shall be appointed by the President for a term expiring on April 27, 2011.

(c) EFFECTIVE DATE FOR LEGAL TRAINING REQUIREMENT.—The amendment made by subsection (a)(1)(B), requiring a member of the Commission to be qualified by reason of a background in legal training, shall apply beginning with the two vacancies referred to in subsection (b) and all subsequent appointments to the Commission.

SEC. 6. AWARD OF ATTORNEYS' FEES AND COSTS.

The Act (29 U.S.C. 651 et seq.) is amended by redesignating sections 32, 33, and 34 as sections 33, 34, and 35, respectively, and by inserting after section 31 the following new section:

''AWARD OF ATTORNEYS' FEES AND COSTS

''SEC. 32.

''(a) ADMINISTRATIVE PROCEEDINGS.—An employer who—

''(1) is the prevailing party in any adversary adjudication instituted under this Act, and

''(2) had not more than 100 employees and a net worth of not more than $7,000,000 at the time the adversary adjudication was initiated,

shall be awarded fees and other expenses as a prevailing party under section 504 of title 5, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the Secretary was substantially justified or special circumstances make an award unjust. For purposes of this section the term 'adversary adjudication' has the meaning given that term in section 504(b)(1)(C) of title 5, United States Code.

''(b) PROCEEDINGS.—An employer who—

''(1) is the prevailing party in any proceeding for judicial review of any action instituted under this Act, and

''(2) had not more than 100 employees and a net worth of not more than $7,000,000 at the time the action addressed under subsection (1) was filed,

shall be awarded fees and other expenses as a prevailing party under section 2412(d) of title 28, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust. Any appeal of a determination of fees pursuant to subsection (a) of this subsection shall be determined without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust.

''(c) APPLICABILITY.—

''(1) COMMISSION PROCEEDINGS.—Subsection (a) shall apply to proceedings commenced on or after the date of enactment of this section.

''(2) COURT PROCEEDINGS.—Subsection (b) shall apply to proceedings for judicial review commenced on or after the date of enactment of this section.''.

SEC. 7. JUDICIAL DEFERENCE.

Section 11(a) of the Act (29 U.S.C. 660(a)) is amended in the sixth sentence by inserting before the period the following: '', and the conclusions of the Commission with respect to questions of law that are subject to agency deference under governing court precedent shall be given deference if reasonable''.

SEC. 8. CONTESTING CITATIONS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970.

(a) IN GENERAL.—Section 10 of the Act (29 U.S.C. 659) is amended—

(1) in the second sentence of subsection (a), by inserting after ''assessment of penalty'' the following: ''(unless such failure results from mistake, inadvertence, surprise, or excusable neglect)''; and

(2) in the second sentence of subsection (b), by inserting after ''assessment of penalty'' the following: ''(unless such failure results from mistake, inadvertence, surprise, or excusable neglect)''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to a citation or proposed assessment of penalty issued by the Occupational Safety and Health Administration that is issued on or after the date of the enactment of this Act.

SEC. 9. RIGHT TO CORRECT VIOLATIVE CONDITION.

Section 9 of the Act (29 U.S.C. 658), as amended by section 2, is amended by adding at the end the following:

''(f) The Commission may not assess a penalty under section 17(c) for a non-serious violation that is not repeated or willful if the

employer corrects the violative condition and provides the Secretary an abatement certification within 72 hours.''.

SEC. 10. WRITTEN STATEMENT TO EMPLOYER FOLLOWING INSPECTION.

Section 8 of the Act (29 U.S.C. 657) is amended by adding at the end the following:

''(i) At the closing conference after the completion of an inspection, the inspector shall—

''(1) inform the employer or a representative of the employer of the right of such employer to request a written statement described in paragraph (2); and

''(2) provide to the employer or a representative of the employer, upon the request of such employer or representative, with a written statement that clearly and concisely provides the following information:

''(A) The results of the inspection, including each alleged hazard, if any, and each citation that will be issued, if any.

''(B) The right of the employer to contest a citation, a penalty assessment, an amended citation, and an amended penalty assessment.

''(C) An explanation of the procedure to follow in order to contest a citation and a penalty assessment, including when and where to contest a citation and the required contents of the notice of intent to contest.

''(D) The Commission's responsibility to affirm, modify, or vacate the citation and proposed penalty, if any.

''(E) The informal review process.

''(F) The procedures before the Occupational Safety and Health Review Commission.

''(G) The right of the employer to seek judicial review.

''(j) No monetary penalty may be assessed with respect to any violation not identified in the written statement requested under subsection (i).''.

SEC. 11. TIME PERIODS FOR ISSUING CITATIONS.

Section—

(1) 9(a) of the Act (29 U.S.C. 658(a)) is amended—

(A) by striking ''upon inspection'' and inserting ''upon the initiation of inspection'';

(B) by striking ''with reasonable promptness'' and inserting ''within thirty working days''; and

(C) by inserting after the first sentence, the following: ''Such 30 day period may be waived by the Secretary for good cause shown, including, but not limited to, cases involving death, novel issues, large or complex worksites, or pursuant to an agreement by the parties to extend such period.''; and

(2) 10(a) of the Act (29 U.S.C. 659(a)) is amended—

(B) by striking ''within a reasonable time'' and inserting ''within thirty days''; and

(C) by inserting after the first sentence, the following: ''Such 30 days period may be waived by the Secretary for good cause shown, including, but not limited to, cases involving death, novel issues, large or complex worksites, or pursuant to an agreement by the parties to extend such period.''.

SEC. 12. TIME PERIODS FOR CONTESTING CITATIONS.

Section 10 of the Act (29 U.S.C. 659) is amended by striking ''fifteen'' each place it appears and inserting ''thirty''.

SEC. 13. PENALTIES.

Section 17 of the Act (29 U.S.C. 666) is amended by inserting the following:

''(m) The Secretary shall not use 'other than serious' citations as a basis for issuing repeat or willful citations.''.

SEC. 14. UNANTICIPATED CONDUCT.

Section 9 of the Act (29 U.S.C. 658) is amended by adding at the end the following:

''(d) No citation may be issued under this section for any violation that is the result of actions by any person that are contrary to established, communicated, and enforced work rules that would have prevented the violation. This subsection shall not be construed to eliminate or modify elements of proof currently required to support a citation.''.

SEC. 15. ADOPTION OF NON-GOVERNMENTAL STANDARDS.

The Act (29 U.S.C. 651 et seq.) is amended by adding after section 4 the following:

''SEC. 4A. ADOPTION OF NON-GOVERNMENTAL STANDARDS.

''The Secretary shall not promulgate or enforce any finding, guideline, standard, limit, rule, or regulation that is subject to incorporation by reference, or modification, as the result of a determination reached by any organization, unless the Secretary affirmatively finds that the determination has been made by an organization and procedure that complies with the requirements of section 3(9). Such finding and a summary of its basis shall be published in the Federal Register and shall be deemed a final agency action subject to review by a United States District Court in accordance with section 706 of title 5, United States Code.''.

SEC. 16. EMPLOYEE RESPONSIBILITY.

The Act (29 U.S.C. 651 et seq.) is amended by adding after section 9 the following:

''SEC. 9A. EMPLOYEE RESPONSIBILITY.

''(a) IN GENERAL.—Notwithstanding any other provision of this Act, an employee who, with respect to employer-provided personal protective equipment, willfully violates any requirement of section 5 or any standard, rule, or order promulgated pursuant to section 6, or any regulation prescribed pursuant to this Act, may be assessed a civil penalty, as determined by the Secretary, but not to exceed $50 for each violation.

''(b) CITATIONS.—If, upon inspection or investigation, the Secretary or the authorized representative of the Secretary believes that an employee of an employer has, with respect to employer-provided personal protective equipment, violated any requirement of section 5 or any standard, rule, or order promulgated pursuant to section 6, or any regulation prescribed pursuant to this Act, the Secretary shall within 30 days issue a citation to the employee. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of this Act, standard, rule, regulation, or order alleged to have been violated. No citation may be issued under this section after the expiration of 6 months following the occurrence of any violation.

''(c) NOTIFICATION.—

''(1) IN GENERAL.—The Secretary shall notify an employee—

''(A) by certified mail of a citation under subsection (b) and the proposed penalty; and

''(B) that such employee has 30 working days within which to notify the Secretary that the employee wishes to contest the citation or proposed penalty.

''(2) FINAL ORDER.—If an employee does not file a notification described in paragraph (1)(B) with the Secretary within 30 working days, the citation and proposed penalty shall—

''(A) be deemed a final order of the Commission; and

''(B) not be subject to review by any court or agency.

''(d) CONTESTING OF CITATION.—

''(1) IN GENERAL.—If an employee files a notification described in paragraph (1)(B) with the Secretary within 30 working days, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford the employee an opportunity for a hearing in accordance with section 554 of title 5, United States Code.

''(2) ISSUANCE OF FINAL ORDER.—The Commission, after a hearing described in paragraph (1), shall issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief. Such order shall become final 30 days after issuance of the order.''.

S. 2067

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 ''HazCom Simplification and Modernization Act of 2005''.

SEC. 2. PURPOSE.

It is the purpose of this Act to assist chemical manufacturers and importers in preparing material safety data sheets pursuant to the requirements of the Hazard Communication standard published at section 1910.1200 of title 29, Code of Federal Regulations, and the Hazard Communication standard published at part 47 of title 30, Code of Federal Regulations, and to improve the accuracy, consistency, and comprehensibility of such material safety data sheets and to establish a Commission for the purpose of studying and making recommendations regarding the implementation of the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals.

SEC. 3. HAZARD COMMUNICATION.

(a) IN GENERAL.—

(1) MODEL MATERIAL SAFETY DATA SHEETS FOR HIGHLY HAZARDOUS CHEMICALS.—The Secretary of Labor shall develop model material safety data sheets for the list of highly hazardous chemicals contained in Appendix A to the Process Safety Management of Highly Hazardous Chemicals standard published at section 1910.119 of title 29, Code of Federal Regulations. Such model material safety data sheets shall—

(A) comply with the requirements of the Hazard Communication standard published at section 1910.100 of such title 29 and the Hazard Communication standard published at part 47 of title 30, Code of Federal Regulations;

(B) be presented in a consistent format that enhances the reliability and comprehensibility of information about chemical hazards in the workplace and protective measures; and

(C) be made available to the public, including through posting on the Occupational Safety and Health Administration's website and the Mine Safety and Health Administration's website, within 18 months after the date of enactment of this Act.

(2) CONSTRUCTION.—Nothing in this subsection shall be construed to—

(A) modify or amend the Hazard Communication standard published at section 1910.1200 of title 29, Code of Federal Regulations, the Process Safety Management of Highly Hazardous Chemicals standard published at section 1910.119 of such title 29, the Hazard Communication standard published at part 47 of title 30, Code of Federal Regulations, or any other provision of law; and

(B) authorize the Secretary of Labor to include in the model material safety data sheet developed under this subsection any suggestion or recommendation as to permissible or appropriate workplace exposure levels for these chemicals, except as required by the Hazard Communication standard published at section 1910.1200 of such title 29, and the Hazard Communication standard published at part 47 of title 30, Code of Federal Regulations.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to

the Department of Labor such sums as may be necessary to carry out this subsection.

(b) GLOBALLY HARMONIZED SYSTEM COMMISSION.—

(1) ESTABLISHMENT.—Not later than 6 months after the date of enactment of this Act, there shall be established a commission, to be known as the Global Harmonization Commission (referred to in this subsection as the ''Commission''), to consider the implementation of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals to improve chemical hazard communication and to make recommendations to Congress.

(2) MEMBERSHIP.—The Commission shall be composed of 17 members of whom—

(A) 1 shall be the Secretary of Labor (referred to in this Act as the ''Secretary'');

(B) 1 shall be the Secretary of Transportation;

(C) 1 shall be the Secretary of Health and Human Services;

(D) 1 shall be the Administrator of the Environmental Protection Agency;

(E) 1 shall be the Chairman of the Consumer Product Safety Commission;

(F) 1 shall be the Chairman of the Chemical Safety and Hazard Investigation Board (or his or her designee);

(F) 11 shall be appointed by the Secretary of Labor, of whom—

(i) 2 shall be representatives of manufacturers of hazardous chemicals, including a representative of small businesses;

(ii) 2 shall be representatives of employers who are extensive users of hazardous chemicals supplied by others, including a representative of small businesses;

(iii) 2 shall be representatives of labor organizations;

(iv) 2 shall be individuals who are qualified in an occupational health or safety field by an organization whose program has been accredited by a nationally recognized private accreditation organization or by the Secretary, who have expertise in chemical hazard communications;

(v) 1 shall be a representative of mining industry employers;

(vi) 1 shall be a representative of mining industry employees; and

(vii) 1 shall be a safety and health professional with expertise in mining.

(3) CHAIR AND VICE-CHAIR.—The members of the Commission shall select a chair and vice-chair from among its members.

(4) DUTIES.—

(A) STUDY AND RECOMMENDATIONS.—The Commission shall conduct a thorough study of, and shall develop recommendations on, the following issues relating to the global harmonization of hazardous chemical communication:

(i) Whether the United States should adopt any or all of the elements of the United Nation's Globally Harmonized System of Classification and Labeling of Chemicals (referred to in this subsection and the ''Globally Harmonized System'').

(ii) How the Globally Harmonized System should be implemented by the Federal agencies with relevant jurisdiction, taking into consideration the role of the States acting under delegated authority.

(iii) How the Globally Harmonized System compares to existing chemical hazard communication laws and regulations, including the Hazard Communication standard published at section 1910.1200 of title 29, Code of Federal Regulations and the Hazard Communication standard published at part 47 of title 30, Code of Federal Regulations.

(iv) The impact of adopting the Globally Harmonized System on the consistency, effectiveness, comprehensiveness, timing, accuracy, and comprehensibility of chemical hazard communication in the United States.

(v) The impact of adopting the Globally Harmonized System on occupational safety and health in the United States.

(vi) The impact of adopting the Globally Harmonized System on tort, insurance, and workers compensation laws in the United States.

(vii) The impact of adopting the Globally Harmonized System on the ability to bring new products to the market in the United States.

(viii) The cost and benefits of adopting the Globally Harmonized System to businesses, including small businesses, in the United States.

(ix) How effective compliance assistance, training, and outreach can be used to help chemical manufacturers, importers, and users, particularly small businesses, understand and comply with the Globally Harmonized System.

(B) REPORT.—Not later than 18 months after the date of enactment of this Act, the Commission shall submit to the appropriate committees of Congress a report containing a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation as the Commission considers appropriate.

(5) POWERS.—

(A) HEARINGS.—The Commission shall hold at least one public hearing, and may hold additional hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this section. The Commission shall, to the maximum extent possible, use existing data and research to carry out this section.

(B) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this section. Upon request by the Commission, the head of such department or agency shall promptly furnish such information to the Commission.

(C) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(6) PERSONNEL MATTERS.—

(A) COMPENSATION; TRAVEL EXPENSES.—Each member of the Commission shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(B) STAFF AND EQUIPMENT.—The Department of the Labor shall provide all financial, administrative, and staffing requirements for the Commission including—

(i) office space;

(ii) furnishings; and

(iii) equipment.

(7) TERMINATION.—The Commission shall terminate on the date that is 90 days after the date on which the Commission submits the report required under paragraph (3)(B).

(8) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Labor, such sums as may be necessary to carry out this subsection.

(c) HAZARD COMMUNICATION DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—Section 20(a) of the Act (29 U.S.C. 670(a)) is amended by adding at the end the following:

''(8) Subject to the availability of appropriations, the Secretary, after consultation with others, as appropriate, shall award grants to one or more qualified applicants in order to carry out a demonstration project to develop, implement, or evaluate strategies or programs to improve chemical hazard communication in the workplace through the use of technology, which may include electronic or Internet-based hazard communication systems.''.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the amendment made by paragraph (1).

By Ms. COLLINS (for herself, Mr. VOINOVICH, and Mr. AKAKA):

S. 2068. A bill to preserve existing judgeships on the Superior Court of the District of Columbia; to the Committee on Homeland Security and Governmental Affairs.

Ms. COLLINS. Mr. President, today I am pleased to introduce legislation that would preserve existing seats on the District of Columbia Superior Court. I am pleased to be joined in this effort by Senators VOINOVICH and AKAKA.

The Superior Court is the trail court of general jurisdiction over local matters in the District of Columbia. The associate judges on the court are selected through a two-step review process. When a vacancy on the court occurs, usually because of a retiring judge, the District of Columbia Judicial Nominations Commission solicits applicants to fill the vacancy. The commission narrows the possible number of candidates to three and sends those three names to the President. The President then selects one of those three candidates and sends the nominee to the Senate for confirmation. Existing law caps the total number of judges on the superior court at 59.

Unfortunately, two nominees currently pending in the Committee on Homeland Security and Governmental Affairs and an additional candidate expected to be nominated in the coming months may not be able to be seated on the court even if they are confirmed by the Senate. The three seats that these candidates are intended to fill were left open by retiring judges, so they are not new seats on the court.

The cause of this unusual problem is the District of Columbia Family Court Act, enacted during the 107th Congress. That act created three new seats for the family court, which is a division of the superior court, but failed to increase the overall cap on the number of judges seated on the court. As a result, the Family Court Act effectively eliminated three existing seats in the other divisions of the court, including the criminal and civil divisions.

As a result of this situation, the Committee on Homeland Security and Governmental Affairs currently has two nominations pending for the superior court but no seats left to fill. I also understand that there is yet another nomination expected in the coming months. Since existing law sets strict requirements on both the DC Judicial Nominations Commission as well as the White House on how quickly they must process potential candidates and make a nomination, it is unclear whether they have legal grounds to halt their processes.

This is a highly unusual situation for this body to have nominations pending

before it for which there are no open positions. The bill I introduce today would rectify this problem by amending the District of Columbia Code to increase the cap on the number of associate judges on the superior court. This is not intended to create new seats on the Court; that was already done when the DC Family Court Act was enacted. Instead, this would preserve existing seats on the court and remedy a problem that is affecting not only the court but the Senate as well.

I believe that it is also important to not only remedy the immediate problem before the Senate but also to ensure that all of the divisions of the superior court are fully staffed. This is more than just a procedural issue. It is also important for the citizens of the District of Columbia to know that all of the divisions, including criminal and civil, are operating at full capacity. Eliminating existing seats in the criminal and civil divisions will not improve the administration of justice in the District, but can only result an increased judicial caseload and delays at the courthouse.

The legislation I introduce today is similar to legislation that was favorably reported by the Committee on Governmental Affairs and subsequently passed by the Senate by unanimous consent during the 108th Congress. I hope that my colleagues will join me in supporting this important legislation.

