United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, SECOND SESSION

Vol. 152 WASHINGTON, TUESDAY, FEBRUARY 14, 2006 No. 18

House of Representatives

The House met at 2 p.m. and was called to order by the Speaker pro tempore (Mr. ISSA).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC.
February 14, 2006.

I hereby appoint the Honorable DARRELL E. ISSA to act as Speaker pro tempore on this day.

J. DENNIS HASTERT
Speaker of the House of Representatives.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God Almighty, giver of all good gifts and authority's source of wisdom, we stand humbly before You. We ask Your forgiveness for the times we are self-centered and not attuned to the needs of others or Your holy inspirations.

Give us strength today to accomplish the work of the people in the House of freedom and civil expression. Receive our praise and thanksgiving for Your countless gifts and the opportunity to serve in government.

To You be honor and glory now and forever. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Georgia (Mr. GINGREY) come forward and lead the House in the Pledge of Allegiance.

Mr. GINGREY led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

NSA TERRORIST SURVEILLANCE

(Mrs. MILLER of Michigan asked and was given permission to address the House for 1 minute.)

Mrs. MILLER of Michigan. Mr. Speaker, since it has been revealed that the NSA had a terrorist surveillance program, opponents of the administration have been quick to criticize this program.

Let us try to set the record straight on this effective tool in fighting the war on terror. One Senator has charged the NSA is eavesdropping on Americans who have no indication of wrongdoing. The Senate minority leader, who has been briefed on the program, called it domestic spying.

In fact, this program is extremely limited to international communications, in which one party is suspected of links to al Qaeda or other terrorist organizations, like calls made by 9/11 hijackers to their leaders in Afghanistan.

Are some Democrats so confused, or do they care more about attempting to gain political advantage than protecting our Nation?

Mr. Speaker, we know our enemies place operatives within our borders who blend in and wait to strike as they did on 9/11, but they are still out there. I do not care one iota about protecting the privacy of terrorists who have been sent to this country to murder innocent Americans. It is regretful that some seek political gain at the expense of our security.

THE PRESIDENT'S BUDGET PROPOSAL

(Ms. CARSON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. CARSON. Mr. Speaker, today is Valentine's Day, representing our heart. I would like to extend my heart to all of the Members of the United States Congress.

The President's budget does not, in fact, reflect a warm heart, as it eliminates funding for the Commodity Supplemental Food Program. Each month, CSFP provides over 475,000 low-income individuals with nutritious food packages; 85 percent of the recipients are seniors, all with income levels below a meager $12,400 per year.

In Indiana, 4,979 seniors are currently enrolled in this program. Next year, they could go hungry if the program is eliminated.

The budget proposal enables participants to enroll in a food stamp program once the CSFP is eliminated. The food stamp program, while extremely important, does not offer the same benefit and convenience that CSFP does. The food packages that seniors receive from the CSFP go to veterans who are sleeping under a bridge and who are homeless.

I would ask the majority leadership of this Congress to redress those inequities in the President's budget.

Some seniors are also hesitant to participate in the food stamp program because they perceive it as a welfare program. Yet these same seniors participate in the CSFP in Indiana.

I was touched by the story of a senior who received her first CSFP box from Gleaners. She cried after discovering 12 pudding cups in her box. Her case manager explained, "Pudding is a luxury she has not been able to afford in a very long time." Let's not forget that as we craft a budget resolution, something as simple as pudding cups are a great luxury for some Americans.

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Our budget is a reflection of our values and priorities. Our seniors deserve the very best from us, and it is incumbent upon us to keep them in mind when determining our budget allocations.

SALUTING THE BRAVERY OF BORDER PATROL AGENTS

(Mr. KELLER asked and was given permission to address the House for 1 minute.)

Mr. KELLER. Mr. Speaker, today I rise to salute the bravery of Border Patrol agents working along the Mexican border. I recently returned from a week-long trip to the Mexican-California border, where I had the opportunity to ride along with our Border Patrol agents.

I was impressed by the bravery of the Border Patrol agents who escorted me. We personally saw a Border Patrol supervisor pull an illegal alien off a 10-foot wall and arrest him despite his violent attempts to resist arrest. I witnessed another Border Patrol agent scale a 5,000-foot mountain at 2 in the morning in freezing 30-degree weather and single-handedly arrest and handcuff eight illegal aliens.

The Border Patrol agent I rode with told me that he had been shot at on several occasions. Twenty-three of his colleagues have been killed in the line of duty since 1990. For example, Border Patrol agents Susan Rodriguez and Ricardo Salinas were gunned down by a murder suspect. Agent Jefferson Barr was shot to death by a drug trafficker.

I have a message for these brave Border Patrol agents: the U.S. Congress knows you are there. We appreciate your service, and help is on the way.

CONGRATULATING THE NCAA FOOTBALL CHAMPION TEXAS LONGHORNS

(Mr. SMITH of Texas asked and was given permission to address the House for 1 minute.)

Mr. SMITH of Texas. Mr. Speaker, for the second time in a row, the University of Texas has won the Rose Bowl. By any definition, the 2006 victory was a classic and made the Longhorns the national champions.

Led by quarterback Vince Young, the Longhorns fought their way to a stunning 41–38 victory over the top-ranked University of Southern California Trojans.

Vince Young ran for 200 yards, passed for 267 and scored the winning touchdown with 19 seconds left on the clock. It does not get much better than that, which is why Vince Young won the Most Valuable Player trophy.

UT Coach Mack Brown and the entire Longhorn football team have a special place deep in the hearts of all Texans. Through hard work, determination and teamwork, the Longhorns beat the odds and became an example for all of us of what sportsmanship really means.

Today, appropriately, the Longhorns were honored at the White House by President and Texan George Bush. Please join me in congratulating the Longhorns on their championship season. Hook 'Em Horns.

OLYMPIAN AND TEXAN CHAD HEDRICK

(Mr. POE asked and was given permission to address the House for 1 minute.)

Mr. POE. Mr. Speaker, there is a Texas-sized force to be reckoned with in Italy. Chad Hedrick, the 28-year-old former inline skating icon from Spring, Texas, is speed skating his way to victory.

In the first day of Olympic competition, he has already garnered gold, the first for him and the United States in these Olympics. Chad's love for skating started at age 2 in roller skates at his parents' roller skating rink in Spring, Texas.

He grew up and became one of the world's most famous inline skaters, but he switched to speed stating only 4 years ago. Chad Hedrick is a contender for four more medals in the games in Italy, and he is off to a spectacular start.

Although the rink and the type of skates have changed, this hometown hero's passion and talents have only gotten stronger throughout the years, and his passion was shown when he became teary eyed when the Star Spangled Banner played as he was awarded the gold medal.

The entire State of Texas and the Nation congratulate Chad on this astounding accomplishment, and we will be cheering for him for the remainder of the games. As we say in Texas, get 'er done, Chad. And that's the way it is.

CUTS TO ENTITLEMENT PROGRAMS

(Ms. SOLIS asked and was given permission to address the House for 1 minute.)

Ms. SOLIS. Mr. Speaker, today I rise because I am deeply concerned with respect to the President's budget, his proposed cuts to women and children. In particular, the budget of fiscal year 2007 fails on all accounts and provides insufficient funding for our Nation's greatest investment, its children.

Domestic programs, as we know, are vital to women and children, particularly the WIC program, which will see its funding decline by almost $5 billion over the next 5 years. For low-income families who rely solely on WIC to feed their children and keep them healthy, these cuts are simply unacceptable.

We will see a continued rise in poverty and food shortage among these families. The President's budget is also hurting women who work to provide for their families by cutting back on their health care.

Despite the huge budget cuts made already to the Medicaid program in the budget reconciliation bill, the President proposes to slash another $17 billion over the next 5 years. Medicaid, as many of you know, helps women and children, the most vulnerable in our population. I urge the Congress to reject this morally irresponsible budget.

MORAL SECURITY

(Mrs. BLACKBURN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BLACKBURN. Mr. Speaker, our constituents expect us to not only guard the economic and national security of this Nation; they expect us to preserve the moral security that has made this Nation great. Just the other day, I had the chance to deliver the keynote address at an event for the Tennessee Boy Scouts.

Mr. Speaker, in this job we do as Members of Congress, there are times when you speak to a group and you can just feel that they are doing the right things. The Boy Scouts fit in that category. They are teaching our boys what it means to serve their community.

We are a Nation built on shared moral values. Families across the country know that our communities are strong and that this country is strong when those values are respected and protected and preserved for future generations. House Republicans know this, and we will be working here each and every day to protect this Nation's security.

STUDENT AID

(Mr. DOGGETT asked and was given permission to address the House for 1 minute.)

Mr. DOGGETT. I have just returned from a joyful celebration at the White House, not one about red or blue States, but about burnt orange, branded into the pages of sports history.

As much as all of us can come together to celebrate the dramatic UT National Championship, I think that supporting Longhorns and supporting university students means much more. It means providing a Federal financial commitment to our students to let them achieve their individual greatness.

When qualified students cannot afford to attend a university, all of us lose. This President's budget, as far as I can tell, is one big fumble. Because once again, added on top of the $12 billion that Republicans have just cut in Federal student financial assistance, are additional cuts to Perkins loans and to GEAR UP for those who are trying to get into college.

For the students that I represent at the University of Texas-Pan American, who already face big financial challenges, this burden is going to be a great one. One in four of the students have dependent children and more than 75 percent are first-generation students. I hope that we can make substantial changes and show a real commitment to Longhorns and students everywhere.

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MASHA'S LAW

(Mr. GINGREY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY. Mr. Speaker, I rise today to share the heartbreaking story of a 13-year-old girl in my district and to call for tougher penalties for child pornography.

I have introduced, along with Representative TIERNEY, H.R. 4703, called Masha's law after 13-year-old Masha Allen, whose adoptive father posted pornographic images of her at age 5 on the Internet. Thankfully, law enforcement officials tracked and convicted her father. Masha now lives in Douglasville, Georgia, with a new and loving adoptive parent. However, hundreds of her images are still on the Internet; and her photographs are some of the most widely downloaded pictures in the world.

Mr. Speaker, we absolutely must do something to harshly reprimand those who produce, distribute and consume child pornography. Did you know that under current law the penalties for illegally downloading music are three times higher than the penalties for downloading child pornography? This is absurd and unjust. My legislation would increase the statutory damages for victims of child exploitation and ensure victims can sue those who download their pictures.

We must protect those who have no way of protecting themselves from this horrific and sickening crime, and I ask that you join me in supporting Masha's law.

WILLIE VAUGHN POST OFFICE

(Mr. DAVIS of Illinois asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DAVIS of Illinois. Mr. Speaker, this weekend I had the fortune to attend a funeral in a small rural town in the southeast corner of Arkansas of a gentleman who was 101 years old. But the people in that town were all excited and happy because one of our Members, Congressman MIKE ROSS, had named the Post Office in that town after this gentleman, Mr. Willie Vaughn, who had worked and been there almost a hundred years. I commend our colleague, Representative MIKE ROSS, for making a lot of people in Southeast Arkansas very happy.

MYTH VERSUS REALITY

(Ms. FOXX asked and was given permission to address the House for 1 minute.)

Ms. FOXX. Mr. Speaker, since the revelation of the National Security Agency's terrorist surveillance program, we have heard all sorts of hysterics from the other side of the aisle. I think now is the time to separate myth from reality.

Allegations that the NSA program is illegal are a myth. The reality is that the President's authority to authorize this program is firmly based in both his constitutional authority as Commander-in-Chief and in the authorization for use of military force which passed Congress after 9/11.

Allegations that the NSA program is a domestic eavesdropping program used to spy on innocent Americans are a myth. The reality is that this program is narrowly focused, aimed only at international calls and targeted at al Qaeda and related groups. There are safeguards in place to protect the civil liberties of Americans.

Allegations that NSA activities violate the fourth amendment are a myth. The reality is that that program is consistent with the Constitution's protections of civil liberties, including fourth amendment protections.

There are people who want you to believe this program is targeting average Americans. Nothing could be further from the truth.

ROYALTY HOLIDAY FOR MAJOR OIL COMPANIES

(Mr. GEORGE MILLER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEORGE MILLER of California. Mr. Speaker, Members of the House, today in the New York Times Americans were told that not only had the Congress passed a royalty holiday for major oil companies but in the most recent energy bill they had expanded and extended that royal holiday. So we have the situation today where a bill, a law that was passed many, many years ago when the price of energy was very low, has been kept on the book in spite of efforts to try and repeal it by myself and others. And now with world oil prices in excess of $60 a barrel and the oil company profits of the majors at historical record highs by all of the major oil companies, the Federal Government is going to continue to provide a royalty holiday to those oil companies that will cost us, at a minimum, over $7 billion in the next 5 years and maybe an additional 35 to $40 billion over that same period of time.

The time has come for Congress to stop this program, to insist upon the renegotiation of these leases; and if the oil companies will not participate in that renegotiation they should not be allowed to bid on Federal land owned by the taxpayers of this country and continue to be able to rip off the taxpayers of this country.

INTERNATIONAL STRENGTH ON IRANIAN REGIME

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, Mahmoud Ahmadinejad, the controlled President of Iran, continues to deny the horrors of the Holocaust and encourage the elimination of Israel. As his message of hatred and fanaticism grows louder each day, the seriousness of his nuclear ambitions has become increasingly obvious.

Last week, the IAEA Board of Governors, including our allies, India, Canada and Australia, voted overwhelmingly to report Iran to the U.N. Security Council. Although the Bush Administration built a case for international unity, Iran's President persists in his quest for nuclear weapons. The U.N. must act quickly and strongly to hold Iran accountable for violating the nuclear nonproliferation treaty.

During the Cold War, Ronald Reagan advocated peace through strength. As the Iranian regime continues to undermine peace and stability, leaders of free nations must work together to seriously address this grave threat. While the Iranian president, chosen by a fixed system, continues to pursue his agenda of terror, the Iranian people deserve a brighter future of economic expansion, not a warmongering leader.

In conclusion, God bless our troops, and we will never forget September 11.

RUNAWAY SPENDING IN WASHINGTON

(Mr. PENCE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, the headlines announcing one scandal after another have grieved the heart of the American people and have eroded public confidence in our national government's commitment to governing of the highest moral caliber.

The Bible says that righteousness exalts a nation, so the converse must also be true. So Congress is preparing to fight for ethics reform, not because such scandals hurt our party but because they do hurt the Nation. But as we reform our rules of ethics we will do so with the understanding that these are but symptoms of the core problem. The real scandal in Washington, D.C., is runaway Federal spending.

Fiscal and moral integrity are inseparable issues. So it is not enough to change the way lobbyists spend their money, Mr. Speaker. We must change the way Congress spends the people's money. Only by marrying budget reform and ethics reform can we hope to restore the confidence of the American people in the fiscal and moral integrity of our national legislature.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore (Mr. ISSA) laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington DC, February 13, 2006.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House on February 13, 2006, at 3 p.m. and said to contain a message from the President whereby he submits the Economic Report of the President together with the 2006 Annual Report of the Council of Economic Advisers.

With best wishes, I am

Sincerely,

KAREN L. HAAS,
Clerk of the House.

ECONOMIC REPORT OF THE PRESIDENT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 109–78)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Joint Economic Committee and ordered to be printed:

To the Congress of the United States:

The United States economy continues to demonstrate remarkable resilience, flexibility, and growth. Having previously endured a stock market collapse, recession, terrorist attacks, and corporate scandals, this year the economy showed strong growth and robust job creation in the face of higher energy prices and devastating natural disasters. This is the result of the hard work of America's workers, supported by pro-growth tax policies.

In 2005, the Nation's real gross domestic product (GDP) grew 3.5 percent for the year, above the historical average. About 2 million payroll jobs were added in 2005, and the unemployment rate dropped to 4.7 percent last month, well below the averages of the 1970s, 1980s, and 1990s. Real disposable personal income increased, and real household net worth reached an all-time high. This growth comes on top of an already strong expansion. More than 4.7 million payroll jobs have been added since August 2003.

Compared with the performance of other nations' economies, our economic growth is especially impressive. The United States has added more jobs in the past two-and-a-half years than Japan and the European Union combined. Real GDP growth in the United States has been faster than in any other major industrialized country since 2001, and America is forecasted to continue as the fastest-growing country over the next two years.

Our economy's fundamental strength comes from the ingenuity and hard work of our workers. Productivity—how much workers produce per hour—has accelerated since 2000. In the past five years, productivity has grown faster than in any other five-year period since the mid-1960s. The productivity of the United States is increasing faster than any other major industrialized country.

Productivity growth raises our standard of living and plays a central role in our competitiveness in the worldwide economy. Productivity growth will be even more important as new technologies accelerate global economic integration and as the American population ages.

We must now build on this fundamental strength by making robust investments in physical sciences, improving private incentives for research and development, and boosting math and science education and worker training. The American Competitiveness Initiative will help us remain a world leader in science and technology, which means good high-paying jobs for the American people.

We must also continue to pursue pro-growth economic policies and foster a culture of entrepreneurship. To adopt innovations effectively, our companies and workers need the incentives and flexibility that support a thriving free-market economy.

Maintaining a low tax burden is essential for our economic growth and competitiveness. Tax relief has helped our economy, and raising taxes will increase the burden on our families and small businesses. To keep our economy growing, Congress needs to make the tax relief permanent.

Two years ago, I called for cutting the budget deficit in half by 2009 by restraining spending and spurring economic growth. Every year of my presidency, we have reduced the growth of non-security discretionary spending, and last year Congress passed bills that cut this spending. This year, my budget will cut it again, and it will reduce or eliminate more than 140 programs that are performing poorly or not fulfilling essential priorities. By passing these reforms, we will save the American taxpayer another $14 billion next year, and we will stay on track to cut the deficit in half by 2009.

Controlling discretionary spending alone is not enough, however. We have recently passed significant savings in mandatory spending programs. We need to do more because the only way to solve our Nation's fiscal challenges is to address the explosions in growth of entitlement programs like Social Security, Medicare, and Medicaid. I have called for a bipartisan commission to examine the full impact of the Baby Boom retirement and help us come up with bipartisan answers. The longer Congress waits to act, the more difficult the choices will become.

Working together, we accomplished other significant pro-growth reforms that will help our Nation's economy grow stronger and create more jobs. More remains to be done.

Growth in spending on health care has been more rapid than general inflation, straining consumers, employers, and government budgets. Two years ago, we created Health Savings Accounts (HSAs) to help give patients more control over their health care decisions and to make health care more available and affordable. This year, I am proposing to enhance HSAs to make them more widely available, valuable to consumers, and attractive to small businesses—and to make it easier for people to keep their insurance policies when they change jobs. Last year, we worked with Congress to pass a patient safety bill that will help reduce medical errors. Getting doctors and patients the information they need on the quality, cost, and effectiveness of different treatments will help Americans get the highest quality and highest value care. This year, my Administration will push to make more information about price and quality available to consumers, and move forward on these and other policies to lower the cost of health care.

Out Nation's liability laws allow too many frivolous lawsuits and raise costs for consumers and businesses. A year ago, we worked with Congress to pass bipartisan class action reform to help curb lawsuit abuse. I urge Congress in the coming year to pass other essential legal reforms, including asbestos and medical liability reforms.

Energy prices have risen in the last year, but the underlying causes of high prices are long-standing. Last year, we passed the first major energy bill in over a decade. It encourages new technologies and updates government regulations. Over time, the new law will help increase the reliability of our energy supply and the efficient use of the energy we have. We must continue to find new ways to diversify our sources of energy. I have proposed the Advanced Energy Initiative to help increase research in alternative energy sources and technology and to make America less dependent on foreign sources of energy.

Because 95 percent of the world's customers live outside of our borders, opening international markets to our goods and services is critical for our economy. My Administration will continue to work tirelessly to open markets and knock down barriers to free and fair trade so that American farmers and workers can compete on a level playing field worldwide.

These and other issues are discussed in the 2006 Annual Report of the Council of Economic Advisers. This report is prepared by CEA to help policymakers understand the economic context of a variety of issues and trends as our Government makes decisions regarding our economic future. By adopting sound economic policies that build on our strengths, we will keep our economy moving forward and extend prosperity for all Americans.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 2006.*

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 13, 2006.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of rule II of the rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on February 13, 2006, at 2:50 pm:

That the Senate passed S. 2275.

With best wishes, I am,

Sincerely,

KAREN L. HAAS,
Clerk of the House

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 13, 2006.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on February 10, 2006, at 10:05 a.m.:

That the Senate passed with an amendment H.R. 22.

That the Senate agreed to H. Con. Res 331.

That the Senate passed S. 2166.

Appointment:

United States-China Economic Security Review Commission.

With best wishes, I am,

Sincerely,

KAREN L. HAAS,
Clerk of the House.

COMMUNICATION FROM RANKING MEMBER OF COMMITTEE ON WAYS AND MEANS

The SPEAKER pro tempore laid before the House the following communication from the Honorable Charles B. Rangel, Ranking Member, Committee on Ways and Means:

HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS,
Washington DC, February 13, 2006.

DEAR SPEAKER HASTERT: Pursuant to section 11142 of SAFETEA–LU (P.L. 109–59), I hereby appoint to the National Surface Transportation Infrastructure Financing Commission the following individuals:

Mr. Elliot (Lee) Sander, Director of the Rudin Center for Transportation Policy and Management at New York University, and Senior Vice President and Director of Strategic Development at DMJM Harris, of New York City, New York.

Mr. Craig Lentzsch, CEO of Coach USA and KBUS Holdings, of Dallas, Texas.

Sincerely,

CHARLES B. RANGEL,
Ranking Member.

COMMUNICATION FROM THE OFFICE OF THE 50TH DISTRICT OF CALIFORNIA

The SPEAKER pro tempore laid before the House the following communication from Nancy Lifset, Office of the 50th District of California:

CONGRESS OF THE UNITED STATES,
Washington, DC, February 8, 2006.

Hon. DENNIS HASTERT,
Speaker of the House, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally, pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a grand jury subpoena, issued by the U.S. District Court for the Southern District of California, for testimony.

After consultation with counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

NANCY LIFSET,
Office of the 50th District of California.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Ms. Wanda Evans, one of his secretaries.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken after 6:30 p.m. today.

SENSE OF CONGRESS REGARDING THE CONTRIBUTION OF THE USO TO OUR ARMED FORCES

Mr. MILLER of Florida. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 322) expressing the Sense of Congress regarding the contribution of the USO to the morale and welfare of our servicemen and women of our armed forces and their families, as amended.

The Clerk read as follows:

H. CON. RES. 322

Whereas the United Service Organizations, Incorporated (the USO), a nonprofit, charitable organization, was founded in 1941 to provide morale and recreation services to military personnel and in 2006 is celebrating its 65th anniversary of service to United States servicemembers around the world;

Whereas the USO is chartered by Congress and is endorsed by the President and the Department of Defense to provide morale, welfare, and recreation-type services to members of the Armed Forces and their families;

Whereas the USO operates 124 centers around the world, including six mobile canteens, through which support is provided to members of the Armed Forces and their families, who visit those facilities more than 5,000,000 times per year;

Whereas the USO relies on over 33,000 volunteers providing approximately 400,000 hours of service per year, in both peacetime and time of conflict;

Whereas the USO plays an important role in contributing to the success of the Nation's military mission by providing a reliable private connection directly supporting the morale, welfare, and recreational needs of the members of the Armed Forces; and

Whereas the crucial link to home provided by the USO is made possible through the generous contributions of more than 1,000,000 American citizens and scores of corporations: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That Congress extends its appreciation to the United Service Organizations, Incorporated (the USO), on its 65th anniversary and recognizes that the work of that organization in supporting the members of the Armed Forces and their families is a valued contribution to the success and mission of the Armed Forces.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. MILLER) and the gentleman from Texas (Mr. REYES) each will control 20 minutes.

The Chair recognizes the gentleman from Florida.

GENERAL LEAVE

Mr. MILLER of Florida. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the resolution currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. MILLER of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the United Service Organizations, established on February 4 of 1941, has become a national treasure. In every war and every theater of operation since World War II where Americans have been deployed, the USO has been there to entertain and to increase the morale and welfare of the men and women in the military and their families. As the chairman of the USO Caucus it is my pleasure to bring this resolution to the floor today.

When the organization was formed, the military was expanding rapidly for the impending conflict. Between 1940 and 1944 the size of our military grew from 50,000 to over 12 million. At its high point during the Second World War the USO had over 3,000 clubs and 1.5 million volunteers to provide services to military personnel. On the entertainment side, the U.S. provided 428,521 shows and performances. To put this figure into perspective around the world, the USO would do sometimes 700 shows a day. It estimates that over 7,000 entertainers were sent overseas to entertain our troops.

Today, USO facilities are visited over 5 million times a year; and although the USO does have a paid staff, the bulk of the service that they provide is through 12,000 volunteers who donate over 450,000 hours annually.

In 2005, the USO sent out over 50 celebrity entertainment tours. Almost

200,000 servicemembers in some 30 countries were visited by these tours. The USO has distributed over 750,000 care packages to deploying servicemembers, and last year they had three care package stuffing parts right here on Capitol Hill for troops deploying to Iraq and Afghanistan. I have helped stuff packages myself, as have many other Members of Congress and their staff. We have to date stuffed and sent 12,000 care packages. My goal is to increase that number to 20,000 a year. It is the least that we as Members of Congress can do.

H. Con. Res. 322 will recognize the thousands of men and women, mostly volunteers, who have made the USO possible, for without them the USO would not be half of what it is.

Every time I have the opportunity to go overseas to Iraq, Afghanistan, to Bosnia and other areas of operation around the world, the men and women tell me all the time, send us more USO shows.

□ 1430

Send us more of those USO care packages. To me, Mr. Speaker, that says that our USO continues to be the single most important morale booster to our men and women serving overseas. From the Second World War to Iraq, the USO has been there and is there today, and we are here for the men and women of the USO.

God bless them and the incredible work that they do.

Mr. Speaker, I reserve the balance of my time.

Mr. REYES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as co-chair of the USO Congressional Caucus, I join my colleague and good friend, Congressman MILLER, on the House Armed Services Committee, who is our founding co-chair of the USO Caucus, in support of House Concurrent Resolution 322. This resolution recognizes the 65th anniversary of the United Service Organizations and extends Congress's appreciation to the USO for 65 years of dedicated service in support of our Armed Forces and their families.

I have personally seen the impact of the USO on the lives of our Nation's military during visits, as my colleague mentioned, to Iraq, Afghanistan, and military facilities around the world. I have also seen the work of the USO closer to home. The congressional care package stuffing party, which was held in the Rayburn foyer last September, helped provide care packages stuffed by Members of Congress and our staffs for soldiers deploying from the Continental United States Replacement Center in my district at Fort Bliss, Texas.

Also at Fort Bliss in December, the USO established a Wounded Warrior Room at William Beaumont Army Medical Center, providing soldiers recovering from combat injuries a place to relax during their treatment. And later this spring, the USO will open a new center on the main post of Fort Bliss to serve both those currently stationed at Fort Bliss and also the nearly 20,000 soldiers who will be coming to El Paso as part of the decision of BRAC and the overseas rebasing troop movements.

While we see every day the good things that the USO does for our soldiers, sailors, airmen, and marines, many Americans may not remember how the USO came into existence. The year was 1941, and President Franklin D. Roosevelt challenged six private organizations to take responsibility for the leave recreation of the armed services. The six organizations were the Salvation Army; the Young Men's Christian Association, the YMCA; the Young Women's Christian Association, the YWCA; the National Catholic Community Services; National Travelers Aid Association; and the National Jewish Welfare Board. These six organizations pooled their resources together and became known as the United Service Organizations, or more commonly referred to today as the USO. The USO incorporated on February 4, 1941, and remains a private nonprofit organization that is supported entirely by over 1 million American citizens and hundreds of corporations.

Back in its early days, USO facilities were opened in such unlikely places as churches, log cabins, museums, castles, barns, beach clubs and yacht clubs, railroad sleeping cars, and even some storefronts. These USO facilities were many things to so many people, a place to see movies or a place to dance and meet people, a quiet place to talk or write letters back home, a place to find religious counsel, and always a place to go for free coffee and doughnuts. By 1944, the USO had more than 3,000 clubs across the country. However, by 1947 the USO had all but disbanded.

During the Korean war, the USO eventually reopened 24 clubs worldwide; and during the conflict in Vietnam, the first USO opened in a combat zone. It is here where I can tell you, Mr. Speaker, that I have personal knowledge of just what the USO means to a young soldier far away from home, bringing a little bit of home to a combat zone.

As the draw-down in Vietnam ended, the USO began to provide new programs to help servicemembers and their families transition back into civilian life. With the current conflicts in Iraq and Afghanistan, the USO opened its first center in Afghanistan, the Pat Tillman USO Center, at Bagram Air Base in 2005. Today there are more than 124 airport and family centers worldwide, located in 10 countries and 21 States.

The USO is also recognized for its entertainment effort on behalf of our servicemembers and their families. In fact, one cannot recognize the USO and not remember that the most beloved and recognized entertainer, the great Bob Hope, was part of the heart and soul of the USO. Bob Hope began his first USO tour in 1942 and continued to entertain and support our troops for more than five decades. Bob Hope brought laughter and joy to thousands of men and women deployed around the world, and he and other entertainers volunteered to entertain the troops both in the United States and abroad, often under some of the most trying situations and conditions.

Today that same commitment and dedicated spirit lives on in the hundreds of entertainers that have volunteered and continue to support our deployed troops in Operation Iraqi Freedom and Operation Enduring Freedom, as well as other bases around the world.

Today the USO continues its outstanding achievement under the leadership of president and chief executive officer Ned Powell; chief of staff Sarah Farnsworth; and senior staff, Michael Farley, John Hanson, Keith Weaver, Bruce Townsend, and Hilary Welch; and the contributions from the USO World Board of Governors. These great people continue to help build and sustain the USO. But the most critical component of the USO and what makes it so special and what makes it so unique are the over 33,000 volunteers and paid staff members who contribute over 400,000 hours of service annually. These are people that are the heart and soul of the USO and provide direct comfort and assistance to our troops and their families, and I want to thank them all and honor them for their service to our troops and their families.

Congress also recognizes the important role that the USO plays in support of our servicemembers and their families; and to further provide support to the USO, it established the USO Congressional Caucus. As co-chair of the caucus, I am pleased that over 150 of my colleagues have joined that effort to enhance the outreach to our soldiers, sailors, airmen, marines, coast guardsmen, and their families.

So today, Mr. Speaker, I urge my colleagues to join me in support of this great resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. MILLER of Florida. Mr. Speaker, I yield such time as he may consume to the gentleman from South Carolina (Mr. WILSON), a gentleman who has three sons serving in our Armed Forces today, one of whom returned from service in Iraq last year.

Mr. WILSON of South Carolina. Mr. Speaker, I urge support for House Concurrent Resolution 322, and I appreciate the leadership of my Armed Services Committee seatmate JEFF MILLER for authoring the resolution. He and his wife, Vicky, are tireless advocates for our military heroes who protect American families. I am also grateful for the USO Caucus leadership of Congressman JEFF MILLER and SYLVESTRE REYES, two of the most dedicated Members of Congress.

Created in 1941 by the request of President Franklin D. Roosevelt, the United Service Organizations delivers

encouragement and optimism to our brave men and women in uniform. The USO is ably led by president and CEO Ned Powell, who is a distinguished graduate of Washington and Lee University in Virginia.

Throughout the past six decades, the USO has evolved continuously to meet our soldiers' needs during wartime and peacetime. From operating clubs where troops can meet, to sponsoring Bob Hope's historic shows, the organization has a tremendous record of providing critical comfort and aid to our servicemembers. Today, with the help of 12,000 volunteers providing nearly 450,000 hours of service per year, the USO operates 124 centers and six mobile canteens around the world. On the State level, we have had outstanding programs such as in South Carolina with Redd Reynolds entertaining National Guard troops.

I am proud to join Congressman JEFF MILLER and Congressman SYLVESTRE REYES in congratulating the USO for its 65th anniversary of dedicated service. As American soldiers risk their lives in the war on terrorism to protect American families, the USO's mission is more important than ever. I appreciate the USO firsthand from my knowledge as a Member of Congress, a 31-year veteran, and as the parent of three sons currently serving in the military.

In conclusion, God bless our troops and we will never forget September 11.

Mr. EDWARDS. Mr. Speaker, I rise in strong support of this resolution and thank my colleagues from Florida and Texas for introducing it.

Established on February 4, 1941, at the direction of President Roosevelt and chartered by Congress in 1979, the USO has long provided generously for the morale and welfare of our troops. Through their various programs, events and campaigns, the USO extends a touch of home to the men and women of our nation's military. The USO benefits from the generosity of many Americans, as the bulk of the service delivery is provided by 12,000 volunteers who donate over 450,000 hours annually.

Funded through the generous contributions of the American people, organizations and corporations, the USO operates 124 centers worldwide and 6 mobile canteens. With overseas centers located in Germany, Italy, France, the United Arab Emirates, Bahrain, Iceland, Bosnia, Japan, Qatar, Korea and Kuwait; the USO has built an extensive network—with service members and their families visiting USO centers more than 5 million times each year.

Many of us in this Chamber have participated in or witnessed firsthand the good work done by the USO for many of our constituents. Since 2003 the USO has distributed over 1 million prepaid phone cards as part of Operation Phone Home. The cards have been distributed in Iraq, Afghanistan, hospitals, and even to service members impacted by Hurricane Katrina. In 2005 the USO sent out over 50 celebrity entertainment tours. Almost 200,000 service members in 30 countries were visited by these tours. Additionally, over 750,000 care packages were delivered to deploying service members. Last year the USO held three care package stuffing parties on Capitol Hill for troops deploying to Iraq and Afghanistan, where Members of Congress and Staff were able to assemble about 12,000 care packages.

More than just entertainment, the USO also provides critical services such as ''newcomer'' briefings for troops and family members and new spouses; family crisis counseling and support groups for families separated by deployments; housing assistance; and nursery facilities.

Mr. Speaker, as co-chair of the House USO Caucus, it gives me great pride to rise in strong support of this resolution and in support of the USO for all of the work they have done for our military community and our nation.

Mr. EVANS. Mr. Speaker, I rise today in strong support of H. Con. Res. 322, acknowledging the contributions of the United Service Organization to the morale and welfare of the servicemen and women of our armed forces and their families.

It is with great honor I join Congressman REYES and my fellow colleagues in supporting the United Service Organization (USO), an organization I know well as a Vietnam-era Marine. The USO was formed in response to a 1941 request from President Franklin D. Roosevelt for the purpose of providing the men and women of the Armed Forces with comfort, hospitality, and recreation. The USO continues to successfully fulfill this mission in collaboration with the U.S. government and numerous private organizations.

Since the opening of the first center in 1963, the USO has grown to over 120 centers worldwide, ranging from Seattle, Washington to Seoul, Korea. Annually, 12,000 volunteers donate 450,000 hours of their time assembling and delivering over 750,000 care packages to deployed service members. Last year, Members of Congress and their staff participated in three care package stuffing events that assembled about 12,000 packages for troops deploying to Iraq and Afghanistan.

As our military continues to grow and change, the mission of the USO also continues to expand and incorporate new ideas to better serve our servicemen and women. In 2003, the USO began ''Operation Phone Home,'' which distributed over one million prepaid phone cards to our troops, enabling them to communicate with family members while stationed overseas.

The most well-known programs sponsored by the USO are the Celebrity Entertainment shows, which have proven to be an effective morale booster. In 2005, the USO sent over 50 celebrity entertainment tours in 30 countries, which were attended by almost 200,000 service members. Longtime USO entertainer, Bob Hope, is perhaps the most memorable advocate of the USO. His legacy continues to inspire and attract celebrities, entertainers, and the American people to donate their time and talents in support of the troops.

The USO provides a channel for American citizens to express appreciation and admiration to those who bravely defend the United States overseas, and to let our military men and women know they are cared for and not forgotten. The USO embodies the generous spirit of the American people and their unwavering support for our servicemen and women. On the 65th Birthday of the USO, I, sincerely extend my thanks for providing so much support and comfort to our Armed Forces.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of H. Con. Res. 322, recognizing the importance of the United Service Organization's (USO) many contributions and to their vital role in the betterment of the lives of our servicemen and women.

We are sending an increasing number of soldiers, both enlisted and reserve, to serve in locations far from home, which shows that the USO's work is just as necessary today as it was 65 years ago. In 1941, President Franklin D. Roosevelt challenged 6 private organizations to provide morale boosting support for our servicemen and women. The USO has met that challenge head-on.

As a member of the congressional USO Caucus, and a member who has visited war zones around the world throughout my years in Congress, I have seen evidence of the services they provide our soldiers and the value of these welcoming facilities.

The organization is well-know for inviting Hollywood entertainers to perform concerts, boosting morale, and providing temporary reprieve from the daily stresses of their profession. However, the USO provides more than just mere entertainment for the armed services, offering less publicly known programs, such as crisis counseling and support groups for both military personnel and their families.

The USO operates 124 of these facilities around the world, including 49 overseas. As a testament of their good work and its commitment to expanding its efforts, the USO just opened its newest facility in Kuwait, just two weeks shy of the organization's 65th birthday. This center is the 6th in the Persian Gulf region, showing that the organization has continued with its tradition of providing support where support is needed, be that at home, or halfway around the world.

For soldiers unable to meet their families at a facility, the organization reaches out providing phone cards and care packages, so that at the very least, they can hear a familiar and soothing voice, and enjoys a taste of home.

The USO's charter may be signed into law, but it still operates as a non-profit, charitable organization relying on both private contributions and support of volunteers. Thankfully, the organization is in no short supply of either with scores of companies and 33,000 volunteers offering their support. The USO serves as the bridge between concerned citizens wanting to make a difference, and our servicemen in need of assistance. With that said, I can not understate the value of the organization's work in enhancing both the lives of soldiers on the ground, and their families' safe at home. For all of the aforementioned reasons I hope my colleagues will vote to recognize the many contributions the USO has made in enhancing the lives of our soldiers.

Ms. BORDALLO. Mr. Speaker, I rise to today in support of House Concurrent Resolution 322 to recognize the outstanding contributions of the United Service Organization (USO) to the morale and welfare of our servicemen and women in the U.S. Armed Forces and their families. I also take this occasion to commend the USO upon their 65th anniversary.

The USO has served as a source of support, entertainment, and morale for American troops since its chartering in 1941. Established at the request of President Franklin Delano Roosevelt, the USO has served our Nation's

servicemen and women ever since. I commend the efforts of those six civilian agencies—the Salvation Army, Young Men's Christian Association, Young Women's Christian Association, National Catholic Community Service, National Travelers Aid Association and the National Jewish Welfare Board—that came together in support of our troops in creating the USO, bringing about its official incorporation in New York on February 4, 1941.

The USO has strong ties to Guam. Burgeoning with U.S. military personnel following the liberation of the island, the USO first came to Guam in the early 1950s. Delivering entertainment and laughs to those serving on Guam, the USO's work on Guam was but a small glimpse of its work lifting the morale of servicemen and women around the world.

The combat zones of the past included Korea, Vietnam and Kuwait. Today the USO brings entertainment to our men and women serving in Iraq, Afghanistan and the Horn of Africa among many other places. For 65 years, wherever you found America's military, you found the USO, no matter the location or the danger.

The USO not only brings entertainment, a piece of home and a smile to troops deployed abroad through its shows, but serves as a "home away from home" for servicemen and women in 124 centers around the world. I am pleased to state that this proud tradition will soon be resurrected on Guam. The USO will re-open its Guam branch on March 23, 2006. With the military presence on Guam steadily growing, the USO has once more answered the call to service. With growing unease in Asia, the strategic location of Guam is increasingly valued. The men and women who serve on the island provide stability to the region and security to our Nation. The USO will once again ensure that these men and women, their families and their guests nonetheless always have the support they need. No doubt this branch will also bring to Guam many of the USO's trademark shows.

Let me take this chance to say, on behalf of the people of Guam, welcome back to the USO. As we say on Guam, Hafa Adai and Si Yu'os Ma'ase (thank you) for their work.

Our Nation enjoys a spirit of brotherhood, of service and of charity that is a reflection of a national value of selfless service. The USO embodies this national value. And the people who are the USO live this national value. Over 12,000 volunteers donate over 450,000 hours annually thereby allowing the USO to serve our Nation's greatest servants. Not to be forgotten are the celebrities and entertainers that often headline USO tours, lending their time and talents to honor those people who provide them the very opportunity to live the American dream they have realized. And providing the foundation upon which the USO can operate are countless thousands of U.S. donors, both private and corporate, who make giving a centerpiece of their lives.

I join my colleagues in commending the USO and all of the men and women who over time and who now make up this great organization for the service they provide to those who serve our Nation in uniform. Like our military men and women, you too are heroes. You are what makes America great. God Bless the USO, God Bless our men and women serving around the world today and God Bless America.

Mr. MORAN of Virginia. Mr. Speaker, I rise today to pay tribute to the United Service Organizations, whose world headquarters are located in my district and this year will celebrate its 65th anniversary of serving the men and women of our armed forces.

At the direction of President Franklin D. Roosevelt the USO was formed in 1941 as a means of promoting troop morale by providing entertainment, recreation and support. Relying solely on charitable contributions and the generosity of individuals, the USO has served troops in each American conflict since World War II.

Perhaps at its most well known during World War II, the USO provided over 400,000 shows and performances to our armed forces, sending 7,000 performers overseas and performing as many as 700 shows in a single day. It was during this time that the great Bob Hope first performed for our soldiers. His famous USO career spanned six decades, headlining over 60 tours and delivering countless one-liners. In 1997, the USO successfully worked with Congress to designate Bob Hope the first honorary veteran of the U.S. armed forces.

Today the USO is still going strong. In 2005, the USO sponsored over 50 celebrity entertainment tours, visiting nearly 200,000 service members in over 30 countries. The volunteer base has grown to over 12,000 people who donate over 450,000 hours of service each year.

The USO, however, provides more than just uplifting entertainment to our troops. Over 750,000 handmade care packages were sent to service members deploying to Iraq and Afghanistan last year. Additionally, the USO has made communication to the home front more affordable and accessible through the Operation Phone Home which distributed over one million prepaid phone cards to deployed troops.

All of this would not be possible were it not for the dedication of the USO staff and volunteers who so graciously give their time and energy to help those who are defending our Nation. Mr. Speaker, I ask that you join me in commending the USO and its members for all of their work and in congratulating them on 65 years of dedicated services to our troops.

Mr. REYES. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MILLER of Florida. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. ISSA). The question is on the motion offered by the gentleman from Florida (Mr. MILLER) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 322, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. MILLER of Florida. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

SUPPORTING THE GOALS AND IDEALS OF A DAY OF HEARTS, CONGENITAL HEART DEFECT DAY

Mrs. MILLER of Michigan. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 629) supporting the goals and ideals of a Day of Hearts, Congenital Heart Defect Day in order to increase awareness about congenital heart defects, and for other purposes.

The Clerk read as follows:

H. RES. 629

Whereas congenital heart defects are structural problems with the heart that are present at birth;

Whereas such defects range in severity from simple problems, such as "holes" between chambers of the heart, to very severe malformations, such as the complete absence of one or more chambers or valves of the heart;

Whereas more than one million Americans have some form of a congenital heart defect and such defect is the number one cause of death in infants;

Whereas out of 1000 births, eight babies will have some form of a congenital heart disorder, and approximately 35,000 babies are born with such defects each year;

Whereas twice as many children die each year from congenital heart disease compared with childhood cancers, yet funding for pediatric cancer research is five times higher than such funding for congenital heart disease;

Whereas cardiovascular disease is the Nation's leading killer in both men and women among all racial and ethnic groups;

Whereas the United States has a severe shortage of cardiac centers that are fully equipped to provide care for adults living with complex heart defects;

Whereas almost one million Americans die of cardiovascular disease each year, resulting in up to 42 percent of all deaths in the United States;

Whereas the presence of a serious congenital heart defect often results in an enormous emotional and financial strain on young families who are already in a vulnerable stage of their lives;

Whereas severe congenital heart disease requires that families dedicate extensive financial resources for assistance and care both within and outside of a hospital environment;

Whereas congenial heart defects exceed more than $2.2 million a year for inpatient surgery alone; and

Whereas February 14, 2006, would be an appropriate day to recognize A Day for Hearts: Congenital Heart Defect Awareness Day: Now, therefore, be it

Resolved, That the House of Representatives supports the goals and ideals of A Day of Hearts: Congenital Heart Defect Awareness Day to—

(1) increase awareness about congenital heart defects;

(2) encourage research with respect to the disease; and

(3) support the millions of Americans who are affected by this disease.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Michigan (Mrs. MILLER) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from Michigan.

GENERAL LEAVE

Mrs. MILLER of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Michigan?

There was no objection.

Mrs. MILLER of Michigan. Mr. Speaker, I yield myself such time as I may consume.

H. Resolution 629, offered by the distinguished gentleman from Georgia (Mr. PRICE), would support the goals and the ideals of a Day of Hearts, Congenital Heart Defect Day.

Today in the United States, heart disease and stroke, the basic components of cardiovascular disease, are the first and third leading causes of death for both men and women, accounting for nearly 40 percent of all deaths. Over 900,000 Americans die of cardiovascular disease each year, Mr. Speaker, which amounts to a death every 34 seconds. Even though this dangerous disease attacks those over the age of 65 most commonly, the number of sudden deaths from heart disease among people between the ages of 15 and 34 has increased dramatically.

Along with the individual effects of this vastly growing disease, there is also a widespread economic impact. The U.S. health care system continues to be hit with the cost of heart disease and stroke in the U.S. Coronary heart disease is the leading cause of permanent disability in the U.S. workforce, and there are over 6 million hospitalizations each year due to this disease. As our population ages, the cost of heart disease and stroke was projected to be $394 billion in 2005, last year, which includes health care expenditures and lost productivity from death and disability.

Mr. Speaker, I would ask all Members to support H. Resolution 629 with the hope that, because cardiovascular disease is preventable, increased awareness and research could enable us as Americans to cut down on the unnecessary deaths due to this disease each year in our country.

Mr. Speaker, I reserve the balance of my time.

□ 1445

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

(Mr. DAVIS of Illinois asked and was given permission to revise and extend his remarks.)

Mr. Speaker, I rise in strong support of the resolution to recognize the goals and ideas of a Day of Hearts, and I commend the gentleman from Georgia for making use of Valentine's Day as a way of highlighting and bringing awareness to one of our major health problems and health issues.

Every year, eight out of every 1,000 children are born with some form of congenital heart defect, or CHD. CHDs are the number one killer of infants in the United States, and while treatment is available for many of these defects, a number of them are not treatable. Sadly, too, many families lack the resources necessary to obtain proper treatment for even the most common and easily treatable defects.

Because CHDs are long-term or often lifelong afflictions, the life of a child who survives a CHD is made more difficult by restricted behavior and the laborious effort needed to carry out the daily tasks of life.

A Day of Hearts is an international effort to raise awareness of this all-too-common problem. CHD lacks the visibility of some of the diseases we all know well, yet the effects are no less tragic. Much progress needs to be made in fighting the disease and in finding and funding facilities that are dedicated to cutting-edge research related to all aspects of CHDs, especially factors that contribute to their occurrence.

In addition, developing countries are far behind the developing world in treating CHDs. Defects that are easily treatable here in the United States can be killers in those countries, and our sense of humanity can no longer tolerate easily preventible deaths from CHDs.

Mr. Speaker, February 14 is a day that many people around the world associate with love and companionship, and the enduring symbol of Valentine's Day is the heart. I can think of no day more appropriately tailored towards raising the public's awareness of CHDs than Valentine's Day. Therefore, I join in support of this important resolution and call upon all of my colleagues to support this effort so that hopefully we will generate the kind of awareness and the kind of resources that are necessary to fight this tragic and debilitating illness.

Mr. Speaker, I yield back the balance of my time.

Mrs. MILLER of Michigan. Mr. Speaker, I yield such time as he may consume to my distinguished colleague from the State of Georgia (Mr. PRICE).

Mr. PRICE of Georgia. Mr. Speaker, I thank the chairwoman for allowing me to speak on this issue. I appreciate her leadership in this. I want to thank my Georgia colleagues and all colleagues on both sides of the aisle who have assisted in supporting this endeavor.

Mr. Speaker, I rise today to wish a happy Valentine's Day to Sarah Anne Voyles. Sarah is a 15-year-old young lady who happens to live in my district. She is a special young lady who just happened to be born with a congenital heart defect who brought this whole issue to my attention.

As a physician, I practiced for nearly 20 years in my community and I understand the medical importance of being able to treat congenital heart defects. But as a Member of Congress the issue becomes all that more important as we work to bring attention to this remarkable challenge.

So I am proud to stand today and present and support H. Res. 629, a resolution that will identify today, Valentine's Day 2006, as a Day of Hearts, Congenital Heart Defect Awareness Day.

What is a congenital heart defect? Well, congenital means it is present at birth, so it is an abnormality that is present at birth. It is a birth defect. It is a birth defect of the heart. It is a birth defect, though, that we don't often hear about.

It occurs during the development of the heart, which begins for a baby shortly after conception. These defects can involve the walls of the heart, or the valves of the heart, or the blood vessels, the arteries and veins that supply the heart itself. They are often able to disrupt the normal flow of blood in the heart, slowing that blood down or having it flow in the wrong direction or wrong place, or it might even block the flow of blood altogether. They also can be conduction defects, defects that make it so the heart doesn't beat in the correct way.

More than 35,000 infants, about one out of every 150 births, are born with heart defects every single year; and these defects can be very minimal in nature and not even be noticed by the family or the child or the physicians, or they can be life-threatening. Heart defects are among the most common birth defects, and they are the leading cause of birth defect-related deaths in the United States.

The good news is that with significantly improving treatment over the past few decades there are now more adults living with congenital heart defects than ever before, having been treated in their infancy for those defects. And this means that there are new medical challenges that we as a society will confront, and confront them we will.

So it is perfectly fitting and appropriate that we pause today and recognize Congenital Heart Defect Awareness Day in order to do three specific things: One is to increase the awareness of congenital heart defects; two is to encourage research with respect to this disease; and, three, to support the millions of Americans who are affected by this disease.

So I join with the others and ask my colleagues to support this resolution and join me in wishing Sarah Anne Voyles, and all Americans living with congenital heart defects, a very happy Valentine's Day and a Day of Hearts for Congenital Heart Defect Day.

Mrs. MILLER of Michigan. Mr. Speaker, I yield such time as he may consume to my distinguished colleague from the State of Nebraska (Mr. FORTENBERRY).

Mr. FORTENBERRY. Mr. Speaker, I thank Dr. Price and my other colleagues who have cosponsored this Day of Hearts resolution, recognizing congenital heart defects and the impact they are having on American society and American families.

As has been mentioned, approximately 35,000 babies are born each year with some variety of a congenital heart defect. Five years ago, my wife Celeste and I had a beautiful baby girl, and we named her Kathryn, and she was one of those 35,000 babies. She was diagnosed shortly after her birth with a complete atrial ventricular septal defect.

It was a normal birth. Afterward, during a regular checkup, our family doctor heard something that almost jumped through his stethoscope. As we later found out, he was holding back his own emotion as he heard this. So that launched us then on a path, a very intense, difficult, 3-month period, until she had her first surgery.

But one of the most encouraging things that happened for us then were other parents who found out we were suffering through this and who took initiative to call us, to extend a hand of friendship. Because when this happens to you, your world spins around 360 degrees. It is very hard to know who to turn to and where to go. So the support network of parents who simply took their own initiative to contact us was very deeply meaningful and helped us through this very difficult time.

Kathryn, as many of your saw this past weekend, is a very vibrant, happy, 5-year-old. She wears a pacemaker, which obviously causes some security difficulties here and there, but, nonetheless, we are grateful to the advances that medicine has given us in the last 30 years to be able to deal successfully with this form of defect.

I am just really thankful that Congress is taking the initiative today to actually propose a Day of Hearts, not only to bring more emphasis to the issue, because it does affect so many families, but to potentially help spur additional research into the potential of finding a cure, or at least helping parents who have to deal with the management of this issue for a lifetime.

Thank you, Dr. Price, for proposing this; thank you to my other colleagues who have cosponsored this; and I urge passage of H.R. 629.

Mrs. MILLER of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think it is especially appropriate that today on Valentine's Day, when we celebrate love and affection from the bottom of our hearts, that this House passes a resolution that seeks to provide protection from our hearts being damaged from disease. I urge all Members to support the adoption of H. Res. 629.

Ms. JACKSON-LEE of Texas. Mr. Speaker, today I rise in support of H. Res. 629, supporting the goals and ideals of a Day of Hearts, Congenital Heart Defect Day in order to increase awareness about congenital heart defects. I think it's fitting that on Valentine's Day, we can discuss a resolution that will help protect our hearts.

Heart disease can affect every aspect of your life: your ability to work, your ability to get adequate insurance, your ability to exercise or play sports, and your ability to have children, not to mention your ability to enjoy your life and live it to the fullest.

Estimates suggest that about 1 million Americans have a congenital heart defect. If time in the hospital and recuperating from heart conditions could be measured in years of life, over 91,000 life years are lost each year in the US due to congenital heart disease. For inpatient surgery alone, charges for care exceed $2.2 billion every year.

Even our most vulnerable and innocent citizens are not exempt from the risk of heart disease: around 35,000 babies are born with a heart defect each year. Out of 1,000 births, 8 babies will have some form of congenital heart disorder, although for the most part, these are mild. Severe heart disease generally becomes apparent during the first couple of months after birth. Doctors know to watch for certain clues, including when babies are born blue, have very low blood pressure, breathing difficulties, feeding problems, or poor weight gain. In addition, most minor defects are diagnosed on a routine medical check up.

We've made significant improvements in the treatment of congenital heart conditions, from preventive treatment, to surgery, to research, to education and outreach. In the 1960s and 1970s the risk of dying following congenital heart surgery was about 30 percent and today it is around 5 percent.

However, recent statistics show that heart disease is still the No. 1 killer of American women, and heart failure is on the rise in the elderly. This bill is relevant and timely, and a noble effort to bring much needed awareness and crucial outreach to men, women and children across the Nation. Knowledge can make all the difference in quality of life, and a Day of Hearts is the perfect way to start the conversation and spread the word.

Mrs. MILLER of Michigan. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. ISSA). The question is on the motion offered by the gentlewoman from Michigan (Mrs. MILLER) that the House suspend the rules and agree to the resolution, H. Res. 629.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

RAYMOND J. SALMON POST OFFICE

Mrs. MILLER of Michigan. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4152) to designate the facility of the United States Postal Service located at 320 High Street in Clinton, Massachusetts, as the ''Raymond J. Salmon Post Office''.

The Clerk read as follows:

H.R. 4152

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

SECTION 1. RAYMOND J. SALMON POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 320 High Street in Clinton, Massachusetts, shall be known and designated as the ''Raymond J. Salmon Post Office''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the ''Raymond J. Salmon Post Office''.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Michigan (Mrs. MILLER) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from Michigan.

GENERAL LEAVE

Mrs. MILLER of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4152.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Michigan?

There was no objection.

Mrs. MILLER of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4152, offered by the distinguished gentleman from Massachusetts (Mr. MCGOVERN), would designate the post office building in Clinton, Massachusetts, as the Raymond J. Salmon Post Office.

On April 16, 1923, Raymond J. Salmon was born in the town of Clinton, Massachusetts. In his younger years, Ray served his country as a Technical Sergeant in the U.S. Army in World War II. In 1950, he began his political career by working for Congressman Phillip Philbin of Clinton, Massachusetts, and served as his Chief of Staff until 1970. While working on Capitol Hill, Ray managed to complete law school and be admitted to the bar in 1952.

After several years as a sole practitioner, Ray was appointed the Clerk Magistrate of Clinton District Court in 1976, and he remained in this position until his retirement in 2000.

His service in this capacity did not go unnoticed by his community. He was loved and revered by the citizens of Clinton, and he remained involved in many other community activities. He was a member of the Knights of Columbus, the American Legion, Turner Veterans, the Polish American Veterans, the Hibernian AOH Master of Ceremonies, President of the National Exchange Club, Exalted Ruler of the Clinton Lodge of Elks and President of the Clinton Democratic Town Committee.

It is an honor and privilege to be able to recognize such an unselfish and giving member of the community by passing H.R. 4152 and recognizing the efforts of such a committed individual.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as a member of the Government Reform Committee, I am pleased to join my colleague in the consideration of H.R. 4152, legislation naming a postal facility in Clinton,

Massachusetts, after Raymond Salmon. This measure, sponsored by Representative JAMES MCGOVERN of Massachusetts, was unanimously reported by our committee on November 16, 2005. H.R. 4152 has the support and cosponsorship of the entire Massachusetts delegation.

Mr. Salmon, a native of Massachusetts, was a graduate of Clinton public schools, Saint Michael's College in Vermont and Suffolk University Law School. He was a congressional staffer who worked for former representative Phillip Philbin from 1950 to 1970. He was a veteran and an attorney seriously and actively involved in many aspects of community life in the neighborhood and community where he lived. He gave a great deal of himself for the benefit of others with consistency and regularity.

I am pleased, Mr. Speaker, to urge the swift passage of this bill.

Mr. MCGOVERN. Mr. Speaker, I want to thank Chairman TOM DAVIS and Ranking Member HENRY WAXMAN of the House Government Reform Committee for their leadership on moving this important resolution through the committee and to the House floor for its consideration today.

I rise today in strong support of H.R. 4152, which would designate the United States Postal Facility at 320 High Street in Clinton, Massachusetts as the Raymond J. Salmon Post Office.

Mr. Speaker, by designating this Federal post office today, we honor a great American. Raymond J. Salmon was born on April 16, 1923 in the small town of Clinton, MA. As a young man, Ray responded to the call of duty during World War II and became a member of the United States Army serving as a Technical Sergeant. Returning home from the war, Ray began work for Congressman Phillip Philbin of Clinton, Massachusetts, in 1950, and he remained in public service as the Congressman's Chief of Staff until 1970.

During his time as a Hill staffer, Ray completed law school, was admitted to the bar in 1952 and was a sole practitioner until 1977. While practicing law, Ray was appointed the Clerk Magistrate of Clinton District Court in 1976 and remained loyal to his position until his retirement in 2000. Ray brought honor and an enthusiasm to his position, and everyone in town knew and admired Ray for his character and love of public service. Actively engaged in the community, Ray was a member of many civic groups, including the Knights of Columbus, American Legion, Polish American Veterans, and the Clinton Elks Lodge.

Mr. Speaker, if you ever have the opportunity to travel to the town of Clinton, you will be hard-pressed to find someone who was not fond of Ray. Clearly, his spirit lives on throughout this small, tight-knit community. By designating this facility as the Raymond J. Salmon Post Office, we honor not only this truly great individual, but the community he served and the people who knew him so well.

Mr. DAVIS of Illinois. Mr. Speaker, I yield back the balance of my time.

Mrs. MILLER of Michigan. Mr. Speaker, I have no further requests for time. I urge Members to support the passage of H.R. 4152, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. BRADLEY of New Hampshire). The question is on the motion offered by the gentlewoman from Michigan (Mrs. MILLER) that the House suspend the rules and pass the bill, H.R. 4152.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

HOLLY A. CHARETTE POST OFFICE

Mrs. MILLER of Michigan. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1989) to designate the facility of the United States Postal Service located at 57 Rolfe Square in Cranston, Rhode Island, shall be known and designated as the ''Holly A. Charette Post Office.''

The Clerk read as follows:

S. 1989

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

SECTION 1. HOLLY A. CHARETTE POST OFFICE.

(a) DESIGNATION.—The facility of the United States Postal Service located at 57 Rolfe Square in Cranston, Rhode Island, shall be known and designated as the ''Holly A. Charette Post Office''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the ''Holly A. Charette Post Office''.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Michigan (Mrs. MILLER) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from Michigan.

□ 1500

GENERAL LEAVE

Mrs. MILLER of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Michigan?

There was no objection.

Mrs. MILLER of Michigan. Mr. Speaker, I yield myself as much time as I might consume. Mr. Speaker, S. 1989, offered by the distinguished gentleman from Rhode Island, Senator REED, would designate the post office building in Cranston, Rhode Island, as the Holly A. Charette Post Office.

United States Marine Corps Lance Corporal Holly Charette, a Cranston resident, was killed on June 23, 2005, while serving our country in Iraq. Charette served as a mail clerk at the Marine Camp Blue Diamond in Ramadi, which is the headquarters battalion of the Second Marine Division.

Holly Charette was recognized by every soldier who had the pleasure of receiving mail from her, as she always greeted them with a smile and with a kind word. She was known for her ability to sort through thousands of letters and parcels, identifying each name with a face, never letting down those who relied on her. In fact, Holly Charette was quoted as saying, I never really thought too hard about being a mail person, but it is really an important job and people depend on me.

There are a lot of stresses involved, but it is really worth it at the end of the day. After her service in the military, Charette had planned to apply at the U.S. Postal Service, where she could continue to serve the citizens of the United States. About her future plans, she stated, It will not be the same as being a marine, but at least I am still in uniform.

I would urge all Members to come together and to honor this dedicated young woman in her efforts to serve our country. I thank Senator REED for his diligence in bringing this important measure forward.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield such time as he may consume to the gentleman from Rhode Island (Mr. LANGEVIN).

(Mr. LANGEVIN asked and was given permission to revise and extend his remarks.)

Mr. LANGEVIN. Mr. Speaker, last June I had the sad duty of coming to the floor to announce the loss of a brave marine in Iraq, Lance Corporal Holly Ann Charette, a citizen of Cranston, Rhode Island.

Today, I am proud to honor her service as we dedicate a post office in her memory. I would like to thank my friend and colleague, Senator JACK REED, for introducing this measure, as well as the Government Reform Committee for bringing it to the floor today.

After the loss of Holly Charette, I was touched by the memories shared by her neighbors, friends, and family. One common theme that emerged was that Holly's smile and personality cheered all those around her. Those who knew her well spoke of her optimistic outlook on life and her ability to make the most of any situation.

She aimed to help others, and that dedication to service encouraged her to join the Marines. In Iraq, Holly held an administrative job, and her duties included serving as the mail distributor for her camp.

She was exceptionally well suited to that assignment, not only because of her outstanding organizational skills, but also because of her aspirations to one day become a postal worker. Despite the procedures and physical challenges of the position, she always maintained her professionalism and sunny disposition.

She recognized the importance of that task and worked so hard so that she could brighten the days of her fellow marines with the messages of their loved ones back home.

However, Holly's service was not without risk. As one of few women at

her post, she also traveled into Fallujah to perform searches of female Iraqis, a task that men were prohibited from doing. It was returning from one such trip that Holly's convoy was attacked by insurgents.

Three men and three women were killed that day, and 13 men and women were wounded. This sacrifice reminds us of the courage of our men and women in uniform who are faced with ongoing dangers in Iraq. It also underscores how important it is that we as Members of Congress do everything in our power to protect those who defend our Nation.

Designating a post office in memory of Lance Corporal Holly Ann Charette is a fitting tribute to a woman who touched the lives of so many. When her friends and family visit the facility at 57 Rolfe Square in Cranston, they will be reminded of her smile, her cheerful personality, and her dedication to helping others.

It will also remind future generations of the sacrifice of one exceptional person who gave so much to her Nation. I ask my colleagues to honor Holly Charette, a truly amazing woman by supporting this legislation today.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

As a member of the Government Reform Committee, I am pleased to join my colleagues in the consideration of S. 1989, legislation naming a postal facility in Cranston, Rhode Island, after Holly A. Charette.

This measure, sponsored by Senator Jack Reed, was introduced on November 10, 2005, and unanimously reported by our committee on February 1, 2006.

A 2001 graduate of Cranston High School East in Cranston, Rhode Island, Holly Charette was a cheerleader, athlete and active student in high school. A year later she enlisted in the United States Marines, where she was assigned to Headquarters Battalion, Second Marine Division, Second Marine Expeditionary Force.

She held an administrative position, keeping records and delivering mail to fellow soldiers. Sadly, she was killed on June 23, 2005, when her convoy was ambushed by a suicide bomber as it departed from Fallujah.

Lance Corporal Holly Charette, who was awarded the Purple Heart posthumously, will be remembered as a fine marine and soldier, someone who dearly wanted a career in the U.S. Postal Service when she completed her tour of duty.

A soldier in Operation Iraqi Freedom, she enjoyed delivering mail to her fellow soldiers and fighting for her country.

I commend my colleague, Senator REED, for seeking to honor her sacrifice by naming a post office in her hometown.

Mr. Speaker, I think it is so important in reality that we take note of this very young person who had a serious sense of duty and sense of commitment, even to the extent of saying that when I leave I want to continue to serve my country in one way. And one way that I can do that is to make sure that the communication continues, that the letters and parcels and packages that people use to communicate with each other are in fact delivered?

I do not think one can give any more than giving their life in service to others and in service to humanity. I am very pleased to urge swift passage of S. 1989 and commend both gentlemen from Rhode Island for their introduction of it.

Mr. DAVIS of Illinois. Mr. Speaker, I yield back the balance of my time.

Mrs. MILLER of Michigan. Mr. Speaker, I would urge all Members to support the passage of S. 1989, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Michigan (Mrs. MILLER) that the House suspend the rules and pass the Senate bill, S. 1989.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mrs. MILLER of Michigan. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

SCIENCE AND ENGINEERING INDICATORS, 2006—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Science:

To the Congress of the United States:

Consistent with 42 U.S.C. 1863(j)(1), I transmit herewith a report prepared for the Congress and the Administration by the National Science Board entitled, ''Science and Engineering Indicators—2006.'' This report represents the seventeenth in the series examining key aspects of the status of science and engineering in the United States.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 14, 2006*.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 6:30 p.m. today.

Accordingly (at 3 o'clock and 10 minutes p.m.), the House stood in recess until approximately 6:30 p.m.

□ 1830

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. PRICE of Georgia) at 6 o'clock and 30 minutes p.m.

MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 4297. An act to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 4297) ''An Act to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006,'' requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. GRASSLEY, Mr. KYL, and Mr. BAUCUS, to be the conferees on the part of the Senate.

The message also announced that pursuant to Public Law 109–59, the Chair, on behalf of the Majority Leader, appoints the following individuals to serve as members of the National Surface Transportation Policy and Revenue Study Commission:

Paul Weyrich of Virginia.