By Ms. SNOWE (for herself, Mr. BINGAMAN, Ms. COLLINS, Mr. DORGAN, and Mr. ROCKEFELLER):

S. 2071. A bill to amend title XVIII of the Social Security Act to clarify congressional intent regarding the counting of residents in the nonhospital setting under the medicare program; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce the Community and Rural Medical Residency Preservation Act of 2005, which will serve to ensure the continued viability of medical residency training programs in our local communities. I am particularly pleased to introduce this bill with several of my colleagues, Senators BINGAMAN, COLLINS, DORGAN, and ROCKEFELLER, who share my concerns about the need to clarify congressional intent so that teaching hospitals will be able to offer these essential residency training programs in the community and so that medical residents, as well as many who live in these communities, will be able to continue to benefit from these programs.

Many medical residency training programs have traditionally operated in sites located outside the hospital setting for their educational programs. These nonhospital settings are, in fact, where most of this type of physician training occurs. The community and rural sites which operate these programs include physician offices, nursing homes, and community health centers—cornerstones of ambulatory training for graduate medical education, GME, programs. These programs often rely upon volunteer physician faculty to provide educational opportunities in practice settings which are similar to those in which these physicians in training will ultimately practice.

Congress clearly stated support for this concept as part of the Balanced Budget Act of 1997, when they reformed the GME funding formulas to allow funding for residents training in nonhospital settings. However, recent rulemaking, agency interpretations, and guidance issued by the Centers for Medicare and Medicaid Services, CMS, are creating a chilling effect on these training programs. Teaching programs across the Nation are facing audits and scrutiny as a result of confusing and unclear CMS policies and guidance on this issue. This has happened in my State, as well as many others, and is posing a serious threat to our future physician workforce and to teaching hospitals and medical schools which offer these programs.

If these agency policies are not halted and reversed, teaching hospitals throughout the country will be forced to train all residents in the hospital setting or potentially eliminate their residency programs. Not only does this do a disservice to medical residents who are able to obtain practical experience and be exposed to settings where they may ultimately practice, but these programs provide individuals living in medically underserved and rural areas with access to health care which might otherwise not be available.

Training medical residents outside the hospital setting is sound educational policy and a worthwhile public policy goal that Congress clearly mandated in 1997. In an effort to preserve the utilization of nonhospital training sites, I am therefore introducing legislation today which would clarify the meaning of the term ''all, or substantially all, of the costs for the training program,'' a phrase which has been subject to differing, and confusing, interpretations by CMS.

My legislation would clarify that, for teaching hospitals and entities operating training programs outside the hospital setting, the teaching hospital shall not be required to pay the entity operating the nonhospital setting any amounts other than those determined by the hospital and the entity for the hospital to be considered to have incurred all, or substantially all, of the costs for the training program. Medical associations, teaching hospitals, and academic medicine all strongly support this legislation.

This language will also make clear that hospitals shall not be required to pay an entity operating a nonhospital setting for any actual or imputed costs of time voluntarily spent supervising interns or residents as a condition for computing residents for purposes of receiving either direct graduate medical education payments or indirect medical education payments.

We have received strong support from a number of organizations who are in the forefront of training America's future physicians and who have confirmed the critical need for this legislation, including the Association of American Medical Colleges, the Academic Family Medicine Advocacy Alliance, representing the Society of Teachers of Family Medicine, the Association of Departments of Family Medicine, the Association of Family Medicine Residency Directors, and the North American Primary Care Research Group, and the American Osteopathic Association.

I ask unanimous consent that the text of the bill and the letters of support from these organizations printed in the RECORD.

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

S. 2071

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 ''Community and Rural Medical Residency Preservation Act of 2005''.

SEC. 2. CLARIFICATION OF CONGRESSIONAL INTENT REGARDING THE COUNTING OF RESIDENTS IN A NONHOSPITAL SETTING.

(a) D–GME.—Section 1886(h)(4)(E) (42 U.S.C. 1395ww(h)(4)(E)) is amended by adding at the end the following new sentences: ''For purposes of the preceding sentence, the term 'all, or substantially all, of the costs for the training program' means the stipends and benefits provided to the resident and other amounts, if any, as determined by the hospital and the entity operating the nonhospital setting. The hospital is not required to pay the entity any amounts other than those determined by the hospital and the entity in order for the hospital to be considered to have incurred all, or substantially all, of the costs for the training program in that setting.''.

(b) IME.—Section 1886(d)(5)(B)(iv) (42 U.S.C. 1395ww(d)(5)(B)(iv)) is amended by adding at the end the following new sentences: ''For purposes of the preceding sentence, the term 'all, or substantially all, of the costs for the training program' means the stipends and benefits provided to the resident and other amounts, if any, as determined by the hospital and the entity operating the nonhospital setting. The hospital is not required to pay the entity any amounts other than those determined by the hospital and the entity in order for the hospital to be considered to have incurred all, or substantially all, of the costs for the training program in that setting.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2005.

AMERICAN OSTEOPATHIC ASSOCIATION,
DEPARTMENT OF GOVERNMENT RELATIONS,
Washington, DC, November 2, 2005.

Hon. OLYMPIA J. SNOWE,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SNOWE: As President of the American Osteopathic Association (AOA), I write to express our strong support for the ''Community and Rural Medical Residency Preservation Act of 2005.'' On behalf of the

56,000 osteopathic physicians represented by the AOA, thank you for your tireless efforts to protect and promote quality graduate medical education.

A majority of osteopathic residency programs, in all specialties, use non-hospital settings in their educational programs. These non-hospital sites, which consist of physician offices, nursing homes, community health centers, and other ambulatory settings, provide resident physicians with valuable educational experiences in settings similar to those in which they ultimately will practice. This concept is a cornerstone of osteopathic graduate medical education.

The training of residents in non-hospital settings is sound educational policy and a worthwhile public policy goal that Congress clearly mandated in 1997. It continues to enjoy strong Congressional support. Congress endorsed this concept as part of the Balanced Budget Act of 1997, when the graduate medical education, GME, funding formulas were reformed to allow funding for residents training in non-hospital settings with volunteer faculty.

However, recent rule-making, agency interpretations, and guidance issued by the Centers for Medicare and Medicaid Services, CMS, create a chilling effect on residency training programs. If CMS policy is not halted, hospitals will be forced to train all residents in the hospital setting or potentially eliminate programs. Teaching programs across the nation face audits and scrutiny as a result of confusing and unclear CMS policy on this issue.

Your legislation establishes, in statute, clear and concise guidance on the use of ambulatory sites in teaching programs. If enacted, it will preserve the quality education of resident physicians originally envisioned by Congress in 1997. The AOA and our members stand ready to use all available resources to ensure enactment of this important legislation.

Sincerely,

PHILIP SHETTLE, D.O.,
President.

ASSOCIATION OF AMERICAN MEDICAL COLLEGES,
Washington, DC, November 18, 2005.

Hon. OLYMPIA SNOWE,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SNOWE: On behalf of the Association of the American Medical Colleges, AAMC, I write to endorse the ''Community and Rural Medical Residency Preservation Act of 2005.'' The AAMC represents 125 accredited U.S. medical schools; approximately 400 major teaching hospitals and health systems, 94 academic and professional societies, representing 109,000 faculty members; and the nation's 67,000 medical students and 104,000 residents.

Your bill would ensure that CMS regulations and guidance no longer impede the ability of teaching programs to train resident physicians in ambulatory and rural settings. As you know, ambulatory training is a vital aspect of every resident's training and is designed to expose residents to a variety of rural, suburban and urban settings in which they ultimately choose to practice such as physicians offices, nursing homes, and community health centers. Such training is coordinated by program directors at teaching hospitals in conjunction with community physicians—many of whom volunteer their time as a professional commitment to train the next generation of physicians.

Specifically, your bill clarifies that supervising physicians in non-hospital settings would be allowed to volunteer their teaching time. It also ensures that any teaching costs associated with supervising physicians who are not volunteers would be based on negotiations between the hospital and the non-hospital setting, rather than a complicated formula requiring unreasonable administrative burdens on both the teaching programs and nonhospital training settings.

We appreciate your continued interest in this issue and your efforts to ensure the viability of community and rural residency training. The AAMC looks forward to continuing to work with you and your staff to advance this important legislation.

Sincerely,

JORDAN COHEN, M.D.

ACADEMIC FAMILY MEDICINE ADVOCACY ALLIANCE,
November 11, 2005.

Hon. OLYMPIA J. SNOWE,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SNOWE: On behalf of the undersigned academic family medicine organizations I would like to commend you for introducing the ''Community and Rural Medical Residency Preservation Act of 2005'', legislation intended to solve a longstanding problem in Medicare regulations that deals with volunteer teachers of residents in non-hospital settings.

We have appreciated your support through the years on this issue, and value your continued efforts to find a solution to the problem. As you know, the Balanced Budget Act, BBA, included a change in statute that allowed forthe counting of training time in non-hospital settings to be included in Medicare cost reports forboth IME and DME FTE counts. As part of that change, the statute, stated that a hospital must incur ''all pr substantially all'' the costs ofthe training in that setting. In the implementing regulations CMS (then HCFA) added the faculty costs to the already included residents' salary and benefits, and required a written agreement between the hospital and the non hospital site.

This change in regulation, and the interpretations of it that CMS has used during audits have caused many hospitals to lose the ability to count residents that train in non-hospital settings, and required them to refund large sums of IMEand DME money to CMS.

Congress made the change in statute. to encourage training in rural and underserved settings. Unfortunately. CMS's, actions have had just the opposite effect. It has had a dampening effect on training in the non-hospital setting—including rural rotations. It has resulted in much training being brought back into the hospital, ironically both at a time when accrediting bodies are requiring more training outside the hospital, and contrary to the wishes of Congress.

As you are well aware, several of the Family Medicine residency programs in Maine are at risk of closing due to the financial implications of CMS's interpretations. We are also aware of similar situations throughout the United States. For example, if the current situation continues, we have heard that in Iowa, four of the eight Family Medicine training programs are at risk of closing in the next couple of years. In Oregon, several residencies are at risk of losing many FTE's, including Internal Medicine, Surgery, OB-Gyn, and Emergency Medicine. In Montana, the only Family Medicine residency program in the state is in danger of losing funding oJ all it's outside rotations due to CMS's unreasonable requirements related to non-hospital rotations. Across the country, residency programs are at risk. CMS has had several years to solve the problem. The report of the Office of Inspector General (OIG) that was required by Congress in the MMA has given CMS several options, and yet nothing has been done.

We appreciate your efforts to put an end to this war of attrition. Please count on us to support your efforts at resolving this situation legislatively. Thank you for your help in this area. We look forward to your moving this legislation forward.

Sincerely,

WILLIAM K. MYGDAL, EDD,
President, Society of Teachers of Family Medicine.
PENNY TENZER, MD,
President, Association of Family Practice Residency Directors.
WARREN NEWTON, MD,
President, Association of Departments of Family Medicine.
PERRY DICKINSON, MD,
President, North American Primary Care Research Group.

By Mr. REID:

S. 2072. A bill to provide for the conveyance of certain public lands in and around historic mining townsites in Nevada, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today to introduce the Nevada Mining Townsite Conveyance Act, which addresses an important public land issue in rural Nevada. As you may know, the Federal Government controls more than 87 percent of the land in Nevada. That is more than 61 million acres of land. This fact makes it necessary for our State and our communities to pursue Federal remedies for problems that in other States can be handled in a much more expeditious manner.

The residents of Ione and Gold Point in Nevada have asked for our help in settling longstanding trespass issues that affect these historic mining communities. These communities have been continuously occupied for over 100 years. Many residents live on land that their families have ostensibly owned for several decades. These citizens have paid their property taxes and made improvements to their properties, rehabilitated historic structures and built new ones.

The documents by which many of these people claim possession of the properties date back many years. In fact, some of the deeds are historic documents themselves. Yet because many of these documents do not satisfy modern requirements for demonstrating land title, they have been deemed invalid. In other words, the Bureau of Land Management has determined that some of the residents of Ione and Gold Point are trespassing on Federal land. This unfortunate situation puts the BLM at odds with the local residents and county governments and is hampering efforts to improve basic community services such as fire protection, and water supply and treatment facilities.

Nye County, Esmeralda County, and the BLM have worked together for nearly a decade to solve this problem. All of these parties support the legislation that we offer today as a solution to these land ownerships conflicts, and

as a means of promoting responsible resource management. All of the land included in this bill has been identified by the BLM for disposal.

This legislation represents the first of a two-part solution. Under this bill, specified lands within the historic mining townsites of Ione and Gold Point would be conveyed to the respective counties. Under the provisions of a State law passed several years ago in Nevada, the counties will then reconvey the land to these people or entities who can demonstrate ownership or longstanding occupancy of specific land parcels.

My bill conveys, for no consideration, approximately 760 acres in the communities of Ione and Gold Point from the BLM to Nye and Esmeralda Counties. As a condition of the conveyance, all historic and cultural resources contained in the townsites shall be preserved and protected under applicable Federal and State law. It should also be noted that approximately 145 acres of the total land conveyed to Nye County will stay in county hands in order to simplify management of a cemetery, a landfill and an airstrip. These conveyances will benefit the agencies that manage Nevada's vast Federal lands as well as the proud citizens of our rural communities.

I sincerely hope that my colleagues will support this legislation. It is a practical solution that deserves swift passage. We salute the Bureau of Land Management, the counties, and the local residents for their cooperation and hard work in crafting a reasonable solution to this problem.

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. 2072

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 ''Nevada Mining Townsite Conveyance Act''.

SEC. 2. DISPOSAL OF PUBLIC LANDS IN MINING TOWNSITES, ESMERALDA AND NYE COUNTIES, NEVADA.

(a) FINDINGS.—Congress finds the following:

(1) The Federal Government owns real property in and around historic mining townsites in the counties of Esmeralda and Nye in the State of Nevada.

(2) While the real property is under the jurisdiction of the Secretary of the Interior, acting through the Bureau of Land Management, some of the real property land has been occupied for decades by persons who took possession by purchase or other documented and putatively legal transactions, but whose continued occupation of the real property constitutes a ''trespass'' upon the title held by the Federal Government.

(3) As a result of the confused and conflicting ownership claims, the real property is difficult to manage under multiple use policies and creates a continuing source of friction and unease between the Federal Government and local residents.

(4) All of the real property is appropriate for disposal for the purpose of promoting administrative efficiency and effectiveness, and the Bureau of Land Management has already identified certain parcels of the real property for disposal.

(5) Some of the real property contains historic and cultural values that must be protected.

(6) To promote responsible resource management of the real property, certain parcels should be conveyed to the county in which the property is situated in accordance with land use management plans of the Bureau of Land Management so that the county can, among other things, dispose of the property to persons residing on or otherwise occupying the property.

(b) MINING TOWNSITE DEFINED.—In this section, the term ''mining townsite'' means real property in the counties of Esmeralda and Nye, Nevada, that is owned by the Federal Government, but upon which improvements were constructed because of a mining operation on or near the property and based upon the belief that—

(1) the property had been or would be acquired from the Federal Government by the entity that operated the mine; or

(2) the person who made the improvement had a valid claim for acquiring the property from the Federal Government.

(c) CONVEYANCE AUTHORITY.—

(1) IN GENERAL.—Notwithstanding sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712, 1713), the Secretary of the Interior, acting through the Bureau of Land Management, shall convey, without consideration, all right, title, and interest of the United States in and to mining townsites (including improvements thereon) identified for conveyance on the maps entitled ''Original Mining Townsite, Ione, Nevada'' and ''Original Mining Townsite, Gold Point, Nevada'' and dated October 17, 2005.

(2) AVAILABILITY OF MAPS.—The maps referred to in paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Secretary of the Interior, including the office of the Bureau of Land Management located in the State of Nevada.

(d) RECIPIENTS.—

(1) ORIGINAL RECIPIENT.—Subject to paragraph (2), the conveyance of a mining townsite under subsection (c) shall be made to the county in which the mining townsite is situated.

(2) RECONVEYANCE TO OCCUPANTS.—In the case of a mining townsite conveyed under subsection (c) for which a valid interest is proven by one or more persons, under the provisions of Nevada Revised Statutes Chapter 244, the county that received the mining townsite under paragraph (1) shall reconvey the property to that person or persons by appropriate deed or other legal conveyance as provided in that State law. The county is not required to recognize a claim under this paragraph submitted more than 10 years after the date of the enactment of this Act.

(e) PROTECTION OF HISTORIC AND CULTURAL RESOURCES.—As a condition on the conveyance or reconveyance of a mining townsite under subsection (c), all historic and cultural resources (including improvements) on the mining townsite shall be preserved and protected in accordance with applicable Federal and State law.

(f) VALID EXISTING RIGHTS.—The conveyance of a mining townsite under this section shall be subject to valid existing rights, including any easement or other right-of-way or lease in existence as of the date of the conveyance. All valid existing rights and interests of mining claimants shall be maintained, unless those rights or interests are deemed abandoned and void or null and void under—

(1) section 2320 of the Revised Statutes (30 U.S.C. 21 et seq.);

(2) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); or

(3) subtitle B of title X of the Omnibus Budget Reconciliation Act of 1993 (30 U.S.C. 28(f)–(k)), including regulations promulgated under section 3833.1 of title 43, Code of Federal Regulations or any successor regulation.

(g) SURVEY.—A mining townsite to be conveyed by the United States under this section shall be sufficiently surveyed to legally describe the land for patent conveyance.

(h) RELEASE.—On completion of the conveyance of a mining townsite under subsection (c), the United States shall be relieved from liability for, and shall be held harmless from, any and all claims arising from the presence of improvements and materials on the conveyed property.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of the Interior such amounts as may be necessary to carry out the conveyances required by this section, including funds to cover the costs of cadastral and mineral surveys, mineral potential reports, hazardous materials, biological, cultural and archaeological clearances, validity examinations and other expenses incidental to the conveyances.

By Mrs. CLINTON:

S. 2073. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for property owners who remove lead-based paint hazards; to the Committee on Finance.

Mrs. CLINTON. Mr. President, I rise today to discuss a serious, persistent, and entirely preventable threat to the health and well-being of our children.

Lead is highly toxic and continues to be a major environmental health problem in the United States, especially for infants, children, and pregnant women. A CDC survey conducted between 1999–2002, estimated that 310,000 American children under 6 were at risk for exposure to harmful lead levels in United States. Childhood lead poisoning has been linked to impaired growth and function of vital organs and problems with intellectual and behavioral development. A study from the New England Journal of Medicine also found that children suffered up to a 7.4-percent decrease in IQ at lead levels that CDC considers safe. At very high levels, lead poisoning can cause seizures, coma, and even death.