Patrick E. Quinn of Tennessee.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

Votes will be taken in the following order:

H. Con. Res. 322, by the yeas and nays;

S. 1989, by the yeas and nays.

SENSE OF CONGRESS REGARDING THE CONTRIBUTION OF THE USO TO OUR ARMED FORCES

The SPEAKER pro tempore. The pending business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 322, as amended.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. MILLER) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 322, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 407, nays 0, not voting 25, as follows:

[Roll No. 8]

YEAS—407

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chocola
Clay
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schmidt
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
Strickland
Stupak
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wynn
Young (AK)
Young (FL)

NOT VOTING—25

Bishop (UT)
Brown, Corrine
Campbell (CA)
Chandler
Davis (FL)
Ford
Fossella
Gibbons
Gutierrez
Hinchey
Hunter
Kilpatrick (MI)
Kuhl (NY)
LaHood
Leach
Lee
Lipinski
Miller, Gary
Moran (VA)
Owens
Sullivan
Wamp
Wasserman Schultz
Woolsey
Wu

□ 1854

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the concurrent resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

The title of the concurrent resolution was amended so as to read: ''Concurrent resolution expressing the appreciation of the Congress for the contributions of the United Service Organizations, Incorporated (the USO), to the morale and welfare of the members of the Armed Forces and their families.''.

A motion to reconsider was laid on the table.

Stated for:

Mr. FOSSELLA. Mr. Speaker, on rollcall No. 8, I was unavoidably detained. Had I been present, I would have voted "yea."

Mr. KUHL of New York. Mr. Speaker, on rollcall No. 8, I was unavoidably detained. Had I been present, I would have voted "yea."

HOLLY A. CHARETTE POST OFFICE

The SPEAKER pro tempore (Mr. PRICE of Georgia). The pending business is the question of suspending the rules and passing the Senate bill, S. 1989.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Michigan (Mrs. MILLER) that the House suspend the rules and pass the Senate bill, S. 1989, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 408, nays 0, not voting 24, as follows:

[Roll No. 9]

YEAS—408

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chocola
Clay
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
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Hinojosa
Hobson
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Hostettler
Hoyer
Hulshof
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Millender-McDonald
Miller (FL)

Miller (MI)
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schmidt
Schwartz (PA)
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Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
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Taylor (MS)
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Thompson (CA)
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Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Waters
Watson
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Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—24

Bishop (UT)
Bonilla
Brown, Corrine
Campbell (CA)
Chandler
Davis (FL)
Edwards
Ford
Gibbons
Gutierrez
Hinchey
Hunter
Kilpatrick (MI)
LaHood
Lee
Lipinski
Miller, Gary
Moran (VA)
Owens
Sabo
Sullivan
Wamp
Wasserman Schultz
Woolsey

□ 1910

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the Senate bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. GUTIERREZ. Mr. Speaker, I was unavoidably absent from this chamber today. I would like the RECORD to show that, had I been present, I would have voted "yea" on rollcall votes 8 and 9.

PERSONAL EXPLANATION

Ms. KILPATRICK of Michigan. Mr. Speaker, personal reasons require my absence from legislative business scheduled for today, Tuesday, February 14, 2006. Had I been present, I would have voted "yea" on H. Con. Res. 322, a resolution expressing the sense of Congress regarding the contribution of the USO to our service men and women of our armed forces (rollcall No. 8) and "yea" on S. 1989, the Holly A. Charette Post Office Building Designation Act (rollcall No. 9).

URGING SENATE ACTION ON IMMIGRATION

(Ms. GINNY BROWN-WAITE of Florida asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, this country is in dire need of immigration reform and tighter border security. Officials at all levels of government and across party lines have felt this need. However, instead of acting, we are sitting back and debating the details of amnesty or no amnesty, guest worker or no guest worker, et cetera.

I call on my colleagues in both the House and the Senate to move political positioning and think about the men and women that they represent. There will undoubtedly be areas of disagreement, yet this must not stop us from moving forward to secure our borders this year.

Our constituents deserve to know that they are safe and that they can live out their lives without the threat of terror at their doorstep, and they deserve nothing less.

MEDICARE PART D AND COMMUNITY PHARMACISTS

(Ms. HERSETH asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. HERSETH. Mr. Speaker, I rise to discuss the crisis facing our community pharmacists, particularly those in rural communities. Of all the health care professionals struggling with the implementation of the new Medicare drug benefit, pharmacists appear to be the most negatively affected.

Guess what? Pharmacists are facing another blow. The recently enacted cuts to the Medicaid program are achieved by changes in the way we reimburse pharmacies for prescription drugs.

The choices made during the budget reconciliation process once again targeted our Nation's pharmacists without asking for corresponding sacrifices from the pharmaceutical manufacturers and the PBMs.

This one-two punch is not only bad policy, it is outrageous. Health and Human Services Secretary Mike Leavitt praised pharmacists last week for their ''heroic'' efforts in shouldering the burden for implementing Medicare Part D.

Their reward? Drastic pharmacy reimbursement cuts in the Medicaid program that will have a devastating impact on our communities, disproportionately impacting the poorest and sickest Americans that will no doubt put hundreds, if not thousands, of small businesses out of business.

It is time this body quit taking the path of least resistance and base our health policy decisions on what is good for our constituents, communities and small businesses, not the powerful drug and insurance companies. I respectfully and urgently ask my colleagues to address this important issue.

PRESIDENT'S BUDGET

(Mr. OSBORNE asked and was given permission to address the House for 1 minute.)

Mr. OSBORNE. Mr. Speaker, last year, the President's budget zeroed out the Byrne Justice Assistance Grant program, and this was devastating to the drug task forces around the country. Byrne funds are the primary source of funds for drug task forces and are critical in combating methamphetamine abuse.

Congress restored $410 million of Byrne funds, but this is way short of the $1.1 billion of authorized spending that was allowed. The State of Texas was forced to eliminate drug task forces, and other States are now considering doing so.

The President's 2007 budget proposal again eliminates Byrne funds. Unless Congress restores these funds at an adequate level, we will lose the drug task forces in nearly all of our States. This is our most effective means of combating methamphetamine abuse. For every $1 that we spend on education and prevention, we get $9 at the back end and save costs on imprisonment, crime and all the things that are attendant to methamphetamine abuse.

Meth is sweeping across the country, and we certainly urge the Congress to restore these funds as rapidly as we can.

□ 1915

RESPECT RELIGIONS

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, as co-chair of the Pakistan Caucus, it saddens me to see the loss of life that has occurred and the violence that is raging throughout the Muslim world and as well in Pakistan.

It would seem appropriate that the Danish Government and the Prime Minister would spend less time pointing a finger at fundamentalist Islamic activities and groups and really speak to the hundreds of millions of Muslims around the world who are peace-loving and believing in humankind and, of course, the world humanity.

It is appropriate to admit mistakes; it is appropriate to announce the fact that I am appealing to the Muslims who believe in peace and harmony in the words of the Koran. It would be appropriate to say that we made a mistake in degrading the religion, that we do have a respect for diversity and religion.

It would not be to undermine the fact of the first amendment, to be able to

acknowledge that a mistake has been made. It would be the same way of acknowledging if the degradation of other religions were to occur and many voices would rise. Why not admit that the cartoons were degrading of a religion. It did not show the appreciation of religion and, in fact, we can all do better.

We have a respect for each other's differences, and we join together in harmony and world peace. I would ask the Danish Government to stop hiding behind the first amendment or at least the premise of free speech and deal with the question of religious diversity and appreciation.

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. CONAWAY). Under the Speaker's announced policy of January 4, 2005, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

GUNS IN THE WORKPLACE

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New York (Mrs. MCCARTHY) is recognized for 5 minutes.

Mrs. MCCARTHY. Mr. Speaker, in the last year the gun lobby has continued to defy common sense by pursuing a radical agenda in Congress and in State legislatures. Last year Congress passed legislation to give the gun industry unprecedented immunity from litigation and other legal action.

Thanks to this new law, dishonest and corrupt gun dealers will be held accountable for their negligence. Almost 2 years ago, Congress let the ban on assault weapons expire, and this year's budget cuts bullet-proof vest grants for police departments. Congress is allowing criminals to better arm themselves, and now the budget is taking away protection from our police officers.

But sadly, the gun lobby isn't done defying common sense with legislation. The NRA is currently lobbying for States to prohibit employers from banning guns on their private property. It does not matter if someone works in a school, day care center, bar, or even a facility that produces hazardous materials. The NRA wants to let them come to work with a loaded gun in their car.

In fact, the NRA is suing companies who ban guns in the workplace. Let us set the record straight here. I have no problem for a legal citizen to be able to purchase a gun. But allowing loaded guns in day care centers, parking lots, that does not make sense. Right outside of chemical plants, again, makes no sense. This is a recipe for disaster.

The NRA and its allies say that workers bringing guns to work and leaving them in their parked cars makes for a safer workplace, but they never explain how. Last month, an ex-employee of a post office in California opened fire at a mail processing plant, unfortunately killing six people.

Having loaded guns in cars outside the facility has not saved one life. In fact, I cannot think of a single workplace shooting that could have been prevented by loaded guns being kept in company parking lots. But I can think of numerous scenarios that would make a shooting more likely with guns on the premises.

What happens when a criminal learns that parked cars, often left unattended, contain loaded weapons? What is stopping them from breaking into cars and using those guns for crimes? Criminals break into parked cars to steal stereo speakers. They would not hesitate to take a loaded gun. What if an employee brings his or her gun into their place of work. A gun could be misfired or end up in the hands of someone else.

Worse yet, somebody who isn't legally allowed to own a firearm could gain access to a co-worker's gun. Studies show that guns are already the third greatest workplace safety hazard, behind vehicles and heavy machinery.

In fact, 17 people are killed by guns on the job each week. A study done by the University of North Carolina revealed that killings are five times more likely to occur at job sites where guns are allowed in workplaces than where they are prohibited. The NRA has targeted State legislatures for this ridiculous campaign.

The Florida legislature is considering making it a felony for employers to ban workers from having guns on the company property. Similar laws have passed in Alaska, Minnesota, and Oklahoma. I fear it is only a matter of time before they bring their cause before Congress.

Fortunately, the business community has rallied against the NRA on this matter, and for good reason. Businesses know that if they fire someone, who is to say that person is not going to go out into the car and get their gun and come in and try to do the mayhem against an employer. Are they going to have a safe room for someone that has been fired to go there? The liability costs are going to also be involved in private companies.

Also, layoffs and firings are a tough reality in today's economy. How will companies handle giving employees bad news when they may have loaded guns in their cars? Seems to me the latest initiative of the NRA creates a lot more problems than it solves.

Mr. Speaker, instead of being a rubber stamp for the NRA in 2006, let us focus on laws that keep guns out of the hands of criminals and terrorists. It is time for common sense, not misguided extremism.

SIMPLIFIED USA TAX, SUSAT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. ENGLISH) is recognized for 5 minutes.

Mr. ENGLISH of Pennsylvania. Mr. Speaker, tonight I would like to talk about our current Tax Code and its discontent, a tax system that has stifled economic growth, has encumbered our resources and miles of red tape and needlessly burdened working Americans.

Our Tax Code is too complicated and is riddled with obvious inequities. It punishes savings and investment, reducing economic and job growth; and it burdens domestic industry struggling to remain competitive.

As a member of the Ways and Means Committee, I have long advocated a tabula rasa approach to the Tax Code, a complete overhaul grounded in first principles. Our objective must be to replace the current antiquated tax system with one that can sustain a free capitalist society in the 21st century. That means a Tax Code that is simple, fair, and stable.

The new Tax Code I have developed, the Simplified USA Tax Act, or SUSAT, puts the right incentives in place to grow our economy and ultimately raise our standard of living. In fact, many of the provisions included in my bill were recommended by the President's advisory panel on Federal tax reform as part of their growth and investment plan.

My proposal has three key components. First, it simplifies the code by a factor of about 75 percent. Second, it takes the taxes off of savings to promote thrift and avert a national savings crisis. Third, it makes America significantly more competitive, thereby creating better jobs within our borders.

The Simplified USA Tax starts out with just three simple low rates: 15 percent at the bottom, 25 percent in the middle, and 30 percent at top. Through a payroll tax credit to all wage earners, SUSAT effectively lowers the income tax rates to about 7 percent to 17 percent for nearly all Americans.

Under my proposal, and this is one significant departure from the President's panel recommendation, everyone gets a deduction for the mortgage interest on their home. In addition, the SUSAT tax allows charitable donations and tuition deductions. To further ensure that the new Tax Code would be progressive, my proposal also permits all families to take a generous family credit and qualifying families to take an additional refundable work credit. These two credits simplify and improve the current child credit and earned income tax credit.

I believe the Tax Code must also give Americans a fair opportunity to save part of their earnings. By taking the taxes off of savings, we will increase the savings rate and ultimately reduce the cost of capital.

My proposal encourages savings by allowing everyone to contribute to an unlimited Roth IRA. It also repeals the individual and corporate alternative minimum tax, Federal death and gift taxes. Mr. Speaker, as you can see, the individual tax system, under my proposal, is designed to be much simpler than the status quo.

The tax return will be short: only a page or two for most people. But more importantly, the tax return will be understandable. My proposal also contains a new and better way of taxing corporations and other businesses that will allow them to compete and win in global markets in a way that exports American-made products, not American jobs.

All businesses would be taxed alike at an 8 percent rate on the first $150,000 of profit, and at 12 percent on all amounts above that small business level. All businesses will be allowed a credit toward the 7.65 percent payroll tax that they pay under current law.

One of the most pro-growth elements in SUSAT is that all costs for plant and equipment and inventory in the United States will be expensed in the year of purchase. This is important because investment and state-of-the-art equipment is critical to manufacturing in a global economy.

The other key component of SUSAT that will make American business more competitive is that it is border adjustable. In other words, SUSAT would end the perverse practice unique among our trading partners of taxing our own exports. All export sales income is exempt and all profits earned abroad can be brought back home for reinvestment in America without penalty.

Because of a 12 percent import adjustment, all companies that produce abroad and sell back into U.S. markets will be required to bear the same tax as companies that both produce and sell in the United States. This policy would finally take away the bias in favor of imports built into our current tax structure, which, in my view, contributes to our record trade deficit that continues to rise to record-breaking levels.

For too long, the Tax Code has been a needless drag on the economy. This is a curious paradox, and certainly not fair to those Americans whose living standards are lower because of it. The time has come for fundamental change.

In the coming weeks, I will outline more details about this tax system and why we need to move forward today with tax reform.

□ 1930

THE PEOPLE'S HOUSE FOR SALE

The SPEAKER pro tempore (Mr. CONAWAY). Under a previous order of the House, the gentleman from Illinois (Mr. EMANUEL) is recognized for 5 minutes.

Mr. EMANUEL. Mr. Speaker, the real estate bubble may be bursting in some markets around America, but here in Washington, D.C., real estate is still a great investment.

You may have missed the listing, but it appears that the U.S. Capitol, the People's House, was bought with a down payment of a mere $1.6 billion, $1.16 billion from lobbyists here in town. Or at least that is what the special interests spent on lobbying the Republican Congress in the first 6 months of 2005.

And what exactly does about $1 billion from lobbyists get you these days in a home like the People's House?

If you are an oil and gas company, you have done $87 million in lobbying expenses. What does it buy you? $14.5 billion in subsidies from taxpayers. $14.5 billion from taxpayers in subsidies so you can just do your business plan. They spent $87 million and got a $14.5 billion gift from the taxpayers.

$87 million will also allow to you pump about $65 billion worth of oil and gas from the Gulf of Mexico, and you do not pay a single royalty, costing the taxpayers $7 billion. That is $7 billion that could pay for child support collections, $7 billion that could pay for college education, $7 billion that can create new broadband expansion, everything that we would be doing. $7 billion could pay down the deficit.

No, taxpayers have been asked to forgo all the royalty that is owed to them, and the oil and gas companies walked away with it, $14.5 billion in taxpayers subsidies. All the while, while energy is about little north of 60 bucks a barrel. That is right, 60 bucks a barrel. We are subsidizing big oil and big energy companies who also have made record profits.

Now, I think that is great. I think Exxon Mobil should make all the money they want to make. But why are subsidizing them when they are making record profits to do nothing but their business plan? I don't know of another family that has their family budget subsidized by the rest of the taxpayers to this level. $87 million investment and contributions got them $14.5 billion in taxpayer subsidies and basically a pass on $7 billion they owe the taxpayers for having drilled in the Gulf of Mexico.

But that is not just alone in the energy sector. Let us talk a look at the health care sector. They have given about $173 million in contributions, lobbying activities, all types of expenses. Drug manufacturers saw an extra $139 billion in profits over the next 8 years from the prescription drug bill. HMOs, $130 billion in additional profits through Medicare overpayments. There is actually a section in the prescription drug bill called the HMO slush fund for $10 billion. Where else can you get an investment like that? You cannot get an investment that gives you 100 percent return on your money on Wall Street.

My grandmother used to say, with a deal like this, where you basically give $173 million and you get $132 billion profit, such a deal is what my grandmother used to say. Nowhere except in Washington, D.C., in a Republican Congress can you give $87 million and get $14 billion in return. Give $173 million and get $132 billion in return. That is close to a hundred percent return on your money.

So what do the American people get out of this blue-light special and how do we get out of this? We have created a structural deficit to the system and a system that works against the American people and the taxpayers, whether you are a senior citizen who is struggling with this prescription drug bill which is total chaos but has guaranteed and locked in profits for HMOs and pharmaceutical companies, or whether you are a consumer going to pump paying close to three bucks a gallon, and yet we are also paying on April 15 subsidizing the big companies. Yes, there are 30 different insurance forms for a senior citizen to try to figure out which drug they can get matched with.

Now do you think the oil and gas companies fill out 30 different forms for oil and gas leasing or for their $14.5 billion in taxpayer subsidies? No, they do not. Now there are over 100 questions for a kid who is just trying to apply for a student loan for about $2,000, yet we do not force oil and gas companies, pharmaceutical companies, HMO companies to fill out forms like that when it comes to the subsidies we are providing these companies.

It is time to end corporate welfare as we know it. The People's House and the Speaker's gavel when it comes down it is intended to open up the People's House, not the auction house. In the last 5 years, this place has looked like an auction house, whether it is oil and gas companies, whether it is HMO companies, whether it is pharmaceutical companies. In fact, last year, we had a corporate tax bill on the floor. It was supposed to solve a $5 billion problem. By the time the Republican Congress was done with it, $150 billion it cost the taxpayers. Time and again, we are paying for the types of wheeling and dealing and what goes as business as usual.

If you go out to the north side of the lawn here at the People's House you will see the for sale sign, and the lobbyists have paid a little over a billion dollars and gotten everything money can buy. So it is time in this election that we turn the People's House back and that gavel back to its rightful owner, the American people.

PROTECTING FIRST AMENDMENT RIGHTS OF MILITARY CHAPLAINS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. JONES) is recognized for 5 minutes.

Mr. JONES of North Carolina. Mr. Speaker, prior to the break I came on the floor and announced that we had sent a letter in October of this past year to the President of the United States signed by 76 Members of the House, 3 United States Senators asking the President of the United States to use his constitutional authority as Commander-in-Chief to guarantee the first amendment rights of our chaplains in the military, whether they be Muslim, Jewish or Christian, to pray in their faith and their tradition.

Tonight, I am on the floor to give an example of what is happening in our military. I can tell you, Mr. Speaker, in the 3 years that I have talked to chaplains from the Navy, from the Marine Corps, from the Army, Air Force, that there is a prohibited rule that they should not pray in the name of Jesus, if they happen to be of the Christian faith, outside of their church.

Give you two examples. Last year, I spoke to a Navy chaplain in Hawaii who had been asked to pray at a remembrance service for Marines killed in Afghanistan and Iraq. At the close of his prayer, he closed in the name of our Lord and Savior, Jesus Christ. About an hour later, he got a phone call from a Marine Major that asked him to please, in the future, outside of his church not to pray in the name of Jesus Christ.

He was so upset, Mr. Speaker, that he went to a Jewish rabbi who was a friend of his, and he asked the Jewish rabbi, are you offended when I pray in the name of my Lord and Savior, Jesus Christ? The Jewish rabbi said, absolutely not. This is your faith and your tradition, and you should pray as you see fit.

Mr. Speaker, 3 weeks ago, I spoke to a chaplain in Iraq. His name is Jonathan Stertzbach. He happens to be an independent Baptist. He is a chaplain, and he was asked by a commander of a unit to pray over the grave of a shoulder who professed to be a Christian who had been killed in battle. It so happens in the Army that this chaplain had to submit his prayer in writing to the senior chaplain. The senior chaplain, Mr. Speaker, struck through the words Jesus Christ. The young chaplain whose name is Jonathan Stertzbach, I talked to him by telephone, said, Congressman, I could not pray if I could not pray as I thought my Lord wanted me to pray. It so happens that the company commander, before he removed himself, asked him if he was going to be at the service and if he was going to pray. And he said, sir, I have asked to be removed because my prayer has been struck down. The Major told him, you go to the funeral. You are going to pray as you see fit.

Since that time, it so happens that a newspaper in America called Chaplain Stertzbach and he did comment about what happened, and so now he has been removed from his chapel in Iraq.

I have written to the Inspector General, General Stanley Green. I have asked him to look into this matter.

Mr. Speaker, I would be on the floor of the House tonight if this was a Jewish rabbi, if it was a Muslim cleric, and protect their rights to pray as they see fit. That is what America is all about, is the first amendment rights to pray, to speak as we see fit.

I hope that my colleagues in the House will join the 76 of us who have signed this letter and say to the President of the United States, protect the first amendment rights.

We are not talking about having altar calls. We are just talking about in certain ceremonies and services that they pray as they think their faith and tradition asks them to pray.

Mr. Speaker, I will ask, as I close, God to please bless our men and women in uniform and ask God to please bless the families of our men and women in uniform and ask God to please bless America.

DARFUR RESOLUTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

Mr. PALLONE. Mr. Speaker, this evening I introduced a bipartisan resolution expressing the disapproval of the Arab League's decision to hold its 2006 summit in Khartoum, Sudan. The resolution also calls on the Arab League, the government of Sudan, the Sudanese rebels and the world community to do all they can to end acts of genocide in the Darfur region of Sudan.

Recently, the Arab League announced its decision to hold its annual summit in Khartoum. Doing so will only lend credibility to a country that is currently under sanction by the United States. The Sudanese government continues to allow acts of genocide to occur in the Darfur region and deliberately obstructs the African Union's ability to stabilize the region.

Mr. Speaker, the current situation in the Darfur region of Sudan is dire. The U.N. estimates that as many as 180,000 have died, many of starvation and disease, and up to 2 million have been displaced.

The Darfur conflict is an ongoing conflict in the Darfur region of western Sudan, mainly between the Janjaweed, a government-supported militia recruited from local Arab tribes, and the non-Arab rebels in the region. The Janjaweed has been implicated in a campaign of murder, rape and intimidation sponsored by the government of Sudan.

Mr. Speaker, I do not need to remind this House of the horrors that we have turned a blind eye to in the past. The U.S. still will not recognize the Ottoman Empire's genocide of over a million Armenians from 1914 to 1921.

It took us far too long to join the fight against the systematic state-sponsored persecution and genocide of the Jews of Europe during World War II by Nazi Germany. And of course our shameful disregard for the 937,000 Tutsis and moderate Hutus that died at the hands of organized bands of militias during the Rwandan genocide.

As the leader of the free world, we have a moral obligation to do all we can to stop genocide in all its forms. It was in 1998 when President Clinton said, and I quote, never again must we be shy in the face of evidence describing the failed U.S. response to the Rwandan genocide. Well, here we are, 8 years later, standing on the sidelines once again in the face of undisputable evidence.

So in light of the current situation, why would the Arab League decide to have their annual summit in Sudan? I understand that the site of the Arab League summit is determined by an alphabetical order rotation. However, genocide calls for more than business as usual, and that is the attitude that the Arab League is now using.

If there is one organization that has influence over the Sudanese government it is the Arab League. Member countries have a responsibility to rein in the Sudanese government and to do everything in their power to stop this genocide now.

I believe the Arab League's decision to hold this 2006 summit in Khartoum constitutes an economic and symbolic reward and could even encourage the government of Sudan to continue to allow acts of genocide and other mistreatment against the people of Darfur.

Mr. Speaker, the Arab League has a choice to make. Ignore a genocide and go forward with their planned summit or break the alphabetical tradition and send a message to Khartoum to do all it can to end the acts of genocide, to allow international peacekeepers to protect the innocent and to hold the Arab militia responsible for these acts accountable. This is an opportunity for the Arab League to lead. It is time for them to send the right message to the Sudanese government.

I would urge my colleagues to join my resolution. It is bipartisan, expressing disapproval of the Arab League's decision to hold its 2006 summit in Khartoum. It is time to send a strong message that the Sudanese government should be reprimanded, not rewarded for their support of genocide.

DORIS MILLER—TEXAS SAILOR

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

Mr. POE. Mr. Speaker, I have talked much on this House floor about our veterans, both those of today and those of the past. Tonight I mention another one of them.

Doris Miller was born in Waco, Texas, on October 12, 1919. He was the youngest of three sons born to Henrietta and Connery Miller. He was a good kid. He enjoyed playing with his brothers and was always helping around the house, especially in the kitchen. In school, Miller was a good student. He was also a fullback on the football team at A.J. Moore High School in Waco, Texas. They called him the raging bull because of his size. He was 5 foot 9, but he weighed over 200 pounds.

Growing up, Miller worked on his father's farm until he enlisted in the United States Navy at the age of 20 as a Mess Attendant, Third Class. He quickly advanced to Mess Attendant, Second Class and First Class, and subsequently he was promoted to Ship's Cook.

After training at the Naval station at Norfolk, Virginia, he was assigned to the ammunition ship USS *Pyro*; and on January 2, 1940, Dorie, as his shipmates nicknamed him, was transferred to the battleship USS *West Virginia*. When he was not cooking he was boxing with his buddies, and he became the ship's heavyweight boxing champion. He was serving on the battleship *West Virginia* that December morning in 1941 when the Japanese surprise attack took place.

As the bright rising and violent sun came up on the morning of December 7, 1941, Dorie was already awake and collecting laundry when the battle stations alarm sounded throughout the ship. Pearl Harbor and Hawaii were under attack.

He ran on deck to help his fellow wounded soldiers. In the midst of the chaos, an officer ordered him to aid the critically wounded captain of the ship. While struggling back to the bridge and then amid horrendous and heavy fire and bombs, Dorie came upon a machine gun whose gunner had already been killed. Dorie, rescuing his captain, made sure that he was protected and immediately began firing this machine gun at Japanese airplanes.

□ 1945

He continued firing until the crew was ordered to abandon the ship. Miller had never been trained to operate a machine gun, but he was credited with shooting down at least two Japanese planes, probably more than that. Later he said, ''I just pulled the trigger and she worked fine.''

In the spring of 1943, Dorie Miller was assigned to the USS *Liscome Bay*, an aircraft carrier in the Pacific, and he was on board November 24, 1943, when the aircraft carrier was sunk by a submarine; 646 sailors were lost at sea, and Dorie was one of them.

Before he died, Miller was honored for his brave acts at Pearl Harbor on December 7. He was awarded the second highest medal in the Navy, the Navy Cross, for his extraordinary courage during that battle. It happened that Admiral Chester Nimitz, another Texan, presented the award to Miller personally. And he said of Miller, ''This marks the first time in this conflict in this war that such high tribute has been made in the Pacific fleet to a member of this race, and I am sure that the future will see others of this race similarly honored for these brave acts.''

Admiral Nimitz mentioned Miller's race because he was black. The Navy had been integrated, but segregated responsibilities. So Miller, since he was black, he was assigned to being a cook on the ship. He was not required to be topside manning that .50-caliber machine gun on December 7, but he was there. He voluntarily helped protect his ship and protect his captain. By the way, Mr. Speaker, in the movie ''Pearl Harbor,'' Cuba Gooding, Jr., portrayed Doris Miller in his actions on December 7.

Mr. Speaker, every February our Nation celebrates Black History Month to recognize the contribution that African Americans have made to our country. This Black History Month, as we note accomplishments of African Americans, we take time to salute their military accomplishments as well. We honor the loyal duty of heroes like Doris Miller. He was an extraordinary American and a sailor. He received many awards for his bravery during the attack on Pearl Harbor, and he acted above and beyond the call of duty. He could have certainly qualified for the medal of honor for his courage. He was a man of valor, and Doris Miller is entitled to respect and gratitude of our country.

There were many of the World War II Greatest Generation that gave their youth and their lives for our Nation. Mr. Speaker, over 400,000 Americans, young men and young women, died in World War II protecting our Nation and the concept of freedom. Dorie Miller was one of those Americans. And that's just the way it is.

The SPEAKER pro tempore (Mr. CONAWAY). Under a previous order of the House, the gentleman from American Samoa (Mr. FALEOMAVAEGA) is recognized for 5 minutes.

(Mr. FALEOMAVAEGA addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

THE POLICY OF ROYALTY RELIEF

Mr. GEORGE MILLER of California. Mr. Speaker, I ask unanimous consent to claim the time of the gentleman from American Samoa (Mr. FALEOMAVAEGA).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. GEORGE MILLER) is recognized for 5 minutes.

Mr. GEORGE MILLER of California. Mr. Speaker, today Americans woke up to the unfortunate news that because of the actions of this Congress, the major oil companies that are drilling in the Gulf of Mexico are in all likelihood not going to be paying any royalty on billions of dollars, some $65 billion worth of oil, that they will be extracting from the Outer Continental Shelf of this country and on which they would be expected to pay some $7 billion in royalties; and, in fact, they may not be paying that. It may go even further that some of the majors have suggested that they are not required to pay any royalties on oil extracted from the Outer Continental Shelf. In that case, the cost to the taxpayers would be maybe $35 billion, $35 billion in lost revenue to this country at a time when we are running record deficits, at a time when we are telling people we cannot afford to help them with their home heating oil, at a time we are making basic cuts to basic education; and it goes on and on and on and on.

The fact of the matter is the policy of royalty relief that the Congress passed was an unwise policy when we passed it. But the oil companies convinced this Congress to do so, and they have convinced the administration to allow it to continue. Although the Bush administration opposed the further extension in expansion of the oil royalty relief program that was in their most recent energy bill that was just signed by President Bush, unfortunately, his opposition did not go to such an extent that he insisted that it be taken out of the bill.

So what do we have? We have the major oil companies securing leases on land that is owned by the public, land that is owned by the taxpayers of this Nation, to go in and to drill those lands. And in exchange for that, they said that they would not go in there and drill unless we gave them royalty relief, unless we took away the royalties that they were entitled to pay to the landowners, the taxpayers of this country, for the privilege and the right to drill those reserves.

These are some of the most important reserves in this country. They are some of the more important reserves in the world. There is a huge amount of competition for drilling for this. At the time, it was suggested that nobody would bid on these leases, that nobody would participate, that nobody would raise the capital to do so if they did not have royalty relief. The fact of the matter is I think the record will show that at the same time they were arguing that, they were already in the construction of the rigs that were necessary for deepwater drilling and that the decisions had already been made. Some companies decided they would bet on the gulf. Other companies decided they would go to the Caspian Sea. But the fact of the matter is the competition was hot and heavy.

For this Congress to have then just given away those royalties is a horrible mistake, and it is a mistake that the Congress must correct. Nobody, even the proponents of royalty relief, believed that there was going to be a complete escape from the royalties owed to the taxpayers for the development of this oil. They believed, as the administration has said, that at a minimum they were not going to get oil royalties relief, they were not going to get relief from the payment of the rent to the taxpayers if oil was over $34 a barrel. Well, as we all know, the world price of oil today is hovering around $60 a barrel. It has been as high as $70, and it has been in the mid-50s, back and forth.

The fact of the matter is these very same oil companies that are seeking a royalty holiday, freedom from the payment of these royalties, have just reported the biggest profits in the history of these companies, in the history of the world in the oil industry. And at the same time, they are suggesting that they have no obligation to pay the taxpayers of this country what is due

them for the privilege of drilling on the Outer Continental Shelf.

Today, some of us introduced legislation to prevent any future royalty holidays for the oil companies, to seek and direct the Minerals Management Service to renegotiate these leases so that it does include the provisions of a minimum of a trigger but hopefully even a better royalty policy than that, and if those companies do not want to cooperate with that renegotiation, then they should be barred from future bids on the Outer Continental Shelf.

Now, to their credit, some of the major oil companies are suggesting that, in fact, they do owe the royalties, that there is a trigger mechanism. But Kerr-McGee and apparently some other companies have decided that they are going to challenge the whole law. They believe they are not obligated to pay any of these royalties, there is no trigger in this law. If that is the case, the taxpayer is just going to be hung out to dry by the major oil companies, and the major oil companies are going to abscond with the natural resources that belong to the people of this country.

It is wrong and Congress ought to correct it.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. DREIER) is recognized for 5 minutes.

(Mr. DREIER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

WITNESS TO AFGHANISTAN'S PROGRESS

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent to take my Special Order at this time.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Florida?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Florida (Ms. ROS-LEHTINEN) is recognized for 5 minutes.

Ms. ROS-LEHTINEN. Mr. Speaker, while leading a congressional delegation to Afghanistan, I was struck by the progress that the Afghan Government is making toward establishing a democracy, as well as with the enthusiasm and the determination of the Afghan people to finally and deservedly live in a free society.

The purpose of this trip, which also included stops in Iraq and Kuwait, was for Members of Congress to see firsthand the efforts being made toward U.S. goals of bringing stability and democracy to these nations.

In Afghanistan, where the prospects for reform once looked bleak, a transformation has occurred which has resurrected freedom, established legitimate leadership, and reinvigorated the population.

It is difficult to imagine that a mere 5 years ago the Taliban government was thriving in this nation, exporting terrorism and promoting archaic extremism. Today media, cultural, business, and political leaders are free to meet, to discuss, to demonstrate and guide policies which are reforming their nation's economy, opening the political process, and liberating society from the fundamentalist laws which enslaved their nation.

This overwhelming progress has been made under leadership of President Hamid Karzai. Having met with President Karzai, I am assured that he is a capable and determined individual and he is able to continue to guide his nation into a transition to a modern democracy. To help facilitate this, Karzai and the Afghan Government are seeking to implement the Afghan Compact, which is a commitment to achieve specific goals relating to security, to the rule of law, to human rights, to economic development, to the elimination of narcotics trade within 5 years.

The task ahead remains difficult. It remains lengthy. But with the sustained help of the United States and other international donors and especially the demonstrated optimism and the resilience of the Afghan people, I am confident that the goals of this compact will be realized.

The progress being made in Afghanistan also has serious implications for our own Nation's security. Our congressional delegation conveyed to Afghan leaders that Congress remains deeply concerned about the mounting bloodshed in this Nation and over the ongoing narcotics trade which supplies over 90 percent of global opium and heroin.

My colleagues and I were also able to meet with high-ranking U.S. military officials, including Commanding General John Abizaid, to discuss the current military situation on the ground. I left impressed with our military's success against the insurgents and confident in our decisive victory over it.

Afghanistan was the first foreign front in our campaign to eradicate terrorism, and the success that we have had in eliminating the Taliban and establishing a democratic government is monumental and undeniable. In this area, however, our job is not complete, and America must not yield in our commitment to our troops and to their noble efforts. Standing side by side with its Afghan counterparts, our military will continue to actively seek out and destroy terror elements and work toward establishing complete stability and a transparent rule of law so that Afghanistan will never again be a safe haven for terrorists.

At a time when many are questioning the legitimacy of U.S. efforts abroad, Afghanistan serves as the perfect example of why our efforts to bring stability, freedom, and security are crucial, just, and attainable. Clearly, the new Afghanistan is emerging as one of our closest allies in our fight against extremists.

While meeting with the Speaker of the Afghan Parliament, he and I discussed the critical partnership which is developing between our two nations. Both nations are committed to furthering our alliance, which has already borne much fruit, with the knowledge that neither nation's goals will most effectively be realized without the friendship and deep cooperation of the other.

In our meeting, the Speaker expressed his hope that the Afghan people will serve as a ''bridge to democracy for other peoples of the region.''

I share the Afghan Speaker's hope, and I am confident that the inevitable spread of freedom and democracy will protect and preserve the American way of life here at home and make it available to those currently oppressed abroad.

The undeniable progress that continues to be made in Afghanistan makes peace, security, and prosperity all the more assured and protected—for Americans as well as Afghans.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has passed without amendment concurrent resolutions of the House of the following titles:

H. Con. Res. 71. Concurrent resolution expressing the sense of Congress that there should be established a Caribbean-American Heritage Month.

H. Con. Res. 315. Concurrent resolution urging the President to issue a proclamation for the observance of an American Jewish History Month.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. WYNN) is recognized for 5 minutes.

(Mr. WYNN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

LIHEAP AND NATURAL GAS PRICES

Mr. GENE GREEN of Texas. Mr. Speaker, I ask unanimous consent to take my Special Order at this time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. GENE GREEN) is recognized for 5 minutes.

Mr. GENE GREEN of Texas. Mr. Speaker, I would like to bring attention tonight to an issue that both the House and the Senate have been debating. Low-income Americans are struggling to pay for heating bills this winter. Thankfully, this winter has not been as cold as expected, and heating bills have not increased as greatly as feared.

Less noticed, however, is that our low-income Americans also struggle to pay cooling bills. When the 90- and 100-

degree heat rolls around this year, the situation is going to become very critical very quickly. Air conditioners run on electricity, and a lot of electricity comes from natural gas. Natural gas prices have more than tripled in the last 3 years, from $3 to $4 per thousand cubic feet to $10 to $15.

These costs are really hitting home as State public utility commissions, PUCs, are increasing fuel charges on electric bills. The need for relief is going to be intense this summer, but the Federal Government's Low-Income Home Energy Assistance Program, also called LIHEAP, is going to do next to nothing to help. For example, over 60,000 Houston area families got their power cut off in the summer of 2001 and only 14,443 people received 2001 cooling assistance statewide in Texas.

□ 2000

How can that be? The problem is that the LIHEAP formula is completely biased toward heating costs and ignores cooling costs. Many people believe that LIHEAP is a cold weather State program only. In the Northeast, the Midwest coalition lobbies for it and my Northeast and Midwest colleagues talk most about the program.

The media tends to cover LIHEAP funding issues only during the winter months. The shocking facts are that 3 percent of LIHEAP funding goes toward cooling homes in the summer, and 74 percent goes toward heating homes in the winter. Incredibly, LIHEAP spends three times more on administrative costs than it spends saving lives from heatstroke.

States like Texas, Florida and California that have large low-income populations vulnerable to hot weather get almost no funding. Low-income people in New York, Ohio and Pennsylvania receive eight or nine times as much LIHEAP per low-income resident.

In Texas, we have 3.7 million people who are eligible for LIHEAP due to income, but only 4.5 percent receive any assistance. The State of Texas canceled its Low Income Energy Assistance Program as electric bills were on their way up, and our constituents have nowhere to turn.

The cold weather bias is unacceptable, because hot weather kills just as many or more people than cold. According to the National Weather Service, which uses media reports and local government information, from 1985 to 2000 there were 2,596 fatalities caused by heat, an average of 235 per year, and 462 fatalities caused by cold, an average of only 24 a year.

It is scandalous that LIHEAP provides 3 percent of the funding for cooling, and hot weather kills 19 times more people than cold weather. However, a peer-reviewed study at the University of Delaware shows that over 1,000 people die from heat in the 15 biggest cities alone in the average summer, well over either government estimate. So neither National Weather Service nor the CDC data tells the full picture.

Reported causes of death are unreliable. The American Meteorological Society found several peer-reviewed academic studies showing that heart attack and stroke rates increased during hot weather. These heat-related deaths are often attributed to those other causes like heart disease and stroke and are not recorded as heat-related deaths.

The society's study found cold snaps do not cause death rates to go up versus average winter death rates, but extreme heat causes death rates to go up dramatically in the summer. As a result, the LIHEAP program is clearly completely divorced from reality. Heat kills more, but LIHEAP ignores cooling assistance.

The LIHEAP program is so biased because the funding formula is outdated. LIHEAP is based on an obsolete formula that is only still around because of the political support. The tragedy is that this political calculation is contributing to hundreds of preventible deaths annually.

Here are a few of the factors that go into the current LIHEAP formula: A ratio of State and national low income households in 1979; residential energy expenditures in 1979; a State's annual average number of heating days between 1931 and 1980; the number of a State's households at or below 125 percent of Federal poverty in 1980; a State's increase in home heating expenditures in 1980; the increase in total home residential heating expenditures between 1977 and 1980; and also 75 percent of each State's 1981 crude oil windfall profits tax formula.

This is a formula that is just ridiculous, and we need to update it. As we can see, this information is over 25 years old and completely irrelevant to modern reality. The fact that the primary LIHEAP formula still uses data from the date of the disco is unbelievable. There is absolutely no excuse for the program to allocate life-saving money based on such a formula.

While supporters of the current formula defend it by pointing to the $2 billion trigger, it is a red herring. Our Northeast and Midwest friends and colleagues insist the rising tide lifts all boats. Once the funding gets above $2 billion a year, a new formula directs it, but Congress has seldom voted over $2 billion.

It is true that there is a trigger and this obsolete formula goes away for appropriations over $2 billion. However, Congress rarely goes over that $2 billion dollar trigger, and when they do, they use accounting tricks to avoid the modern, fair formula.

For example, members in the other body are trying to move $1 billion in LIHEAP funding from the reconciliation bill from fiscal year 2007 to 2006. That would mean a total appropriation of $3 billion, including what Congress has already done, which should help for cooling.

However, the reconciliation bill put $750 million of that extra $1 billion into a "contingency" account that uses no formula and the White House can do whatever it wants with it. History tells us that Southern states and cooling needs will see very little, if any, of that money.

Unsurprisingly Southern members have placed a hold on the bill.

The only solution is changing the LIHEAP formula.

The House Energy and Commerce Committee nearly accomplished a fairer formula during the energy bill debate, where my amendment would have lowered the "trigger" to $1 billion to make a difference.

Northeastern and Midwestern members protested and offered a compromise to increase the authorization to $5 billion, which many of accepted at the time as a good faith offer.

However, the budget reconciliation bill revealed the true motive to deny funding for cooling assistance and to deny much needed LIHEAP funding for Southern, mid-American, and Western states.

Along with my colleagues CHIP PICKERING, MIKE ROSS, CHARLIE GONZALEZ, MICHAEL BURGESS, and many others, we will continue to push for justice in the LIHEAP formula.

We can no longer allow Congress to use a 25 year old formula to ignore hundreds of preventable deaths every year—it is unconscionable and outrageous.

The SPEAKER pro tempore (Mr. CONAWAY). Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

(Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

AMERICA IS NOT WINNING ON THE TRADE FRONT

Ms. KAPTUR. Mr. Speaker, I ask unanimous consent to take the time of the gentleman from Indiana (Mr. BURTON).

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Mr. Speaker, America is not winning on the global trade front. Last Friday, the U.S. Department of Commerce announced the United States has the largest trade deficit in our history. So many more imports are coming in here than exports, and every American can affirm that every time they go to shop.

At $725 billion in the red in 2005, that is three-quarters of a trillion dollars, our trade deficit is growing at a rate of more than $1,500,000 every minute. This total is more than 18 percent higher than one year ago.

Sectors such as agriculture, as well as manufacturing, which once sustained a thriving economy here, are now withering. For every billion dollars in deficit, we are shedding a minimum of over 10,000 jobs. Workers' wages are not rising, their pensions are being cut, health care costs are going

up, and this is a major contributing factor.

Our manufacturing sector is deteriorating. Since the year 2000, 3 million more manufacturing jobs, good jobs, have been outsourced. The 2005 deficit in autos, trucks and automotive parts is $138 billion, the worst ever. Those are dollars we used to put in our own pockets, the pockets of our workers, the pockets of our shareholders, the pockets of the executives. This industry was once at the cutting edge of the world and the mother of invention. Today, we have become an assembly line for imported parts.

Our Trade Representative, Ambassador Portman, comes from my home State of Ohio. He should be intimately aware on a global scale that it is just not a level playing field that parts producers and other exporters face. Yet the deficit in the auto sector, which once provided a path to the middle class for millions of Americans through living wage jobs, keeps going more and more in the red, another 20 percent just last year. It seems every week we hear about another plant shutting down, more layoffs, the most recent set of companies, Delphi.

In agriculture, which used to be America's savior, our global trade balance in agricultural products showed a mere $27 billion surplus in 1996. That has gone down from $27 to $4 billion, and it is projected we are going to become a net food importer. America, the richest agricultural nation in the world, a food importer? That is what is happening.

Yet the agreements that this administration has signed, including CAFTA, will encourage countries like Brazil and El Salvador to undermine one of our most promising agricultural sectors, ethanol, because CAFTA will allow Brazilian ethanol transhipped through Central America to undermine that promising agricultural sector of our economy.

And what is the Bush administration through Ambassador Portman doing to stop these hemorrhages? Nothing. Just issuing reports. There is no new enforcement actions, no special bilateral talks with countries with which we are massing these huge deficits. Today's Congress Daily reports Ambassador Portman issued a report reviewing China's trade practices; China, a most undemocratic nation that represents an alarming chunk of this growing trade deficit that we have amassed. Indeed, our trade deficit with China is at an all-time high, over $200 billion, dollars we used to put in the pockets of American workers.

Mr. Portman did note that the trade relationship between the United States and China ''lacks equity and balance.'' Yet his report does absolutely nothing to change it.

By contrast, my bill, the Balancing Trade Act of 2006, H.R. 4405, would require action in the face of consistent deficits of more than $10 billion with a single country. With 21 bipartisan cosponsors so far, this bill will require action from any administration.

With the red ink getting deeper and deeper every minute, with American workers losing, with American communities losing, we need action, not more whitewashing. What a shame that Washington is so out of step with what is happening on every Main Street and every manufacturing and every agricultural sector of this country.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona (Mr. FLAKE) is recognized for 5 minutes.

(Mr. FLAKE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

POINTING FINGERS WHILE ROME BURNS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Texas (Ms. JACKSON-LEE) is recognized for 5 minutes.

Ms. JACKSON-LEE of Texas. Mr. Speaker, it is interesting that, while Rome burns, the administration spends its days pointing fingers at each other. As the continuing disaster in the Gulf region continues to burn and to fuel its own fire, we now have administration officials, both ex and those who are still in office, raising the question of who knew what when, while those of us in the Gulf region, in Texas, Louisiana, Mississippi and Alabama, are continuing to contend with the tragedy of Hurricanes Katrina and Rita. In fact, there are 44 States around the Nation where Katrina survivors languish without opportunities to return home.

Rather than the administration having real concrete solutions, such as the right of return to the region, where FEMA provides a return ticket to all those families who are desiring to come and be reunited with their family members or to come home, there is no answer at the end. Rather than offering non-concrete solutions, solutions that are just whitewashing, of course, the administration protects its own.

They protect Secretary Chertoff, who for one was not in charge, not because former FEMA Director Brown said so, but because I know so. Because within 2 days of the storm, I dialed, as a member of the Homeland Security Committee, Secretary Chertoff's number over and over again. As someone familiar with the region, I understood that disaster was at hand. You could not get one return phone call from the Secretary to a member of the Homeland Security Committee.

It might be that I was a Democrat and therefore did not count. But thousands upon thousands of people were being sent to their death if they could not get any additional help. We lost 1,000-plus. There are 4,000 still missing, and there has been no definitive response from this administration.

Testimony of former FEMA Director Brown in the last 48 hours has indicated that this administration, along with the President of the United States, well knew that the levees were spilling over. They knew how catastrophic the storm was going to be 48 hours out, and it was sufficient time for this administration to call for military resources and other resources. We know that there were deployed military vessels off the coast that could have provided for evacuation of thousands upon thousands of individuals. We also know that no response was given. In fact, according to the testimony, under oath I understand, of former Director Brown, one of the staff persons of the FEMA office flew over the levees and saw them spilling over.

The irony of all this the response was ''we didn't know whether it was just a leak or whether or not the levees had broken.'' My friends, there are those who can drown in a teaspoon of water. The fact that the water was spilling over was enough reason for them to act.

What about the aftermath? What about the fact that now in Hope, Arkansas, isn't it interesting, quite funny, if you will, hope, hope and dreams of Americans, in Hope, Arkansas, 10,000, 10,000 mobile homes are now languishing in disaster. $431 million was spent for these mobile homes that are now sitting there, the wrong size, sinking in the mud. And now, in addition, adding insult to injury, the $431 million, which no one knows whether there was any bid criteria, any criteria whatsoever for the purchase of these particular mobile homes, was there any bidding, was this a no-bid contract, was this another waste of money from the taxpayers, by FEMA, these homes are now languishing in Hope, Arkansas, as indicated by our colleague from Arkansas, languishing there, not being able to be utilized by the thousands who, one, want to come home and, two, are in the region.

Mr. Speaker, it is both a crime and it is a shame. As I said earlier, Rome is burning. The administration was at fault, Secretary Chertoff was at fault, as were all of those who sat and did nothing while people died.

It is imperative that we not whitewash the House of Representatives report, that we have a full 9/11 inquiry report and that we immediately address the question of removing FEMA from the Homeland Security Department and making it a full, free-standing department.

Unlike Mr. Brown, I am not interested in pitting natural disasters against man-made disasters. 9/11 stands as a horrific disaster in the history of America. What I am looking forward to is that they stand equal in the eyes of this administration, equal in the eyes of resources, equal in the eyes of Americans being able to count when they are in need that there will be the Federal Government to provide them with resources, to provide them with assistance.

All of this name calling and finger pointing and who was in charge and

who was not gives no comfort to those who are still suffering, such as Alvin, who is not getting any money for rebuilding his house.

Mr. Speaker, I believe Mr. Chertoff should be held accountable and, if necessary, should resign; and, likewise, FEMA should be moved out into an independent, free-standing department.

□ 2015

The SPEAKER pro tempore (Mr. DAVIS of Kentucky). Under a previous order of the House, the gentleman from Georgia (Mr. KINGSTON) is recognized for 5 minutes.

(Mr. KINGSTON addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from South Dakota (Ms. HERSETH) is recognized for 5 minutes.

(Ms. HERSETH addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

BLUE DOGS FOR CHANGE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2005, the gentleman from Utah (Mr. MATHESON) is recognized for 60 minutes as the designee of the minority leader.

Mr. MATHESON. Mr. Speaker, it is indeed always an honor to have an opportunity to speak on the floor of the House of Representatives.

And tonight I join with fellow members of the Blue Dog Coalition. The Blue Dogs, as you know, is a group of moderate to conservative Democrats in the House of Representatives, a group that has taken positions on many issues over the years, and a particular issue which the Blue Dogs have a solid reputation on is that of promoting fiscal responsibility for this country.

And that message is needed now more than ever, and the Blue Dogs are going to continue to speak out in terms of what we think is the right thing to do for this country and particularly for future generations in this country.

You know, I just had a new addition to my family about a month ago, had a little boy born into my family. And the day he was born, he already owed over $27,000 to the United States of America. Because if you take our national debt and divide it over our whole population, that is about how it calculates out.

And that little boy entered this world with that kind of debt hanging on him not having had anything to do with that debt. He was not around when the money was spent, was not involved in the decision-making that created that debt. And I find it appalling that we allow this to continue to take place and grow in terms of a problem.

I see this as a moral obligation we have to future generations, and for me personally I see it in my own new son. What is disturbing is the trend that we are on right now, because there are going to be times when the economy is good and times when the economy is bad, and sometimes revenues are going to be up and sometimes revenues are going to be down.

And there may be times when a deficit occurs for valid reasons. But when you are in a deficit situation, what you want to do is you want to have a plan for working your way out of that debt. The concern I have is that we do not see that plan on the horizon. What we see instead is an ever-increasing amount of debt over time.

Let us put it into context. From 1789 until the year 2000, the total debt that was incurred by this country was $5.63 trillion. But by 2010, the total national debt will have increased to just under $11 trillion. So we will have doubled the 211 years' worth of debt in just 10 years.

You do not need to get out your calculator to figure out that that is not a good trend, and it is increasing at way too fast a rate. So now more than ever it is time for us to stand up in a statesman-like way and make the decisions that are going to be tough decisions if we are ever going to get a handle on being fiscally responsible.

That is what we are here to talk about tonight as the Blue Dog Coalition. I have been joined by some of my colleagues from the Blue Dog Coalition. I am honored to be associated with all of them.

Mr. Speaker, I am happy to call on them at this time, and I would like to first recognize my colleague from the great State of Tennessee (Mr. TANNER).

Mr. TANNER. Mr. Speaker, I thank the gentleman for yielding to me.

I have been here before with the Blue Dogs because it is about the only opportunity we have to discuss what we all believe, as Mr. MATHESON said, a trend line that is leading us to a financial Armageddon. There is no other way that one can look at it.

I have been talking about and writing about the fact that our country is currently borrowing more money faster than any previous political leadership in the history of the United States.

To give you some idea, and I wish I were making some of this up, but if anyone cares to go to the Web site of the public Treasury, www.publicdebt.treas.gov, you can see for yourselves there what I am about to talk about.

What happened in this country, basically, is two things: one is we embarked on an economic plan for America in June of 2001 that assumed various things that would happen in the future. In so doing, the outlook was for a $5 trillion surplus over the next 10 years.

We all know what happened on 9/11 in the year 2000, some 2½ months after this economic plan was adopted. The economic plan has not changed, but everything else in the world has.

So what we did was we reduced revenue in 2001, and we have increased spending; and we have not gone back and tried to adjust for this new world that we live in.

So what is so disturbing about this is since 2001 the debt held by non-governmental agencies has increased by $1.4 trillion. Now, if that were not bad enough, you know how much of it we borrowed from foreigners? Almost 90 percent: $1.16 trillion has been borrowed from foreigners, primarily Asia, China and Japan, who together own over $1 trillion worth of IOUs from Mr. MATHESON's little boy and others, me, everybody else in this country that is a citizen.

So what we are trying to alert the American people to is that this country has a broken economic game plan, and we do not like the remedies that are being prescribed for this deal by the current administration and the current Congress.

Now, I said the other night, half jesting, it is so bad now and getting worse by the second, I am going to tell you in a minute how much we are borrowing every second, that if China attack Taiwan, we would have to borrow the money from China to defend Taiwan. I say that tongue in cheek; but if you look at where we are, we do not have the money, and we do not have the ability to seemingly right this ship of state.

Now what are the consequences? There are consequences to actions. What are the consequences of this unprecedented borrowing that has taken place here in the last 48 to 60 months? Unless one is able to repeal the laws of arithmetic, interest rates must go higher. Every reputable economist says that. What does higher interest rates mean? Well, it means more finance charges on every American's credit card. It means cars and homes cost more. All of the things that we buy on time will cost more. And it crowds out private investment that creates new jobs in this country, because the interest rates cripple one's ability to invest in new plants, new equipment, modernization, all of those things.

That is the consequence of a willful and deliberate plunge into debt that is taking place here in Washington, DC. It eventually will mean higher taxes.

Did you know that $16 out of every $100 that comes to Washington now goes not for health and education and troops, it goes to pay interest? Now, this inability of the government to invest is going to catch up with us.

There are three things, basically, American families, my friend the gentleman from Kansas (Mr. MOORE) says, three things, basically, that American families live by: one is live within your means; second is pay your debts; and the third is invest in the future. In other words, save money for your kids' college education or for your retirement or something.

Your government is not doing any of the three. We are not living within our

means, deficit spending every year for the last 4. We are not paying our bills; we are borrowing the money. We are borrowing the money to fight the war in Iraq and Afghanistan, and giving the soldiers who return home the bill with interest.

If that is not immoral, I do not know what is. These guys and women, too, are giving their lives sometimes, their legs, their arms, everything else. And what do they get from us? They get a bill when they get back with interest for what they did for this country.

And the other consequence of this is what our friend from Nebraska (Mr. OSBORNE) said earlier tonight. We are having to zero out the drug task forces in this country that are the front line to try to keep our young people from getting hooked on these drugs like methamphetamine and so forth that will rob not only them of their future but will rob this country of their ability to contribute to a free and strong land.

The other thing is, when we continue to do this, we degrade the tax base so that more and more money that comes here is not available for any investment by the government in infrastructure or human capital.

What do I mean by that? I mean infrastructure, that only the government can do, whether it is dams, roads, bridges, airports, all of the things that allow private enterprise to move in and around the infrastructure and create jobs and create opportunities for our citizens. That is not being done because there is no money for it. It is going to pay interest on the national debt.

And when we do not do that, just go to any country on the face of the Earth that has no infrastructure and see how many people are doing pretty well. Nobody is, because there is nothing for private enterprise and entrepreneurship to build to.

The other thing we are not doing is investing in human capital. If this country is going to remain strong and free, the citizenry of this country must have a good education and must have good health care.

We are robbing ourselves of the ability to invest in education and health care because of this ever-growing burden of debt and interest that takes away from the tax base of the taxes we all pay. There has never been, if one reads history, there has never been a country that is strong and free with an unhealthy, uneducated population. It is not possible.

And yet as this trend line continues, as Mr. MATHESON said, this is exactly where we are headed. Now, again, you can go to the Treasury Web site and see what I am talking about.

Last year, the deficit was $319 billion. To put that into something that hopefully we can all understand, that is $26 billion a month, $886 million a day, $36 million an hour. By the time we finish this hour, this Blue Dog hour, we will have borrowed another $36 million. It is $615,000 a minute, and $10,200 a second.

That is how much money we are borrowing. Last year, the fiscal year 2005, the net interest last year we paid was $184 billion. Do you know how much interest checks are? That is $15 billion a month in interest, $511 million a day in interest, $21 million an hour in interest, $354,000 a minute in interest, and $5,900 a second that we are paying in interest because of this growing debt.

I was trying to put this in some kind of context; I guess this is about the best I can do. If you have $1,000 bills, $1,000 bills, and you stack them like that, to get to a million dollars, it will be about a foot high. To get to a billion dollars, $1,000 bills stacked like that, it is as high as the Empire State Building. And a trillion dollars is 1,000 bills, 1,000 times the height of the Empire State Building.

It is staggering. It is the most unaccountable, irresponsible activity that I know any political leadership in the history of this country has engaged in knowingly, willfully, and deliberately. And it is going on tonight, and it will go on when this budget is presented on the floor here. Because there is no accountability.

We do not have any hearings particularly on holding people accountable. You have heard a lot about that. Well, the Blue Dogs have tried to do a couple of things. The first thing we did, or tried to do, to fix it was to reinstitute PAYGO rules. That is something every American family does. If you decide you want to spend some money, you either have got to raise the money to pay for it or you have got to cut the budget somewhere else that is of a lesser priority and fund it that way.

PAYGO rules were allowed to expire. The majority will not let them come back here, and that is one of the reasons that we keep digging deeper. The other thing we have recommended, or tried to recommend actually, is that in addition to the PAYGO rules, and we are going to do this, we are going to unveil an accountability plan, the Blue Dogs are, that is going through every Federal agency, the IG reports, to pick out the programs that are ineffective, duplicitous, or otherwise do not work and cut them. And we will have that coming out. We are working on it right now.

□ 2030

The lack of accountability here, the lack of responsibility here, cannot go on; and the American people need to really pay some attention to this. We have a birth tax of $27,000. That is hideous. It is not right. And this generation has got to bear most of the blame. My generation has to bear most of the blame because we are simply not doing the three things that American families do every day, and that is live within our means, pay your debts and invest in the future.

If we do not change this, Mr. Speaker, then I fear more tonight for my country's future than I ever have in the 60 years I have been on this earth.

Mr. MATHESON. I appreciate those comments from my Blue Dog colleague, Mr. TANNER. He is one of the leaders of the Blue Dogs, and he has been a real voice of reason in Congress. I appreciate him taking the time tonight.

Mr. Speaker, I would like to recognize my Blue Dog colleague from the State of Georgia, Mr. BARROW.

Mr. BARROW. Mr. Speaker, I want to address an issue that is important to all the families that I represent; and it is just being abandoned in this 2007 budget proposal submitted to Congress. I am talking about support for our local police officers and law enforcement agencies, men and women on the frontlines of homeland security, protecting our communities and patrolling our neighborhoods.

Large cities in my district like Savannah are dealing with a rise in violent crime. At the same time, many of our smaller rural communities in Southeast Georgia and all around the country are fighting an epidemic of meth labs. Mr. Speaker, we cannot afford to let drugs and violent crime continue to go up in this country. For more than 14 years, homicide was on the decline in this country. That changed last year. According to the latest figures from the FBI, homicide rose by 2.1 percent in the first 6 months of 2005, the first increase since 1991. That is unacceptable, and these cuts in this budget are unacceptable.

The COPS program, cut by $376 million. During the '90s, we figured out what works in reducing crime. More police officers on the streets makes them safer and reduces crime. The COPS program helps our community hire, train, retain and equip our police officers. But this budget cuts this program by 78 percent.

The Byrne Justice Grant Program, completely eliminated. Byrne JAG grants help State and local law enforcement agencies identify and break up regional drug syndicates. This budget completely eliminates that program. Why would anyone want to do that?

If you think that a rise in violent crime is an issue that Congress should ignore, then this budget is for you. If you think we ought to be cutting back on the tools we give our police officers to keep our neighborhoods safe, then this budget is for you.

In the short time since the President dropped this budget, I have discussed this budget with sheriffs and police chiefs all across my district; and the verdict is unanimous. These budget cuts are hurting and not helping local law enforcement. We need to do more, not less, for our police officers.

Mr. Speaker, I urge my colleagues to oppose the proposed budget cuts to the COPS program and to oppose the complete elimination of the Byrne JAG grants. Our local police deserve all the tools that we can give them to protect our families. We need to give them more help, not less.

Mr. MATHESON. Mr. Speaker, I think what you heard here, Mr. TANNER

first alluded to it and then Mr. BARROW gave a more elaborate description of proposed reductions in local law enforcement funding, and that is the example of the squeeze that is on. The deficits that we are incurring and the increased interest costs, and, by the way, interest expenses are one of the fastest growing components of the Federal budget today. And with that increased interest cuts you are squeezing other programs.

Some of these programs mean a lot. Local law enforcement grants are something that I think most people in Congress think are a good idea. And the notion that we have a budget presented to Congress that zeros that out is something that is not going to be received well here, I would think. But, again, it is a reflection of the pressures that these increasing deficits are putting on the situation; and that is why it is just another example of why it is so important we try to get a handle on this program.

I now recognize my colleague from Florida, Mr. BOYD.

Mr. BOYD. Mr. Speaker, I want to thank my friend and colleague, Mr. MATHESON from Utah, who is our distinguished leader of the Blue Dogs, a group, Mr. Speaker, that I am very proud to be a member of. I joined when I first came to Congress in January of 1997, and I am proud of the work that they do in trying to bring to the attention of the country and of the Congress the importance of the economic model and making sure that the government meets its obligations to the community and is willing to pay for those obligations.

Mr. Speaker, we live in the greatest country on the face of the Earth. I like to tell my constituents back home when I speak to Kiwanis Clubs or civic clubs that we have 5 percent of the world's population. That is about one of every 20 people in the world live in America. And we control 25 percent of the world's wealth.

We got into that position in a relatively short period of time. It is less than 230 years this year we have been a Nation, and we have done it by creating an economic model that is unsurpassed in the world.

That economic model really to me, when you break it down, does one thing. It always strives to expand the middle class and move as many people as you can out of the bottom rung and into the middle class where they can be productive members of our society. In the process, you narrow the gap between the very rich and the very poor; and that served us well over the years.

I remember talking to my parents when I got old enough to register to vote and asked them about why they happened to be registered Democrats. And they said, well, they thought that, coming out of the Depression in the 1920s and 1930s, that the Democratic party under the leadership of Franklin Delano Roosevelt really laid the groundwork for making this country the greatest economic and military machine on the face of the Earth.

Expand the middle class, Mr. Speaker, to expand the middle class you have to have a well-educated and healthy population, and those are functions that our government has to be involved in. We have to be providing a good educational system for our children. We have to ensure, if we are going to stay competitive in the world, Mr. Speaker, that each generation is better educated than the previous generation. You have to have a good health retirement system. You have to have a good income retirement system.

Prior to the implementation of Social Security and Medicare in this country, if you reached the age of retirement, age 65 in America, there was a great chance, over a 50 percent chance, that you would be below the poverty level. Less than 10 percent of our folks today live below the poverty level because of this great economic model that we have created which strives to expand the middle class. Social Security and Medicare were important components of that.

Why do I talk about the expansion of the middle class and the economic model? This government has a budget which talks about how it funds its community responsibilities, community obligations, and that budget proposal was just presented by the administration to Congress in the last couple of weeks. And that budget proposal for the coming fiscal year which starts on October 1 proposes to spend $2.47 trillion.

Let me say that again. It proposes to spend $2.47 trillion. But its collections to pay for that $2.47 trillion amount to $2.15 trillion. That is a budget deficit of approximately $318 billion. That is after we spend all of the Social Security surplus masking the much larger deficit.

But the problems do not stop there. The budget does not even address the costs of the war effort in the Middle East, in Iraq and Afghanistan, in the coming year. It does not address some other issues which we know as a Congress and a Nation that we have to address, such as the alternative minimum tax exploration and some other tax issues like that.

So what we have before us as a Congress presented by the administration is a budget that really is not a very useful document for us to start with.

Mr. Speaker, my wife and I own a farm, a family farm that has been in my family for over 175 years. And it is not always easy on the farm. It is a small business. And this past week at home I spent a good part of the week doing a budget.

Why do I do a budget? I do my budget to take to my creditors so they can provide us the funds we need to run our little small business. I spent a good many days on that budget and did the very best I could to present to my creditors just as accurate a picture as possible of what I thought the revenues would be and the expenses would be for the coming year. That is honesty in budgeting. And out there in the country our constituents have to do it in running their own homes. They do it in running their own businesses, and they certainly have to do it in running their own local governments and school boards.

We certainly could expect that the Federal Government could be honest in presenting this budget to the American people. So I would hope, Mr. Speaker, and I would ask my colleagues to join in as we have this discussion about accountability and honesty in budgeting, that we can as a Congress be a little more honest with the American people about what the cost of some of these programs are that we are involved in and how we are going to pay for them.