The most common source of lead exposure for children today is lead paint in older housing and the contaminated lead dust it generates. Despite a ban on lead paint in 1978, there are still over 24 million housing units in the United States that have lead paint hazards, with about 1.2 million in New York State alone. According to 2000 census data, New York State has over 37 percent of homes that were built prior to 1950 and more pre-1950 housing units available for occupancy than any other State.

Though New York State has made considerable progress in prevention and early identification of childhood lead poisoning, more needs to be done to minimize the risk of lead exposure in the home, by our kids. About 5 percent of New York children screened for lead

poisoning at age 2 were found to have elevated levels of lead in the blood, more than twice the national average. Minority and poor children are disproportionately at risk, as these groups are more likely to live in older housing with poor building maintenance, where the risk of lead paint hazards are greater. Low-income children are eight times more likely to develop lead poisoning than more affluent children, and African-American and Mexican-American children are five and two times more likely, respectively, to have toxic blood lead levels than white children. In New York City, about 95 percent of children with elevated blood levels were African American, Hispanic or Asian.

I am glad that the U.S. Department of Health and Human Services considers lead poisoning to be a priority, and established a national goal of ending childhood lead poisoning by 2010. However, Federal programs only have resources to remove lead-based paint hazards from less than 0.1 percent of the 24 million housing units that have these hazards. At this pace, we will not be able to end childhood lead poisoning by 3010, let alone 2010.

We will never stop childhood lead poisoning unless we get lead out of the buildings in which children live, work, and play. In Brooklyn, more than a third of the buildings in one community have a lead-based paint hazard. Parents of children with lead poisoning are being told that nothing can be done until their children's lead poisoning becomes worse. How can we ask parents to watch and wait while their sons and daughters suffer from lead poisoning before we remove the lead from their homes?

That is why today, I am proud to introduce the Home Lead Safety Tax Credit Act of 2005 with my colleagues, Senators DEWINE, OBAMA, and SMITH. This legislation would provide a tax credit to aide and encourage homeowners and landlords to engage in the safe removal of lead-based paint hazards from their homes and rental units. Specifically, it would change the IRS Code of 1986 to provide a tax credit for 50 percent of the allowable costs paid by the taxpayer, up to a maximum of $3000 and $1000 for lead abatement and interim control measures, respectively. Interim control measures, which can include replacement of windows, specialized maintenance, safe repainting and renovation work practices to eliminate lead hazards, are a cost-effective means of protecting the largest number of children in the near term. While total elimination of lead paint in housing is the most desirable, interim control measures typically cost three to nine times less and can be equally effective at removing the lead hazard.

The credit is targeted to homes that contain children less than 6 years of age or a woman of childbearing age, low-income residents, and to buildings built before 1960, as these include more than 96 percent of all units where lead-based paint is prevalent. In Massachusetts, a similar tax credit helped reduce the number of new cases of childhood lead poisoning by almost two-thirds in a decade.

The Home Lead Safety Tax Credit Act of 2005 would help homeowners make over 80,000 homes each year safe from lead, which is more than 10 times the number of homes made lead safe by current Federal programs. It would greatly accelerate our progress in ridding our Nation of the significant problem of childhood lead poisoning. I ask my colleagues to join me in supporting this legislation, which will provide needed incentives for property owners to ensure that our homes are safeguarded against environmental hazards that detrimentally affect the health and safety of our children.

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. 2073

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

SECTION 1. SHORT TITLE; FINDINGS; PURPOSE.

(a) SHORT TITLE.—This Act may be cited as the ''Home Lead Safety Tax Credit Act of 2005''.

(b) FINDINGS.—Congress finds that:

(1) Of the 98,000,000 housing units in the United States, 38,000,000 have lead-based paint.

(2) Of the 38,000,000 housing units with lead-based paint, 25,000,000 pose a hazard, as defined by Environmental Protection Agency and Department of Housing and Urban Development standards, due to conditions such as peeling paint and settled dust on floors and windowsills that contain lead at levels above Federal safety standards.

(3) Though the number of children in the United States ages 1 through 5 with blood levels higher than the Centers for Disease Control action level of 10 micrograms per deciliter has declined to 300,000, lead poisoning remains a serious, entirely preventable threat to a child's intelligence, behavior, and learning.

(4) The Secretary of Health and Human Services has established a national goal of ending childhood lead poisoning by 2010.

(5) Current Federal lead abatement programs, such as the Lead Hazard Control Grant Program of the Department of Housing and Urban Development, only have resources sufficient to make approximately 7,000 homes lead-safe each year. In many cases, when State and local public health departments identify a lead-poisoned child, resources are insufficient to reduce or eliminate the hazards.

(6) Old windows typically pose significant risks because wood trim is more likely to be painted with lead-based paint, moisture causes paint to deteriorate, and friction generates lead dust. The replacement of old windows that contain lead based paint significantly reduces lead poisoning hazards in addition to producing significant energy savings.

(7) Childhood lead poisoning can be dramatically reduced by the abatement or complete removal of all lead-based paint. Empirical studies also have shown substantial reductions in lead poisoning when the affected properties have undergone so-called ''interim control measures'' that are far less costly than abatement.

(c) PURPOSE.—The purpose of this section is to encourage the safe removal of lead hazards from homes and thereby decrease the number of children who suffer reduced intelligence, learning difficulties, behavioral problems, and other health consequences due to lead-poisoning.

SEC. 2. HOME LEAD HAZARD REDUCTION ACTIVITY TAX CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

''SEC. 30D. HOME LEAD HAZARD REDUCTION ACTIVITY.

''(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the lead hazard reduction activity cost paid or incurred by the taxpayer during the taxable year for each eligible dwelling unit.

''(b) LIMITATION.—The amount of the credit allowed under subsection (a) for any eligible dwelling unit for any taxable year shall not exceed—

''(1) either—

''(A) $3,000 in the case of lead hazard reduction activity cost including lead abatement measures described in clauses (i), (ii), (iv) and (v) of subsection (c)(1)(A), or

''(B) $1,000 in the case of lead hazard reduction activity cost including interim lead control measures described in clauses (i), (iii), (iv), and (v) of subsection (c)(1)(A), reduced by

''(2) the aggregate lead hazard reduction activity cost taken into account under subsection (a) with respect to such unit for all preceding taxable years.

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

''(1) LEAD HAZARD REDUCTION ACTIVITY COST.—

''(A) IN GENERAL.—The term 'lead hazard reduction activity cost' means, with respect to any eligible dwelling unit—

''(i) the cost for a certified risk assessor to conduct an assessment to determine the presence of a lead-based paint hazard,

''(ii) the cost for performing lead abatement measures by a certified lead abatement supervisor, including the removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces, windows, or fixtures, or the removal or permanent covering of soil when lead-based paint hazards are present in such paint, dust, or soil,

''(iii) the cost for performing interim lead control measures to reduce exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards, and the establishment and operation of management and resident education programs, but only if such measures are evaluated and completed by a certified lead abatement supervisor using accepted methods, are conducted by a qualified contractor, and have an expected useful life of more than 10 years,

''(iv) the cost for a certified lead abatement supervisor, those working under the supervision of such supervisor, or a qualified contractor to perform all preparation, cleanup, disposal, and clearance testing activities associated with the lead abatement measures or interim lead control measures, and

''(v) costs incurred by or on behalf of any occupant of such dwelling unit for any relocation which is necessary to achieve occupant protection (as defined under section 35.1345 of title 24, Code of Federal Regulations).

''(B) LIMITATION.—The term 'lead hazard reduction activity cost' does not include any cost to the extent such cost is funded by any grant, contract, or otherwise by another person (or any governmental agency).

''(2) ELIGIBLE DWELLING UNIT.—

''(A) IN GENERAL.—The term 'eligible dwelling unit' means, with respect to any taxable year, any dwelling unit—

''(i) placed in service before 1960,

''(ii) located in the United States,

''(iii) in which resides, for a total period of not less than 50 percent of the taxable year, at least 1 child who has not attained the age of 6 years or 1 woman of child-bearing age, and

''(iv) each of the residents of which during such taxable year has an adjusted gross income of less than 185 percent of the poverty line (as determined for such taxable year in accordance with criteria established by the Director of the Office of Management and Budget).

''(B) DWELLING UNIT.—The term 'dwelling unit' has the meaning given such term by section 280A(f)(1).

''(3) LEAD-BASED PAINT HAZARD.—The term 'lead-based paint hazard' has the meaning given such term by section 745.61 of title 40, Code of Federal Regulations.

''(4) CERTIFIED LEAD ABATEMENT SUPERVISOR.—The term 'certified lead abatement supervisor' means an individual certified by the Environmental Protection Agency pursuant to section 745.226 of title 40, Code of Federal Regulations, or an appropriate State agency pursuant to section 745.325 of title 40, Code of Federal Regulations.

''(5) CERTIFIED INSPECTOR.—The term 'certified inspector' means an inspector certified by the Environmental Protection Agency pursuant to section 745.226 of title 40, Code of Federal Regulations, or an appropriate State agency pursuant to section 745.325 of title 40, Code of Federal Regulations.

''(6) CERTIFIED RISK ASSESSOR.—The term 'certified risk assessor' means a risk assessor certified by the Environmental Protection Agency pursuant to section 745.226 of title 40, Code of Federal Regulations, or an appropriate State agency pursuant to section 745.325 of title 40, Code of Federal Regulations.

''(7) QUALIFIED CONTRACTOR.—The term 'qualified contractor' means any contractor who has successfully completed a training course on lead safe work practices which has been approved by the Department of Housing and Urban Development and the Environmental Protection Agency.

''(8) DOCUMENTATION REQUIRED FOR CREDIT ALLOWANCE.—No credit shall be allowed under subsection (a) with respect to any eligible dwelling unit for any taxable year unless—

''(A) after lead hazard reduction activity is complete, a certified inspector or certified risk assessor provides written documentation to the taxpayer that includes—

''(i) evidence that—

''(I) the eligible dwelling unit passes the clearance examinations required by the Department of Housing and Urban Development under part 35 of title 40, Code of Federal Regulations,

''(II) the eligible dwelling unit does not contain lead dust hazards (as defined by section 745.227(e)(8)(viii) of such title 40), or

''(III) the eligible dwelling unit meets lead hazard evaluation criteria established under an authorized State or local program, and

''(ii) documentation showing that the lead hazard reduction activity meets the requirements of this section, and

''(B) the taxpayer files with the appropriate State agency and attaches to the tax return for the taxable year—

''(i) the documentation described in subparagraph (A),

''(ii) documentation of the lead hazard reduction activity costs paid or incurred during the taxable year with respect to the eligible dwelling unit, and

''(iii) a statement certifying that the dwelling unit qualifies as an eligible dwelling unit for such taxable year.

''(9) BASIS REDUCTION.—The basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit (determined without regard to subsection (d)).

''(10) NO DOUBLE BENEFIT.—Any deduction allowable for costs taken into account in computing the amount of the credit for lead-based paint abatement shall be reduced by the amount of such credit attributable to such costs.

''(d) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(2) the sum of the credits allowable under subpart A and sections 27, 29, 30, 30A, 30B, and 30C for the taxable year.

''(e) CARRYFORWARD ALLOWED.—

''(1) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (d) for such taxable year (referred to as the 'unused credit year' in this subsection), such excess shall be allowed as a credit carryforward for each of the 20 taxable years following the unused credit year.

''(2) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under paragraph (1).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) of the Internal Revenue Code of 1986 is amended by striking ''and'' in paragraph (36), by striking the period and inserting '', and'' in paragraph (37), and by inserting at the end the following new paragraph:

''(38) in the case of an eligible dwelling unit with respect to which a credit for any lead hazard reduction activity cost was allowed under section 30D, to the extent provided in section 30D(c)(9).''.

(2) The table of sections for subpart B of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 30C the following new item:

''Sec. 30D. Home lead hazard reduction activity.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to lead hazard reduction activity costs incurred after December 31, 2005, in taxable years ending after that date.

By Mr. BINGAMAN (for himself, Mr. BAUCUS, Mr. DORGAN, Mrs. MURRAY, Ms. CANTWELL, and Mr. JOHNSON):

S. 2074. A bill to amend title XIX of the Social Security Act to provide for fair treatment of services furnished to Indians under the medicaid program, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I am pleased to be introducing the Indian Medicaid Health Act of 2005 with Senators BAUCUS, DORGAN, MURRAY, CANTWELL and JOHNSON.

This legislation addresses a number of technical but critically important provisions within the Medicaid Program that devote special attention to Native Americans, the Indian Health Service, IHS, tribal health organizations, and urban Indian health organizations. These provisions would:

No. 1, codify protections that American Indians and Alaska Natives have obtained over the years in the Medicaid program, such as the requirement that states consult with tribes and tribal health organizations prior to seeking a federal Medicaid waiver;

No. 2, clarify that American Indians and Alaska Natives are not subject to additional cost sharing or benefit limitations within Medicaid that will result in nothing more than a cost-shift from the Medicaid program to IHS or tribal health providers;

No. 3, codify critically important provisions that provide protections against states or the federal government taking Indian property or tribal lands in exchange for medical services delivered through Medicaid; and,

No. 4, eliminate certain inequities such as the lack of 100 percent federal matching payments within Medicaid for care delivered to Native Americans at urban Indian health clinics.

American Indians and Alaska Natives continue to suffer enormous disparities in the health and medical care they receive. It should not come as a surprise to anyone at the Federal level that health care funding for American Indians and Alaska Natives, AI/AN, is well below what it should be and, consequently, Native Americans received rationed health care services that deny them access to the quality and medically necessary health care services.

However, year after year, budget and appropriations amendments are offered to more fully fund health care for Native Americans but both the administration and Congress routinely fail to provide adequate funding. The result is a continued and growing divide between the health of American Indians and Alaska Natives compared to that of the general population.

The U.S. Commission on Civil Rights, USCCR, held meetings in Albuquerque, NM, and visited the Gallup Indian Medical Center in 2003 as part of a fact-finding mission to review the current disparities in the health status and outcomes of Native Americans. What they found served as a basis for the release of their report in September 2004 entitled Broken Promises: Evaluating the Native American Health Care System. The opening line in that report reads, ''Today, in Indian Country, health-related problems and the lack of adequate health care are the enemy.''

This is in large part due to the fact that the IHS operates on just 57 percent of the budget it needs and had more than $3 billion in unmet needs in 2003. USCCR cites estimates by the Department of Health and Human Services, HHS, that per capita health spending for all Americans at $4,065, while IHS spent about $1,914 per person and average spending on Navajo patients is just $1,187.

The USCCR adds, ''In fact, the federal government spends nearly twice as much money for a federal prisoner's health care than it does for an American Indian or Alaska Native.''

Consequently and not surprisingly, this disparity in funding translates into severe health disparities for Native Americans. For example, life expectancy is 6 years less than the rest of the U.S. citizens. Tuberculosis rates are four times the national average. Complications due to diabetes are almost three times the national average and death rates exceed the Healthy People 2010 targets by 233 percent. Infant mortality rates are 1.7 times higher than the rate for white infants.

In recognition of these facts, the National Indian Health Board has said, ''The travesty in looking at the deplorable health of American Indians and Alaska Natives is recognizing that the poor health indicators could be improved if funding was available to provide even a basic level of care.''

The U.S. Commission on Civil Rights adds, ''In this light, this report should be considered a clarion call to those who inexplicably fail to acknowledge the present state of Native American health care and to those who lack a commitment necessary to address the overwhelming need for clear and decisive action. Such a call is certainly appropriate for our political leadership and the message is clear—it is finally time to honor our nation's commitment to protecting the health of Native Americans.''

Such an agenda is actually a fairly simple one. It would include:

No. 1, full funding for the Indian Health Service and tribal health organizations, which should include conversion of IHS into an entitlement program;

No. 2, increased numbers and funding of urban Indian health organizations;

No. 3, reauthorization of the Indian Health Care Improvement Act;

No. 4, coverage of as many American Indians and Alaska Natives who qualify for federal health programs, such as Medicare and Medicaid, as possible to ensure they are enrolled and receiving benefits in order to augment funding to IHS facilities; and,

No. 5, targeted efforts to address health disparities in Indian Country, such as diabetes.

For this reason, I strongly support the annual budget and appropriations efforts, which have been led by Senator Daschle in the past and Senator DORGAN this year, to increase funding for the Indian Health Service. Unfortunately, those efforts continue to be voted down in the Congress.

I also strongly support reauthorization of the Indian Health Care Improvement Act, IHCIA, which is led by Senators MCCAIN and DORGAN. This effort has been ongoing for 6 years and it is long past time for the Congress to take up and pass IHCIA. Unfortunately, due to continued opposition to certain provisions by the administration, the legislation continues to be bottled up in the Congress and has not even been reintroduced in the House of Representatives.

As a member of the Senate Finance Committee, one area that I have been able to focus on in recent years is to improve coverage for Native Americans in both Medicare and Medicaid. I was able to pass legislation, the Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2001 or Public Law 107–121, to correct problems whereby Native American women had previously been wrongly denied coverage under Medicaid's breast and cervical cancer treatment option. After a year of work, we were able to pass legislation to correct that outrageous and discriminatory error.

I was also able to pass two provisions in 2003 from my bill, the Medicare Indian Health Fairness Act of 2003, that expanded reimbursement to IHS and tribal health providers for all Medicare Part B services and limited the amount that providers outside the IHS system can charge for services delivered to Native Americans through the contract health services, CHS, program. As with anything related to Native Americans in this Administration, the Department of Health and Human Services, HHS, continues to fail to publish regulations necessary to implement the latter provision, even though the law required publishing of those regulations in December 2004.

Although most involved in Indian health feel frustrated and argue that we are taking one step forward and two steps back with respect to Indian health care policy, it is in the area of Medicare, Medicaid and the State Children's Health Insurance Program, SCHIP, policy that we have been making some progress. The legislation I am introducing today, the Medicaid Indian Health Care Act of 2005, seeks to protect the gains that have been made and to take another few steps forward.

For one, while IHS funding continues to fall further and further behind what is needed, the one bright spot is that collections from third party payers has increased over time with Medicaid playing a fundamental role in that growth.

IHS was first authorized to seek Medicaid payment for services delivered in Indian health facilities, whether operated by the IHS directly or by tribes as part of the Indian Health Care Improvement Act of 1976 or Public Law 94–437.

As Indian health experts Mim Dixon and Kris Locke said, ''This entitlement funding was expected to provide critical resources to improve the quality of health care for AI/AN and to reduce the health status disparities. To support this outcome, there is an additional provision in the IHCIA that Medicaid and Medicare revenues shall not offset Congressional appropriations for the IHS, so that the total amount of funding for Indian health care would increase and not merely be shifted from one funding stream to another.''

With regard to that requirement, however, the U.S. Commission on Civil Rights adds, ''. . . Congress included language to articulate the express intent that increased collections not be used to justify lower appropriations levels. Congress has failed to abide by this clear mandate. Only enhanced collection efforts have made up for shortfalls created by inflation and population growth, and prevented a continuous decline from 1991 until today.''