I do know something for a fact, Mr. Speaker, that you cannot increase spending, cut taxes and cut the deficit all in one lick. The math does not does not work. I learned that in grade school. It is a simple mathematical calculation. You cannot increase spending, cut taxes, and decrease the deficit. It just cannot be done, and that is what evidently this budget pretends to do.

So I hope as we so have this discussion for the next 30 minutes or so that we can delve into some of these issues and have a little straight talk. Let us shoot straight with the American people about what the budget issues are.

Mr. MATHESON. I appreciate those comments. I do think people should expect an honest budget. I think we all know we are going to have troops in Iraq during the next fiscal year; and the fact that this budget does not list a dollar to fund that, in and of itself, tells you that this budget is not an accurate reflection of the expenses that this government is going to face in the next year.

That is not being honest. That is not being straight with people. We know we are going to incur that expense. We ought to acknowledge we are going to incur that expense, and we do not do it, and I think that is something the Blue Dogs feel real strongly about in terms of having honesty and integrity in the budgeting process and the budget numbers.

Part and parcel of that is that we ought to have planning for contingencies. I suspect when Mr. BOYD was developing the budget for the family farm, for his business, that he had a line item in there called contingency, because you know that something else is going to come up. You do not know what it is going to be. You do not know when it is going to be. It could be weather related. It could be something that you cannot even anticipate, but you know there is going to be an expense that comes up that you cannot identify today but it is going to happen. You cannot estimate with absolute accuracy down to the dollar what it is going to be, but you know there is going to be something.

And based on your experience and based on your judgement you guesstimate what it is going to be. And when you go to your bank, if they are helping you finance it, they want you to do that, and they are going to work with you to make sure that is a good estimate of what a contingency might be. We do not do that in the Federal Government, but I am sure you do that when you are planning your own budget.

Mr. BOYD. Absolutely we do do that. I think most people who run a small business understand that. Most folks who run local governments understand that. But there is something else in this budget that we are looking at that we received from the administration in the last few days that really belies any thought of sensibility.

□ 2045

A couple of examples: the veterans medical portion of the budget, we know those are issues that we have to deal with and we have not dealt with very well in the past. In that budget that we were presented are significant fees, increases in copayments that the veterans will have to pay. The Congress has rejected that soundly over all the years that I have been here. So I would not expect that the Congress would increase the fees on the veterans; but yet that is in the President's proposal that he sent up.

Student loans cut significantly. I do not think Congress is likely to cut student loans. I certainly hope they are not, but that is in the budget. Those are the kinds of things that we ought to be honest with the American people about, what the costs are, and how are we going to raise the money to make sure those costs are paid for.

Mr. MATHESON. Mr. Speaker, I yield to the gentleman from Tennessee (Mr. TANNER).

Mr. TANNER. Mr. Speaker, I want to talk about accountability again. Another consequence of what we have done in the last 48 to 60 months with this unprecedented borrowing has not only degraded tax money coming here that could have been used for foster children, the poorest, most neglected and abused citizens in our society, but what we are doing is we are not fulfilling the congressional role in the scheme of things in this country.

We do not have any hearings about accountability. I saw on television the other night on one of the shows bundles of money that they were handing out in Iraq. They played football with them, and they asked the guy, well, where is the audit for that. He said it is nonexistent. We do not know where the money has gone.

We see Katrina. We see in Hope, Arkansas, 12,000 house trailers sinking in the mud at the Hope airport. That is total incompetence.

What is really disturbing is the Government Accountability Office reports that 16 out of 23 Federal agencies cannot produce an audit. What we want to do, if we are allowed the opportunity to do so, we want to get every one of those Inspector Generals in here and make them tell us what they did with the money. The Congress does not even ask, now what you did with the money that we appropriated to you to the executive branch. We have got basically a one-party government here. They do not ask them; and if they did ask them, they could not tell them.

This is outrageous. There is not a businessperson in America who would go to their comptroller and say here is an item of $20,000, what is that for? I could not tell you; I do not know. Nobody will put up with that, and yet the American people are putting up with it in this town every day.

We just borrowed another $18 million, by the way, since we have been talking.

Mr. BOYD. Mr. Speaker, I know this accountability issue is one that we are all very concerned about. I saw some reports today that in the FEMA response to the Katrina and Rita disasters and other storms of 2005, which were dreadful and particularly dreadful for the people on the gulf coast, but one of the tools they used to help the folks was a $2,000 credit card that FEMA passed out. I read some reports today that many of those, maybe as many as 30 or 40 percent of those credit cards, were received with fraudulent Social Security information; and, also, the expenses on some of those cards were for some very unreasonable items like tattoos and massages and things that we would not think that necessarily the taxpayer ought to be paying for.

So we do need oversight, and one of the things that I am hopeful for is the majority party in this body had an election here a week or so ago, and there is a new majority leader on the Republican side here. It is my hope and I am sure the hope of the Blue Dogs that we can work with him in a way that we have not been able to work with the leaders in the past to try to address some of these issues, because this issue of one-party rule and lack of oversight into the administration's activities is costing the American people greatly. I think it is time that we addressed it and try to do something about it.

Mr. MATHESON. Mr. Speaker, I think that really centers on a fundamental issue about the way our Constitution was set up. This is not supposed to be driven by party when it comes to oversight.

When they wrote up our Constitution, they created the three branches of government. We all learn this in grade school. It is called the checks and balances. There is an institutional role for the legislative branch to play. We legislate but we also keep an eye on the executive branch and on the judicial branch, and we do that through oversight. We are supposed to be asking questions. It is all what makes the government accountable. It is pursuing good government. It is not looking for a scandal or anything like that. This is just basically making the trains run on time, ask the right questions.

We know that is not happening right now, and so you mentioned 16 out of 22 major agencies cannot even give you a clean audit of their books. The government cannot tell you where they spent $24.5 billion in the last fiscal year. That is enough to fund the entire Department of Justice, and we do not know where the money is, and Congress is not asking the questions.

It should not be a party issue. We all ought to be asking these questions; and I know the Blue Dogs, as much as anybody in this Congress, are ready to work with anybody because it is an America-first issue, not a Democrat or Republican issue. It is about putting this country in the right position and doing the right thing.

So this issue of accountability and oversight that my two colleagues have been talking about rings real true with me in terms of what the Framers of the Constitution asked us to do. That is our role here. We took an oath to uphold that Constitution. My concern is the non-oversight. I hope we do take action. I hope this conversation helps spur some action in this body, because it is the right thing to do.

Mr. TANNER. Certainly it is the right thing to do. We take money involuntarily away from people in the form of taxation and appropriate it to the executive branch and then do not even ask them what they did with it. If we ask them, they could not tell us. That is outrageous, and the American people ought not to put up with it, and I hope they will not for too much longer.

Let me say one other thing about the consequences of these deficits. We have raised the debt ceiling, and we are going to have to raise it again either this month or next month. It will be the fourth time we have raised the debt ceiling in 4 years, and the consequences of this, not only are we degrading the tax base because we are diverting more and more to interest, but 90 percent of these interest checks are now being sent overseas, not even staying in this country.

When one is dependent upon foreign interests that do not see the world as we do for their finances, that creates a vulnerability, a financial vulnerability, for our economy, number one; but, two, I think it is a national security issue.

If one reads history, as we all do from time to time, one will see that there are two things that a country cannot survive if they allow themselves to get into that situation. One is for a country to remain strong and free it must have the inherent ability to feed and clothe its citizens, agriculture. If one is dependent upon a foreign source for one's food supply, one is necessarily at risk when that supply chain is interrupted. We know that. You read history.

The second is economics. When one is dependent upon someone else for their

funding, any interruption in that supply will sink that country economically.

Someone in the administration testified that it was naive to think that China, which holds $300 billion worth of our paper now, Red China, they say it would be naive to think that the Chinese would do anything to hurt their economic short-term interests. I think it would be naive to think they would not. That would be the cheapest war they ever fought against the United States.

My dad told me one time, I tell you something, Son, he said, It is easier to foreclose a man's house than it is to shoot your way in the front door. When we are dependent upon China and China can say to us, U.S., back off, whether we are demanding that they conform to trade standards, we know what the trade imbalance is with China, or whether or not they make a move on Taiwan and we say you cannot do that, they are getting themselves in a position to say, U.S., stay out of it, or we are going to roll Wall Street and we can do it.

That is the financial vulnerability that puts this country in grave jeopardy. If we lose control of our own economic self-interests, we have lost part of our freedom; and this mortgaging of our country to anybody on Earth that will let us have money on the cheap, 90 percent of last year's deficit was financed from offshore. When we allow that to happen, we are playing Russian roulette, so to speak, because anytime they want to, when they get a critical mass, they can really put the squeeze on us, and there is not a thing on Earth we can do about it.

Mr. BOYD. Mr. Speaker, you can foresee a situation that would put us in a dependent situation with agriculture and funding like we are with oil. For instance, I think 60 percent or so of our oil consumption in this country comes from another part of the world. Many of those people, like you said earlier, do not necessarily have our best interests at heart. So we have it within our own ability to stay out of that situation with the economics, and we really need to get this turned around and stop this deficit spending to the tune of 400 or $500 billion a year. If we do not, then we can foresee a situation down the road where it could be an economic wreck here.

Mr. TANNER. The other thing that the supporters of this economic plan for our country say, well, do not worry about it; as a percentage of the gross domestic product, it is not historically too high. Well, when it was higher was World War II, and we did deficit spend and we borrowed a lot of money; but you know who bought the debt then? Americans, the war bonds, the savings bonds. They are not buying it today. They do not have the money to buy it because the middle class you talked about earlier is shrinking, not growing. It is shrinking. So we are not even financing our own debt.

I had a fellow call me on the phone the other day and said, I am afraid we have gone from the greatest generation to the greediest generation, and if our forefathers had borrowed money like we have seen in the last 48 to 60 months, at this pace, I guarantee you we would not have the standard of living that we have enjoyed in this country up to now. You said it pretty well awhile ago when you said this country was built with investment in infrastructure and human capital, and we are robbing ourselves of the ability to do that.

We do not have the drug task forces. If there is anything on Earth we need to do in this country it is to try to alert the young people to the dangers of that, and the gentleman from Nebraska (Mr. OSBORNE) spoke, I thought, very eloquently about that. It is zeroed out.

We are eating the seed corn, so to speak, with regard to our investing in the future. I go back to three things every American family does: live within your means, pay your debts, and invest in the future, whether it is for your retirement, kid's college education or something. Leave the place better than when you found it.

This is the first time I can remember when people who are in power of this government are knowingly, willfully, and deliberately leaving this country worse off than they found it financially.

Mr. BOYD. Mr. Speaker, I think you said it very well. We do have a tendency here to be very selfish, this generation, unlike the Greatest Generation, which came out of World War II and paved the way for us to be a great country.

But the Blue Dogs have a plan. We have a plan that talks about some very basic principles that would put this country back on sound footing in terms of its budgeting for its government and funding its priorities, and would the gentleman from Utah (Mr. MATHESON) care to share those points with us?

Mr. MATHESON. Mr. Speaker, I would be happy to do that, and I think I would put it in the following context. This is not easy to balance this budget. It is going to require a lot of really tough choices, tough political choices.

What the Blue Dogs have decided is we need to put in a structure for this institution and for the White House, for the President and Congress to work within a structure that is going to guide us on the path of fiscal responsibility because without that structure it is just too easy to deficit spend.

□ 2100

That is what has been going on around here. It will take some tough choices. We do not deny that at all. We are ready to work with people, but it will have to be all of us working together to take on those tough choices.

So what the Blue Dogs have done is they have tried to establish a 12-point proposal to set up a structure that addresses some of the issues we have talked about here tonight. For instance, I talked about contingency planning when my colleague, Mr. BOYD, plans his family business budget, which we called one of our 12 points for a rainy day fund, or the Federal Government plans for things that you cannot articulate at the start of the year.

Thirty-five States in this country have rainy day funds. Apparently, we thought that was not appropriate for the United States of America, but we know every year something happens. Natural disasters may happen. We do not know what it is going to be, but we know we ought to plan. That is one of our 12 points.

We talked about accountability earlier, the fact that you can't get a clean audit from most agencies. One of our 12 points is, you know what, any Federal agency that cannot give us a clean audit and properly balance their books, we freeze their budget at the previous year's level. They are stuck. That has some real teeth in it, and that is going to motivate that agency to do the right thing and give you a clean budget.

Another point of the Blue Dog 12-point plan is going to be acquiring a balanced budget amendment for the Constitution. Now this will be appropriately written with exceptions for times of war and natural disaster. But I think that is something we need. As I said earlier, we need a structure. We need something to force Congress and the White House to move toward a balanced budget, and that balanced budget amendment in our Constitution is a key component of making that happen.

Another part of the 12-point plan is something called pay-as-you-go. Now, we throw these terms out a lot. People may not know what that means, but it is a pretty basic concept. That means if you have got something new, a new program you want to spend money on, guess what, you have to pay for it. You can do it by taking money away from a another program or raising revenues.

Same thing if you reduce revenues someplace, you have got to pay for it by cutting spending or raising revenues someplace else. It is something that every family deals with in their household budget, what every business deals with. It is a responsible way to look at things.

This isn't a new idea. This is something that the Congress was working with before. In fact, these rules were in place from 1990 until 2002. Then they expired, and while the Blue Dogs have advocated putting the pay-as-you-go rules back in place, we can't get a vote out here on the floor of the House to do that.

Because as I said earlier, in the short term, it is a lot easier to govern if you do not have to make the tough decisions and you would rather deficit spend. But if we put those rules back in place, it is going to force people to make the tough decisions.

As an aside, I might add, Alan Greenspan who just retired after 18 years as

head of the Federal Reserve, and he has such a great reputation in terms of his economic model, he made a rather prophetic statement back in 2001. This is just when we finished a couple of years of surplus. He was testifying before Congress.

He said, ''With today's euphoria surrounding the surpluses, it is not difficult to imagine the hard-earned fiscal restraint developed in recent years rapidly dissipating. We need to resist those policies that would readily resurrect the deficits of the past and the fiscal imbalances that followed in their wake.''

He sure was right, because by November of 2005 he came back before Congress, and in testimony he said, ''Our budget position is unlikely to improve substantially further until we restore constraints similar to the Budget Enforcement Act of 1990, which were allowed to lapse in 2002.'' That was the pay-as-you-go provision that existed before.

So we have proof. We have a track record that shows that these rules worked. Without these rules, we have seen us spin into tremendous fiscal imbalance. It is another one of the Blue Dog points. There are 12 points. I thankfully may not go through all 12 of the points tonight, but I wanted to highlight some of the ones that we have talked about tonight, and ones that I think anyone in this country, regardless of political party understands, and they know it is the right thing to do.

I encourage, again, any colleague in the House of Representatives should know the Blue Dogs want to engage them on this issue.

If these 12 points that we have come up with aren't the perfect solution, and somebody has a better idea, we welcome the chance to have a dialogue with them. Because these are not easy issues, and we have got to work together to work this one out. But I think the 12-point plan represents a thoughtful process and a good start for setting up a structure that will force this institution to put us back on the path to fiscal responsibility, and so we can avoid increasing, and I will close with coming back to the comments I started with.

That is not increasing the problem of that birth tax, that we called it, that was employed on the son I had just 3½ weeks ago, that my wife had actually, my new son, came into this world owing $27,000. That is not right, it is not fair, and we have got to do something to make sure we do not grow that anymore.

Mr. TANNER. Now you have got a part of another $36 million that we have borrowed since we started talking, and 90 percent of that is coming to us from overseas.

Mr. MATHESON. I appreciate my Blue Dog colleagues joining me tonight. This is an issue we feel strongly about, and we are sincere when we ask our colleagues on both sides of the aisle to work with us on this because we think it so important to the future of this country.

NATIONAL SECURITY

The SPEAKER pro tempore (Mr. DENT). Under the Speaker's announced policy of January 4, 2005, the gentlewoman from Tennessee (Mrs. BLACKBURN) is recognized for 60 minutes as the designee of the majority leader.

Mrs. BLACKBURN. Mr. Speaker, I appreciate the opportunity to come before this body this evening and to talk for a few minutes about some things that are very important to us here in the House.

You know, we stand here many times, many evenings, and we debate the role of government here in this body. We certainly have heard it here tonight, as our colleagues across the aisle have talked about their desire to see things done differently as we look at our budget process.

Certainly there are those of us like me who think that government is overgrown. While there are others in this body that think that government cannot do enough, there are those of us who want to prioritize and reduce the budget, and there are those who do not want to prioritize or reduce the budget. They feel like something to do is to keep the status quo and raise taxes and approach our responsibilities in that way.

A couple of points I did want to touch on, as they have talked about the budget and talked about the deficit and talked about the concerns that we have for that, is we look at the overall economic security of this great Nation.

One of the things that we did when we passed the Deficit Reduction Act, which was a plan brought forward by the majority in this House that would reduce what the Federal government spends and yield a savings for the American people, what happened with that Deficit Reduction Act was, yes, we did achieve a reduction in what the Federal Government spends. This is the first time in about 20 years that this has happened. We had a reduction in our discretionary spending.

Mr. Speaker, I think it is noteworthy that we received not one Democrat vote for that bill for reducing spending. While it is easy to say, and certainly makes for great discussion and conversation, that the deficit is too big, and that we are spending too much, the proof is in the pudding.

The proof is, when it comes time to vote, are you going to vote to raise taxes and spend more and keep the status quo, or are you going to vote to make some reductions, to get in there and prioritize that budget and decide what is going to be the best way to allocate the resources of the Federal Government, because we have to bear in mind it is not our money, it is not this government's money. It is the taxpayers' money.

The taxpayers are overtaxed. They are paying too much. They want Uncle Sam to get his fingers out of their pocket, off their paycheck, and leave that paycheck to them.

I will remind my colleagues across the aisle also, they talk about we have to raise taxes to pay for this. Well, 2004, 2005, the U.S. Treasury received $274 billion more than they had estimated in revenues.

Mr. Speaker, there is a reason for that, and it is because tax reductions work. We know that they work. You lower those rates, and the economy, this great, wonderful engine of the U.S. economy, works. It works. We certainly have seen that happen. The reductions that were passed in 2003 have certainly paid off.

There is another point I would like to address that did come up. A couple of the colleagues said, we need to have some honesty as we look at this budget process. I am not going to disagree with that. I certainly think as we get ready for Presidents' Day and thinking about President Lincoln and the moniker Honest Abe that he carried with him, we certainly need to remember that and have honesty. But part of that honesty is looking at this and reminding the American people one of the reasons we are faced with the budget we have is because of this huge, enormous bureaucracy, huge bureaucracy that grew out of 40 years of Democrat control of this body, a bureaucracy that basically is a monument to them.

It is so difficult and people have such a tough time working through the bureaucracy, whether it is paying your income tax, figuring out that process, figuring out that Tax Code; whether it is the local university, trying to get over here and get the bureaucracy to help them with some program that is needed for that university; whether it is our local community and county governments trying to figure out how to work with different agencies and comply with different regulations.

It is a cumbersome, overgrown, bloated bureaucracy; and certainly as we address the issues of oversight through the ratings tools, through the President's management initiative, through the CFO act, those are all accountability measures that have come into play since Republican control of this body took place in 1994.

So there is plenty that we can discuss and we will look forward to discussing over the next month as we look at the budget, look at the process, look at the need to put those parameters in place that will help us get the budget under control and still address the areas of responsibility that we have.

One of those areas of responsibility that I think we all can agree on and certainly should be agreeing on is that of national security. There is truly a reason that our founders included the words ''provide for the common defense'' in the preamble to the Constitution. They knew that national security was an imperative in order for this Nation to be able to survive. They knew

that in order for children to dream big dreams, in order for small businesspeople to be able to go out and take that idea that they have and grow it into something that is wonderful, that creates jobs for their community, that yields back and gives back to that community, that security was an imperative. It is an imperative.

Tonight, several of my colleagues and I are going to take a few moments and talk about guarding this Nation and talk about the issue of national security, because we as a party, we as a majority, are focused, first and foremost, on that issue. Mr. Speaker, I cannot think of a single better time to do this than on Valentine's Day, because there is nothing more important or caring that we can do for our children, our grandchildren, our neighbors and those we love than to fight to be certain that every child has the opportunity to grow up in a safe, a free and a secure world. It is one of those foundational building blocks. And we Americans are free today because of the sacrifices that our parents and our grandparents chose to make for them, for us, and on our behalf. Until this world is a far different place, it is very clear that we must continue our support for a strong military and defense presence. That is the only way that we are going to be able to be certain that our kids inherit the America that we know today.

Mr. Speaker, we are going to look at some issues, as I said, of national security. We are going to look at the border security issue; we are going to look at the war on terror and how important it is for us to win in this war on terror and how important it is for us to realize that it is going to be a long war, that it is about freedom, and it exists not only in faraway lands like Iraq and Afghanistan but it is something that we have to address on our border, our Nation's border, as we look at the issue of border security.

The first Member who is joining me tonight, Mr. KELLER from Florida, has just returned from spending several days down on our southern border working with some of the border guards and the security agents that are there. Mr. KELLER is going to talk with us about some of the activity that is taking place on our Nation's southern border.

□ 2115

Mr. KELLER. Mr. Speaker, if you would have told me when I was in college that one day my idea of a romantic Valentine's Day evening would be standing around giving a speech on border security, I would have probably drank a cup of hemlock back then. But here we are, and I am happy to drink this cup of water beside me.

Mr. Speaker, I have just returned from the Mexican border, and I am here to report my findings.

We were 5,000 feet up in the mountains along the border California shares with Mexico at 2:00 A.M., freezing in 30-degree weather, with the wind howling in our faces. Eight shivering young men, illegal aliens in their late teens and early 20s, sat on the cold ground in handcuffs, grateful to be caught. One of them pleaded with a border patrol agent to find his girlfriend, Maria, who was still stuck out on one of the cliffs.

Illegal aliens like the ones I saw in handcuffs continue to enter the United States from Mexico at the rate of 8,000 per day. Today, we have 11 million illegal aliens in the United States. Illegal immigration presents a huge problem. That is why I decided to spend a week along the southern border to see firsthand how bad the problem is and, more importantly, what Congress can do to fix it.

Last year, our Border Patrol agents arrested 1.2 million illegal aliens attempting to enter the United States from Mexico. Significantly, 155,000 of those arrested were from countries other than Mexico. They included illegal immigrants from Iran, Iraq, and Afghanistan. This poses a very serious national security problem according to CIA director Porter Goss. I spoke with Border Patrol agents who had apprehended suspects on the terrorist watchlist.

One night, while I was riding along with the Border Patrol, two illegals from Pakistan were captured. One convicted sexual predator was caught trying to cross. So were wanted murder suspects, drug dealers and smugglers.

If the job of a Border Patrol agent sounds dangerous, imagine the risk to people who actually live along the border. I sat down in the living rooms of four different families who own ranches along the border. One couple, Ed and Donna Tisdale, documented on home video 13,000 illegal aliens crossing their property in 1 year alone. The Tisdales had their barbed wire fences cut by illegals running off the family's cattle. When their dogs barked to scare off intruders, the dogs were poisoned.

Another rancher told me about numerous break-ins at his home while his family slept as illegal aliens searched for food and clothing. One morning his daughters had gone out to feed their pet bunnies, only to find them skinned and taken for food by illegal aliens trying to escape to a nearby highway.

The economic impact of these illegal crossers who are successful is catastrophic. Illegal immigration costs taxpayers $45 billion a year in health care, education and incarceration expenses. The cost of the estimated 630,000 illegal aliens in my home State of Florida is about $2 billion a year, meaning every family in my congressional district pays a hidden tax of $315 each year and yet still faces artificially depressed wages because of illegal immigration.

So how do we fix the problem? Well, first, we need to crack down on employers who knowingly hire illegal workers. Jobs are the magnet attracting illegal aliens across the border, and the U.S. House has acted to make it mandatory for employers to check the paperwork of new hires or else face stiff penalties. Now it is time for the Senate to act.

Second, we complete construction of a double fence for 700 miles along the border near highly populated urban areas. For example, San Diego saw a steep reduction in crossings from 500,000 down to 130,000 when their double fence was completed.

Third, where mountains and rugged terrain make completion of a double fence impossible, we need to have a virtual fence. That is, Congress needs to appropriate money for infrared cameras that allow agents to see the entire border in day and nighttime.

Finally, we need more Border Patrol agents. Although Congress has already tripled the number of Border Patrol agents since the late 1980s, more are still needed.

Mr. Speaker, one million immigrants come to America legally each year; and my staff members spend the majority of their time helping those who want to come to our country to work hard and play by the rules.

We are protected from dangerous people entering the country at our airports. IDs are checked against the terrorist watchlist, and baggage is screened. Who is doing checks on the 8,000 people who arrive here illegally each day? Who is our last line of defense? It is a Border Patrol agent in a green uniform working alone.

At 2:00 a.m. tonight, after all of us are asleep, he will be once again working somewhere near the top of a cold 5,000-foot mountain along the California-Mexican border. He will get a radio call telling him to approach a group of illegals who have been spotted by an infrared scope and are located near the top of that mountain. He will track their footprints in the dirt and make his way toward them. As he approaches, there is something he does not know. Are these illegal aliens a group of harmless teenagers who are scared and freezing, or are they heavily armed, dangerous drug traffickers like the ones who have killed so many of his colleagues? Either way, he will approach them because it is just another day on the job.

Mr. Speaker, I have a message for that Border Patrol agent. The United States Congress knows you are there. We appreciate your service, and help is on the way.

Mrs. BLACKBURN. I thank the gentleman from Florida; and I thank him for reminding us of the importance of protecting that border so that we do provide for the common defense, we do have a secure Nation, and we are alert and watching. As he has mentioned so well, his State of Florida, the area that he represents, their estimated cost of dealing with illegal entry into this country is $2 billion a year, and that is for those that choose to enter this country illegally.

The gentleman mentioned some of the things that we have done, employer

verification, looking at continuing to secure the border, whether you are looking at a wall or whether you are looking at technology, but putting that surveillance into place.

Now, Mr. Speaker, I am going to yield to the gentleman from Texas (Mr. POE), who is on the International Relations Committee and the Terrorism Subcommittee. Judge POE likes to remind us that it is just the way it is time and again as he comes to this floor and reminds us of the importance of viewing immigration and appropriate and proper immigration, abiding by those laws and what an important component that is to this Nation's security and how important it is that we abide by those immigration laws as we are right now battling in this war on terror.

With that, I yield to the gentleman from Texas.

Mr. POE. I thank the gentlewoman for yielding.

We have spent much time in these halls discussing many purposes of government. Tonight we have heard much about the budget, how to spend taxpayer money, how the money should be spent, how it should not be spent, discussed projects big and small.

And many Americans consistently ask themselves the question, what is the purpose of government? Why do we have government at all? That is certainly a valid question to be asked, especially of our Federal Government.

And you said it well when you mentioned the preamble of our U.S. Constitution, that one purpose of government is to provide for the common defense. It is the first duty of government to protect us, to protect its citizens. Building roads and bridges, having commissions, maybe that is important. Well, maybe it is not. But the first duty of government is to protect the people that live within our borders, the U.S. citizens. Government does a pretty good job of that, especially locally, from our local police to our Federal officers, capturing outlaws, sending them to jail where they need to be. And we do a pretty good job on the international basis. We are fighting the war on terror in Iraq and Afghanistan and other parts of the world. Our military is the best military that has ever existed. And so the government does a fairly good job of that duty of protecting us.

I spent all my life basically in the criminal justice system. I started out as a prosecutor in Houston, and then I spent over 20 years on the bench trying criminal cases, just as Judge CARTER, who is here tonight. He has tried his share of outlaws.

And the rule of law is something that we all believe in in this country, that the law is the standard of conduct. And the law in this country is you do not come into the United States of America illegally, regardless of your purpose. And we know people are doing that anyway. We know, of course, that those narcoterrorists come across the southern border, especially the southern border of Texas, bringing in that cancer to sell. They make a lot of money doing that.

We know that people come here illegally, over 5,000 a day across the Texas border, illegally coming into the United States for various purposes. And we suspect that probably the next terrorist attack that occurs in the United States is not going to be because somebody flies into Reagan National down the street here, gets off the airplane, looks around and decides, I wonder what damage I can do to the American population. That is probably not going to happen.

That next terrorist is going to come across the open porous border, South Texas and Mexico, because those borders are open. And every country in the world knows that we have an open border, and that is why so many people are coming in.

Give you one example: 2005, in Maverick County, Texas, they had about 8,000 people illegally come in from Mexico that were captured. They had over 20,000 people illegally come in from Mexico from other countries other than Mexico, almost four times as many coming into the United States from other countries other than Mexico. They were from Korea. They were from China. They were from Brazil. They were from countries all over the world coming here. Every country knows we do not protect our borders to keep people illegally, that wish to come here illegally from coming into the country.

So the duty of government is to protect us, protect the sovereignty and the dignity of this country. Everybody wants to live in the United States. I do not blame them. I mean, this is the greatest place on earth to live. But everybody cannot live here, so we have got to have some rules, and those rules have to be followed, and it is the duty of our government to enforce the rule of law and make sure that people respect the dignity of this country. So we have a lot of concerns about that.

And maybe we should refocus the purpose of government. Maybe we should ask the question profoundly, what is the duty of government? And then we should expect the answer to be, to protect us, to protect our borders, to protect our national security, because that is the duty of government. And that is just the way it is.

Mrs. BLACKBURN. The gentleman from Texas is correct. That is the way it is. That is the duty of government. And as the gentleman stated so well and so eloquently, the business of government is protecting this country, as well as that being a duty.

And one of the things, Mr. Speaker, that we have altered is the way that we do business here in America by tightening some of our immigration rules. Looking at drivers' licenses, tightening our drivers' license requirements to prevent those documents from being used in ways that they are not supposed to be used. The Judiciary Committee has led on that issue, and Chairman SENSENBRENNER has done a tremendous amount of work on strengthening our border, taking steps to strengthen that.

Certainly our party as a whole is focused on the national security issue as one of the central issues that we must address. That is one of the reasons that we as a party fought to get the PATRIOT Act passed. We know that on 9/11 our security net had significant holes in it and it had to be fixed and addressed, and we now hope that our colleagues across the aisle will join us in supporting the reauthorization of the bill. It has been successful, and there are things we need to do to continue that focus on this issue.

A gentleman who is spending a good deal of time working on our homeland security issues and looking at the global war on terror and America's response there is the gentleman from Texas (Mr. CARTER), or Judge CARTER as we do like to refer to him. He is on the Homeland Security subcommittee, on the Appropriations Committee, and he is going to speak with us for just a few moments about what is being done to address some of our homeland security issues.

Mr. CARTER. I thank the gentlewoman from Tennessee and all those who gather here today to talk about our national security.

One of the things that has been bothering me here recently, there was a movie that just came out called War of the Worlds, and in that movie they were flipping cars around and the space invaders were coming around, and you saw the fear and panic on the faces of the people on the streets as this made up story of the invasion of our country from outer space.

And I could not help but be struck by the fact that we saw exactly that same live and in color fear on 9/11 when those people were watching those buildings burn, and all of a sudden the first one came crashing down. And we saw films on television of that absolute panic of American citizens as they ran in abject fear from the falling of those buildings, the attack on our Nation.

□ 2130

We saw films of people leaping from windows.

This is what our national security is all about. As Judge POE said, it is about protecting the American citizen. While this is the subject of such conversation all over our Nation today, let us do not forget we have got to protect ourselves.

Now, I, like Judge POE, have been dealing with law enforcement most of my adult life. I have tried a substantial number of felony criminal cases. One of the things that we always would do that we worked into law enforcement is we wanted to have interagency cooperation. We wanted to be able to let the DEA and in Texas the Texas Highway Patrol work together on a drug

case, work in cooperation, share information. But as we approached a view of how we were going to secure this Nation, we discovered that we had a lot of agencies in this Federal Government and in the State governments that really were not coordinating, working together. Tools that we have used for years in criminal justice were not being used for securing our Nation. So some brave folks got together here in the Congress, and they wrote the PATRIOT Act.

This PATRIOT Act, because of partisan politics, in my opinion, and the fact that this is a world where everybody likes to criticize everybody else, we forgot about those people panicking in the streets of New York now, and we are starting to tear up a document that makes sense. And I think it makes sense to the American people. I think it makes sense to say I would sure like to know that every agency that is involved with somebody who might want to attack me or my family in this country talks to each other, shares information, does not have bureaucratic boundaries set up which prevent them from doing this.

The FBI should share information with the CIA. The CIA should share information with the DEA. And all other codes for the various groups that are up here, they should get together and share that information. The PATRIOT Act set up those procedures to do that. Does anybody have a problem with that? I cannot imagine an American citizen having a problem with that.

Do you not want your FBI agents and your prosecutors, the people who work on this stuff, to talk? Do you not want them to be able to communicate, share what they have got?

Now, if I think somebody is planning on blowing up a building, just like I am really concerned about somebody who might be worried about smuggling drugs into this country and I want to have a surveillance on that facility where I think this illegal activity or this terrorist activity is taking place, I do not see anything wrong with being able to have procedures set up, which we have used in fighting the war on drugs for years where you go in and take a look and then you back off until the perpetrators get there and then you go in and make your raid.

But you can put a title on that, a sneak and peak warrant, and it sounds horrible. It sounds terrible. It sounds like the government is sneaking around peaking on private citizens. No. Why should you let them know when you are not there that you have been there? Go get them when they are there. We are here to stop these people. Why should we have to conduct investigations and tip off the people we are investigating? Does that make sense? So we have proper legal proceedings that have gone on in this country for a decade or so in fighting the war on drugs and the war on crime. We are using this in the war on terror. That is part of the PATRIOT Act. I do not see why the American public would feel like they were intruded upon at all. Law-abiding American citizens are not intruded upon at all by this.

Some people are just shocked that the PATRIOT Act actually looks into business records. How do you think you finance people to come over here, train to fly a 747 or a 727, and crash into a building without some money? If that money is being done for terrorist activities, why would you not want the investigating agencies to have the ability to go into business records and find out about these things? It certainly makes common sense to me, and it is something we have used. In fact, many of you may recognize now in your life there was a time you could come into this country and deposit money or you could go down to the bank and deposit any amount of money you wanted to in the bank. But there were people coming from other sources with huge sums of money that they were laundering through our banking system for the drug business.

So what did we do? You have to report every $10,000 deposit and every $10,000 withdrawal. Nobody got all upset about that in the United States. That is dealing with people's business records. But it helped us find out where the drug dealers were, and it helped to keep their dirty money out of our legitimate system. Now we want to know where the terrorists' money is, and I think it is appropriate that we look at those records.

Now, does it make sense to you that you have to hunt for somebody to issue a warrant when there is a criminal procedure, a criminal procedure that is going on all over the entire United States, that you have to go to just one particular jurisdiction to get it when it affects all jurisdictions? No, it does not make sense. You should be able to seek a warrant anywhere there is jurisdiction. The PATRIOT Act allows that to happen on terrorist activities.

This is a good law enforcement tool. The warrant still has the same checks and balances and protections and probable causes that are there for anybody. But why do you have to hunt down a judge in Arizona when you can find one in California when it all affects the same territory?

The PATRIOT Act increased penalties on these terrorist crimes. Now, I personally am a penalty guy. I believe in penalties. I have sentenced a person to 20 years in prison for one rock of crack cocaine because I believe punishment works. That is my personal philosophy, and some Americans might not agree with it. Our county happens to have the lowest crime rate in the United States, but that is my argument. But the point is the terrorist penalties have been enhanced by the PATRIOT Act. That is good. That helps us use another tool to keep people who want to harm our wives, our children, our husbands, our communities, give them extra punishment for what they do. Those who harbor those who would harm us we also have tools to go after.

This is the goal of the PATRIOT Act. That is what it was established for. It is a good tool. It is a tool that is effectively helping us. One of the major reasons that all those who deal with these issues talk about them right now, today, is because we have been able to protect this Nation since 9/11. Nobody is sitting here telling you that everything is perfect; but if you throw away your tools and you put up the things that help you solve the problems, in my opinion, for political reasons, it concerns me greatly that the real purpose of homeland security is lost, and that is protecting our families and our way of life.

The USA PATRIOT Act should be renewed. We should continue this tool for the American agencies that deal with terrorism and law breakers and making sure that when our kids go to bed at night, they feel a little bit safer.

Mrs. BLACKBURN. Mr. Speaker, I thank the gentleman from Texas for his comments. He is so correct in talking about the importance of the PATRIOT Act and being able to protect our families.

And I appreciate so much that he and the other speakers tonight have talked about the implications of what happens here on our homeland and the importance of keeping that homeland safe, keeping that homeland secure, and have talked about the great work that is done by our first responders, by our local law enforcement members, that community that works so diligently; the work that is done by our border guards and those who are patrolling our borders. Because, yes, indeed, national security means that we secure this great Nation. Because this is a war on terrorism; it is going to be a long difficult war. And it is the reason, Mr. Speaker, that we have taken military action in Afghanistan and in Iraq, and it is the reason that we are working to reshape that region of this world. And we are making progress. And I know it is frustrating sometimes when we feel like we are taking two steps forward and one step back. But, indeed, there is a mighty work that is being done, a very good, consistent and productive work that is being done by the members of this great Nation's military.

And tonight we are joined by the gentlewoman from Virginia (Mrs. DRAKE). The thing that is so wonderful about Mrs. DRAKE's district is the presence of the military that is there, whether it is our men and women of the naval forces that are out there working or those in the Air Force who are flying.

So from land to air to sea, you have it all covered, and we appreciate your constituents. And, Mrs. DRAKE, I join you in wishing the families of all of those men and women who are deployed a wonderful Valentine's Day. And I join you in standing here tonight to say ''thank you'' that they are working to be certain that these children grow up in a safe, free, and secure America.

Mr. Speaker, I yield to the gentlewoman from Virginia.

Mrs. DRAKE. Mr. Speaker, I would like to thank the gentlewoman from Tennessee for yielding to me.

I am very proud to join her tonight on Valentine's Day to wish all our men and women of the service a happy Valentine's Day, but especially those and their families who are separated today and not celebrating Valentine's Day together because they have put duty and the defense of our Nation first.

We live, as we know, in a completely different time; and we face a totally different threat. Our enemies do not wear a uniform. They do not represent a nation. They do not own tanks and aircraft. What they are is a global terrorist network that represents a violent extremist philosophy, one that places no value on life. What they seek to destroy is our way of life, the very fabric of our civilization.

We realize that they have established goals. Their short-term goal is to take Iraq. Their mid-term goal is to take the Middle East. And their long-term goal is to take the world. They seek and they have vowed to use nuclear, biological, and chemical warfare.

Our brave fighting men and women understand this threat. They have volunteered to defend this Nation. Recently, I met a member of our military, a young man. He looked at me and he made a very simple statement. He said, Think about this war on terror as if it were a football game. And the question that I want to ask you is would you rather play the game at home or away? Our goal is that we must fight this war, or play this game, as an away game.

I met another young man on my trip to Iraq and had a brief conversation with him. He looked at me and he said, Ma'am, I understand the threat. I know why I am here, and if I have anything to do with it, we will never have another attack on our soil. With that he asked me not to worry about him but to pray for him, and in a moment he was gone.

We as Americans do not fully understand this threat. Unless we have loved ones who are serving, our lives have not changed. We have not been asked to sacrifice for a war cause nor should we change our way of life because terrorists would like to do that for us. So it is hard to realize that we truly are a Nation at war.

We question why we bother with a small country that is so far away from us when we perceive that they have lived in constant turmoil and they have constantly fought with other people. But America is committed to winning this war. We have watched liberty and democracy spring in the Middle East, and we know in our hearts that all people yearn for freedom to raise their children, to be able to live without fear, without torture, and without tyranny.

I would like to share with America that this fall the House Armed Services Committee, under the chairmanship of Chairman HUNTER, conducted a bipartisan comprehensive review to prepare our members on the committee for the QDR, that is, the Quadrennial Defense Review. This is a review that is done every 4 years by the Department of Defense to assess our national security posture.

□ 2145

Very importantly, this is the very first review that has been done post-9/11. This review is designed to ensure that the Department of Defense has a plan to transform itself to meet the threats we face in the 21st century.

The QDR seeks to achieve the following objectives: Defeating the terrorist network; defending the homeland; shaping the choices of countries who are at a strategic crossroad; and preventing hostile states and non-state actors from acquiring or using weapons of mass destruction.

Our goal is to develop a military that is more effective, more able to strike quickly. In the coming weeks, members of the House Armed Services Committee will be reviewing and assessing how to reshape our military to meet these present and emerging threats.

Our military and the people of Iraq have accomplished great successes. In less than 3 years, they toppled Saddam, they created their government, and they passed their own constitution. I think that is quite a feat. It took us 13 years to develop our Constitution. We amended it 27 times. It took us 120 years to give women the right to vote. I think we should be very, very proud of their successes.

So far, we have rehabbed over 2,800 schools; trained over 4,700 teachers; electricity, water and sewer are working in Iraq; as well as setting up independent TV stations, radio stations and newspapers. We have captured and killed many of their leaders, not all; we are shutting down as much of their money as we can; and our fighting men and women have engaged the enemy so that they do not have the time to wage war here on our soil and hopefully will continue to prevent an attack within our Nation.

I believe the first function of government is to defend our Nation, and I think the greatest gift that we give to our children and our grandchildren is freedom. On Valentine's Day I am very happy to thank the men and women of our military who give us those gifts.

Mrs. BLACKBURN. I thank the gentlelady from Virginia. I appreciate her comments about the QDR and the review that the Armed Services Committee, a committee on which she serves, is conducting.

I would think for those who are watching tonight, if they want to follow that process and learn a little bit more, they could go to the House.Gov website and then go to the Armed Services Committee and could get a bit more information about that process.

Mrs. DRAKE. That will be ongoing.

Mrs. BLACKBURN. I thank the gentlelady for her comments and for mentioning the good work that is taking place over in Afghanistan and in Iraq.

One of the things, Mr. Speaker, that we are learning more and more about every day is the fact that, as the military raises up over there, at the same time we are raising up and working to raise up the economic underpinning of that nation, the governmental underpinning of that nation, the educational underpinning of that nation, and working to be certain that they are indeed ready to take the reins and ready to succeed as they step toward democracy.

Mr. Speaker, I would like to yield to the gentlewoman from North Carolina, Ms. FOXX. She does such a wonderful job as she works with her constituents and works with us. Education is her forte, and I love listening to her stories about how she educates and works with her grandchildren and how special and how important they are and the lessons that she teaches them and how privileged they are to grow up in a safe, free land and their responsibility to be good stewards of that citizenship and that opportunity that is presented toward them.

I yield to the gentlewoman from North Carolina for some comments on addressing the global war on terror.

Ms. FOXX. Thank you, Congresswoman BLACKBURN, for your leadership and for providing these opportunities for us to share some of our thoughts.

Our colleague, Mrs. DRAKE from Virginia, does such a wonderful job in recognizing our military and serving on the Armed Services Committee.

Today, when I was coming into the Cannon Building, there were two gentlemen in uniform standing at the door taking some pictures, and I stopped to thank them for their service. I do that every time I see anyone in our military. I thank them for their willingness to serve. They were so pleasant and so excited. They had come home from Iraq for a few days, and they were spending some time here in Washington. One of them said that his mother came from Mt. Airy, which is in my district. They gave me their cards, and we are going to maintain e-mail correspondence.

You mentioned my grandchildren. I mentioned to them that, without any prompting whatsoever, about a year-and-a-half or 2 years ago my now 6½-year-old granddaughter and 9-year-old grandson, at night when I heard their prayers as they were going to sleep, began praying for our military people. It really touched my heart and the heart of their parents, because we didn't tell them to do that, they did it completely on their own. I hope that all of our military folks know, as I told these two gentlemen today, that there are millions of people in this country praying for them regularly.

I want to tie that into what President Bush says all the time. He believes, as I believe and I think most people in this country believe, that freedom is a gift of God and that we are

blessed in this country with the most freedom of any people and the most prosperity of any people and that part of our responsibility is to help spread that freedom.

I also was thinking that February is not only the month for Valentine's Day, but it is Abraham Lincoln's birthday, and pretty soon we are going to be celebrating George Washington's birthday, and Ronald Reagan's birthday was in this month. We have so much to think about in this month of what those men meant to helping to live up to the ideals of freedom and the values of this country and what they risked in their lives, particularly Washington and Lincoln but also President Reagan, who risked saying to the world the truth, as President Bush has done.

I want to bring us back to talking about the fact that we are at war and that it is appalling that many of our colleagues cannot seem to understand that, as Congresswoman DRAKE mentioned, and a part of that war is being able to gather intelligence so that we can fight it effectively. We do want to fight that war on their turf, not on our turf, and we want to keep them from attacking us again.

I have been very distressed in the last few weeks about the way the revelation about the National Security Agency's terrorist surveillance program, the hysterics that have been created from the other side of the aisle. I think that it is time that we talk about the myth that has been created about that program.

The allegations about that program, that it is illegal, are a myth. It is a legal program. The reality is that the President's authority to authorize this program is firmly based in both his constitutional authority as commander-in-chief and in the authorization for the use of military force which passed Congress after 9/11.

The allegations that the NSA program is a domestic eavesdropping program used to spy on innocent Americans are a myth. The reality is that this program is narrowly focused aimed only at international calls and targeted at al Qaeda and related groups. There are safeguards in place to protect the civil liberties of Americans. Allegations that the NSA activities violate the fourth amendment are a myth. The reality is this program is consistent with the Constitution's protections of civil liberties, including fourth amendment protections.

There are people who want you to believe this program is targeting average Americans, but nothing could be further from the truth. We need this program to help protect us and this country and to help protect our men and women who are fighting to keep this country a free country, and we need to do everything that we can that is legal, and I am convinced that the President is doing what is legal to protect us.

I think, again, that we want to call attention to the men and women who are fighting for us and remember them in our prayers constantly and thank them for the sacrifices that they are making to keep this country free.

Mrs. BLACKBURN. Mr. Speaker, I thank the gentlelady from North Carolina, and thank her for reminding us that this is a global war on terrorism.

Mr. Speaker, I yield to the gentleman from Texas (Mr. CONAWAY) for some additional thoughts on the global war on terror.

Mr. CONAWAY. Mr. Speaker, I thank the gentlewoman for yielding this time. I will be brief, as we have one more speaker.

Several of our colleagues tonight have talked about the war in Iraq and the global war on terror. I just want to add a little meat to that bone that says when we have a free Iraq, a democratic Iraq that is at peace with its neighbors, is no longer a haven for terrorists, that the war on terror will go on.

I would like to beef up that argument by a brief historical review of some of the things that our enemies have done outside of Iraq over the last several years.

In October 2000, the USS *Cole* was in Aden, Yemen, refueling, when a small rubber boat ran up beside it, set off a charge that blew a 40 foot by 40 foot gash in the side of the USS *Cole*, killed 17 young sailors and injured 39. Without provocation, without warning, these terrorists struck.

In Saudi Arabia, in 2003 and 2004, on May 12, 2003, suicide bombers killed 34 people, including 8 Americans, when they blew up a housing compound that housed westerners.

In May of the following year, 22 people were killed when terrorists attacked a Saudi oil company in Khobar, taking foreign oil operators hostage and leaving 22 dead, including one American.

June 11, the next month, in Riyadh, terrorists kidnapped and executed Paul Johnson, an American in Riyadh. Two other Americans and a BBC cameraman were killed by gun attacks.

Then in December of 2004, in Jeddah, terrorists killed five consulate employees at the U.S. consulate there in Saudi Arabia.

In Madrid, March 11, 2004, just before the elections in Madrid, in an attempt to affect the elections, which as history shows us this bombing did affect it, 13 rucksacks went off at a train station on four commuter trains almost simultaneously at the height of rush hour, killing 191 civilians and injuring over 1,800 people. The Moroccan Islamic Combatant Group has claimed responsibility for this tragic killing; again, an unexpected, unannounced, unprovoked attack on civilians.

Then in July of this year, this past year, July 7, I was actually in Kuwait on my way to Iraq when a suicide bomber struck again, this time in trains in London. Three different underground trains were blown up, killing some 56 people, injuring 700, again in an unprovoked, unannounced sneak attack using suicide bombers.

Finally, on November 9, 2005, in Amman, Jordan, at a wedding ceremony in the three hotels there in Amman, again suicide bombers blew up, killing 57 people and injuring 115 others in an attempt to create terror among those who oppose the violent Islamic Jihadist movement.

I remind my colleagues and others that we are in a global war on terror, no place in this world is safe, and while it is counterintuitive to talk about playing an away game, it is clearly in our best interests that we continue to fight this war in Iraq and around the world so that we don't fight it in the streets of America.

Mrs. BLACKBURN. Mr. Speaker, I thank the gentleman from Texas for reminding us this is an elusive enemy. It is not an enemy that is located in one place or an enemy that is stationary. It is an enemy that you will find spread out all across the globe.

As he mentioned, several of the attacks, whether you are talking about the *Cole* or the Saudi bombings or Khobar Towers or the World Trade Center, both of the bombings there, this is a very vicious enemy, and the global war on terror is a war that is being fought around the globe. The activity is centered in Afghanistan, it is centered in Iraq, and it is important that we keep our Nation safe.

Our final speaker this evening is the gentleman from Georgia, Dr. PRICE, who has certainly put a tremendous amount of attention on what it takes to keep this Nation safe and having the tools. Being a physician, he knows the tools of the trade are important, and it is important that our men and women in uniform, our men and women in our intelligence services, our first responders, having the tools they need to fight this war and be successful in this war. I yield to the gentleman from Georgia.

□ 2200

Mr. PRICE of Georgia. Mr. Speaker, I am so pleased to stand with so many of my colleagues this evening and to talk about an issue that really is one of the central planks of our side of the aisle and the national campaign that we put forward before the American people. I thank you so much for your leadership.

I was going to talk at length about the National Security Agency and the issue that has come before us. I look forward to doing that at some point in the future. But I do just want to share a few comments about what we have heard tonight.

When I was young, I was a member of an organization, a group, that used to sing a song called Freedom Is Not Free, and the words were something like: freedom is not free, freedom is not free, you have got to pay a price, you have got to sacrifice for your liberty.

And I had the privilege of being with the American Legion Post 140 last night, just last night in my district, and met with these men and women. And they went around the room and each of them identified themselves and

their branch of service and the conflict and the war in which they served.

And I was so humbled to be in the company of such heroes. It just brings to the fore the incredible sacrifices that we as Americans have made over the past number of years for our liberty, for our freedom. I am so pleased with the leadership in the House, the Members who stood up this evening and talked about the difficulty that Americans have comprehending this war on terror; and we do, as you well know, because we do not think like terrorists.

We do not understand that mind. We do not understand the mind that would murder innocent individuals. We do not understand the mind that would chop the heads off of innocent individuals. That is just incomprehensible to us. So it does not come easily to us to comprehend the fact that we are in a war.

I was so pleased to hear Congressman CONAWAY talk about Iraq not being the end of this war. There are so many aspects to all of this war. So I am pleased with the leadership in the House, and I am pleased with the leadership of my colleague, the gentlewoman from Tennessee, who is willing to stand up and discuss these issues.

I also understood that this is not a Republican issue, it is not a Democrat issue. It is an American issue; it is an American challenge. And so my hope and prayer over the coming year is that all of the Members of the House of Representatives and all of the members of the Senate will embrace the challenge and the battle truly that we have to work together in this war on terror. I yield back to you, and commend you for your wonderful leadership in this area.

Mrs. BLACKBURN. I thank the gentleman from Georgia. I too remember singing that song: freedom is not free, you have to sacrifice for your liberty. I think that we all have sung that at camps as we were growing up. And how true and how meaningful it is as we talk about the men and women, whether they are working here domestically as first responders, as local law enforcement, as border security guards, protecting this homeland that we have, or whether they are fighting in Iraq, Afghanistan, around the globe. Whether they are deployed and away from their families, we know that they are doing this because they want to be certain that future generations grow up in a world that is free, is safe, is secure.

And we thank them for loving all of us enough to make that sacrifice and be willing to put their lives on the line. And we wish each of them a happy Valentine's Day. We wish their families a happy Valentine's Day, and we hope that they all know that we love them too.

Thank you, Mr. Speaker.

30-SOMETHING WORKING GROUP

The SPEAKER pro tempore (Mr. GOHMERT). Under the Speaker's announced policy of January 4, 2005, the gentleman from Florida (Mr. MEEK) is recognized for half the time until midnight.

Mr. MEEK of Florida. Mr. Speaker, it is an honor to be here on the floor of the U.S. House of Representatives again.

As you know, we have our 30-something Working Group that Leader PELOSI has formed over 3 years ago. And we meet constantly on issues that are facing the American people, and we ask the U.S. House of Representatives to address those issues in many cases. And there is an awful lot, Mr. Speaker, that is going on here in Washington, D.C.

I must say that I am really, really pleased at the innovation workshop we had earlier today that allowed Americans to be able to get a view of what the Democratic side has to offer in the area of innovation. And we are going to talk a little bit about that tonight.

But we are also going to talk about the ongoing costs of corruption and cronyism and incompetence in this institution that has brought about bad policies for the American people and affects the very lives of the American people that we are trying to serve.

As we work to try to better ourselves here in this Congress, we continue to point out the fact that we are not working in a bipartisan way to be able to get the best results for Americans. And we are going to talk about that also, Mr. Speaker.

I think it is important to point out the fact that we want to wish everyone here, not only in the U.S. House of Representatives but throughout our Nation, a happy Valentine's Day. And Mr. DELAHUNT is here, one of our esteemed colleagues. We are so glad tonight, Mr. DELAHUNT, that you can join the 30-something Working Group on this Valentine's night.

I know a nice man like you had to call a couple of folks and wish them happy Valentine's Day, including your family members, and it is a good day.

Mr. DELAHUNT. It was a long process all day, Mr. MEEK. But I just about accounted for everybody that it was appropriate. And a happy Valentine's Day to you and to your family. I had an opportunity to meet your family recently, and they are great folks. They really are.

Mr. MEEK of Florida. Well, without family where would we be?

Mr. DELAHUNT. That is right. That is what this is all about.

Mr. MEEK of Florida. Do you know what is interesting, Mr. DELAHUNT, is the fact that we have the issues that are floating here in Washington, D.C., and it is just kind of hard to keep up with them. There are so many things that are going on, and so many things that are happening to the American people. It is important that we get our house in order, and this House and the Chamber across the hall, including the executive branch, of getting back to the business of the people of this country.

We have families in the gulf that had visited the Capitol last week, coming with demands for their government: do not forget about us; do not leave us out; do not leave us behind. And reports are being released, but not only a summary report from the partisan House committee that was formed here about some of the mistakes that the administration made and where this Federal Government failed Americans.

Another report that Secretary Chertoff is talking about, he was supposed to come before the Senate today of the Homeland Security Committee, and they canceled the committee meeting because of Senate votes, to get down to the bottom of why we still have not prioritized the emergency management response.

I also think it is important that we point out the fact that the partisan commission here in this House that is charged, Mr. Speaker, with getting to the bottom of what happened and what did not happen in the case of the response and preparedness for Hurricane Katrina fell short of its duty to be able to make sure that we had sound, concrete recommendations to be able to move forward.

We still ask, Mr. Speaker, here on this side of the aisle, for an independent Katrina commission so that we can really get down to the nuts and bolts of what happened in this natural disaster and the disaster that followed that was the Federal Government's response.

I think it is also important that we talk about our fiscal situation, and some of tonight and tomorrow we will talk about what has happened with the reconciliation, budget recommendations that passed through this House and through the Senate, and where we are falling short there and being straight with the American people as it relates to the Republican majority.

Mr. DELAHUNT, I think it is important to point out the fact that so many Americans under this administration and under this White House have found themselves left behind economically and also socially.

The President talked about his health care plan here in this Chamber, a health savings plan that is already not working, and the way it should work and could work for Americans because it is not the right prescription for coverage for families.

To set aside money, to ask Americans to set aside money that they do not have in the first place is an oversight in itself. So many American families are living from paycheck to paycheck. It is not because they were so unfortunate to have a job and a family that they could not afford some of the high prices they are paying for fuel at this time and heating costs and other energy-related costs, but to say that we will allow you to put money aside for a rainy day for when a family member gets sick, that is not insurance.

Right now there is legislation here in this Congress to stop the Veterans' Affairs Committee from going up on insurance rates against veterans. And I want to also, if I can point out a few of those articles today just in the local Washington Post, Mr. DELAHUNT, I think maybe we can talk about some of the things our third-party validators are talking about here in this town.

Mr. DELAHUNT. Mr. MEEK, if I can. I think you made a reference to reports that are now being released, and you indicated that it is a partisan report. I think it is very important to explain that the report from the House committee that reviewed this, the aftermath and the prelude, if you will, to Katrina and what went wrong, was for all intents and purposes a Republican effort.

Two Democrats sat with our Republican colleagues; and in the aftermath of their effort, these two Democrats, both from Louisiana, have recommended that it is essential to create, as we did in the aftermath of September 11, an independent commission that reviews again the prelude, during, and the aftermath of the natural disaster that devastated this country in the form of Hurricane Katrina back on August 29.

Maybe like the 9/11 Commission, we can have an 8/29 Commission that all Americans can have confidence in—in its integrity. But I think, too, that we ought to review really the damning findings of the Republican effort that really, in my judgment, speaks to the incompetence of this administration.

You know, we use the word or the term ''culture of corruption'' frequently in explaining what is occurring here in Washington. But I think you might agree with me that it is incompetence combined with cronyism that really are the building blocks, if you will, of that culture of corruption that creates a huge cost to the American taxpayers.

I am speaking in terms of billions of dollars and multiple lost opportunities, dashed dreams, and unfortunately this, let me use the term ''corruption tax,'' that even cost lives. And I think we have witnessed this because of what occurred by way of a natural disaster on August 29 and what has occurred in Iraq in the aftermath of our invasion.

And I do not want to delve tonight into the disagreement that I have in terms of the rationale for this administration to invade Iraq.

□ 2215

I do not want to talk about weapons of mass destruction. I do not want to talk about links to al Qaeda. I do not even really want to talk about the failures to bring democracy to far corners of this world according to the Bush doctrine. But I think it is important that we talk about the corruption that is ongoing and reveals itself on a frequent basis by reports coming from independent sources, coming from, actually, the special inspector general for the reconstruction of Iraq and coming from trials that are now occurring in Federal district court.

But before we get to that I think it is important to review what went wrong with this administration's response for Hurricane Katrina. And again, I think we have to, in a sense of fairness, applaud some of our Republican colleagues who really said it better than you and I can say it, and I am sure they cannot be accused of being partisan since they are Republicans. But I thought what was particularly interesting to me was a quote in my hometown paper or one of my hometown papers, the Boston Globe. It was an observation by TOM DAVIS, who is the respected chair of the Government Affairs Committee.

He made the observation that President Bush is in Texas, Chief of Staff Card is in Maine, and the Vice President is fly fishing wherever. I mean, who is in charge? And I guess that is really the question.

We have had a Department of Homeland Security for several years with the ultimate Federal responsibility to prepare Americans for disasters, whether they are triggered by a terrorist attack or whether they come via a natural disaster; and the performance of this administration can only be described as a disaster, a debacle, if you will.

I thought it was rather ironic that today, as I was watching the news, the Secretary of Homeland Security, Mr. Chertoff, announced he was going to hire 1,500 disaster specialists. I guess my response was, what took so long? What took so long? How long has it been? Since 8/29, since August 29.

Mr. MEEK of Florida. Mr. Speaker, I can tell the gentleman what took so long. What took so long is that we have an administration and we have a Congress that did not give the proper oversight.

The Department of Homeland Security asked the questions when they should have been asked. The American people were told, trust us, trust us, trust us. When you talk about the Republican majority and really Homeland Security, FEMA, the White House, and oversight committees were not prepared to do what it was supposed to do and we failed the American people.

Now, let me just say this. The American people have been asked to trust the words of this majority time after time again. Trust us on the fiscal outlook for the country. Trust us on taking down the deficit. Trust us on making sure what they tell you is actually the reality. Trust us on your health care costs and your coverage. Trust us, trust us, trust us.

And almost in the same month the American people, it is revealed to the American people that it was not about them the whole time. It was about special interests having their opportunities and privacy through the executive branches in this Congress.

Now if I can just take a minute just to bring in third-party validators. You talked about what you read in your hometown paper. I just want to put this picture right here. This is Secretary John Snow from the Department of Treasury. I want to put his picture there so folks know that this is not the Meek or the Delahunt report.

This is a report in a letter from the Secretary of the Department of Treasury to Senator MITCH MCCONNELL, and it says the administration now projects that the statutory debt limit currently at $8.184 billion will be reached in mid-February of this year. At that time, unless the debt limit is raised or the Department of Treasury takes the authorized authority, extraordinary actions will have to be carried out, we will be unable to continue financing the government operations.

It goes on to say, I am writing you to request that the Congress raise the statutory debt limit as soon as possible or we will not be able to carry out government functions. That is basically what it is saying.

I have blown this letter up here because I think it is important. This letter is signed by the Secretary of the Treasury. Basically what he is saying in this letter is that, unless the debt limit is raised, the Department of Treasury will not be able to continue to finance government operations. Our government operations, not the government operations of a foreign country, not the government operations of the Republican party, not the government operations of the Democratic party, the government operations of these United States of America.

Now give me a couple more minutes. This came from the Secretary of the Treasury, the office right next to the White House, Mr. Speaker, appointed by the President of these United States and confirmed by the U.S. Senate. This is a letter that he wrote on December 29 of 2005, just the end of last year.

Better yet, Mr. Speaker, the American people are being asked, trust us with the money and the decisions. Let us have a treasurer here.

Mr. DELAHUNT is familiar with this chart. The President of the United States, George W. Bush, has borrowed more, and he could not do it by himself, he needed the Republican majority to do it, $1.05 trillion from foreign countries. Foreign nations like China and Saudi Arabia and all of the countries that we are concerned about, we have borrowed more money in four years since 2001 to the present, to the end of 2005 than 42 Presidents combined, and that is $1.01 trillion.

Now we had World War II, Mr. Speaker. We have had the Korean War. We have had World War I. We have had Vietnam. We had Gulf I. All of these wars, all of these conflicts, the Great Depression, a number of challenges to our country. This President and this Republican Congress has borrowed more, I cannot say that enough, has borrowed more from foreign nations in the history of our republic. And we can

say that from a standpoint as Democrats to say that we put forth a balanced budget recommendation here and it has actually happened.

I just want to make sure, and I know this is one of Mr. RYAN's charts here, but I am going to go ahead and say this is our debt right here now as you see it as of February 14, as of February 14 which is a special day on the calendar, and we talked about that a little earlier. This is what the American, this is what each American, if a baby was born when we started this special order here tonight, they already owe $27,526.77 and counting.

So I go back to Secretary Snow's letter. Did the Democrats write this letter? No. The Democrats put forth recommendations of pay as you go. Is the Republican majority embracing that doctrine? No. Is the White House embracing that doctrine? No.

So when we start talking about fiscal responsibility and competence and saying no to corruption and cronyism that has an effect on the American people, this is the result of it.

You have got a letter. That is what the we are about. We are about shedding light on what is happening under this Capitol dome. If you let the majority tell you, oh, well, the Democrats have done this, that and the other. This is the biggest borrow-and-spend Congress in my opinion in the history of the Congress, borrow and spending in the worst way with interest.

Mr. DELAHUNT. If the gentleman would yield for just a moment, today I was at a hearing and the hearing happened to be on China. It was a subcommittee on which I serve as ranking member, and there was a reference made to the Bush doctrine.

Well, I would submit, given that President Bush has accomplished in one term more than all of his predecessors combined in terms of accumulating debt held by foreign nations, some of whom are particularly hostile to the United States, that we should describe the Bush doctrine as one of borrow and spend, not pay as you go, but borrow as you cut taxes. And I made the observation if you connect the dots how are we conferring a massive tax cut, 40 percent of which is reserved for 1 percent of Americans. Who is paying for that particular tax cut? Well, at least a trillion of it is being funded by Japan, China, Britain, the Caribbean, Taiwan.

And listen to this, that tax cut is also being paid for by money borrowed from OPEC, OPEC. That means that we are not just buying our oil from the OPEC cartel, but we are also borrowing money for them to support a tax cut for 1 percent of our affluent citizens. And then Korea, Germany, Canada and others makeup the difference. This is extraordinary.

Mr. RYAN of Ohio. Mr. Speaker, it is good to join the gentlemen.

As we are talking about the debt and we are borrowing this money from the Chinese, from the Japanese, from the Koreans, from the OPEC countries, as we borrow that debt we have got to pay interest on that debt.

So as we are paying interest on that debt, this chart will show us that out of our priorities that we have in this country, the red is what we are paying in billions of dollars in the 2007 budget in interest, compared to education, compared to homeland security, compared to veterans.

□ 2230

So when we are talking about borrowing the money and what we are paying the interest on and what country we are paying the interest to, that interest money, the red, is going back to China. It is going back to Japan. It is going back to Korea.

Mr. DELAHUNT. It is going back to OPEC.

Mr. RYAN of Ohio. It is going back to OPEC.

Mr. DELAHUNT. Along with the dollars we are using to buy oil at $60-plus a barrel to heat our homes.

Mr. RYAN of Ohio. Which is also going back to OPEC. So OPEC is benefiting from the high oil prices, high gasoline prices. They are benefiting from the net interest we have to pay on the money we are borrowing from them at the expense of education, homeland security, and veterans.

Let me just show you this, and let me just say this is a powerful, powerful, powerful group of information here that we need to share, and I have got to tell you something. I love this slide. I love this. I want to be friends with this slide.

Look what we can do. This says what else could the government do with the interest, the red that we just showed, what else could the government do with the interest that the country pays every day on the debt that we have. $1 million in every congressional district per day. That means in the gentleman from Florida's congressional district, you get $365 million; the gentleman from Massachusetts (Mr. DELAHUNT), $365 million for your congressional district; $365 million for mine. I can tell you, with the health care priorities and education and veterans that live in my district, they would love to have an extra million a year.