Growth in Medicaid collections has been used to partially offset the dramatic decline in IHS purchasing power over the years, despite the Federal provision stating that such revenues should not reduce overall IHS spending.

The U.S. Commission on Civil Rights noted that '' . . . collections from third parties increased 453 percent from 1991 to 2003.'' Without that increase, the fate of IHS and health care services for Native Americans would even be more severe.

According to the Government Accountability Office, GAO, in its August 2005 report entitled ''Indian Health Service: Health Care Services Are Not Always Available to Native Americans'', ''In fiscal year 2004, IHS-funded facilities obtained approximately $628 million in reimbursements, with 92 percent collected from Medicare and Medicaid and 8 percent from private insurance.''

Medicaid collections, alone, have by 2004 ''grown to $446 million, which is 71 percent of the total third party collections reported by IHS In FY 2004, . . . Medicaid collections provided about 16.8 percent of the IHS budget for clinical services,'' according to Dixon and Locke.

Consequently, the administration's own congressional justification document for its IHS budget proposes just a 2.1-percent increase, or $62.9 million, in additional IHS funding in fiscal year 2006 while noting that the IHS will increase their Medicare and Medicaid collections by another $8.4 million in fiscal year 2006. The Northwest Portland Area Indian Health Board estimates it will take $371 million to maintain current services for IHS and tribally operated health programs. Therefore, the administration's ridiculously low proposed increase for IHS combined with their estimated increase in Medicare and Medicaid collections will still fall $300 million short of providing current services.

Whether intentional or not, as direct IHS funding continues to fail to cover inflation or population growth year after year, Medicaid collections are now a growing and critical component to providing basic health care services by IHS and tribal health organizations. Yet, while Medicaid has become critically important to the health of American Indians and Alaska Natives, Native Americans constitute a small share of overall Medicaid costs. As the Northwest Portland Area Indian Health Board has found, Medicaid accounts for almost 20 percent of the IHS

budget but less than 0.5 percent of Medicaid expenditures go to Indian health.

Consequently, the legislation I am introducing today with Senators Baucus, Dorgan, Murray, Cantwell, and Johnson entitled the ''Medicaid Indian Health Act of 2005'' is primarily an attempt to prevent the Federal Government and States from inflicting harm on the health and well-being of American Indians and Alaska Natives, but it also seeks to take a few steps forward as well.

What is at stake? First, from the ''do no harm'' prescriptive, both the National Governors' Association, NGA, and the House of Representatives budget reconciliation legislation contemplate major changes to the Medicaid program to achieve $10 billion or more in proposed budget cuts to Medicaid and Medicare. Unfortunately, it is clear that neither the NGA nor the House of Representatives considered the tremendous impact that the cuts they are proposing will have on the health and well-being of Native Americans across this Nation.

For example, both the NGA and the House budget reconciliation package provide for States being able to impose additional premiums, copayments, and other forms of cost-sharing on low-income Medicaid beneficiaries, including Native Americans. Such changes can have enormous consequences for AI/ANs as well as the Indian Health Service, tribal, and urban Indian, I/T/U providers from whom many Native Americans receive health services.

As Andy Schneider of Medicaid Policy, LLC, stated at a meeting in August of this year on Medicaid and Indian health care, ''Regrettably, the NGA recommendations [which have been adopted as part of the House budget reconciliation package] could well make matters even worse for AI/ANs and the I/T/U providers that serve them. The NGA proposal to increase beneficiary cost-sharing could impose additional financial burdens on IHS and tribal health budgets. The NGA proposal for more benefits package 'flexibility' could result in significant reimbursement losses to I/T/U providers.''

How would this occur? With respect to additional cost sharing, evidence shows that additional cost sharing either results in reduced use of medical services, which could result in further a decline in the health status of AI/ANs, or that the I/T/U providers will pick up the added cost sharing burden. As Schneider points out, ''These costs include not only the amounts of the copayments and deductibles but also the administrative expense of processing them and tracking the cumulative out-of-pocket payments, particularly if the services subject to cost-sharing are delivered by a non-I/T/U provider.''

Even if you subscribe to the ideology that Medicaid beneficiaries should pay more for their health care, as Dixon and Locke point out, ''The intended outcome of enrollee cost sharing is not achieved in the Indian health system and actually acts to further deplete funding.''

Put simply, added copayments in Medicaid would result in the unintended effect of shifting Medicaid costs directly upon the already horribly underfunded IHS system. In other words, the imposition of consumer cost-sharing provisions by Medicaid on Native American populations would effectively reduce the level and quality of health care services in Indian communities.

With respect to benefit flexibility as proposed by NGA and adopted in the House budget reconciliation package, according to Schneider, ''The effect of reducing Medicaid coverage will be to reduce Medicaid revenues to the I/T/U providers that furnish covered services to this population. Services for which the I/T/U could previously collect Medicaid revenues will no longer be reimburseable because the patient is no longer eligible for Medicaid.''

To address these concerns, the Northwest Portland Area Indian Health Board has recommended, ''The Medicaid program could be a more effective means of financial Indian health programs if it would exempt American Indians and Alaska Natives from cost sharing including co-pays, premiums and any form of cost sharing. It makes little sense to Indian people to sign up for a health program that charges them for health care services that their tribe gave up lands and others considerations to secure for all generations. The practical effect is that they will not sign up for Medicaid and the IHS funded programs will end up paying all the costs of their health care. If this becomes the case, CMS will save the federal government millions of dollars, but renege on rights guaranteed by law and treaties.''

In order to address these important points, one need look no further than the State Children's Health Insurance Program, SCHIP, rules and regulations. As Schneider adds, ''Federal regulations prohibit states from imposing premiums, deductibles, coinsurance, or copayments or AI/AN children enrolled in their SCHIP programs. There is no comparable regulatory protection for AI/AN children or adults enrolled in Medicaid.''

Consequently, to prevent harm to the health and well-being of Native Americans, section 3 of the Medicaid Indian Health Act of 2005 would explicitly prohibit imposing such things as premiums or other forms of cost sharing on Native Americans within Medicaid, just as SCHIP already does. Section 4 adds a prohibition on the recovery of the estates of AI/AN Medicaid beneficiaries or tribal property by States through the Medicaid Program. Furthermore, section 8 of the legislation allows States to include special provisions exempting Native Americans from additional cost sharing or from benefit reductions in recognition of the special circumstances of Native Americans in the Medicaid Program.

In light of the failure of the NGA to consider the special circumstances of American Indians and Alaska Natives with respect to Medicaid policy, section 5 of the legislation recognizes the Federal trust responsibility and requires the Secretary, prior to the approval of any State Medicaid waivers, to assure that there has been consultation with tribes whose members or tribal health programs could be adversely affected by the waiver. Otherwise, the current waiver process can result in the approval of waivers that may include reductions in Medicaid eligibility, benefits and/or reimbursement or increases in cost sharing that can have a negative impact on Native Americans or tribal health programs.

In short, sections 3, 4, 5, and 8 seek to adopt a policy of ''do no harm'' by preventing changes in Medicaid policy from having negative consequences for Native Americans. Meanwhile, sections 2, 6, and 7 in the bill seek to make some additional progress on behalf of Native Americans through the Medicaid Program.

Foremost among those provisions in section 2, which provides for 100 percent Federal Medicaid matching funds for services delivered to AI/AN Medicaid beneficiaries at urban Indian health programs. Although the Medicaid statute currently provides for 100 percent Federal Medicaid matching funds for Medicaid services delivered to AI/ANs through IHS facilities and a subsequent Memorandum of Agreement, MOA, in 1996 clarified those payments also apply to services provided through tribally owned facilities, the 100 Percent Federal Medical Assistance Percentage, FMAP, does not apply to urban Indian clinics.

In short, if an AI/AN Medicaid beneficiary received services from an IHS or tribal facility, the Federal Government is paying 100 percent of the cost, but if the same individual received the same services from an urban Indian health program funded by the IHS, the Federal Government shifts part of the costs of that care to the State in proportion to the State's share of the FMAP. There is no justification for this cost shift. Just as IHS and tribal facilities are part of the I/T/U delivery system for Native Americans, so are urban Indian health programs and, as part of the ''Federal trust responsibility,'' States should not be required to subsidize any element of this system.

Section 6 of the legislation would simply ensure that I/T/U providers that do not have the status of federally qualified health centers, FQHCs, receive the same level of reimbursement from Medicaid managed care organizations, MCOs, as they would if they were a FQHC. If Medicaid MCOs are continued to be allowed to pay I/T/U providers less for the same services that they pay other network providers, the I/T/U providers will, effectively, be subsidizing the MCO or other network providers, which is not an appropriate use of limited federal IHS resources.

And finally, section 7 of the Medicaid Indian Health Act of 2005 ensures that IHS spending on behalf of a Native American does not disqualify them for Medicaid coverage under the ''medically needy option.'' Current policy prohibits such care from counting toward the ''spend down'' requirements for qualifying as ''medically needy'' in Medicaid. Receiving services at an IHS facility should certainly not disqualify anybody from Medicaid coverage and, once again, IHS should not be subsidizing the Medicaid program.

In total, the provisions in the Medicaid Indian Health Act of 2005 might at first glance appear to be a hodge podge set of provisions related to both Medicaid and Indian health. However, they are not. They reflect a concerted effort on behalf of Native American people to protect the gains that have already been made within the Medicaid Program for American Indians and Alaska Natives and the need to make additional strides to improve the delivery of health services throughout to Native people, including those in urban areas, through Medicaid.

Furthermore, this is just the first in a series of bills addressing Indian issues within the Medicaid and Medicare Programs. The next two will focus, respectively, on improving the Medicare Program and fixing problems with respect to the Medicare prescription drug program for Native Americans and Indian health providers.

As part of the Indian Health Care Improvement Act of 1976 report, the Congress said, ''The most basic human right must be the right to enjoy decent health. Certainly, any effort to fulfill Federal responsibilities to the Indian people must begin with the provision of health services. In fact, health services must be the cornerstone upon which rest all the other Federal programs for the benefit of Indians. Without a proper health status, the Indian people will be unable to fully avail themselves of the many economic, educational, and social programs already directed to them or which this Congress and future Congresses will provide them.''

The Federal Government has a ''Federal trust responsibility'' to Indian people that it is simple not fulfilling. This administration and this Congress can and simply must do better. Part of that multipronged agenda should include passage of the Medicaid Indian Health Act of 2005.

This could occur in a variety of ways. First, the provision from this bill could be incorporated in any budget reconciliation conference report package. Consequently, during Finance Committee consideration of the Senate's version of the budget reconciliation package on October 25, 2005, I offered an amendment that included a number of the provisions from this bill. Opponents of the amendment, which failed on a 9-to-11 party-line vote with Democrats in favor and Republicans opposing it, argued at the time that the budget reconciliation package was not the right vehicle but that we should look to the reauthorization bill for the Indian Health Care Improvement Act to attach these provisions instead.

Two days later, on October 27, 2005, the Committee on Indian Affairs took up and passed S. 1057, the Indian Health Care Improvement Act Amendments of 2005, but did not include any of the Medicaid provisions I have been discussing as part of this bill. They were told that inclusion of Medicaid provisions within IHCIA was objected to by both the administration and the Senate Finance Committee. However, in light of the Senate Finance Committee's failure to take up the amendment earlier this month, another possible vehicle should be the reauthorization bill for the Indian Health Care Improvement Act when it comes to the Senate floor.

And finally, if we fail to get these provisions included in either of those legislative vehicles, we will push to get the Medicaid Indian Health Act of 2005 passed as a free standing piece of legislation. Medicaid has become such a crucial and necessary piece in maintaining and improving the health and well-being of American Indians and Alaska Natives that it is unacceptable that the various Senate committees point to each other as being in charge while not taking the necessary responsibility to get this important protections for Native Americans passed into law.

The Federal Government and the States also point figures at each other as to who is in charge. As Jim Crouch, executive director of the California Rural Indian Health Board, has said, ''The joint operation of the Medicaid program by federal and state authorities often ignores the governmental status of Tribes and the unique needs of Tribal citizens. It is always appropriate for the federal government to establish special provisions that are in the best interest of Tribes and American Indians due to the governmental status of federally recognized tribes.''

Mr. President, it is well past time to enact legislative initiatives such as the Medicaid Indian Health Act of 2005 and reauthorization of IHCIA. Years of broken promises to Indian Country must come to an end. Passage of the provisions in both the Medicaid Indian Health Act of 2005 and IHCIA reauthorization are just two of the pieces that the Federal Government must take in order to fulfill the Federal trust responsibility and make real progress at providing the full array of medically necessary health services that have been long promised to American Indians.

I ask unanimous consent that the text of the bill and a fact sheet describing the various provisions in the bill be printed in the RECORD.

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

S. 2074

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 ''Medicaid Indian Health Act of 2005''.

SEC. 2. APPLICATION OF 100 PERCENT FMAP FOR SERVICES FURNISHED TO AN INDIAN BY AN URBAN INDIAN HEALTH PROGRAM.

(a) IN GENERAL.—The third sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)), is amended by inserting before the period at the end the following: '', or through an urban Indian health program receiving funds under title V of the Indian Health Care Improvement Act''.

(b) CONFORMING AMENDMENT.—Section 1911(c) of such Act (42 U.S.C. 1396j(c)), is amended by inserting '', or through an urban Indian health program receiving funds under title V of the Indian Health Care Improvement Act'' after ''facilities''.

SEC. 3. PROHIBITION ON IMPOSITION OF PREMIUMS, DEDUCTIBLES, COPAYMENTS, AND OTHER COST-SHARING ON INDIANS.

Section 1916 of the Social Security Act (42 U.S.C. 1396o) is amended—

(1) in subsection (a)(3), by inserting ''(other than such individuals who are Indians (as defined in section 4 of the Indian Health Care Improvement Act)'' after ''other such individuals'';

(2) in subsection (b), in the matter preceding paragraph (1), by inserting ''or who are Indians (as defined in section 4 of the Indian Health Care Improvement Act)'' after ''section 1902(a)(10)''; and

(3) in subsection (c)(1), by inserting ''(other than such an individual who is an Indian (as defined in section 4 of the Indian Health Care Improvement Act))'' after ''section 1902(l)(1)''.

SEC. 4. PROHIBITION ON RECOVERY AGAINST ESTATES OF INDIANS.

Section 1917(b)(1) of the Social Security Act (42 U.S.C. 1396p(b)(1)) is amended, in the matter preceding subparagraph (A), by inserting '' who is not an Indian (as defined in section 4 of the Indian Health Care Improvement Act)'' after ''an individual'' the second place it appears.

SEC. 5. REQUIREMENT FOR CONSULTATION WITH INDIAN TRIBES PRIOR TO APPROVAL OF SECTION 1115 WAIVERS.

Section 1115 of the Social Security Act (42 U.S.C. 1315) is amended by adding at the end the following:

''(g) In the case of an application for a waiver of compliance with the requirements of section 1902 (or a renewal or extension of such a waiver) that is likely to affect members of an Indian tribe (as defined in section 4 of the Indian Health Care Improvement Act) or a tribal health program (whether operated by an Indian tribe or a tribal organization (as so defined) serving such members, the Secretary shall, prior to granting such a waiver under subsection (a) or renewing or extending such a waiver under subsection (e), consult with each such Indian tribe.''.

SEC. 6. REQUIREMENT FOR FAIR PAYMENT BY MEDICAID MANAGED CARE ENTITIES TO INDIAN HEALTH PROGRAM PROVIDERS.

Section 1903(m)(2)(A)(ii) of the Social Security Act (42 U.S.C. 1396b(m)(2)(A)(ii)) is amended to read as follows:

''(ii) such contract provides, in the case of entity that has entered into a contract for the provision of services with a facility or program of the Indian Health Service, whether operated by the Service or an Indian tribe or tribal organization (as defined in

section 4 of the Indian Health Care Improvement Act) or an urban Indian health program receiving funds under title V of the Indian Health Care Improvement Act , that is not a Federally-qualified health center or a rural health clinic, that the entity shall provide payment that is not less than the highest level and amount of payment that the entity would make for the services if the services were furnished by a provider that is not a facility or program of the Indian Health Service;''.

SEC. 7. TREATMENT OF MEDICAL EXPENSES PAID BY OR ON BEHALF OF AN INDIAN BY AN INDIAN HEALTH PROGRAM AS COSTS INCURRED FOR MEDICAL CARE FOR PURPOSES OF DETERMINING MEDICALLY NEEDY ELIGIBILITY.

Section 1902(a)(17)(D) of the Social Security Act (42 U.S.C. 1396a(a)(17)(D)) is amended by inserting ''or by the Indian Health Service or an Indian tribe or tribal organization (as defined in section 4 of the Indian Health Care Improvement Act)'' after ''political subdivision thereof''.

SEC. 8. STATE OPTION TO EXEMPT INDIANS FROM REDUCTIONS IN ELIGIBILITY OR BENEFITS.

Section 1902 of the Social Security Act (42 U.S.C. 1396a)) is amended by inserting after subsection (j) the following:

''(k) The Secretary shall not disapprove a State plan amendment, or deny a State request for a waiver under section 1115 (or a renewal or extension of such a waiver), on the grounds that the amendment or waiver would exempt Indians (as defined in section 4 of the Indian Health Care Improvement Act) eligible for medical assistance from—

''(1) any restriction on eligibility for medical assistance under this title that would otherwise apply under the amendment or waiver;

''(2) any imposition of premiums, deductibles, copayments, or other cost-sharing that would otherwise apply under the amendment or waiver; or

''(3) any reduction in covered services or supplies that would otherwise apply under the amendment or waiver.''.

SEC. 9. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act apply to items or services furnished on or after January 1, 2006.

(b) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by a provision of this Act, the State plan shall not be regarded as failing to comply with the requirements of this Act solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

FACT SHEET—''MEDICAID INDIAN HEALTH ACT OF 2005''

Senators Bingaman, Baucus, Dorgan, Murray, Cantwell, and Johnson are introducing legislation entitled the ''Medicaid Indian Health Act of 2005'' that would make technical but important changes to the Medicaid program to address the unique issues confronting Native Americans and Indian Health Service (IHS) providers within that program.

The provisions within this legislation are as follows:

SEC. 2. 100% FMAP FOR SERVICES TO AI/AN MEDICAID PATIENTS OF URBAN INDIAN HEALTH PROGRAMS

Current Law

The cost of covered services to AI/AN Medicaid beneficiaries is matched by the federal government at a 100% rate if the services are received through an IHS facility, whether operated by the IHS or a tribe or tribal organization. However, the federal government matches the cost of covered services furnished to AI/AN Medicaid beneficiaries by urban Indian health programs funded by the IHS only at a state's regular federal matching rate, which varies from 50% to 77%. Thus, states must pay a share of the cost of Medicaid services furnished to AI/AN beneficiaries by urban Indian health programs.

Proposed Change

Extend the 100% federal matching rate to services received through an urban Indian health program receiving funds under Title V of the Indian Health Care Improvement Act.

Justification

Under current policy, if an AI/AN Medicaid beneficiary receives covered services from an IHS or tribal hospital or clinic, the federal government pays 100% of the cost, but if the same individual receives covered services from an urban Indian health program funded by the IHS, the federal government shifts part of the costs to the state in proportion to the state's share of Medicaid spending generally. There is no principled justification for this cost shift. Just as IHS and tribal facilities receive IHS funds, so do urban Indian health programs. The urban Indian health programs are part of the same ''I/T/U'' delivery system as are IHS and tribal facilities. States should not be required to subsidize any element of this system.

SEC. 3. PROHIBITING IMPOSITION OF MEDICAID PREMIUMS ON AI/AN MEDICAID BENEFICIARIES

Current Law

State Medicaid programs are allowed to impose premiums only on certain categories of Medicaid beneficiaries—principally those who qualify as ''medically needy'' by incurring high medical expenses that, when applied against their income, enable them to ''spend down'' into eligibility. Any premiums imposed on this group must be income-related, as specified in federal regulations. In contrast, State SCHIP programs are prohibited by regulation from imposing premiums on AI/AN beneficiaries.

Proposed Change

Prohibit states from imposing any premiums, enrollment fees, or similar charges in any amount on AI/AN beneficiaries, regardless of the basis of eligibility for Medicaid.

Justification

The Federal government, through the IHS, has the responsibility for providing health care free of charge to AI/ANs eligible for its services. Thus, if a state imposes a premium requirement as a condition of Medicaid enrollment, in the case of an AI/AN the premium must be paid by the IHS or the contracting tribe from the limited federal funds allocated to it. The effect is to reduce the appropriated funds available to the IHS or tribal facility for serving patients who are eligible for IHS services but are not eligible for Medicaid. In this respect, Medicaid policy should be conformed to SCHIP policy.

SEC. 3. PROHIBITING IMPOSITION OF MEDICAID COPAYMENTS OR OTHER COST-SHARING ON AI/AN MEDICAID BENEFICIARIES

Current Law

States Medicaid programs may impose deductibles, copayments, or co-insurance requirements on certain services with respect to certain populations. Any cost-sharing imposed must be ''nominal'' in amount, as defined in federal regulations. States are prohibited from imposing any cost-sharing, nominal or otherwise, on certain services (e.g., emergency services and family planning services and supplies) and certain populations (e.g., children under 18). In contrast, State SCHIP programs are prohibited by regulation from imposing deductibles, copayments, or co-insurance requirements on AI/AN beneficiaries.

Proposed Change

Prohibit states from imposing deductibles, copayments, or co-insurance requirements in any amount on AI/AN Medicaid beneficiaries.

Justification

The Federal government, through the IHS, has the responsibility for providing health care free of charge to AI/ANs eligible for its services. Thus, if a state imposes deductibles, copayments, or co-insurance requirements, in the case of an AI/AN beneficiary cost-sharing amount must be paid by the IHS or the contracting tribe from the limited federal funds allocated to it. The effect is to reduce the appropriated funds available to the IHS or tribal facility for serving patients who are eligible for IHS services but are not eligible for Medicaid. In this respect, Medicaid policy should be conformed to SCHIP policy.

SEC. 4. PROHIBITING RECOVERY AGAINST THE ESTATES OF AI/AN MEDICAID BENEFICIARIES

Current Law

States are required to recover from the estates of deceased Medicaid beneficiaries the costs of long-term care services (nursing facility services, home and community-based services, and related hospital services and prescription drugs) paid for by Medicaid when the individual was age 55 or over. The state may not recover against an individual's estate until the death of any surviving spouse and so long as there is not a child under 21 or an adult child who is blind or disabled. Under federal administrative guidance, certain AI/AN property is exempt from estate recovery.

Proposed Change

Exempt the property/estates of deceased AI/AN beneficiaries from recovery for costs correctly paid by Medicaid.

Justification

The Federal government, through the IHS, has the responsibility for providing health care to AI/ANs eligible for its services. Because the IHS, due to funding limitations, generally does not have the capacity to furnish long-term care services, low-income AI/ANs who are eligible for IHS services must turn to Medicaid for coverage for this care. To recover Medicaid costs correctly paid from the estates of these individuals violates the Federal government's responsibility to them. Tribal lands and property should not be threatened by federal or state governments.

SEC. 5. REQUIRING TRIBAL CONSULTATION PRIOR TO APPROVAL OF SECTION 1115 WAIVERS

Current Law

Under section 1115 of the Social Security Act, the Secretary of HHS has the authority to waive certain requirements of federal Medicaid law to enable states to conduct demonstrations that, in his judgment, ''is likely to assist in promoting the objectives of'' the Medicaid program. Section 1115 contains no requirement that the Secretary consult with Indian tribes prior to approval of Medicaid demonstration waivers that may adversely affect their members or their tribal health programs. The January 2005 HHS

tribal consultation policy does not specify that consultation is required in these specific circumstances, although the previous July 2001 guidance had.

Proposed Change

Require the Secretary, prior to approval of any new section 1115 waiver or renewal of any existing section 1115 waiver to consult with tribes whose members or tribal health programs could be affected by the waiver.

Justification

Section 1115 waivers are commonly negotiated by the Secretary (acting through CMS) and the Governor of the state seeking the waiver (through his Medicaid or Budget director). Affected Indian tribes have no formal role in these negotiations, even when those negotiations result in reductions in Medicaid eligibility, benefits, and/or reimbursement or increases in premiums and cost-sharing that have an adverse impact on tribal members or tribal health programs.

SEC. 6. REQUIRE FAIR PAYMENT BY MEDICAID MCOS TO I/T/U PROVIDERS

Current Law

Managed care organizations (MCOs) contracting with Medicaid on a risk basis are required to pay health care providers, whether in- or out-of-network, on a timely basis for covered services furnished to Medicaid beneficiaries. Although there are generally no minimum payment requirements, in the case of federally qualified health centers (FQHCs) and rural health clinics (RHCs), MCOs are required to pay the same amount for a covered service as they would if the provider were not an FQHC or RHC. In addition, the State Medicaid agency is required to pay the difference, if any, between: (1) the MCO's payment to the FQHC or RHC; and, (2) the prospective payment amount to which the FQHC or RHC is entitled under Medicaid law. There is no similar protection for I/T/U providers that are not FQHCs or RHCs.

Proposed Change

Require that MCOs to pay I/T/U providers that are not FQHCs or RHCs the same amount that the MCO would pay for the same service to a non-I/T/U provider.

Justification

Current law protects I/T/U providers that are FQHCs or Rural Health Clinics against underpayment by Medicaid MCOs. This provision extends some of these protections to other I/T/U providers. If Medicaid MCOs are allowed to pay I/T/U providers less for the same services than they pay other network providers, the I/T/U providers will, in effect, be subsidizing the MCO or other network providers. This is not an appropriate use of limited federal IHS resources.

SEC. 7. TREATMENT OF IHS OR TRIBAL PAYMENTS AS INCURRED MEDICAL EXPENSES

Current Law

States have the option of extending Medicaid coverage to individuals who are ''medically needy''—that is, individuals who ''spend-down'' by incurring high medical expenses that, when subtracted from their incomes, reduce their incomes to below the state eligibility threshold. If the IHS or a Tribe pays the health care costs of an AI/AN, that individual is not considered to have ''incurred'' the cost for purposes of meeting the ''spend-down'' requirements for qualifying as ''medically needy.''

Proposal

Allow medical expenses paid by the IHS or a Tribe or tribal organization on behalf of an AI/AN to count as costs ''incurred'' for medical care for purposes of establishing eligibility for Medicaid in states with ''medically needy'' programs.

Justification

Current policy has the effect of disqualifying AI/ANs from Medicaid eligibility as ''medically needy'' individuals. This, in turn, results in IHS, Tribes, and tribal organizations paying for services that Medicaid would otherwise cover once these individuals established ''medically needy'' eligibility. Subsidizing Medicaid is not an appropriate use of limited IHS and Tribal resources.

SEC. 8. OPTION FOR STATES TO EXEMPT INDIANS FROM REDUCTIONS IN ELIGIBILITY OR BENEFITS

Current Law

CMS policy has been to acknowledge the federal government's unique responsibilities under the trust obligation and to take into account special circumstances of American Indians and Alaska Natives in Medicaid and SCHIP programs. As such, states have historically been allowed to include special provisions with respect to Tribes and Indian people in their Medicaid and SCHIP programs. However, in 2004, CMS informed Oregon and Washington that it would not approve waiver amendments containing special provisions for Indian participation in the Medicaid program.

Proposed Change

Secretary shall not disapprove a state Plan amendment, or deny a state request for a waiver under section 1115, on the grounds that the amendment or waiver would exempt eligible Indians (as defined in section 4 of the Indian Health Care Improvement Act) from:

(1) any restriction on eligibility for medical assistance under this Title that would otherwise apply under the amendment or waiver;

(2) any imposition of premiums, deductibles, copayments or other cost-sharing that would otherwise apply under the amendment or waiver; or

(3) any reduction in covered services or supplies that would otherwise apply under the amendment or waiver.''

Justification

The federal government should continue to acknowledge the federal government's unique responsibilities under the trust obligation and to take into account and allow states to take into account the special circumstances of American Indians and Alaska Natives in Medicaid and SCHIP programs.

By Mr. DURBIN (for himself, Mr. HAGEL, Mr. LUGAR, Mr. KENNEDY, Mr. MCCAIN, Mr. LEAHY, Mr. COLEMAN, Mr. LIEBERMAN, Mr. CRAIG, Mr. FEINGOLD, Mr. DEWINE, Mr. OBAMA, and Mr. CRAPO):

S. 2075. A bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes; to the Committee on the Judiciary.

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

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

S. 2075

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 ''Development, Relief, and Education for Alien Minors Act of 2005'' or the ''DREAM Act of 2005''.

SEC. 2. DEFINITIONS.

In this Act:

(1) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(2) UNIFORMED SERVICES.—The term ''uniformed services'' has the meaning given that term in section 101(a) of title 10, United States Code.

SEC. 3. RESTORATION OF STATE OPTION TO DETERMINE RESIDENCY FOR PURPOSES OF HIGHER EDUCATION BENEFITS.

(a) IN GENERAL.—Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) is repealed.

(b) EFFECTIVE DATE.—The repeal under subsection (a) shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

SEC. 4. CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS OF CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.

(a) SPECIAL RULE FOR CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.—

(1) IN GENERAL.—Notwithstanding any other provision of law and except as otherwise provided in this Act, the Secretary of Homeland Security may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, subject to the conditional basis described in section 5, an alien who is inadmissible or deportable from the United States, if the alien demonstrates that—

(A) the alien has been physically present in the United States for a continuous period of not less than 5 years immediately preceding the date of enactment of this Act, and had not yet reached the age of 16 years at the time of initial entry;

(B) the alien has been a person of good moral character since the time of application;

(C) the alien—

(i) is not inadmissible under paragraph (2), (3), (6)(B), (6)(C), (6)(E), (6)(F), or (6)(G) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), or, if inadmissible solely under subparagraph (C) or (F) of paragraph (6) of such subsection, the alien was under the age of 16 years at the time the violation was committed; and

(ii) is not deportable under paragraph (1)(E), (1)(G), (2), (3)(B), (3)(C), (3)(D), (4), or (6) of section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a)), or, if deportable solely under subparagraphs (C) or (D) of paragraph (3) of such subsection, the alien was under the age of 16 years at the time the violation was committed;

(D) the alien, at the time of application, has been admitted to an institution of higher education in the United States, or has earned a high school diploma or obtained a general education development certificate in the United States; and

(E) the alien has never been under a final administrative or judicial order of exclusion, deportation, or removal, unless the alien has remained in the United States under color of law or received the order before attaining the age of 16 years.

(2) WAIVER.—The Secretary of Homeland Security may waive the grounds of ineligibility under section 212(a)(6) of the Immigration and Nationality Act and the grounds of deportability under paragraphs (1), (3), and (6) of section 237(a) of that Act for humanitarian purposes or family unity or when it is otherwise in the public interest.

(3) PROCEDURES.—The Secretary of Homeland Security shall provide a procedure by

regulation allowing eligible individuals to apply affirmatively for the relief available under this subsection without being placed in removal proceedings.

(b) TERMINATION OF CONTINUOUS PERIOD.—For purposes of this section, any period of continuous residence or continuous physical presence in the United States of an alien who applies for cancellation of removal under this section shall not terminate when the alien is served a notice to appear under section 239(a) of the Immigration and Nationality Act (8 U.S.C. 1229(a)).

(c) TREATMENT OF CERTAIN BREAKS IN PRESENCE.—

(1) IN GENERAL.—An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsection (a) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

(2) EXTENSIONS FOR EXCEPTIONAL CIRCUMSTANCES.—The Secretary of Homeland Security may extend the time periods described in paragraph (1) if the alien demonstrates that the failure to timely return to the United States was due to exceptional circumstances. The exceptional circumstances determined sufficient to justify an extension should be no less compelling than serious illness of the alien, or death or serious illness of a parent, grandparent, sibling, or child.

(d) EXEMPTION FROM NUMERICAL LIMITATIONS.—Nothing in this section may be construed to apply a numerical limitation on the number of aliens who may be eligible for cancellation of removal or adjustment of status under this section.

(e) REGULATIONS.—

(1) PROPOSED REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall publish proposed regulations implementing this section. Such regulations shall be effective immediately on an interim basis, but are subject to change and revision after public notice and opportunity for a period for public comment.

(2) INTERIM, FINAL REGULATIONS.—Within a reasonable time after publication of the interim regulations in accordance with paragraph (1), the Secretary of Homeland Security shall publish final regulations implementing this section.

(f) REMOVAL OF ALIEN.—The Secretary of Homeland Security may not remove any alien who has a pending application for conditional status under this Act.

SEC. 5. CONDITIONAL PERMANENT RESIDENT STATUS.

(a) IN GENERAL.—

(1) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of law, and except as provided in section 6, an alien whose status has been adjusted under section 4 to that of an alien lawfully admitted for permanent residence shall be considered to have obtained such status on a conditional basis subject to the provisions of this section. Such conditional permanent resident status shall be valid for a period of 6 years, subject to termination under subsection (b).

(2) NOTICE OF REQUIREMENTS.—

(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien obtains permanent resident status on a conditional basis under paragraph (1), the Secretary of Homeland Security shall provide for notice to the alien regarding the provisions of this section and the requirements of subsection (c) to have the conditional basis of such status removed.

(B) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Secretary of Homeland Security to provide a notice under this paragraph—

(i) shall not affect the enforcement of the provisions of this Act with respect to the alien; and

(ii) shall not give rise to any private right of action by the alien.

(b) TERMINATION OF STATUS.—

(1) IN GENERAL.—The Secretary of Homeland Security shall terminate the conditional permanent resident status of any alien who obtained such status under this Act, if the Secretary determines that the alien—

(A) ceases to meet the requirements of subparagraph (B) or (C) of section 4(a)(1);

(B) has become a public charge; or

(C) has received a dishonorable or other than honorable discharge from the uniformed services.

(2) RETURN TO PREVIOUS IMMIGRATION STATUS.—Any alien whose conditional permanent resident status is terminated under paragraph (1) shall return to the immigration status the alien had immediately prior to receiving conditional permanent resident status under this Act.

(c) REQUIREMENTS OF TIMELY PETITION FOR REMOVAL OF CONDITION.—

(1) IN GENERAL.—In order for the conditional basis of permanent resident status obtained by an alien under subsection (a) to be removed, the alien must file with the Secretary of Homeland Security, in accordance with paragraph (3), a petition which requests the removal of such conditional basis and which provides, under penalty of perjury, the facts and information so that the Secretary may make the determination described in paragraph (2)(A).

(2) ADJUDICATION OF PETITION TO REMOVE CONDITION.—

(A) IN GENERAL.—If a petition is filed in accordance with paragraph (1) for an alien, the Secretary of Homeland Security shall make a determination as to whether the alien meets the requirements set out in subparagraphs (A) through (E) of subsection (d)(1).

(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Secretary determines that the alien meets such requirements, the Secretary shall notify the alien of such determination and immediately remove the conditional basis of the status of the alien.

(C) TERMINATION IF ADVERSE DETERMINATION.—If the Secretary determines that the alien does not meet such requirements, the Secretary shall notify the alien of such determination and terminate the conditional permanent resident status of the alien as of the date of the determination.

(3) TIME TO FILE PETITION.—An alien may petition to remove the conditional basis to lawful resident status during the period beginning 180 days before and ending 2 years after either the date that is 6 years after the date of the granting of conditional permanent resident status or any other expiration date of the conditional permanent resident status as extended by the Secretary of Homeland Security in accordance with this Act. The alien shall be deemed in conditional permanent resident status in the United States during the period in which the petition is pending.

(d) DETAILS OF PETITION.—

(1) CONTENTS OF PETITION.—Each petition for an alien under subsection (c)(1) shall contain information to permit the Secretary of Homeland Security to determine whether each of the following requirements is met:

(A) The alien has demonstrated good moral character during the entire period the alien has been a conditional permanent resident.

(B) The alien is in compliance with section 4(a)(1)(C).

(C) The alien has not abandoned the alien's residence in the United States. The Secretary shall presume that the alien has abandoned such residence if the alien is absent from the United States for more than 365 days, in the aggregate, during the period of conditional residence, unless the alien demonstrates that alien has not abandoned the alien's residence. An alien who is absent from the United States due to active service in the uniformed services has not abandoned the alien's residence in the United States during the period of such service.

(D) The alien has completed at least 1 of the following:

(i) The alien has acquired a degree from an institution of higher education in the United States or has completed at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the United States.

(ii) The alien has served in the uniformed services for at least 2 years and, if discharged, has received an honorable discharge.

(E) The alien has provided a list of all of the secondary educational institutions that the alien attended in the United States.

(2) HARDSHIP EXCEPTION.—

(A) IN GENERAL.—The Secretary of Homeland Security may, in the Secretary's discretion, remove the conditional status of an alien if the alien—

(i) satisfies the requirements of subparagraphs (A), (B), and (C) of paragraph (1);

(ii) demonstrates compelling circumstances for the inability to complete the requirements described in paragraph (1)(D); and

(iii) demonstrates that the alien's removal from the United States would result in exceptional and extremely unusual hardship to the alien or the alien's spouse, parent, or child who is a citizen or a lawful permanent resident of the United States.