With the debt every day, we could provide health care for almost 80,000 more veterans if we balance our budget, if we get our fiscal house in order here. We could improve Social Security solvency by almost half a billion dollars if we could begin to balance the budget.

Mr. DELAHUNT. Are you aware with the President's budget that 263,000 of our veterans will be denied access to veterans health care?

Mr. MEEK of Florida. It goes a little further. They are going to pay higher copayments, too; and what the majority has to understand, Mr. Speaker and what the Senate has to understand and what the President has to understand, this is not going to change. This is business as usual.

Mr. RYAN of Ohio. A track record here.

Mr. MEEK of Florida. A track record, a pattern of those who have made youthful indiscretions in their lives, need it be on credit, need it be some sort of criminal activity, you can no longer have access. You used to have the capital, if you do not have a good credit record. Am I right?

Let me just tell you something right now as it relates to the United States. I am looking at Japan. You can put Japan in the State of Florida, and the State of Florida will swallow geographically Japan. But, better yet, look what they are holding of the U.S. apple pie. The bottom line is this is about, Mr. Speaker, the incompetence, cronyism and, in some cases, corruption of these individuals being able to get access into this institution and into the executive branch to be able to get what they want.

I want to drive the point on here. I want to make sure this is crystal clear. It has to be crystal. The bottom line is the only way that we will be able to have a paradigm shift not only in thinking but in policy and action on behalf of the American people and unless the American people like you say, the majority, they do not have to be the majority. The American people can make that change. They can say that we are willing to allow the Democrats to lead so that we can hopefully start taking care of some of these issues that we have to take care of here at home, with our troops in Iraq and Afghanistan and throughout the world so that we can get the respect of not only the world but our country, our own country.

Veterans, they signed up for all the right reasons, allowing us to salute one flag, as we see it now, are being asked to do more financially, meanwhile $1.5 trillion in tax cuts for the wealthy, while we have individuals, while we are having veterans affairs centers closing in rural America and in urban America. They are closing. Some of them are only open on Wednesday now. But, meanwhile, we have individuals, we have the President every time he gets a chance he is talking about let us make the tax cuts permanent for people who are not even asking for it.

So this is very simple. This speech on what the majority, Republicans, say, well, trust us, we know what we are doing. We showed the letter from Secretary Snow. I think we already know this. We did not write this letter. The guy has said the fifth time, the Secretary is saying we will not be able to operate the government. That is one letter.

Here is the other one here. Forty-two Presidents, this President and Republican majority has borrowed $1.05 trillion, but, better yet, saying let us make a bad idea permanent, let us drive this number up, let us put a two here instead of a one. It does not make sense. Only the American people can stop this crowd. $27,526.77, the average

American owes right now. This is not brought to you, Mr. Speaker, by the Democrats. This is brought to you by the Republican majority and this White House.

We have to save this country, and the American people have to save this country, and we have to get the word out to them that all of the rhetoric, all of the big money machine.

And, look, here is another one. This stuff is just here. It is almost too much to share, Mr. Speaker. We do not have enough time to share what the Members and the American people, clients reward keeping K Street lobbyists thriving.

I never blame the special interests for what happens here, but I am going to tell you right now they have a tax shelter right now where $100 billion in U.S. taxpayer dollars are not going into the coffers because they have an offshore deal with this administration and with this majority. Meanwhile, we are sitting around here trying to figure out how our veterans are going to get health care. Meanwhile, we are trying to figure how small businesses will be able to afford health care for everyday Americans to be able to buy into; and, meanwhile, we have troops still without body armor and the things they need to be able to fight on behalf of this country. So we ask everyday Americans to go out there and suck it up.

Meanwhile, the majority, the Republican majority, based on incompetence, some may say corruption in some cases as it relates to the White House, I mean, every day, I am sorry, every day we turn on the television. What is new? What is going on at the White House? What is being held back from the American people? What is being held back from the Congress? Who came to the Hill today and conflicted a story that they told just months ago about the fiscal outlook on the country?

Meanwhile, you have Members that come up to this well on the majority side and say we are doing fine, I do not know what these Democrats are talking about.

But it goes against logic. We have letters from their very own administration that are saying we have got to raise the debt limit because of our irresponsible policies.

Mr. RYAN of Ohio. The fact of the matter is, as you just so eloquently put it and passionately put it, this money that we are borrowing is not going to fund education. It is not going to lower tuition costs. It is not going to fund No Child Left Behind. It is not going to fund the veterans. This money that we are borrowing from the Chinese and Japanese and the Caribbean and OPEC, the oil-producing countries, is going to fund corporate welfare to the oil companies, $16 billion in corporate subsidies to the energy companies in the last energy bill, and billion upon billion upon billions of dollars that go to the HMOs and the pharmaceutical companies and all these other health care providers who are getting all their money.

Your tax dollars, Mr. Speaker, are going for corporate welfare; and we do not have enough to give them so we have got to go to the Japanese to borrow them so we can give them to the wealthiest industries in the United States. This is craziness, and we need to stop it.

Mr. DELAHUNT. And the Chinese and OPEC.

Mr. MEEK of Florida. It is the cost of corruption and cronyism. It is the cost. Who pays it?

Mr. RYAN of Ohio. It is the cost of the K Street project, and the average person that pays taxes foots the bill.

Mr. MEEK of Florida. Can I just get a third party validator in it for you? Just today, NewYorkTimes.com, the Members can go on to it: Huge giveaways were in the works for the oil industry. Not the veterans, not the working Americans, and it spells it all out here. Mr. Speaker, I do not have a conspiracy theory, but it is right here. It is clear.

I do not know. I am so glad that I am not a member of the majority because I do not even know how I could come to the floor and defend this. How can I even shape my mouth to say this is good? But somehow there must be some sort of in front of the mirror in the restroom kind of I can do this, because this is wrong. The sad part about it is that the country is paying the price; and the folks that are wearing the suits, being driven around with tinted windows in cars and sedans and all, do not even know the price of a carton of milk because they have someone else go out and get it. They are getting paid by the U.S. tax dollar. Meanwhile, we are telling veterans, schoolchildren, U.S. cities, to suck it up.

Mr. DELAHUNT. Now, of course, we are presented with a plan that would cut Medicare and cut Medicaid. So if you are a senior in this country, and, of course, we are here representing the generation of 30 somethings, but if you happen to be getting close to that point in your life where you receive a Medicare card, be careful. Do not count on it.

A while back there was a speaker who preceded over this Chamber who said Medicare, let it wither on the vine. Well, I wonder if that particular submission to cut and slash Medicare is the beginning of the withering process. It just is not right. But, as we were saying earlier, a lot of it is just rank incompetence. But when you combine this magnitude of incompetence that we have witnessed surrounding Katrina and surrounding the reconstruction of Iraq, it easily evolves into corruption.

There was an audit done or at least a preliminary audit done by the General Accountability Office which, as Members know is a nonpartisan, independent agency to review government expenditures; and they discovered that the government has squandered millions of dollars in Katrina disaster aid, including handing 2,000 debit cards to people who gave phony Social Security numbers and used the money for such items as a $450 tattoo.

Mr. RYAN of Ohio. Can you repeat that? I missed that.

Mr. DELAHUNT. A $450 tattoo. Federal money also paid for $375 a day beachfront condos and almost 11,000 trailers that were stuck in the mud and unusable.

Mr. RYAN of Ohio. Do you have the number on the trailers, how much that cost? Because I heard it today, and I am sorry to interrupt you, but I think this is a salient point that we need to make.

Mr. DELAHUNT. The GAO auditor, Gregory Kurz, told senators during a hearing that the amount of waste and abuse and fraud could be hundreds of millions of dollars. They just do not know yet.

□ 2245

As he indicated, FEMA may also have brought too many temporary homes, including 11,000 units that currently sit empty in sinking mud in Hope, Arkansas, while they are needed in Louisiana and Mississippi. It is the incompetence of the planning process that was nonexistent. Today, the Secretary of Homeland Security announces, I am going to address that, I am going to hire 1,500 disaster specialists. Good job, Mike, heck of a job.

Mr. RYAN of Ohio. I heard tonight on CNN earlier this evening that the cost of the 11,000 trailers was upwards of $300 million. So basically what happened is FEMA is so screwed up, okay, because there are not many other ways to put it. They are so screwed up that they bought 11,000 trailers that they moved to Hope, Arkansas, and put them in a field that is full of mud. They sunk in the mud so they are not even good anymore. They will probably have to get rid of them.

Real estate people in Louisiana said that $300 million could build 2,500 homes for middle-class people in Louisiana or in the gulf States. It could open up all of the schools in the gulf coast.

So when we come down here and we are talking about the debt, the deficit, and the recklessness and the irresponsible spending, reckless abandon for balancing the budget, that is one issue.

But another issue is look at the waste. My goodness, $300 million to buy trailers that are now sitting in the mud in Hope, Arkansas, instead of actually housing people?

You mentioned Speaker Gingrich earlier. He was talking, and I read in the paper the other day, he is as critical of the Republican establishment in this House and in the Senate and in the White House as any of us are.

This is not about Democrat and Republican. This is about America functioning as a government in the 21st century with the communication capabilities that we have, with the technology that we have, with the know-

how that we have. To hear afterwards that experts were trying to tell folks in FEMA, and outside of FEMA, what would happen if there was a category 3, 4 or 5 hurricane that came into the gulf States. We knew.

What we are trying to say here is that the Republican majority in the House and the Republican majority in the Senate, in this administration, Republicans in the White House, do not know how to govern.

Now, because the whole philosophy is that all government from top to bottom does not work, it is worthless, it has no value, that is not true. That is just not true. We are saying that government needs to get out where it does not work, and it needs to be efficient and effective where it has responsibility.

Now, FEMA, for example, who else is going to coordinate between the gulf States and emergency response? Who else is going to protect us with Homeland Security, of which you are a committee member, Mr. MEEK? Who else is going to provide for the defense? Who is going to balance the budget? Government has some responsibilities to invest.

All we are saying is do it in a responsible manner. This nonsense is reckless, paying $225 or $230 billion in interest on the money you are borrowing from the Chinese Government, Japanese Government and the OPEC countries, and then basically raising tuition and underfunding No Child Left Behind.

In Ohio, No Child Left Behind is underfunded by $1.5 billion a year. Cutting veterans benefits? Not funding Homeland Security? You know, this is not very visionary on behalf of our brothers and sisters on the other side of the aisle.

Mr. MEEK of Florida. Mr. RYAN, in the same breath, the President is talking about we want to embrace innovation. We want to prepare the next generation to lead. We want to make sure that we put our fiscal house in order.

Mr. RYAN of Ohio. Well, then, this number, my friend, the purple lavender, it is a nice lavender, it needs to be at the level of the red. The education needs to be up here, and the net interest on the debt needs to be down here. Then we will start talking about innovation.

Mr. MEEK of Florida. One other thing that I want to make sure that we add, Members, so that Members will know exactly, because I believe in third-party validators. I also believe in sharing information.

I know, Mr. RYAN, you will give this information out, but I want to make sure that folks understand and the Members understand. Because I know some Members are in their offices saying, I need to know this, Republicans and Democrats. I want to get a copy of this, and you can, www.housedemocrats.gov/30something. You can go on there. All of the charts that we have here tonight will be posted, and the articles that we have will be in the news section so that the Members can get it.

Because I think it is important, Mr. DELAHUNT. It is one thing to do something and not know. It is another thing to do something and know. I will tell you supermajority and Republican leadership know. Okay, maybe some Members may be a little bit confused about what is actually happening, maybe.

It is easy, because there are a lot of things that are going on. But while we are driving up the debt, and the highest that it has ever been, and while that whole interest piece that you have there, Mr. RYAN, Mr. DELAHUNT, that is not to build schools, that is not to put the gulf coast victims into homes, that is not to help our veterans, that is not even to have world-class health care. That is to make tax cuts permanent for millionaires.

Mr. DELAHUNT. And to pay the interest and our debts off to the Chinese, Japanese, the Koreans and OPEC.

Mr. RYAN of Ohio. Well, can I interject, because I can, this may be going to build schools; but it is going to build schools in China, because they are making money off of us. It is going to build schools in Japan, which of course we want the kids all over the world to be educated and healthy. We were all for that. But you know, not because of the recklessness that the Republican majority has been exercising here.

Mr. DELAHUNT. If I can, just for a moment, just to digress, because we have been talking about Katrina and the fraud and the mismanagement associated with the Katrina spending, I think it is important to remember, too, that about half of the 700 contracts that have already been issued were issued on a no-bid basis, and they were issued to corporations that have obvious political ties. But that is a subject for another night.

But, again, it goes back to just incompetence and lack of planning.

Mr. RYAN of Ohio. Basic stuff, basic stuff.

Mr. DELAHUNT. And lack of due diligence. But it also exists, tragically, in a far greater magnitude, with American tax dollars that are being used to build schools, roads, hospitals, dams, and levees in Iraq. I mean, I have a major concern about the fraud and the corruption that is going on in Iraq with the use of American taxpayer dollars.

I don't know if either one of you, but I am sure many who might be watching this evening, witnessed the CBS news ''60 Minutes'' program that aired this past Sunday. It really was remarkable. They highlighted one firm called Custer Battles. Custer Battles was started by an individual with the name Scott Custer, a former Army Ranger, and Mike Battles, an unsuccessful congressional candidate from Rhode Island, who claimed to be active in the Republican Party and have connections at the White House.

They arrived in Baghdad without any money; yet within a year, they had $100 million in contracts. They have now been charged with fraud and abuse, mismanagement, et cetera. They were supposed to provide some security services for the Baghdad airport. The security director at the airport communicated via e-mail and had this to say: ''Custer Battles, this is the company, has shown themselves to be unresponsive, uncooperative, incompetent, deceitful, manipulative and war profiteers. Other than that, they are swell guys.''

The number two man at the Coalition Provisional Authority's Ministry of Transportation, the American-run temporary government running the affairs of Iraq immediately after the invasion, had this to say: ''It was the Wild West. There were $100,000 bricks of $100 bills. The money was a mixture of Iraqi oil revenues, war booty and U.S. Government funds ear marked for the coalition authority.'' This is a member of the administration.

When asked about Custer Battles' performance, the top Inspector General for the Army in Iraq reviewed it to see if the company was living up to its contract, such as it was. His name is Colonel Richard Ballard. When asked, he said: ''The contract looked to me like something that you and I would write over a bottle of vodka. Complete with all the spelling and syntax errors and annexes, to be filled in later. They presented it the next day and they got awarded about a $15 million contract.'' They were supposed to provide security for commercial aviation at the Baghdad airport, but the airport never reopened for commercial traffic.

Now, do you think that they canceled or voided the contract? No, they got another contract after that. It was for a bomb-sniffing canine team.

Mr. RYAN of Ohio. I just want to make a point, and then kick it to my friend, that all of that money that is wasted, KENDRICK, is going to this. Okay? There was $100 million here, $100 million there. No oversight. No oversight at all on behalf of this Republican Congress.

Mr. MEEK of Florida. They don't want oversight.

Mr. RYAN of Ohio. That is the problem. Article I, section 1 of the Constitution creates the House of Representatives, and our job is to oversee everything, including the administration. So if they are at war, we should be overseeing this. And if there is a bunch of political hacks that are making money off this, then we need to go and bust them. We need to be involved. But this Republican Congress will not oversee what is going on in Iraq, and the hundreds of millions of dollars that Mr. DELAHUNT was just talking about, you are paying for, you are, I am, with interest, because we are borrowing it from the Chinese and the Japanese governments.

Mr. DELAHUNT. And OPEC.

Mr. RYAN of Ohio. And OPEC. And OPEC. Did I mention OPEC?

But this is an issue that, KENDRICK, we need to oversee what is going on

here and the Republican leadership does not want to provide the proper oversight. It is a waste of taxpayer dollars which goes to the interest on the debt, which we have to borrow from the Chinese and Japanese, which allows them to fund their economy.

Mr. MEEK of Florida. In my last 2 minutes, I am bouncing back to you to give the Web site address out, but I just want to make sure that we have a moment of clarity here. Mr. Speaker, we are not pointing these issues out as though we have not tried to stop these runaway majority borrow-and-spend Republicans here in this House.

□ 2300

For the RECORD, CONGRESSIONAL RECORD, I must add, not the Democratic Congressional Record, but the CONGRESSIONAL RECORD, Democrats have repeatedly tried to reinstate the pay-as-you-go philosophy. On March 30, 2004, Republicans voted 209 to 209 against Democrats, which killed the motion that was offered by MIKE THOMPSON of California to instruct conferees on recommendations as pay as you go. All right, that is the first example.

The second one, May 25, 2004, Republicans voted 208 to 215. Republicans voted 215 to reject a motion by DENNIS MOORE, another Democrat that voted on the pay-as-you-go principle.

November 18, 2004, Republicans took another vote to block former Member Stenholm's amendment to stop the debt limit from being increased. Time after time after time again. You can go on to our Web site. The Members can get this information. We have tried to stop this Congress. The only way you can stop this Republican Congress from doing what they are doing is make sure that we have more Democrats here in this House.

Mr. RYAN of Ohio. Www.housedemocrats. gov/ 30something. All of the posters that we had up tonight you will be able to access on the Web site.

Again, I think that is an important point. Democrats have consistently tried to put fiscal restraints on this runaway spending that the Republicans have been doing over the past few years here, trying to balance the budget here so we can get back on the right track and get back the surpluses. We have got our hands full. Housedemocrats. gov/30something.

Happy Valentine's Day to all the sweethearts out there.

Mr. DELAHUNT. Happy Valentine's Day, Mr. Speaker.

Mr. MEEK. We would like to thank the Democratic leader, Mr. Speaker; and, with that, it was an honor addressing the U.S. House of Representatives.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. GOHMERT.) The Chair must remind Members to use proper forms of address. The gentleman, for example, from Massachusetts is properly referred to as the gentleman from Massachusetts or Mr. DELAHUNT. It is not proper under the rules to use first names, and remarks should be directed to the Chair not in the second person.

BALANCED BUDGET PROPOSAL

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2005, the gentleman from Iowa (Mr. KING) is recognized for the time remaining before midnight.

Mr. KING of Iowa. Mr. Speaker, as was stated earlier, I do consider it an honor and a privilege to come to the floor of this House to address you, Mr. Speaker, and to carry this message across the waves to the American people.

I would first take up the issue of a balanced budget, and I would submit that we can balance this budget, Mr. Speaker, and we do not need to do so by raising taxes. We need to do so by fiscal responsibility.

I raised an issue today, I testified before the Budget Committee here in the House of Representatives, and I laid out a scenario by which we can balance this budget for this year. And I also acknowledge that it is quite painful. It is not realistic from a political perspective, but I think it is important that the Budget Committee produce a balanced budget so that we can measure the pain to so many of the programs that would have to be cut.

But a simple version, and it is a quick version, it is not the thing that I would propose as a balanced budget, Mr. Speaker, but it is one the ways that we can easily understand the magnitude of the budget situation we have.

First of all, if you would reinstate the Bush tax cuts and calculate those back into the revenue side, it almost does not show at all on the bottom line as to whether we are running a deficit or a surplus in our spending; and I have a calculator in my computer that allows me to do that. It almost does not show on the graph when you calculate that.

But if you look what the Bush tax cuts have done, they have grown this economy and they have grown this economy at 3 percent or better growth each quarter for at least the last 10 consecutive quarters, and that is a growth rate that has been met or exceeded since the early Reagan years. And I would point out, Mr. Speaker, those early Reagan years were the years when we had high interest and high inflation. So this is a real growth in a very low inflation environment with a low unemployment environment with unemployment rates below 5 percent.

It is a very, very good economic time, Mr. Speaker; and it is as good a time as one could ask for. It is the best economic run that we have had in a long, long time. It eclipses any economic run in the last 2 decades, and it also is a controlled growth. It is a growth that has not gotten out of hand, Mr. Speaker. It is a growth that grows from 3 to 4.7 percent quarter after quarter, with an inflation rate that is 2 percent or less and unemployment rates that are in the 5 percent and less range. That is where we want, not too hot and not too cold, a nice steady accountable growth.

And I would point out this that growth that we have in our economy is growing in spite of the fact that 3.5 percent, perhaps, of our GDP is going off the top to the litigation that goes on in this country. We have to overcome that and still grow at a rate of about 3 to 3.5 percent to match a targeted growth rate that will deal with population growth and to deal with inflation and help us develop our infrastructure in this country to accommodate the future as our infrastructure depreciates. That is what it is going to take to grow.

And what it is going to take to balance the budget, should we have the will to do that, would be to go into the nondefense discretionary spending. Recognizing that we have three large entitlements in our budget, and those are the spending that just goes on year after year that is growing at a rate of about 6.2 percent a year and that is aggregate, and that is Social Security, Medicare and Medicaid. Those three entitlements are essentially, unless we change some of the parameters, Mr. Speaker, are the right now the untouchable budget items; and eventually this Congress will have to look at them. But those three entitlements will grow at about 6.2 percent of their aggregate. The interest rate will grow perhaps even faster than that in the outyears.

You add all those things up, and if you recognize that to make changes in that for this year is very difficult to do and also recognizing that we have defense spending that is critical to our national security and we need to take that off the table from a cut perspective and what is left is the nondefense discretionary spending. That is the items of all, everything else that we spend that I have not identified as being an entitlement of Social Security, Medicare, Medicaid defense spending, that nondefense discretionary spending. We will call that other.

To balance the budget Mr. Speaker, we would need to simply cut the nondefense discretionary spending by 5 percent, a real 5 percent cut, and that would be $0.95 on the dollar. That would be asking Americans to get along with $0.95 out of every dollar that they have right now, today, not grow in relation to inflation and not grow with any kind of a COLA.

Now, if I were looking at this from a business perspective, I would advocate that we just simply balance our budget in that fashion, Mr. Speaker. But I am also aware that the votes on the floor of this Congress will not accommodate

for that. So I will be seeking to put together a budget that looks at some of the other components and gets us to the point where we can reasonably, practically and, in fact, part of the equation here is politically balance this budget. It cannot and should not be done by simply raising taxes. By doing so it would stifle growth, and it would get a reverse effect beyond in the opposite direction that my colleagues who just got finished speaking would say.

I am just going to go backwards, Mr. Speaker, through some of the remarks that I heard made over this past hour and address some of them. I certainly cannot address them all, Mr. Speaker.

But the argument that all of the money that was spent, all, this is a quote, all that money is wasted, meaning the money that was spent for reconstruction in Iraq, all wasted? With no oversight, no oversight, Mr. Speaker? I take exception to a statement such as that.

I went over to Iraq with three of my colleagues last August and returned here about August 20 with the very mission in mind to take a look at where the $18.5 billion that we allocated out of this Congress had been spent, where the practices were, where the projects were, how the money was being spent and what was the return on that investment. And Mr. Speaker, I brought a chart along with me, coincidentally, not knowing that would be the subject matter that was brought up here on the other side of the aisle this evening, a chart that illustrates where these project dollars have gone.

I would point out, Mr. Speaker, that these red dots on this map of Iraq represent 2,200, more than 2,200 completed projects in Iraq. And these projects will be road projects, they will be sewer projects, water, drinking water, potable water projects. They will also be some bridge projects and some pipeline work for the oil pipe lines that are there. You will see along on this border with Iran, the red dots along there, many of those are border defense stations. And what you will not see are the 250 planned border defense stations that are under construction or in planning around these other borders that we have. There is another 1,100 projects that are either in planning or under construction that do not show up yet on this chart, Mr. Speaker. I will have a chart that reflects the projects that are planned, the projects that are started.

Then this one reflects just the projects that are completed, over 2,200; and I visited a number of these. Of course, it would not be possible to visit them in their entirety, but I stopped up here in this region around Kirkuk and there went to the mother of all generators. I forget just how many kilowatts that generator does put out, but I remember what it weighed, 750,000 pounds, brought in on two large loads, and then the other loads would be the rest of the generating plant across about 10.7 kilometers.

Excuse me. It was more than that. It was a long stretch at least across the northern part of Iraq with that kind of a long trail of a convoy to deliver the generator and the turbine that drives that generator down to this location just south of Kirkuk.

□ 2310

And that being one of two huge generation plants that are now in a position where they are up and running in Iraq, this one is fed by a natural gas pipeline. Some of them are using different types of fuel; but up in this area around Kirkuk, there is so much oil that it actually seeps to the top of the ground in some places.

Where I come from, the area, we call it the prairie pothole region where we have these potholes of water that are collected because of the dips that are cut out in the prairie from the last glacier, well, the water that collects there reminds me of the oil; and certainly the oil is in smaller quantities that collects in the depressions within the desert up there around Kirkuk.

And that is not the largest oil location up around Kirkuk; but down here in the southern part, in the Basra region, there is far more oil. And I look at the system of collection, the well system, the collection system, the refinery system, distribution system. All of it is old, tired, dilapidated, has not been reconstructed or modernized in at least 35 years; and yet the oil production out of Iraq is greater than it was, Mr. Speaker.

We keep hearing, no, they are not producing as much oil now as they were then. Not true. The royalties that Iraq was receiving prior to the war were $5 billion a year. The royalties that are coming from the oil that is pumping today are $26 billion a year. That does not necessarily reflect that they are pumping five times as much oil, but it reflects that they are selling perhaps more oil than they did then and pumping more oil than they did.

The electricity that is being generated in Iraq is a number that is close to twice as much electricity at their peak days as it was on a standard day in Iraq at the beginning of the liberation back in March of 2003, Mr. Speaker. And as I measure project after project, benefit after benefit, it cannot be said that, and I will quote again, ''all that money is wasted.'' How could all that money be wasted when we have 2,200 completed projects, 3,300 projects altogether, people that have potable water that never had it before, people that have flush toilets that did not flush before, they did not have water to flush in them?

Looking at the infrastructure that is there in places in Baghdad where they had the sanitary sewer, and I would point out for the lay person listening, Mr. Speaker, that a sanitary sewer is not really all that sanitary. That is what you run your sewage through. And yet that sewer was an easy place for some people to pull a waterline through in those days before the liberation of Baghdad. So their drinking water in many areas was delivered through a black piece of plastic pipe that was pulled through the sewer itself, and they would pull it through, and then the distribution runs out to the locations where it was being used. And that is all fine as long as you keep your waterline in condition, and it does not ever get a leak in it, and you do not ever let the pressure go down.

But both of those things invariably happen; and when that happens, the pressure goes down in your drinking waterline, and the sewage then is drawn into that drinking waterline, and it then pollutes the drinking water. That has happened in a number of areas in Baghdad. We are reconstructing that. We are providing them with clean new sanitary sewer systems and sewer plants to be able to handle their systems in a modern fashion and an environmentally friendly fashion. So the Iraqi people that were living without services now have services.

I will say that the electrical service that was up to 10, 11, perhaps even 12 hours a day in Baghdad at the beginning of the liberation is down to less than that now, perhaps even as low as 4 to 6 hours a day. But the rest of Iraq was getting 2 to 4 hours a day, and now they are up to 10, 11, 12 hours of electricity a day. The next wave is to increase the generation capacity and the distribution so that Baghdad can get back up again to a level that they were before.

But overall there is more electricity being provided into Iraq today than there ever was. The demand is perhaps twice as great as it was, Mr. Speaker, because you know what happens when people get electricity. They figure out a way that they can put another appliance to work and plug it into a wall and use it. Like air conditioners that did not exist in any significant numbers, now they are there in significant numbers, tapped into that electricity.

We also know that satellite televisions were against the law in March of 2003, and today Iraq is replete with satellite dishes on rooftop after rooftop. In fact, I did a survey from the air by helicopter over the top of a region up in Kirkuk where many homes were built in about the same style, and I had done so over the rooftops of Mosul in the fall of 2003; and there my survey showed that about two-thirds of the homes then already had satellite TVs, and now I am seeing that in some of the neighborhoods in Kirkuk there actually are more satellite dishes than there are roofs.

So you will see sometimes two or even three satellite dishes on a single roof that look like they are single-family dwellings from the air. Everyone in Iraq has access to satellite TV, which means access to the outside world. There is access to Internet, cell phones. Those things have grown dramatically. Landline telephones have grown dramatically. The number of newspapers

are up to over 175 newspapers in Iraq. Television stations up and running, communication is flowing, free enterprise is robust in the streets of Baghdad. People that are running shops out there, making furniture out alongside the streets, set it out on the side of the street and sell it.

And, yes, Mr. Speaker, a bomb goes off once in a while, and it is sad and it is tragic. But the people of Iraq clean things up and they grieve and they go back to work, Mr. Speaker, because they are optimistic about the future of Iraq. They are more optimistic about the future of Iraq than the surveys show people are in the United States of America. What went wrong here where people that we say do not have hope have more hope than those of us folks that have the great blessing of living in the United States of America with all of this hope that we take for granted and cannot apparently appreciate?

So the effort that has been put forth there, Mr. Speaker, it is not all that money that is being wasted, not by a long shot, Mr. Speaker: 3,300 projects, all of them worthy and worthwhile. And, no, they were not all cheap. There was money that was spent for security, and there were some projects that were sabotaged that had to be reconstructed again.

There is a project over here on the Tigris River south of Kirkuk where there were nine pipelines that went across the Tigris River, and those pipelines were cut in the liberation operations with the U.S. Air Force. And we went back to patch those pipelines together, did so. They were sabotaged again. They were put across the river on a bridge, and so we undertook the effort to put them all underneath the bottom of the Tigris River. They are backfilling that now, Mr. Speaker, and it is nearly completed; and those lines will be opened up and running by, I believe the target date is February 28.

So another big day to turn those valves on and get that oil flowing south into parts where it can be converted back to cash and be able to help the funding in the great country of Iraq, this emerging free Arab country that has now at least brought forth the name of a prime minister, and I do not think formally has elected him yet. But on that day that that happens and they seek this duly elected parliament, Iraq becomes the most representative Arab nation in the world.

When they sit down at the United Nations and their representative speaks on behalf of the Iraqi people, it will truly be a voice of the Iraqi people, quite unlike the voice of much of the rest of the Arab world where the voice that speaks for the countries that represent those parts of the Arab world in the United Nations often is the voice of a tyrant that would cut the tongues out of its own citizens if they spoke up in criticism of the regime that is there in many of those countries.

But this country can become the lodestar of a free Arab people, an inspiration to the rest of the Arab world, an inspiration that can cause the rest of them to see what Iraq is stepping into, what they are earning along with the coalition forces' efforts and sacrifice to be able to be that inspiration for the rest of the Arab world. And if that day comes, and I pray it comes, Mr. Speaker, we may well see freedom echo across the Arab world in the same fashion that it echoed across Eastern Europe when the Wall went down in Berlin November 9, 1989, on that glorious day that symbolized the end of the Cold War, a victory for the United States and the forces of freedom.

And the forces of freedom could not be stopped, Mr. Speaker. Almost bloodlessly they echoed across Eastern Europe, and we saw country after country be liberated.

□ 2320

Since that time, we have noticed that those who knew freedom the least hungered for it the most. The people on the east side of the wall stepped up to help all of our efforts, our coalition forces in Iraq, in greater numbers than the people on the west side of the wall.

The people on the west side of the wall had the privilege of living with freedom since the end of World War II. The people on the east side of the wall remember the days they weren't free. They remember the day of November 9, 1989, when they had that opportunity to grasp their own freedom, and within a couple of years that freedom did echo across Eastern Europe, and it needs to echo across the Arab world.

So, Mr. Speaker, I submit that there is a vision and mission in this overall War on Terror, and we need to do a far better job of articulating why we are in this war. I would point out that the loss of Americans on September 11 was right at 3,000 Americans. That is more Americans lost there than was lost December 7, 1941, in that day that would live in infamy.

We cannot forget September 11. We cannot forget that we were attacked without cause. We didn't provoke anyone who attacked us. They attacked us because they hate our way of life. They attacked the very center of western civilization.

And no amount of negotiation, understanding, no amount of sitting around and talking, is ever going to resolve this disagreement. These people want us dead. They have demonstrated that, and we saw the celebrations in the streets in other parts of the world as the Twin Towers fell. That should tell us that they will give us no quarter.

If anyone doubts that, take a look at Israel. Take a look and see the circumstances there when the Israelis thought they could trade land for peace, and yet they are still attacked. Hamas won the election there. That means the terrorists, the people who are sworn to annihilate the land of Israel, are running the government of the region that may or may not be a nation called Palestine.

That is a chilling concept, but it also should tell us that there is no negotiated settlement, we must defend ourselves. The Israelis have had to guard every theater, every bus stop, every hospital, every school, every synagogue, and still the infiltrators come in and detonate their bombs and blow their women and children to pieces.

That happens out of a deep hatred that we don't understand in this country, and I don't claim to understand it. But I know that hatred is directed at us. We saw it September 11. We saw it on 18 to 20 other attacks, including the USS *Cole*. We saw it in the U.S. embassy bombings in Africa. We have seen the first attack also on the Twin Towers, in other efforts shut off by good intelligence work in this country.

We cannot rest. Our choices though are guard every theater, every bus stop, every school, every hospital, every church, every synagogue and pull back into the shores of the United States and somehow think that we can protect every center in this country, and we won't be able to, and we will see the attacks come, and we will see our women and children and our men blown into pieces.