(B) EXTENSION.—Upon a showing of good cause, the Secretary of Homeland Security may extend the period of the conditional resident status for the purpose of completing the requirements described in paragraph (1)(D).

(e) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.), in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence. However, the conditional basis must be removed before the alien may apply for naturalization.

SEC. 6. RETROACTIVE BENEFITS UNDER THIS ACT.

If, on the date of enactment of this Act, an alien has satisfied all the requirements of subparagraphs (A) through (E) of section 4(a)(1) and section 5(d)(1)(D), the Secretary of Homeland Security may adjust the status of the alien to that of a conditional resident in accordance with section 4. The alien may petition for removal of such condition at the end of the conditional residence period in accordance with section 5(c) if the alien has met the requirements of subparagraphs (A), (B), and (C) of section 5(d)(1) during the entire period of conditional residence.

SEC. 7. EXCLUSIVE JURISDICTION.

(a) IN GENERAL.—The Secretary of Homeland Security shall have exclusive jurisdiction to determine eligibility for relief under this Act, except where the alien has been placed into deportation, exclusion, or removal proceedings either prior to or after filing an application for relief under this Act, in which case the Attorney General shall have exclusive jurisdiction and shall assume all the powers and duties of the Secretary

until proceedings are terminated, or if a final order of deportation, exclusion, or removal is entered the Secretary shall resume all powers and duties delegated to the Secretary under this Act.

(b) STAY OF REMOVAL OF CERTAIN ALIENS ENROLLED IN PRIMARY OR SECONDARY SCHOOL.—The Attorney General shall stay the removal proceedings of any alien who—

(1) meets all the requirements of subparagraphs (A), (B), (C), and (E) of section 4(a)(1);

(2) is at least 12 years of age; and

(3) is enrolled full time in a primary or secondary school.

(c) EMPLOYMENT.—An alien whose removal is stayed pursuant to subsection (b) may be engaged in employment in the United States, consistent with the Fair Labor Standards Act (29 U.S.C. 201 et seq.), and State and local laws governing minimum age for employment.

(d) LIFT OF STAY.—The Attorney General shall lift the stay granted pursuant to subsection (b) if the alien—

(1) is no longer enrolled in a primary or secondary school; or

(2) ceases to meet the requirements of subsection (b)(1).

SEC. 8. PENALTIES FOR FALSE STATEMENTS IN APPLICATION.

Whoever files an application for relief under this Act and willfully and knowingly falsifies, misrepresents, or conceals a material fact or makes any false or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both.

SEC. 9. CONFIDENTIALITY OF INFORMATION.

(a) PROHIBITION.—No officer or employee of the United States may—

(1) use the information furnished by the applicant pursuant to an application filed under this Act to initiate removal proceedings against any persons identified in the application;

(2) make any publication whereby the information furnished by any particular individual pursuant to an application under this Act can be identified; or

(3) permit anyone other than an officer or employee of the United States Government or, in the case of applications filed under this Act with a designated entity, that designated entity, to examine applications filed under this Act.

(b) REQUIRED DISCLOSURE.—The Attorney General or the Secretary of Homeland Security shall provide the information furnished under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(c) PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

SEC. 10. EXPEDITED PROCESSING OF APPLICATIONS; PROHIBITION ON FEES.

Regulations promulgated under this Act shall provide that applications under this Act will be considered on an expedited basis and without a requirement for the payment by the applicant of any additional fee for such expedited processing.

SEC. 11. HIGHER EDUCATION ASSISTANCE.

Notwithstanding any provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), with respect to assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), an alien who adjusts status to that of a lawful permanent resident under this Act shall be eligible only for the following assistance under such title:

(1) Student loans under parts B, D, and E of such title IV (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.), subject to the requirements of such parts.

(2) Federal work-study programs under part C of such title IV (42 U.S.C. 2751 et seq.), subject to the requirements of such part.

(3) Services under such title IV (20 U.S.C. 1070 et seq.), subject to the requirements for such services.

SEC. 12. GAO REPORT.

Seven years after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives setting forth—

(1) the number of aliens who were eligible for cancellation of removal and adjustment of status under section 4(a);

(2) the number of aliens who applied for adjustment of status under section 4(a);

(3) the number of aliens who were granted adjustment of status under section 4(a); and

(4) the number of aliens whose conditional permanent resident status was removed under section 5.

By Mr. LEAHY (for himself, Mr. HATCH, Ms. MIKULSKI, Mr. DURBIN, Mr. DEWINE, Mr. BIDEN, Mrs. FEINSTEIN, Mr. FEINGOLD, Mr. SMITH, Mr. DODD, Mr. CHAMBLISS, Mr. ROCKEFELLER, Mr. LIEBERMAN, Mrs. BOXER, Mr. WYDEN, Mr. NELSON of Florida, and Mr. CORZINE):

S. 2076. A bill to amend title 5, United States Code, to provide to assistant United States attorneys the same retirement benefits as are afforded to Federal law enforcement officers; to the Committee on Homeland Security and Governmental Affairs.

Mr. LEAHY. I am pleased to join with Senator HATCH in introducing the Assistant United States Attorney Retirement Benefit Equity Act of 2005. This bill was previously introduced in the 107th and 108th Congresses. A House companion bill, H.R. 3183, has already been introduced and currently has 43 bipartisan cosponsors.

Fairness is the driving force behind this legislation. The bill would correct an inequity that exists under current law, whereby AUSAs receive substantially less favorable retirement benefits than nearly all other people involved in the Federal criminal justice system. The bill would increase the retirement benefits given to AUSAs, as well as other designated attorneys employed by DOJ who act primarily as criminal prosecutors, by including them in the Civil Service Retirement System. This change would bring their retirement benefits inline with thousands of other employees involved in the Federal criminal justice system.

Enhanced retirement benefits will allow us to attract and retain the best and the brightest for these vital positions in Government. As a former prosecutor, I know that experienced prosecutors are needed to bring ever more sophisticated cases under increasingly complex federal criminal laws. The Government's success in combating the threats posed by organized crime, drug cartels, terrorist groups, and other sophisticated criminals depends upon representation by skilled, experienced litigators.

Because of the lure of higher salaries and benefits, the average assistant U.S. attorney remains with the Department of Justice only 8 years. The hours are long, the pay is low, and they place themselves in harm's way by prosecuting criminals. Surveys of assistant U.S. attorneys have shown that a fair retirement benefit is the foremost incentive that would increase their tenure with the Department of Justice. Creating an enticement for them to remain with the Department of Justice for the length of their careers would be a tremendous victory for the American people. This legislation would improve public safety for us all by ensuring a strong, knowledgeable, and experienced crop of prosecutors at the federal level.

I want to thank Senators HATCH, MIKULSKI, DURBIN, DEWINE, BIDEN, FEINSTEIN, FEINGOLD, SMITH, DODD, CHAMBLISS, ROCKEFELLER, LIEBERMAN, BOXER, WYDEN, NELSON, AND CORZINE, for cosponsoring this important legislation.

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

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

S. 2076

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 ''Assistant United States Attorney Retirement Benefit Equity Act of 2005''.

SEC. 2. RETIREMENT TREATMENT OF ASSISTANT UNITED STATES ATTORNEYS.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—

(1) ASSISTANT UNITED STATES ATTORNEY DEFINED.—Section 8331 of title 5, United States Code, is amended—

(A) in paragraph (28), by striking ''and'' at the end;

(B) in the first paragraph (29), by striking the period and inserting a semicolon;

(C) in the second paragraph (29)—

(i) by striking ''(29)'' and inserting ''(30)''; and

(ii) by striking the period and inserting ''; and''; and

(D) by adding at the end the following:

''(31) 'assistant United States attorney' means—

''(A) an assistant United States attorney under section 542 of title 28; and

''(B) any other attorney employed by the Department of Justice occupying a position designated by the Attorney General upon finding that the position—

''(i) involves routine employee responsibilities that are substantially similar to those of assistant United States attorneys; and

''(ii) is critical to the Department's successful accomplishment of an important mission.''.

(2) RETIREMENT TREATMENT.—Chapter 83 of title 5, United States Code, is amended by adding after section 8351 the following:

''§ 8352. Assistant United States attorneys

''Except as provided under the Assistant United States Attorneys Retirement Benefit Equity Act of 2005 (including the provisions relating to the non-applicability of mandatory separation requirements under section 8335(b) and 8425(b) of this title), an assistant United States attorney shall be treated in the same manner and to the same extent as a law enforcement officer for purposes of this chapter.''.

(3) TECHNICAL AND CONFORMING AMENDMENTS.—(A) The table of sections for chapter 83 of title 5, United States Code, is amended by inserting after the item relating to section 8351 the following:

''8352. Assistant United States attorneys.''

(B) Section 8335(a) of such title is amended by striking ''8331(29)(A)'' and inserting ''8331(30)(A)''.

(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—

(1) ASSISTANT UNITED STATES ATTORNEY DEFINED.—Section 8401 of title 5, United States Code, is amended—

(A) in paragraph (34), by striking ''and'' at the end;

(B) in paragraph (35), by striking the period and inserting ''; and'' ; and

(C) by adding at the end the following:

''(36) 'assistant United States attorney' means—

''(A) an assistant United States attorney under section 542 of title 28; and

''(B) any other attorney employed by the Department of Justice occupying a position designated by the Attorney General upon finding that the position—

''(i) involves routine employee responsibilities that are substantially similar to those of assistant United States attorneys; and

''(ii) is critical to the Department's successful accomplishment of an important mission.''.

(2) RETIREMENT TREATMENT.—Section 8402 of title 5, United States Code, is amended by adding at the end the following:

''(h) Except as provided under the Assistant United States Attorneys Retirement Benefit Equity Act of 2005 (including the provisions relating to the non-applicability of mandatory separation requirements under section 8335(b) and 8425(b) of this title), an assistant United States attorney shall be treated in the same manner and to the same extent as a law enforcement officer for purposes of this chapter.''.

(c) MANDATORY SEPARATION.—Sections 8335(b) and 8425(b) of title 5, United States Code, are amended by adding at the end the following: ''The preceding provisions of this subsection shall not apply in the case of an assistant United States attorney as defined under section 8331(31) or 8401(36).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first applicable pay period beginning on or after 120 days after the date of enactment of this Act.

SEC. 3. PROVISIONS RELATING TO INCUMBENTS.

(a) DEFINITIONS.—In this section—

(1) the term ''assistant United States attorney'' means—

(A) an assistant United States attorney under section 542 of title 28, United States Code; and

(B) any other attorney employed by the Department of Justice occupying a position designated by the Attorney General upon finding that the position—

(i) involves routine employee responsibilities that are substantially similar to those of assistant United States attorneys; and

(ii) is critical to the Department's successful accomplishment of an important mission; and

(2) the term ''incumbent'' means an individual who is serving as an assistant United States attorney on the effective date of this section.

(b) DESIGNATED ATTORNEYS.—If the Attorney General makes any designation of an attorney to meet the definition under subsection (a)(1)(B) for purposes of being an incumbent under this section—

(1) such designation shall be made before the effective date of this section; and

(2) the Attorney General shall submit to the Office of Personnel Management before that effective date—

(A) the name of the individual designated; and

(B) the period of service performed by that individual as an assistant United States attorney before that effective date.

(c) NOTICE REQUIREMENT.—Not later than 9 months after the date of enactment of this Act, the Department of Justice shall take measures reasonably designed to provide notice to incumbents on—

(1) their election rights under this Act; and

(2) the effects of making or not making a timely election under this Act.

(d) ELECTION AVAILABLE TO INCUMBENTS.—

(1) IN GENERAL.—An incumbent may elect, for all purposes, to be treated—

(A) in accordance with the amendments made by this Act; or

(B) as if this Act had never been enacted.

(2) FAILURE TO ELECT.—Failure to make a timely election under this subsection shall be treated in the same way as an election under paragraph (1)(A), made on the last day allowable under paragraph (3).

(3) TIME LIMITATION.—An election under this subsection shall not be effective unless the election is made not later than the earlier of—

(A) 120 days after the date on which the notice under subsection (c) is provided; or

(B) the date on which the incumbent involved separates from service.

(e) LIMITED RETROACTIVE EFFECT.—

(1) EFFECT ON RETIREMENT.—In the case of an incumbent who elects (or is deemed to have elected) the option under subsection (d)(1)(A), all service performed by that individual as an assistant United States attorney and, with respect to (B) below, including any service performed by such individual pursuant to an appointment under sections 515, 541, 543, and 546 of title 28, United States Code, shall—

(A) to the extent performed on or after the effective date of that election, be treated in accordance with applicable provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, as amended by this Act; and

(B) to the extent performed before the effective date of that election, be treated in accordance with applicable provisions of subchapter III of chapter 83 or chapter 84 of such title, as if the amendments made by this Act had then been in effect.

(2) NO OTHER RETROACTIVE EFFECT.—Nothing in this Act (including the amendments made by this Act) shall affect any of the terms or conditions of an individual's employment (apart from those governed by subchapter III of chapter 83 or chapter 84 of title 5, United States Code) with respect to any period of service preceding the date on which such individual's election under subsection (d) is made (or is deemed to have been made).

(f) INDIVIDUAL CONTRIBUTIONS FOR PRIOR SERVICE.—

(1) IN GENERAL.—An individual who makes an election under subsection (d)(1)(A) shall, with respect to prior service performed by such individual, deposit, with interest, to the Civil Service Retirement and Disability Fund the difference between the individual contributions that were actually made for such service and the individual contributions that would have been made for such service if the amendments made by section 2 of this Act had then been in effect.

(2) EFFECT OF NOT CONTRIBUTING.—If the deposit required under paragraph (1) is not paid, all prior service of the incumbent shall remain fully creditable as law enforcement officer service, but the resulting annuity shall be reduced in a manner similar to that described in section 8334(d)(2)(B) of title 5, United States Code. This paragraph shall not apply in the case of a disability annuity.

(3) PRIOR SERVICE DEFINED.—For purposes of this section, the term ''prior service'' means, with respect to any individual who makes an election (or is deemed to have made an election) under subsection (d)(1)(A), all service performed as an assistant United States attorney, but not exceeding 20 years, performed by such individual before the date as of which applicable retirement deductions begin to be made in accordance with such election.

(g) REGULATIONS.—Except as provided under section 4, the Office of Personnel Management shall prescribe regulations necessary to carry out this Act, including provisions under which any interest due on the amount described under subsection (e) shall be determined.

(h) EFFECTIVE DATE.—This section shall take effect 120 days after the date of enactment of this Act.

SEC. 4. DEPARTMENT OF JUSTICE ADMINISTRATIVE ACTIONS.

(a) REGULATIONS.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Attorney General, in consultation with the Office of Personnel Management, shall promulgate regulations for designating attorneys described under section 3(a)(1)(B).

(2) CONTENTS.—Any regulation promulgated under paragraph (1) shall ensure that attorneys designated as assistant United States attorneys described under section 3(a)(1)(B) have routine employee responsibilities that are substantially similar to those of assistant United States attorneys.

(b) DESIGNATIONS.—The designation of any attorney as an assistant United States attorney described under section 3(a)(1)(B) shall be at the discretion of the Attorney General.

By Mr. MCCAIN:

S. 2078. A bill to amend the Indian Gaming Regulatory Act to clarify the authority of the National Indian Gaming Commission to regulate class III gaming, to limit the lands eligible for gaming, and for other purposes; to the Committee on Indian Affairs.

Mr. MCCAIN. Mr. President, I am introducing today a bill to amend regulatory provisions of the Indian Gaming Regulatory Act (IGRA). The bill clarifies that the National Indian Gaming Commission (NIGC) has authority to promulgate and enforce Minimum Internal Control Standards as to Class III gaming; grants the NIGC Chairman authority to approve contracts, and expands contract approval to include contracts not only for management contracts but also for gaming operation development contracts and consulting services, as well as for any contract the fees for which are to be paid as a percentage of gaming revenue; tightens restrictions on off-reservation gaming;

gives the NIGC authority to issue complaints against any individual or entity, not just against tribes or management contractors, that violate IGRA or federal regulations; and requires all tribes to pay fees to the NIGC.

When IGRA was enacted in 1988, Indian gaming was a $200 million dollar industry. Today, the industry earns $19 billion a year and is spread throughout the nation. The amendments reflect the need to re-evaluate what constitutes appropriate regulation of this vastly changed enterprise. I have always been and continue to be a supporter of the rights of Indian tribes to conduct gaming, a right guaranteed by the Supreme Court in the California v. Cabazon decision and codified in IGRA, but I also continue to believe that effective regulation of these enterprises are critical to tribes' continued success.

Ensuring that the NIGC is able to continue its oversight of Class ill gaming is necessary to this effective regulation. On August 24, 2005, the U.S. District Court for the District of Columbia issued its decision in Colorado River Indian Tribes v. NIGC (''CRIT''), ruling that the National Indian Gaming Commission (NIGC) did not have jurisdiction to issue Class ill Minimum Internal Controls Standards (MICS). These standards regulate day-to-day operations of gaming operations. Specifically, they provide rules that designate how cash is handled by the gaming operation, prescribe surveillance over game play, and provide auditing procedures.

Until the Court's decision, the NIGC had been regulating Class ill gaming through MICS since 1999. The regulations applied both to Class II gaming—that is, bingo and games similar to bingo—and to Class III gaming—including slot machines and table games—which represents the largest source of revenue in Indian gaming. Following to CRIT decision this summer, however, some tribes have challenged NIGC's authority to issue or enforce the MICS. Although without NIGC authority, oversight of Class ill gaming may be provided by tribal-State compacts, States' roles in enforcement varies widely and many have left such regulation to NIGC. In a Nationwide industry, uniform federal minimum internal control standards are appropriate. This amendment makes clear that NIGC continues to have the authority it has exercised until now to issue and enforce MICS, including the ability to inspect facilities and audit premises in order to assure compliance.

Protecting the integrity of Indian gaming also requires that the NIGC's authority to review manager contracts be expanded. IGRA originally identified only one kind of contract that was subject to NIGC approval: management contracts. History has shown, however, that in order to avoid NIGC review, some contracts have been fashioned as ''consulting'' contracts or ''development'' contracts, i.e., something other than ''management'' contracts that require NIGC review. In these cases, tribes run the risk that contractors will enforce unfair contract terms, and tribes and patrons run the risk that the tribe will contract with unsuitable partners. This amendment extends NIGC approval to all significant gaming operation related contracts so that the Indian gaming industry remains, as far as possible, free from unscrupulous and unsuitable contractors.

Related to protecting the integrity of Indian gaming is the issue of off-reservation gaming. When enacted in 1988, IGRA generally banned Indian gaming that was not located on reservations, however, in the interest of fairness, several exceptions to this ban were provided. Exploitation of these exceptions, not anticipated at the time IGRA was enacted, has led to a burgeoning practice by unscrupulous developers seeking to profit off Indian tribes desperate for economic development. Predictably, these ill-advised deals have invited a backlash against Indian gaming generally. These amendments to IGRA will put an end to the most troublesome of these proposals by eliminating the authority of the Secretary to take land into trust off-reservation pursuant to the so-called ''two-part determination'' provisions of Section 20.

In addressing concerns about other exceptions in Section 20 for land claims, initial reservations and restored reservations, these amendments strike a balance by curbing potential abuses of these exceptions, while not unfairly penalizing those who lost their lands through no fault of their own, or even had them taken illegally—often by force. Thus, newly recognized and restored tribes may still obtain lands, and conduct gaming on them, but such lands must be in the area where the particular tribe has its most significant ties. This has been the case for most newly recognized and restored tribes, and surely is not unfair to impose on all similarly situated tribes. For tribes that successfully reclaim lands taken illegally and want to conduct gaming on them, these amendments will require congressional confirmation and the lands must be within the state where the tribe has or had its last reservation. This provision does not impair any tribe's legal rights to reclaim lands, but will discourage attempts by creative non-Indian developers to turn a tribe's legal rights into a form of extortion.

Ensuring that penalties are appropriate and can be brought against the responsible party is another means of protecting the integrity of Indian gaming. To this end the bill clarifies that civil penalties can be imposed on any violator of IGRA, not just Indian tribes or management contractors.

Finally, this bill will ensure fairness in the regulation of Indian gaming by assuring that all tribes bear their appropriate share of the cost of regulation so that the industry, as a whole, continues to prosper. 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. 2078

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 ''Indian Gaming Regulatory Act Amendments of 2005''.

SEC. 2. DEFINITIONS.

Section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703) is amended—

(1) in paragraph (7)(E), by striking ''of the Indian Gaming Regulatory Act (25 U.S.C. 2710(d)(3))''; and

(2) by adding at the end the following:

''(11) GAMING-RELATED CONTRACT.—The term 'gaming-related contract' means—

''(A) a contract or other agreement relating to the management and operation of an Indian tribal gaming activity, including a contract for services under which the gaming-related contractor—

''(i) exercises material control over the gaming activity (or any part of the gaming activity); or

''(ii) advises or consults with a person that exercises material control over the gaming activity (or any part of the gaming activity);

''(B) an agreement relating to the development or construction of a facility to be used for an Indian tribal gaming activity (including a facility that is ancillary to such an activity) the cost of which is greater than $250,000; or

''(C) an agreement that provides for compensation or fees based on a percentage of the net revenues of an Indian tribal gaming activity.

''(12) GAMING-RELATED CONTRACTOR.—The term 'gaming-related contractor' means an entity or an individual, including an individual who is an officer, or who serves on the board of directors, of an entity, or a stockholder that directly or indirectly holds at least 5 percent of the issued and outstanding stock of an entity, that enters into a gaming-related contract with—

''(A) an Indian tribe; or

''(B) an agent of an Indian tribe.

''(13) MATERIAL CONTROL.—The term 'material control', with respect to a gaming activity, means the exercise of authority or supervision over a matter that substantially affects a financial or management aspect of an Indian tribal gaming activity.''.

SEC. 3. NATIONAL INDIAN GAMING COMMISSION.

Section 5 of the Indian Gaming Regulatory Act (25 U.S.C. 2704) is amended—

(1) in subsection (c)—

(A) by striking ''(c) Vacancies'' and inserting the following:

''(c) VACANCIES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a vacancy'';

(B) by striking the second sentence and inserting the following:

''(3) EXPIRATION OF TERM.—Unless a member has been removed for cause under subsection (b)(6), the member may—

''(A) serve after the expiration of the term of office of the member until a successor is appointed; or

''(B) be reappointed to serve on the Commission.''; and

(C) by inserting after paragraph (1) (as designated by subparagraph (A)) the following:

''(2) VICE CHAIRMAN.—The Vice Chairman shall act as Chairman in the absence or disability of the Chairman.''; and

(2) in subsection (e), in the second sentence, by inserting ''or disability'' after ''in the absence''.

SEC. 4. POWERS OF THE CHAIRMAN.

Section 6 of the Indian Gaming Regulatory Act (25 U.S.C. 2705) is amended—

(1) in subsection (a)—

(A) in paragraph (3), by striking ''and'' at the end;

(B) by striking paragraph (4) and inserting the following:

''(4) approve gaming-related contracts for class II gaming and class III gaming under section 12; and''; and

(C) by adding at the end the following:

''(5) conduct a background investigation and make a determination with respect to the suitability of a gaming-related contractor, as the Chairman determines to be appropriate.''; and

(2) by adding at the end the following:

''(c) DELEGATION OF AUTHORITY.—

''(1) IN GENERAL.—The Chairman may delegate any authority under this section to any member of the Commission, as the Chairman determines to be appropriate.

''(2) REQUIREMENT.—In carrying out an activity pursuant to a delegation under paragraph (1), a member of the Commission shall be subject to, and act in accordance with—

''(A) the general policies formally adopted by the Commission; and

''(B) the regulatory decisions, findings, and determinations of the Commission pursuant to Federal law.''.

SEC. 5. POWERS OF THE COMMISSION.

Section 7(b) of the Indian Gaming Regulatory Act (25 U.S.C. 2706(b)) is amended—

(1) in paragraphs (1) and (4), by inserting ''and class III gaming'' after ''class II gaming'' each place it appears;

(2) in paragraph (2), by inserting ''or class III gaming'' after ''class II gaming''; and

(3) in paragraph (10), by inserting '', including regulations addressing minimum internal control standards for class II gaming and class III gaming activities'' before the period at the end.

SEC. 6. COMMISSION STAFFING.

(a) GENERAL COUNSEL.—Section 8(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2707(a)) is amended by striking ''basic'' and all that follows through the end of the subsection and inserting the following: ''pay payable for level IV of the Executive Schedule under chapter 11 of title 2, United States Code, as adjusted by section 5318 of title 5, United States Code.''.

(b) OTHER STAFF.—Section 8(b) of the Indian Gaming Regulatory Act (25 U.S.C. 2707(b)) is amended by striking ''basic'' and all that follows through the end of the subsection and inserting the following: ''pay payable for level IV of the Executive Schedule under chapter 11 of title 2, United States Code, as adjusted by section 5318 of title 5, United States Code.''.

(c) TEMPORARY AND INTERMITTENT SERVICES.—Section 8(c) of the Indian Gaming Regulatory Act (25 U.S.C. 2707(c)) is amended by striking ''basic'' and all that follows through the end of the subsection and inserting the following: ''pay payable for level IV of the Executive Schedule under chapter 11 of title 2, United States Code, as adjusted by section 5318 of title 5, United States Code.''.

SEC. 7. TRIBAL GAMING ORDINANCES.

Section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2710) is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A), by striking '', and'' and inserting ''; and'';

(B) in paragraph (2)(F)—

(i) by striking clause (i) and inserting the following:

''(i) ensures that background investigations and ongoing oversight activities are conducted with respect to—

''(I) tribal gaming commissioners and key tribal gaming commission employees, as determined by the Chairman;

''(II) primary management officials and other key employees of the gaming enterprise, as determined by the Chairman; and

''(III) any person that is a party to a gaming-related contract; and''; and

(ii) in clause (ii)(I), by striking ''primary'' and all that follows through ''with'' and inserting ''the individuals and entities described in clause (i), including'';

(C) in paragraph (3)—

(i) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(ii) by striking subparagraph (B) and inserting the following:

''(B) the plan is approved by the Secretary after the Secretary determines that—

''(i) the plan is consistent with the uses described in paragraph (2)(B);

''(ii) the plan adequately addresses the purposes described in clauses (i) and (iii) of paragraph (2)(B); and

''(iii) a per capita payment is a reasonable method of providing for the general welfare of the Indian tribe and the members of the Indian tribe;

''(C) the Secretary determines that the plan provides an adequate mechanism for the monitoring and enforcement, by the Secretary and the Chairman, of the compliance of the plan (including any amendment, revision, or rescission of any part of the plan);''; and

(D) in paragraph (4)(B)(i)—

(i) in subclause (I), by striking ''of the Act,'' and inserting a semicolon;

(ii) in subclause (II), by striking ''of this subsection'' and inserting a semicolon;

(iii) in subclause (III), by striking '', and'' and inserting ''; and''; and

(iv) in subclause (IV), by striking ''National Indian Gaming'';

(2) in subsection (d)—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) in clause (i), by striking ''lands,'' and inserting ''lands;'';

(II) in clause (ii), by striking '', and'' and inserting ''; and''; and

(III) in clause (iii), by striking the comma at the end and inserting a semicolon; and

(ii) in subparagraph (B), by striking '', and'' and inserting ''; and'';

(B) in paragraph (2)—

(i) in subparagraph (B)(i), by striking '', or'' and inserting ''; or''; and

(ii) in subparagraph (D)(iii)(I), by striking '', and'' and inserting ''; and'';

(C) in paragraph (7)(B)—

(i) in clause (ii)(I), by striking '', and'' and inserting ''; and'';

(ii) in clause (iii)(I), by striking '', and'' and inserting ''; and''; and

(iii) in clause (vii)(I), by striking '', and'' and inserting ''; and'';

(D) in paragraph (8)(B)—

(i) in clause (i), by striking the comma at the end and inserting a semicolon; and

(ii) in clause (ii), by striking '', or'' and inserting ''; or''; and

(E) by striking paragraph (9); and

(3) by adding at the end the following:

''(f) PROVISION OF INFORMATION TO CHAIRMAN.—Immediately after approving a plan (including any amendment, revision, or recision of any part of a plan) under subsection (b)(3), the Secretary shall provide to the Chairman—

''(1) a notice of the approval; and

''(2) any information used by the Secretary in approving the plan.''.

SEC. 8. GAMING-RELATED CONTRACTS.

Section 12 of the Indian Gaming Regulatory Act (25 U.S.C. 2711) is amended to read as follows:

''SEC. 12. GAMING-RELATED CONTRACTS.

''(a) IN GENERAL.—To be enforceable under this Act, a gaming-related contract shall be—

''(1) in writing; and

''(2) approved by the Chairman under subsection (c).

''(b) CONTRACT REQUIREMENTS.—

''(1) IN GENERAL.—A gaming-related contract under this Act shall provide for the Indian tribe, at a minimum, provisions relating to—

''(A) accounting and reporting procedures, including, as appropriate, provisions relating to verifiable financial reports;

''(B) the access required to ensure proper performance of the gaming-related contract, including access to, with respect to a gaming activity—

''(i) daily operations;

''(ii) real property;

''(iii) equipment; and

''(iv) any other tangible or intangible property used to carry out the activity;

''(C) assurance of performance of each party to the gaming-related contract, including the provision of bonds under subsection (d), as the Chairman determines to be necessary; and

''(D) the reasons for, and method of, terminating the gaming-related contract.

''(2) TERM.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term of a gaming-related contract shall not exceed 5 years.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), a gaming-related contract may have a term of not to exceed 7 years if—

''(i) the Indian tribal party to the gaming-related contract submits to the Chairman a request for such a term; and

''(ii) the Chairman determines that the term is appropriate, taking into consideration the circumstances of the gaming-related contract.

''(3) FEES.—

''(A) IN GENERAL.—Notwithstanding the payment terms of a gaming-related contract, and except as provided in subparagraph (B), the fee of a gaming-related contractor or beneficiary of a gaming-related contract shall not exceed an amount equal to 30 percent of the net revenues of the gaming operation that is the subject of the gaming-related contract.

''(B) EXCEPTION.—The fee of a gaming-related contractor or beneficiary of a gaming-related contract may be in an amount equal to not more than 40 percent of the net revenues of the gaming operation that is the subject of the gaming-related contract if the Chairman determines that such a fee is appropriate, taking into consideration the circumstances of the gaming-related contract.

''(c) APPROVAL BY CHAIRMAN.—

''(1) GAMING-RELATED CONTRACTS.—

''(A) IN GENERAL.—An Indian tribe shall submit each gaming-related contract of the tribe to the Chairman for approval by not later than the earlier of—

''(i) the date that is 90 days after the date on which the gaming-related contract is executed; or

''(ii) the date that is 90 days before the date on which the gaming-related contract is scheduled to be completed.

''(B) FACTORS FOR CONSIDERATION.—In determining whether to approve a gaming-related contract under this subsection, the Chairman may take into consideration any information relating to the terms, parties, and beneficiaries of—

''(i) the gaming-related contract; and

''(ii) any other agreement relating to the Indian gaming activity, as determined by the Chairman.

''(C) DEADLINE FOR DETERMINATION.—

''(i) IN GENERAL.—The Chairman shall approve or disapprove a gaming-related contract under this subsection by not later than 90 days after the date on which the Chairman makes a determination regarding the suitability of each gaming-related contractor under paragraph (2).

''(ii) EXPEDITED REVIEW.—

''(I) IN GENERAL.—If each gaming-related contractor has been determined by the Chairman to be suitable under paragraph (2) on or before the date on which the gaming-related contract is submitted to the Chairman, the Chairman shall approve or disapprove the gaming-related contract by not later than 30 days after the date on which the gaming-related contract is submitted.

''(II) FAILURE TO DETERMINE.—If the Chairman fails to make a determination by the date described in subclause (I), a gaming-related contract described in that subclause shall be considered to be approved.

''(III) AMENDMENTS.—The Chairman may require the parties to a gaming-related contract considered to be approved under subclause (II) to amend the gaming-related contract, as the Chairman considers to be appropriate to meet the requirements under subsection (b).

''(iii) EARLY OPERATION.—

''(I) IN GENERAL.—On approval of the Chairman under subclause (II), a gaming-related contract may be carried out before the date on which the gaming-related contract is approved by the Chairman under clause (i).

''(II) APPROVAL BY CHAIRMAN.—The Chairman may approve the early operation of a gaming-related contract under subclause (I) if the Chairman determines that—

''(aa) adequate bonds have been provided under paragraph (2)(G)(iii) and subsection (d); and

''(bb) the gaming-related contract will be amended as the Chairman considers to be appropriate to meet the requirements under subsection (b).

''(D) REQUIREMENTS FOR DISAPPROVAL.—The Chairman shall disapprove a gaming-related contract under this subsection if the Chairman determines that—

''(i) the gaming-related contract fails to meet any requirement under subsection (b);

''(ii) a gaming-related contractor is unsuitable under paragraph (2);

''(iii) a gaming-related contractor or beneficiary of the gaming-related contract—

''(I) unduly interfered with or influenced, or attempted to interfere with or influence, a decision or process of an Indian tribal government relating to the gaming activity for the benefit of the gaming-related contractor or beneficiary; or

''(II) deliberately or substantially failed to comply with—

''(aa) the gaming-related contract; or

''(bb) a tribal gaming ordinance or resolution adopted and approved pursuant to this Act;

''(iv) the Indian tribe with jurisdiction over the Indian lands on which the gaming activity is located will not receive the primary benefit as sole proprietor of the gaming activity, taking into consideration any agreement relating to the gaming activity;

''(v) a trustee would disapprove the gaming-related contract, in accordance with the duties of skill and diligence of the trustee, because the compensation or fees under the gaming-related contract do not bear a reasonable relationship to the cost of the goods or the benefit of the services provided under the gaming-related contract; or

''(vi) a person or an Indian tribe would violate this Act—

''(I) on approval of the gaming-related contract; or

''(II) in carrying out the gaming-related contract.

''(2) GAMING-RELATED CONTRACTORS.—

''(A) IN GENERAL.—Not later than 90 days after the date on which the Chairman receives a gaming-related contract, the Chairman shall make a determination regarding the suitability of each gaming-related contractor to carry out any gaming activity that is the subject of the gaming-related contract.

''(B) REQUIREMENTS.—The Chairman shall make a determination under subparagraph (A) that a gaming-related contractor is unsuitable if, as determined by the Chairman—

''(i) the gaming-related contractor—

''(I) is an elected member of the governing body of an Indian tribe that is a party to the gaming-related contract;

''(II) has been convicted of—

''(aa) a felony; or

''(bb) any offense relating to gaming;

''(III)(aa) knowingly and willfully provided any materially important false statement or other information to the Commission or an Indian tribe that is a party to the gaming-related contract; or

''(bb) failed to respond to a request for information under this Act;

''(IV) poses a threat to the public interest or the effective regulation or conduct of gaming under this Act, taking into consideration the behavior, criminal record, reputation, habits, and associations of the gaming-related contractor;

''(V) unduly interfered, or attempted to unduly interfere, with any determination or governing process of the governing body of an Indian tribe relating to a gaming activity, for the benefit of the gaming-related contractor; or

''(VI) deliberately or substantially failed to comply with the terms of—

''(aa) the gaming-related contract; or

''(bb) a tribal gaming ordinance or resolution approved and adopted under this Act; or

''(ii) a trustee would determine that the gaming-related contractor is unsuitable, in accordance with the duties of skill and diligence of the trustee.

''(C) FAILURE TO DETERMINE.—If the Chairman fails to make a suitability determination with respect to a gaming-related contractor by the date described in subparagraph (A), each gaming-related contractor shall be considered to be suitable to carry out the gaming activity that is the subject of the applicable gaming-related contract.

''(D) REVOCATION.—At any time, based on a showing of good cause, the Chairman may—

''(i) make a determination that a gaming-related contractor is unsuitable under this subsection; or

''(ii) revoke a suitability determination under this subsection.

''(E) TEMPORARY SUITABILITY.—

''(i) IN GENERAL.—For purposes of meeting a deadline under paragraph (1)(C), the Chairman may determine that a gaming-related contractor is temporarily suitable if—

''(I) the Chairman determined the gaming-related contractor to be suitable with respect to another gaming-related contract being carried out on the date on which the Chairman makes a determination under this paragraph; and

''(II) the gaming-related contractor has not otherwise been determined to be unsuitable by the Chairman.

''(ii) FINAL DETERMINATION.—The Chairman shall make a suitability determination with respect to a gaming-related contractor that is the subject of a temporary suitability determination under clause (i) by the date described in subparagraph (A), in accordance with subparagraph (F).

''(F) UPDATING DETERMINATIONS.—The Chairman, as the Chairman determines to be appropriate, may limit an investigation of the suitability of a gaming-related contractor that—

''(i) has been determined to be suitable by the Chairman with respect to another gaming-related contract being carried out on the date on which the Chairman makes a determination under this paragraph; and

''(ii) certifies to the Chairman that the information provided during a preceding suitability determination has not materially changed.

''(G) RESPONSIBILITY OF GAMING-RELATED CONTRACTOR.—A gaming-related contractor shall—

''(i) pay the costs of any investigation activity of the Chairman in carrying out this paragraph;

''(ii) provide to the Chairman a notice of any change in information provided during a preceding investigation on discovery of the change; and

''(iii) during an investigation of suitability under this paragraph, provide to the Chairman such bonds under subsection (d) as the Chairman determines to be appropriate to shield an Indian tribe from liability resulting from an action of the gaming-related contractor.

''(H) REGISTRY.—The Chairman shall establish and maintain a registry of each suitability determination made under this paragraph.

''(3) ADDITIONAL REVIEWS.—Notwithstanding an approval under paragraph (1), or a determination of suitability under paragraph (2), if the Chairman determines that a gaming-related contract, or any party to such a contract, is in violation of this Act, the Chairman may—

''(A) suspend performance under the gaming-related contract;

''(B) require the parties to amend the gaming-related contract; or

''(C) revoke a determination of suitability under paragraph (2)(D).

''(4) TERMINATION.—Termination of a gaming-related contract shall not require the approval of the Chairman.

''(d) BONDS.—

''(1) IN GENERAL.—The Chairman may require a gaming-related contractor to provide to the Chairman a bond to ensure the performance of the gaming-related contractor under a gaming-related contract.

''(2) REGULATIONS.—The Chairman, by regulation, shall establish the amount of a bond required under this subsection.

''(3) METHOD OF PAYMENT.—A bond under this subsection may be provided—

''(A) in cash or negotiable securities;

''(B) through a surety bond guaranteed by a guarantor acceptable to the Chairman; or

''(C) through an irrevocable letter of credit issued by a banking institution acceptable to the Chairman.

''(4) USE OF BONDS.—The Chairman shall use a bond provided under this subsection to pay the costs of a failure of the gaming-related contractor that provided the bond to perform under a gaming-related contract.

''(e) APPEAL OF DETERMINATION.—

''(1) IN GENERAL.—An Indian tribe or a gaming-related contractor may submit to the Commission a request for an appeal of a determination of the Chairman under subsection (c) or (d).

''(2) DETERMINATION OF COMMISSION.—

''(A) HEARINGS.—The Commission shall schedule a hearing relating to an appeal under paragraph (1) by not later than 30 days after the date on which a request for the appeal is received.

''(B) DEADLINE FOR DETERMINATION.—The Commission shall make a determination, by majority vote of the Commission, relating to an appeal under this subsection by not later than 5 days after the date of the hearing relating to the appeal under subparagraph (A).

''(C) CONCURRENCE.—If the Commission concurs with a determination of the Chairman under this subsection, the determination shall be considered to be a final agency action.

''(D) DISSENT.—

''(i) IN GENERAL.—If the Commission dissents from a determination of the Chairman under this subsection, the Chairman may—

''(I) rescind the determination of the Chairman; or

''(II) on a finding of immediate and irreparable harm to the Indian tribe that is the subject of the determination, maintain the determination.

''(ii) FINAL AGENCY ACTION.—A decision by the Chairman to maintain a determination under clause (i)(II) shall be considered to be a final agency action.

''(3) APPEAL OF COMMISSION DETERMINATION.—An Indian tribe, a gaming-related contractor, or a beneficiary of a gaming-related contract may appeal a determination of the Commission under paragraph (2) to the United States District Court for the District of Columbia.

''(f) CONVEYANCE OF REAL PROPERTY.—No gaming-related contract under this Act shall transfer or otherwise convey any interest in land or other real property unless the transfer or conveyance—

''(1) is authorized under law; and

''(2) is specifically described in the gaming-related contract.

''(g) CONTRACT AUTHORITY.—The authority of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81) relating to contracts under this Act is transferred to the Commission.

''(h) NO EFFECT ON TRIBAL AUTHORITY.—This section does not expand, limit, or otherwise affect the authority of any Indian tribe or any party to a Tribal-State compact to investigate, license, or impose a fee on a gaming-related contractor.''.

SEC. 9. CIVIL PENALTIES.

Section 14 of the Indian Gaming Regulatory Act (25 U.S.C. 2713) is amended—

(1) by striking the section designation and heading and all that follows through subsection (a) and inserting the following:

''SEC. 14. CIVIL PENALTIES.

''(a) PENALTIES.—

''(1) VIOLATION OF ACT.—

''(A) IN GENERAL.—An Indian tribe, individual, or entity that violates any provision of this Act (including any regulation of the Commission and any Indian tribal regulation, ordinance, or resolution approved under section 11 or 13) in carrying out a gaming-related contract may be subject to, as the Chairman determines to be appropriate—

''(i) an appropriate civil fine, in an amount not to exceed $25,000 per violation per day; or

''(ii) an order of the Chairman for an accounting and disgorgement, including interest.

''(B) APPLICATION TO INDIAN TRIBES.—An Indian tribe shall not be subject to disgorgement under subparagraph (A)(ii) unless the Chairman determines that the Indian tribe grossly violated a provision of this Act.

''(2) APPEALS.—The Chairman shall provide, by regulation, an opportunity to appeal a determination relating to a violation under paragraph (1).

''(3) WRITTEN COMPLAINTS.—

''(A) IN GENERAL.—If the Commission has reason to believe that an Indian tribe or a party to a gaming-related contract may be subject to a penalty under paragraph (1), the final closure of an Indian gaming activity, or a modification or termination order relating to the gaming-related contract, the Chairman shall provide to the Indian tribe or party a written complaint, including—

''(i) a description of any act or omission that is the basis of the belief of the Commission; and

''(ii) a description of any action being considered by the Commission relating to the act or omission.

''(B) REQUIREMENTS.—A written complaint under subparagraph (A)—

''(i) shall be written in common and concise language;

''(ii) shall identify any statutory or regulatory provision relating to an alleged violation by the Indian tribe or party; and

''(iii) shall not be written only in statutory or regulatory language.'';

(2) in subsection (b)—

(A) by striking ''(b)(1) The Chairman'' and inserting the following:

''(b) TEMPORARY CLOSURES.—

''(1) IN GENERAL.—The Chairman'';

(B) in paragraph (1)—

(i) by striking ''Indian game'' and inserting ''Indian gaming activity, or any part of such a gaming activity,''; and

(ii) by striking ''section 11 or 13 of this Act'' and inserting ''section 11 or 13''; and

(C) in paragraph (2)—

(i) by striking ''(2) Not later than thirty'' and inserting the following:

''(2) HEARINGS.—

''(A) IN GENERAL.—Not later than 30'';

(ii) in subparagraph (A) (as designating by clause (i))—

(I) by striking ''management contractor'' and inserting ''party to a gaming-related contract''; and

(II) by striking ''permanent'' and inserting ''final''; and

(iii) in the second sentence—

(I) by striking ''Not later than sixty'' and inserting the following:

''(B) DETERMINATION OF COMMISSION.—Not later than 60''; and

(II) by striking ''permanent'' and inserting ''final'';

(3) in subsection (c), by striking ''(c) A decision'' and inserting the following:

''(c) APPEAL OF FINAL DETERMINATIONS.—A determination''; and

(4) in subsection (d), by striking ''(d) Nothing'' and inserting the following:

''(d) EFFECT ON REGULATORY AUTHORITY OF INDIAN TRIBES.—Nothing''.

SEC. 10. GAMING ON LATER-ACQUIRED LAND.

Section 20(b) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by striking '' (A) the Secretary, after consultation'' and inserting the following:

''(A)(i) before November 18, 2005, the Secretary reviewed, or was in the process of reviewing, at the Central Office of the Bureau of Indian Affairs, Washington, DC, the petition of an Indian tribe to have land taken into trust for purposes of gaming under this Act; and

''(ii) the Secretary, after consultation''; and

(B) in subparagraph (B)—

(i) in clause (i), by striking the comma at the end and inserting the following: ''under Federal statutory law, if the land is within a State in which is located—

''(I) the reservation of such Indian tribe; or

''(II) the last recognized reservation of such Indian tribe;'';

(ii) in clause (ii), by striking '', or'' and inserting ''if, as determined by the Secretary, the Indian tribe has a temporal, cultural, and geographic nexus to the land; or''; and

(iii) in clause (iii), by inserting before the period at the end the following: ''if, as determined by the Secretary, the Indian tribe has a temporal, cultural, and geographic nexus to the land''; and

(2) by adding at the end the following:

''(4) EFFECT OF SUBSECTION.—Notwithstanding any other provision of this subsection, land that, before the date of enactment of the Indian Gaming Regulatory Act Amendments of 2005, was determined by the Secretary or the Chairman to be eligible to be used for purposes of gaming shall continue to be eligible for those purposes.''.

SEC. 11. CONFORMING AMENDMENT.

(a) IN GENERAL.—Section 123(a)(2) of the Department of the Interior and Related Agencies Appropriations Act, 1998 (Public Law 105–83; 111 Stat. 1566) is amended—

(1) in subparagraph (A), by adding ''and'' at the end;

(2) in subparagraph (B), by striking ''; and'' and inserting a period; and

(3) by striking subparagraph (C).

(b) APPLICABILITY.—Notwithstanding any other provision of law, section 18(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2717(a)) shall apply to all Indian tribes.

By Mr. SMITH (for himself, Mr. THUNE, Mr. ALLARD, Mr. BURNS, and Mr. THOMAS):

S. 2079. A bill to improve the ability of the Secretary of Agriculture and the Secretary of the Interior to promptly implement recovery treatments in response to catastrophic events affecting the natural resources of Forest Service land and Bureau of Land Management Land, respectively, to support the recovery of non-Federal land damaged by catastrophic events, to assist impacted communities, to revitalize Forest Service experimental forests, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BURNS. Mr. President, I rise today in support of the Forests for Future Generations Act, because it addresses a very serious problem in our National Forests. I am not sure how many people in this body have witnessed the devastation of a catastrophic wildfire, but I recommend that everyone tour a burned over forest. It is a sobering reality, often resembling a moonscape.

The worst fire year in recent Montana history was the summer of 2000, when we burned 945,000 acres of productive Montana land. After months of smoke-filled air, we were left with decimated wildlife habitat, charred hillsides, sediment-filled streams, and millions of board feet of dead, standing timber. Active forest management would require that restoration of these fragile soils and ecosystems begin as soon as possible, but that is almost never the case on national forest land. Instead, we spend millions of dollars and thousands of hours writing a plan to restore the burned area, which is inevitably appealed, challenged, and litigated by an environmental group. We end up arguing in the courtroom when we should be working in the forest.

I have seen side-by-side sections of land where private landowners or even the State of Montana has taken quick action and removed some dead or dying timber then replanted the forest. News are growing on the private land before any of the Federal timber is even harvested. It is amazing to me, and it makes absolutely no sense. For that

reason I am happy to cosponsor this bill, because it is time to reintroduce some common sense into a system that has gone far off the tracks.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 320—CALLING ON THE PRESIDENT TO ENSURE THAT THE FOREIGN POLICY OF THE UNITED STATES REFLECTS APPROPRIATE UNDERSTANDING AND SENSITIVITY CONCERNING ISSUES RELATED TO HUMAN RIGHTS, ETHNIC CLEANSING, AND GENOCIDE DOCUMENTED IN THE UNITED STATES RECORD RELATING TO THE ARMENIAN GENOCIDE

Mr. ENSIGN (for himself and Mr. DURBIN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES 320

Whereas the Armenian Genocide was conceived and carried out by the Ottoman Empire from 1915 to 1923, resulting in the deportation of nearly 2,000,000 Armenians, of whom 1,500,000 men, women, and children were killed, 500,000 survivors were expelled from their homes, and which succeeded in the elimination of more than 2,500-year presence of Armenians in their historic homeland;

Whereas, on May 24, 1915, the Allied Powers issued the joint statement of England, France, and Russia that explicitly charged, for the first time ever, another government of committing ''a crime against humanity'';

Whereas that joint statement stated ''the Allied Governments announce publicly to the Sublime Porte that they will hold personally responsible for these crimes all members of the Ottoman Government, as well as those of their agents who are implicated in such massacres'';

Whereas the post-World War I Turkish Government indicted the top leaders involved in the ''organization and execution'' of the Armenian Genocide and in the ''massacre and destruction of the Armenians'';

Whereas in a series of courts-martial, officials of the Young Turk Regime were tried and convicted on charges of organizing and executing massacres against the Armenian people;

Whereas the officials who were the chief organizers of the Armenian Genocide, Minister of War Enver, Minister of the Interior Talaat, and Minister of the Navy Jemal, were tried by military tribunals, found guilty, and condemned to death for their crimes, however, the punishments imposed by the tribunals were not enforced;

Whereas the Armenian Genocide and the failure to carry out the death sentence against Enver, Talaat, and Jemal are documented with overwhelming evidence in the national archives of Austria, France, Germany, Russia, the United Kingdom, the United States, the Vatican, and many other countries, and this vast body of evidence attests to the same facts, the same events, and the same consequences;

Whereas the National Archives and Records Administration of the United States holds extensive and thorough documentation on the Armenian Genocide, especially in its holdings for the Department of State under Record Group 59, files 867.00 and 867.40, which are open and widely available to the public and interested institutions;

Whereas the Honorable Henry Morgenthau, United States Ambassador to the Ottoman Empire from 1913 to 1916, organized and led protests by officials of many countries, among them the allies of the Ottoman Empire, against the Armenian Genocide;

Whereas Ambassador Morgenthau explicitly described to the Department of State the policy of the Government of the Ottoman Empire as ''a campaign of race extermination'', and was instructed on July 16, 1915, by Secretary of State Robert Lansing that the ''Department approves your procedure . . . to stop Armenian persecution'';

Whereas Senate Concurrent Resolution 12, 64th Congress, agreed to July 18, 1916, resolved that ''the President of the United States be respectfully asked to designate a day on which the citizens of this country may give expression to their sympathy by contributing funds now being raised for the relief of the Armenians'', who, at that time, were enduring ''starvation, disease, and untold suffering'';

Whereas President Woodrow Wilson agreed with such Concurrent Resolution and encouraged the formation of the organization known as Near East Relief, which was incorporated by the Act of August 6, 1919, 66th Congress (41 Stat. 273, chapter 32);

Whereas, from 1915 through 1930, Near East Relief contributed approximately $116,000,000 to aid survivors of the Armenian Genocide, including aid to approximately 132,000 Armenian orphans;

Whereas Senate Resolution 359, 66th Congress, agreed to May 11, 1920, stated in part, ''the testimony adduced at the hearings conducted by the subcommittee of the Senate Committee on Foreign Relations have clearly established the truth of the reported massacres and other atrocities from which the Armenian people have suffered'';

Whereas such Senate Resolution followed the report to the Senate of the American Military Mission to Armenia, which was led by General James Harbord, dated April 13, 1920, that stated ''[m]utilation, violation, torture, and death have left their haunting memories in a hundred beautiful Armenian valleys, and the traveler in that region is seldom free from the evidence of this most colossal crime of all the ages'';

Whereas, as displayed in the United States Holocaust Memorial Museum, Adolf Hitler, on ordering his military commanders to attack Poland without provocation in 1939, dismissed objections by saying ''[w]ho, after all, speaks today of the annihilation of the Armenians?'' and thus set the stage for the Holocaust;

Whereas Raphael Lemkin, who coined the term ''genocide'' in 1944, and who was the earliest proponent of the Convention on the Prevention and Punishment of Genocide, invoked the Armenian case as a definitive example of genocide in the 20th century;

Whereas the first resolution on genocide adopted by the United Nations, United Nations General Assembly Resolution 96(1), dated December 11, 1946, (which was adopted at the urging of Raphael Lemkin), and the Convention on the Prevention and Punishment of Genocide, done at Paris December 9, 1948, recognized the Armenian Genocide as the type of crime the United Nations intended to prevent and punish by codifying existing standards;

Whereas, in 1948, the United Nations War Crimes Commission invoked the Armenian Genocide as ''precisely . . . one of the types of acts which the modern term 'crimes against humanity' is intended to cover'' and as a precedent for the Nuremberg tribunals;

Whereas such Commission stated that ''[t]he provisions of Article 230 of the Peace Treaty of Sevres were obviously intended to cover, in conformity with the Allied note of 1915 . . . offenses which had been committed on Turkish territory against persons of Turkish citizenship, though of Armenian or Greek race. This article constitutes therefore a precedent for Article 6c and 5c of the Nuremberg and Tokyo Charters, and offers an example of one of the categories of 'crimes against humanity' as understood by these enactments'';

Whereas House Joint Resolution 148, 94th Congress, adopted by the House of Representatives on April 8, 1975, resolved that ''April 24, 1975, is hereby designated as 'National Day of Remembrance of Man's Inhumanity to Man', and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day as a day of remembrance for all the victims of genocide, especially those of Armenian ancestry'';

Whereas Proclamation 4838 of April 22, 1981 (95 Stat. 1813) issued by President Ronald Reagan, stated, in part, that ''[l]ike the genocide of the Armenians before it, and the genocide of the Cambodians which followed it—and like too many other persecutions of too many other people—the lessons of the Holocaust must never be forgotten'';

Whereas House Joint Resolution 247, 98th Congress, adopted by the House of Representatives on September 10, 1984, resolved that ''April 24, 1985, is hereby designated as 'National Day of Remembrance of Man's Inhumanity to Man', and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day as a day of remembrance for all the victims of genocide, especially the one and one-half million people of Armenian ancestry'';

Whereas, in August 1985, after extensive study and deliberation, the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities voted 14 to 1 to accept a report entitled ''Study of the Question of the Prevention and Punishment of the Crime of Genocide'', which stated ''[t]he Nazi aberration has unfortunately not been the only case of genocide in the 20th century. Among other examples which can be cited as qualifying are . . . the Ottoman massacre of Armenians in 1915–1916'';

Whereas such report also explained that ''[a]t least 1,000,000, and possibly well over half of the Armenian population, are reliably estimated to have been killed or death marched by independent authorities and eyewitnesses and this is corroborated by reports in United States, German, and British archives and of contemporary diplomats in the Ottoman Empire, including those of its ally Germany'';

Whereas the United States Holocaust Memorial Council, an independent Federal agency that serves as the board of trustees of the United States Holocaust Memorial Museum pursuant to section 2302 of title 36, United States Code, unanimously resolved on April 30, 1981, that the Museum would exhibit information regarding the Armenian Genocide and the Museum has since done so;

Whereas, reviewing an aberrant 1982 expression by the Department of State (which was later retracted) that asserted that the facts of the Armenian Genocide may be ambiguous, the United States Court of Appeals for the District of Columbia in 1993, after a review of documents pertaining to the policy record of the United States, noted that the assertion on ambiguity in the United States record about the Armenian Genocide ''contradicted longstanding United States policy and was eventually retracted'';

Whereas, on June 5, 1996, the House of Representatives adopted an amendment to H.R. 3540, 104th Congress (the Foreign Operations,