Or we can take this battle to them, we can fight this war where they are. But going out just to kill the enemy, Mr. Speaker isn't enough. It is not a solution. It is something that has to be done in certain areas of the world and under those circumstances where there are training camps and active leaders that are plotting and planning to attack and kill Americans, that must be done, Mr. Speaker.

But to go out and think that we could kill all of our enemies is the equivalent of realizing that we had a lot of flies on our porch and in our kitchen and then go out to the barn with the fly swatter and think we are going to take care of all those flies in the barn with the fly swatter. No. You can swat flies in the barn all day every day, and you will never accomplish the task. You have got to change the habitat that breeds that many flies. You have to clean the barn, Mr. Speaker, and you need to leave an environment in there that doesn't breed those flies, and then they will leave you alone on the porch and in your kitchen as well.

So I submit that the plan of the United States and the mission that has been laid out by our Commander-in-Chief President Bush is to create a new habitat, to promote a new habitat in the region. This is a habitat called freedom. We happen to know that where there is freedom, there isn't a habitat that breeds terrorists. We have never gone to war against another free people. It has never happened in the history of this country, and I don't think it has actually happened in the history of the world.

So to the extent that freedom can be promoted and we give people that opportunity to reach out and grasp and earn their own freedom, is also the extent to which we can be safer as a people, western civilization can be safer,

and the people in that part of the world can learn some tolerance for Christianity, for Judaism, for capitalism, for free enterprise, for this whole idea of western civilization that they seem to take such exception to. There are good people in that part of the world, Mr. Speaker, and those good people need to be empowered and we need to be supportive of them.

The allegations that were made here on the other side of the aisle, Mr. Speaker, about corruption in Iraq with millions of U.S. dollars, we don't know that. And I won't tell you that you can go into an environment with a $18.5 billion mission and spend every dollar that would be competitive with a project in the United States, because I know that some of that money had to go for security, and some of that money had to go for a high price to get the work done, because who would go into that environment and do that work? But, Mr. Speaker, that work was necessary. And to the extent that anyone has defrauded this government, yes, we need to search that out. We need to have oversight.

But Democrats in this Congress, Mr. Speaker, are not absolved from that responsibility. I did not hear a single solution come out here on the other side of the aisle, not one. All I saw was complaints, lamentations, objections, because all things that go wrong are all Republican responsibility according to the other side of the aisle, and, of course, if they were just in power, then everything would be all fine.

But we don't know what they would do, because they haven't proposed a solution, not a single specific solution. They are absolutely without an agenda. But they have enough energy, they have enough air velocity in their lungs to every night come down here and beat up on the people that are out here trying to move America ahead.

One statement was said that I will agree with, made by the gentleman from Florida. He said, ''I am so glad that I am not a member of the majority.'' Well, to the gentleman from Florida, I want to say I am so glad you are not a member of the majority as well, and so are the majority of the American people who have seen to it that there is majority in charge in this Congress.

We do have our work to do, Mr. Speaker. I won't shirk that responsibility. I step up to it gladly. But we need to have our eyes wide open. We need to promote a responsible budget, and I will be promoting a balanced budget and a path we can get to a balanced budget in a way that we can get the votes in this Congress to get it done. If we do that, we can ensure financial security for our children and our grandchildren. But that financial security that can come with fiscal responsibility here in this Congress and a solid pro-growth tax policy isn't security if we have to be continually under attack from an enemy that the other side of the aisle would not have the will to challenge.

This President, our Commander-in-Chief, Mr. Speaker, has had the will to challenge. He has had the will to lay out the vision and he has had the commitment to stand in the face of a tremendous amount of criticism.

It has been a disappointment to me, Mr. Speaker, to hear that criticism. When I go to the hospitals and visit our wounded soldiers, when I visit our soldiers in the field in Iraq and over in the Middle East, when I stop at Landstuhl at the hospital there and land at Ramstein and go over to Landstuhl, Germany, to visit wounded in the hospital there, where I have been three times; when I go to Bethesda Naval Hospital to visit the wounded, generally the wounded Marines and the corpsmen that are there; when I go to Walter Reed to visit the wounded soldiers that are there, and I listen to them talk to me, Mr. Speaker, and there has been a certain Member of Congress from Pennsylvania that has gotten a lot of press relating to the public criticism that he claims comes from wounded soldiers, I have never heard a word of that kind of criticism from a single soldier that I visited, and I do not let a quarter go by without being to one of those hospitals to visit our wounded, and I will always go in an visit. As long as there are soldiers that need to be visited, I will visit them.

I have never heard one soldier tell me that he regretted volunteering for the United States militarily or that he regretted serving or he didn't believe in this mission or in this cause. Not one.

I had dinner a couple of weeks ago with a nurse who spent a year-and-a-half at Landstuhl and dealt with hundreds of wounded that came through. Most all of the wounded come through from Iraq into Landstuhl in Germany and then come to the United States.

I asked her if she had heard any of that sentiment about wounded soldiers regretting serving their country or not believing in this mission. And her answer was, no, she had never heard a single soldier utter such a thing. In fact, she said, almost all of them feel guilty that they were wounded and they can't be back with their troops. They want to take that responsibility of going back with their troops into the theater, back to Iraq, to finish their tour of duty. That is the kind of patriotism and dedication that comes with our military. And these are people that some of them have been burned badly, some of them have very severe wounds, some of them are amputees.

I have had more than one amputee tell me, ''I am going to make the military my career. I am going to get this prosthetic, get my leg up and going, I am going to take the therapy, and I am going make a career out of the military. I have come this far.''

I had one tell me, ''This wound where I lost my leg isn't going to change my life in any way except I am going to start a family now.'' That level of vision, that level of commitment, Mr. Speaker, is what we have out there.

Perhaps the best quality people that have ever gone to war for a country are the people that are out there defending our freedom today, and we owe them everything we have, all the support we have, all the best training, all the best equipment. But we owe them a voice of support here on the floor of the United States Congress, Mr. Speaker.

□ 2330

We owe them that voice in our national media. We owe them that voice in our schools, in our town squares, in our town halls, in our coffee shops, in our churches. Everywhere across this land we owe them a voice of support.

And I would point out that Clausewitz, the great writer, his philosophy on war, and I believe that was his work, ''On War,'' stated that the object of war was to destroy the enemy's ability and will to wage war. Destroy their ability and their will.

But we are at war, Mr. Speaker. And our troops are over there in harm's way. And they are actively destroying the enemy's ability to wage war. And as they lose their ability, it destroys their will.

But what, Mr. Speaker, puts the energy back in our enemy? What gives them back their will as their will is destroyed on the battlefield in Iraq, that is being destroyed because their ability is being taken away from them? Their will is being replaced by the voices of some of the people that are quasi-leaders of the United States of America that make such statements as, and I will quote Howard Dean, the chairman of the DCCC, he said the idea that we are going to win in Iraq is just plain wrong. Well, how wrong can that be? How wrong can that be to encourage the enemy, discourage our military, to make that statement over and over again? And that voice comes out of people from the other side of the aisle day after day after day, a constant drum beat of despair.

It has been a constant drum beat of despair over here for the previous hour before I came to the floor, and it will be a constant drum beat of despair every single night that they have an opportunity to have this platform here on the floor of the United States Congress, Mr. Speaker. A constant drum beat of despair that encourages our enemy, discourages our own troops, and works to be counterproductive.

Clausewitz said the object of war is to destroy the enemy's ability and will to wage war. Well, the key to this, they are both tied together. Ability and will are tied together. If you have a lot of ability, you also have enough confidence to have the will.

As your ability diminishes, if you lose your munitions and if your troops are being destroyed, you do not have so many tools to work with anymore so you begin to lose your will; you lose your self-confidence.

But I would submit that it is even simpler than Clausewitz said. It is this simple, Mr. Speaker: war is never over

until the losing side realizes that they have lost. It is that simple. When the enemy understands that they have lost, that is when they will give up, not before. They have to realize that they have lost. That requires us to destroy their ability and their will to wage war.

But if their will is weak, and if their will is utterly weak, it does not matter how much ability they have, it does not matter how many tanks they have, how many IEDs they have, how many guns, how many soldiers. If they do not have the will to use them, the war is over.

So if we can win a war simply by sending a letter to the enemy that says, why do you not quit now, because we will not, and we have the ability and we have the will, so you need to have the understanding that it will not pay for you to fight, at that point the war could be over. If we convinced the enemy that they could not win, they would lose their will to fight.

Well, part of that will to fight comes from the voices here on this side of the Atlantic Ocean. And I point out, Mr. Speaker, that on an evening, as I was in the hotel in Kuwait, I was watching al Jazeera TV. On that television show came Muqtada al Sadr. I think we know who he is: Bushy beard, rotten teeth, leader of a militia that has been attacking Americans. He is a Shiaa rather than a Sunni.

And he was saying into the al Jazeera camera, if we keep attacking Americans, they will leave Iraq the same way they left Vietnam, the same way they left Lebanon, the same way they left Mogadishu. That should tell us what is going on in the minds of the enemy. They have been encouraged by the incidents of Vietnam, by pulling our troops out of Lebanon, about pulling out of Mogadishu. They think that Americans will pull out.

So the voice of the people here on the floor of this Congress, Mr. Speaker, echoes through al Jazeera, and in seconds it goes through the satellite dishes that are on the tops of nearly every one of those houses in Iraq, and down into the insurgent's homes, and they will hear the English voices, probably will not understand it, and it will come out in Arabic subtitles, and it will say wrong war, wrong place, wrong time. The idea that we are going to win in Iraq is just plain wrong.

Those kinds of quotes that we know from the other side have encouraged our enemy over and over again, and our enemy makes more and more bombs, extends this conflict longer and longer, and it costs American lives. That is the bottom line.

Our job is to convince them that they cannot win, destroy their will. And when they understand that they have lost, that is when they will quit, not before, Mr. Speaker. So it is imperative that we stick together on this. We had a debate in this Congress. It was a significant majority that endorsed the President's authority.

We are there. We are committed. And we cannot pull out. And we are winning. And the statistics are good. You know, we do not wage war by body count anymore, so we do not ever hear the casualty rates that are actually being inflicted on the enemy in Iraq. The numbers that I am about to give are numbers that are several months old. I have not been briefed on those numbers since prior to Christmas sometime.

But I will tell you that the Iraqis themselves on a monthly average for about a 3-month average were losing about 200 of their uniformed soldiers that were killed and most of them killed in action every month, Mr. Speaker, about 200. They were losing about 400 civilians every month.

The enemy was losing, between those killed and captured, taken out of the battlefield, about 3,000 a month. I also point out that the overall casualties of those killed, those numbers that were up there that added up to a number of more than 650 a month on our side, our coalition side with Iraqi civilian, coalition troops and Iraqi troops, that number that was around 650 a month then, now has diminished dramatically, and those casualties are down to around 50 a month.

So big progress is being made. The sad part is statistically that is not showing up in American casualties; they are still suffering a greater proportion of these casualties. Progress is being made, though, Mr. Speaker; and there is great light at the end of this tunnel.

It has almost moved out into the dawn. It has always been a three-component operation going on in Iraq. And the first component has always been the military component, liberation, provide first regime change. Get Saddam out of power, and then provide security in the country.

And that has been an ongoing battle. It has been difficult. I do not think anybody predicted how difficult it would be. But the American soldiers and marines have persevered. And now the second phase of this, and think of them really as intertwined efforts, but the military security effort first.

The second effort that needed to come along behind that and partially intertwined with it is the political solution. If we just have a military security solution and a political solution, that does not get Iraq where they need to go. They need to have an economic solution as well.

So the phases of this, we are nearing the end of the phase of the security military solution, where more than 237,000 Iraqis are now in uniform defending Iraqis, where more than 30 bases have been handed over to the Iraqis to man and maintain and take care of and operate out of.

Those things are happening. That transition is taking place. It is all consistent with a plan that has been in place for more than a year. And so the military solution is coming along. Remember, within a 12-month period of time, Iraq had three elections. They pulled off three elections.

They elected an interim parliament, they brought forth a Constitution and ratified the constitution and under that constitution they elected seats for a new parliament, and just now promoted the nomination for a new prime minister. That is a great long stride into the political solution, coming right intertwined with and intermixed with, but on the heels of the security solution that comes from the military side.

And now I hope that the Iraqi people, once they have the formal election, they elect a prime minister, I hope they sit down and go to work. I hope one of the first items on their agenda is the item that says look at this country that we have. Look at all of this oil up here around Kirkuk. We have got all of this oil down here around Basra. We have got all of these resources that have been producing $26 billion in royalty revenues in oil from this dilapidated structure that we have. We need to find a way to inject foreign capital in here and punch new wells down into the desert and bring that oil to the top of the ground and run it through refineries and down pipelines and out into the gulf and onto tankers that are sitting down here off the gulf in that area, Mr. Speaker.

□ 2340

They need to realize that that is their economic solution. So I would submit the plan that I would submit would be to have a competitive bidding process. Bring in the large oil companies in the world. Give them a chance to come in and bid and have them pay royalties for the oil that they would take out of the ground. And if they need cash up front to continue their reconstruction effort, and they do, I would ask that those bids come with upfront money so they would be adequate, that Iraq could continue their reconstruction efforts and still open up the oil fields and get this cash coming.

This $26 billion a year, I will not say it is a drop in the bucket, that is a lot of money, Mr. Speaker, but it can be a lot more money, and it needs to be a lot more money.

As this situation unfolds and the Iraqis provide for more and more of their own security and the political solution comes into place where it is on the cusp of having a ratified parliament seated with a prime minister, a voice in the world that is credible and a voice in the world for a sovereign Iraq that really represents the people in Iraq, will be controlling their own destiny, and an oil revenue that gives them a measure of financial independence and can actually make them a very wealthy country, then you will see some of these other things happening.

For example, about the only thing being exported from Iraq right now are dates, and the date exports have been

cut perhaps in half as to what they were prior to the liberation of Iraq. That can come back. A number of other industries can come back and a dynamic free enterprise, the economy that you see that all over the streets in Baghdad and around the country can be rejuvenated.

I want to also point out an interesting experience, and that is they asked if I would give a speech to the Baghdad Chamber of Commerce. Of course, I always say yes if anyone gives me any speech time, Mr. Speaker, so I said I would if we could fit it in the schedule. I believe it was at three o'clock on a Thursday afternoon. So we came rolling into Baghdad, and we hustled into the Al Rasheed Hotel. They were starting to introduce me, and I was not ready because I had not identified the interpreter. I said, Just a minute. Before you introduce me, I would like to know who the interpreter is so I can speak to the interpreter and I will know how to interact with him. And they said, You will not need an interpreter. I said, Well, I do not speak a word of Arabic. They said, You will not need to. These people, there are about 56 or 57 members of the Baghdad Chamber of Commerce, you will not need to have an interpreter and you will not need to speak Arabic because this group of people speaks English. And I thought, This is sweet.

I spoke English to them for 30 minutes or so. They reacted. They smiled at the right times, frowned at the right times, clapped occasionally. They got up and asked questions. It was like being at home in Iowa.

I thought, if they can pull off this English here in Baghdad, we ought to be able to handle this in most of the places in the United States of America. They have got a great start on their economy there, and it has been a very rough time for them, but we are committed, and we will stay there.

Mr. Speaker, to the people from Iraq who will one day look up this CONGRESSIONAL RECORD of perhaps tonight or tomorrow, they need to know that there is a broad, solid core of support in this Congress. We took a vote on whether to stay with them or whether to pull out, and this Congress voted 403 to 3 to stick with you in Iraq. We will be there, Mr. Speaker, and we will be there until this is done. And they are picking up this on their own.

I want to say a few words then about the necessity. While they are providing more energy coming out of Iraq, how come it is so important for us here in the United States to have a better energy policy than we have? We passed a couple of energy bills last year, neither of which was I satisfied with, and I voted for them both because they move us down the road a little ways. They did not get enough done. I want to see more done, Mr. Speaker.

We sit here with a shortage of energy in this country, and Hurricane Katrina certainly illustrated that. The shortage of energy that was shut off when Katrina hit in the Gulf drove gas prices up over $3 a gallon. In some places, gas was not even available. In places like Pennsylvania I think diesel fuel was not available, and there were trucks parked there, and I believe there were also trucks parked in places in Georgia. But it shut down this fuel down, and prices went up, and we understood how vulnerable we were to losing that supply of fuel that comes up from the Gulf Coast and Louisiana area.

It is not just that. It is the fact that we have not produced energy to keep up with the increase in our consumption. So we import more and more foreign oil. The last number that I saw that I had confidence in was 61 percent of our oil comes from overseas. I see that number published sometimes significantly higher than that, and sometimes it is predictions. Sometimes they say it is a real number.

Regardless, Mr. Speaker, we need to be less dependent on foreign oil; and I am certainly more concerned about the oil that we purchase from countries who have leaders who take positions that are just contrary to that of the United States.

Hugo Chavez down in Venezuela has often given public statements that have been very, very critical to the United States. He leans towards Marxism. He is agitating for those kind of governments in South America. There have been elections in South America that leaned a number of countries in that direction. Hugo Chavez has allied with Castro.

The direction that has taken place in the Western Hemisphere because of the politics of the people that we are enriching by purchasing natural gas and oil from them causes me to ask, why are we enriching the people who would position themselves to be our enemies? Why are we losing the fertilizer industry in the United States? The cost of nitrogen fertilizer, 90 percent of that cost is the cost of natural gas that it is produced from. We have watched those fertilizer prices go up 4 and 500 percent in the last few years. We have watched natural gas prices go from $2 to $15. They dropped back down some in the last several years as well but peaked out at $15 here within the last couple of months.

We cannot produce fertilizer with natural gas prices like that. Farmers cannot afford to buy the fertilizer. So what is happening is our fertilizer industry is going offshore, and it is a real industry that is being built down in Trinidad Tobago. Also the fertilizer industry coming from Venezuela and Russia, Russia where their natural gas is 95 cents, ours was $15. You can see that we cannot compete with that. One day we will see a fertilizer cartel in the hands of the people that are positioning themselves not to be our friends, Mr. Speaker.

It is important that we have that kind of independence for our food supply. It is important that we have independence for our energy supply. It is important that we develop the natural gas reserves that we have in this country, 38 trillion cubic feet of natural gas on the north slope of Alaska, sitting there, waiting to be run down to the lower 48 States in a pipeline. A few political glitches in the way from building that pipeline, Mr. Speaker. I think that should have been done a long time ago.

I am not as concerned about that any longer as I am about our ability to drill on the Outer Continental Shelf like they do offshore in Texas, like they do offshore in Louisiana, like they do not offshore going around Florida and up the East Coast and up the West Coast as well. The Outer Continental Shelf, comparing the fertilizer inventory on the north slope of Alaska, which is 38 trillion cubic feet, with 406 trillion cubic feet of natural gas offshore. And that is what we have a pretty good idea of without going out to inventory that natural gas. A tremendous amount.

It is sitting next door to the distribution system off the Louisiana coast. We could just drill our way on around Florida on up the coast. We need to do that. We need to drill for that gas where the market is, where the population centers are. Yes, I am told that Florida plans 33 generation plants coming up within this next year or two, and 28 of them plan to be natural gas and they will not let us drill a single well, not even 199 miles offshore of Florida, anywhere, because someone on a tall tower with a powerful telescope could somehow see the top of that derrick over the curvature of the Earth. And somehow someone would find out about that and they would not go to Florida to sit on the beach when there has never been any kind of environmental negative impact with natural gas anywhere in the world. It just simply vaporizes and goes off in the air, Mr. Speaker.

So I contend that on energy we need to do a number of things, all in the context of grow the size of the energy pie. If you think of all the energy as a pie, and that would include our nuclear, our coal, our gas, our diesel fuel, our ethanol, our bio-diesel, our wind, our hydrogen, and a number of other components of energy that we use and produce, that can all be laid out now. The percentage of each would dictate the size of the piece of the size of the overall pie.

We need to look at that. That is the finite amount of energy that we are producing in this country. We need to grow that. We need to expand the amount of energy that is available to the consumers in America, and we need to change the proportion of those slices of the pie. So, for example, why do we use natural gas to generate electricity when it is becoming a more scarce product that we need for fertilizer, for example?

So I would submit that we would change the overall size of that to more fertilizer, less electrical production. We probably hit the limit that we can

build hydroelectric dams in order to generate electricity.

□ 2350

The limit has been the environmentalists' limit that we would hit there. We need to go back to nuclear and generate a lot more electricity with nuclear. There is a clean coal concept that can be used for baseline, coal-fired plants, and that can be used almost all over this country to produce a tremendous amount of electricity.

All those things need to happen, and as the President said in this chamber just the last day of January, that we need to expand the use of ethanol, and he is very credible when he says that, Mr. Speaker, because a fellow that comes from the oil patch, that is promoting ethanol and renewable fuels, is a person that you know believes in it.

In Iowa, and the congressional district that I have the privilege and honor represent, they will be at nine ethanol production facilities there by the end of this year, perhaps even one more. That will take us to the position where we are producing from corn all of the ethanol that we have the corn to supply. It means we can cannot use all of our corn for ethanol production. We can perhaps use 25 percent of our corn for ethanol production, and ethanol is, of course, going all over the country to be blended with gasoline.

Our markets in Iowa are voluntary. When people go in and pull out the pump and the nozzle and put it in their tank, they choose ethanol 81 percent of the time. It was 42 percent just a few years ago. So it has almost doubled, and that is a voluntary usage because people understand that it is economical, it is environmentally friendly, and it reduces our dependence on foreign oil.

So the President has advocated that within 25 years we reduce our dependence on foreign oil by 75 percent. I think that is a doable goal, especially with some of the technology that is out there, making ethanol out of cellulose. So that would be wood fiber and chips and even weeds and switch grass, and yet corn stalks and all of that kind cellulose that grows up out of the ground is all renewable. We can be energy independent if, in fact, we had to be. It would not take us very long to get there, Mr. Speaker.

We need an overall strategy to grow the size of the energy pie to change the proportions of the size of those pieces so that we use more of certain kinds of energy, and I will advocate, as I said, nuclear and coal and ethanol to be three of those that I would advocate we use a lot more of. We can do some things with solar panels. That is an emerging technology, but change the proportion of the size of the pieces of the energy pie so that we have a prudent, long-term policy that can reduce and, one day, eliminate our dependence on foreign oil.

It also includes not just drilling for oil and gas on the Outer Continental Shelf, not just bringing a pipeline down from Alaska to deliver the natural gas from Alaska, but it also includes drilling for oil in ANWR. That stretch up there, Mr. Speaker, that is 19.6 million acres. Out of that we are going to tap into 2,000. Only 2,000 acres, .01 percent of that region, used to tap into the oil that we know is there. That could bring 1 million barrels or more of oil down to the lower 48 or actually down to Valdez and out on the tanker. That could happen in a very short period of time if we would just step up here on the floor of this Congress, Mr. Speaker, and have the people in the other body do the same thing. The President would sign the bill, and we would be one huge step closer to energy independence.

All of these things need to happen in a country that should be able to plan its future, in a country that should be able to debate its future and take action on the floor of this Congress.

We have stepped forward and taken on quite a task in this overall war on terror. This place called Iraq is not the war on terror. This is a battlefield in the overall global war on terror, but our military has stepped forward and done their job. We need to stand with them. We need to know and realize that we are in a time of war and that means that we need to tighten our belt. That requires sacrifice. That sacrifice needs to let us find the will in this Congress to move towards a balanced budget, a balanced budget that makes the Bush tax cuts permanent because that fixes this growth rate in place so it has a sense of permanency and a sense of predictability. We need to put those tax cuts in place, move towards a balanced budget, and provide a sense of financial security so that this continuity of this long period of 10 consecutive quarters of growth can go on another 10 consecutive quarters.

I would go further with the taxes, Mr. Speaker. Given the time that is allowed here tonight I will simply tie this back with the energy side of this. So, if good things are happening in the overall war on terror, if we control our spending on this budget, tighten our belt and if we sacrifice the way our military sacrifices, we can keep funds and resources going to them so they can do their job. If we provide for more energy, grow the size of the energy pie, we have laid out a destination for America's future that is an economic and a security destiny, and without going into the social side of this, the constitutional aspects of it, that is most of what we need, Mr. Speaker, to get this country where it needs to go.

So I want to thank the Speaker for the privilege to address this House of Representatives.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. HINCHEY (at the request of Ms. PELOSI) for today and February 15.

Ms. WASSERMAN SCHULTZ (at the request of Ms. PELOSI) for today and the balance of the week.

Ms. WOOLSEY (at the request of Ms. PELOSI) for today and the balance of the week.

Mr. CAMPBELL of California (at the request of Mr. BOEHNER) for today and the balance of the week on account of the death of his father.

Mr. GIBBONS (at the request of Mr. BOEHNER) for today on account of travel delay.

Mr. GARY G. MILLER of California (at the request of Mr. BOEHNER) for today and the balance of the week on account of illness.

Mr. WAMP (at the request of Mr. BOEHNER) for today and the balance of the week on account of illness in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. PALLONE) to revise and extend their remarks and include extraneous material:)

Mrs. MCCARTHY, for 5 minutes, today.

Mr. EMANUEL, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

Mr. FALEOMAVAEGA, for 5 minutes, today.

Mr. GEORGE MILLER of California, for 5 minutes, today.

Mr. WYNN, for 5 minutes, today.

Mr. GENE GREEN of Texas, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Ms. HERSETH, for 5 minutes, today.

Ms. JACKSON-LEE of Texas, for 5 minutes, today.

(The following Members (at the request of Mr. ENGLISH of Pennsylvania) to revise and extend their remarks and include extraneous material:)

Mr. DEAL of Georgia, for 5 minutes, February 15.

Mr. NORWOOD, for 5 minutes, February 16.

Mr. JONES of North Carolina, for 5 minutes, February 16.

Mr. POE, for 5 minutes, today and February 15.

Mr. OSBORNE, for 5 minutes, today.

Mr. DREIER, for 5 minutes, today and February 15 and 16.

Mr. BURTON of Indiana, for 5 minutes, today and February 15 and 16.

Ms. ROS-LEHTINEN, for 5 minutes, today and February 15.

Mr. FLAKE, for 5 minutes, today.

Mr. ENGLISH of Pennsylvania, for 5 minutes, February 16.

Mr. KINGSTON, for 5 minutes, today.

BILL PRESENTED TO THE PRESIDENT

Karen L. Haas, Clerk of the House reports that on February 9, 2006, she presented to the President of the United States, for his approval, the following bill.

H.R. 4636. To enact the technical and conforming amendments necessary to implement the Federal Deposit Insurance Reform Act of 2005, and for other purposes.

ADJOURNMENT

Mr. KING of Iowa. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 55 minutes p.m.), the House adjourned until tomorrow, Wednesday, February 15, 2006, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

6140. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Imazethapyr; Pesticide Tolerance [EPA-HQ-OPP-2005-0508; FRL-7755-8] received February 1, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

6141. A letter from the Comptroller, Department of Defense, transmitting a report of a violation of the Antideficiency Act by the Department of the Army, Case Number 02-06, pursuant to 31 U.S.C. 1517(b); to the Committee on Appropriations.

6142. A letter from the Comptroller, Department of Defense, transmitting a report of a violation of the Antideficiency Act by the Department of the Navy, Case Number 04-01, pursuant to 31 U.S.C. 1517(b); to the Committee on Appropriations.

6143. A letter from the Under Secretary for Acquisition, Technology and Logistics, Department of Defense, transmitting the Department's report on the amount of purchases from foreign entities for Fiscal Year 2005, pursuant to Public Law 104–201, section 827 (110 Stat. 2611); to the Committee on Armed Services.

6144. A letter from the Senior Vice President for Congressional Affairs, Export-Import Bank, transmitting the Bank's FY 2005 annual report for the Sub-Saharan Africa Initiative; to the Committee on Financial Services.

6145. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Maine; Nitrogen Oxides Exemption Request for Northern Maine [EPA-R01-OAR-2005-ME-0007; A-1-FRL-8027-5] received February 1, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6146. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans; Wisconsin; General and Registration Permit Programs [EPA-R05-OAR-2005-WI-0003; FRL-8020-1] received February 1, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6147. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Final Rule Making Findings of Failure to Submit Required State Implementation Plans for Phase II of the NOx SIP Call [Docket No. OAR-2005-0154; FRL-8028-8] received February 1, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6148. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Interim Final Determination to Stay and/or Defer Sanctions, Yolo-Solano Air Quality Management District [EPA-R09-OAR-2005-0557c; FRL-8024-9] received February 1, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6149. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List [OAR-2003-0048; FRL-8028-9] (RIN: 2060-AN05) received February 1, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6150. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Protection of Stratospheric Ozone; The 2006 Critical Use of Exemption from the Phaseout of Methyl Bromide [FRL-8028-2] (RIN: 2060-AN18) received February 1, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6151. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District, Yolo-Solano Air Quaility Management District [EPA-R09-OAR-2005-0557a; FRL-8025-2] received February 1, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6152. A letter from the Director, International Cooperation, Deparment of Defense, transmitting pursuant to Section 27(f) of the Arms Export Control Act and Section 1(f) of Executive Order 11958, a copy of Transmittal No. 04-06 which informs of an intent to sign an Memorandum of Agreement (MOA) Concerning Combating Terrorism Research and Development with Singapore, pursuant to 22 U.S.C. 2767(f); to the Committee on International Relations.

6153. A letter from the Director, International Cooperation, Department of Defense, transmitting pursuant to Section 27(f) of the Arms Export Control Act and Section 1(f) of Executive Order 11958, a copy of Transmittal No. 02-06 which informs of an intent to sign an Memorandum of Agreement (MOA) regarding the Organizational Structure and Exploitation Systems (BICES) between the United States and Belgium, Bulgaria, Canada, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey and the United Kingdom, pursuant to 22 U.S.C. 2767(f); to the Committee on International Relations.

6154. A letter from the Director, International Cooperation, Department of Defense, transmitting pursuant to Section 27(f) of the Arms Export Control Act and Section 1(f) of Executive Order 11958, a copy of Transmittal No. 03-06 which informs of an intent to sign an Memorandum of Agreement (MOA) Concerning Combating Terrorism Research and Development with Australia, pursuant to 22 U.S.C. 2767(f); to the Committee on International Relations.

6155. A letter from the Director, International Cooperation, Department of Defense, transmitting pursuant to Section 27(f) of the Arms Export Control Act and Section 1(f) of Executive Order 11958, a copy of Transmittal No. 05-06 which informs of an intent to sign a Project Arrangement concerning the U.S./U.K. Missile Defense Situational Awareness Node, pursuant to 22 U.S.C. 2767(f); to the Committee on International Relations.

6156. A letter from the Assistant Secretary for International Security Policy, Department of Defense, transmitting a Report on Proposed Obligations for Weapons Destruction and Non-Proliferation in the Former Soviet Union and the Republic of Albania, pursuant to Public Law 104–106, section 1206(a) (110 Stat. 471); to the Committee on International Relations.

6157. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting intention to support a resolution in the United Nations Security Council to authorize maintaining the personnel ceiling of the United Nations Operation in Cote d'Ivoire (UNOCI) at its current level until after nationwide presidential and parliamentary elections, pursuant to 22 U.S.C. 287(d) Public Law 109–108, section 4(d); to the Committee on International Relations.

6158. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report on gifts given by the United States to foreign individuals for the period October 1, 2004 through September 30, 2005, pursuant to Public Law 95–105; to the Committee on International Relations.

6159. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting consistent with the Authorization for Use of Military Force Against Iraq Resolution of 2002 (Pub. L. 107–243), the Authorization for the Use of Force Against Iraq Resolution (Pub. L. 102–1), and in order to keep the Congress fully informed, a report prepared by the Department of State for the August 15, 2005 — October 15, 2005 reporting period including matters relating to post-liberation Iraq under Section 7 of the Iraq Liberation Actof 1998 (Pub. L. 105–338); to the Committee on International Relations.

6160. A letter from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting a Memorandum of Justification for the waiver of loan default assistance restrictions under Section 620(q) of the Foreign Assistance Act to support the government of the Democratic Republic of Congo; to the Committee on International Relations.

6161. A letter from the Office of the Independent Counsel, transmitting the 2005 annual report for the Office of Independent Counsel-Barrett, pursuant to 28 U.S.C. 595(a)(2); to the Committee on Government Reform.

6162. A letter from the Federal Co-Chair, Appalachian Regional Commission, transmitting in accordance with Section 647(b) of Title VI of the Consolidated Appropriations Act, FY 2004, Pub. L. 108–199, the Commission's report on FY 2005 Competitive Sourcing Efforts; to the Committee on Government Reform.

6163. A letter from the Assistant Secretary for Administration and Management, Department of Health and Human Services, transmitting in accordance with Section 647(b) of Title VI of the Consolidated Appropriations Act, FY 2004, Pub. L. 108–199, the Department's Report to Congress on FY 2005 Competitive Sourcing Efforts; to the Committee on Government Reform.

6164. A letter from the Administrator, Environmental Protection Agency, transmitting the semiannual report on the activities of the Office of Inspector General for the period April 1, 2005, through September 30, 2005, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform.

6165. A letter from the Chairman, Federal Maritime Commission, transmitting in accordance with Section 647(b) of Title VI of

the Consolidated Appropriations Act, FY 2004, Pub. L. 108–199, the Commission's report on FY 2005 Competitive Sourcing Efforts; to the Committee on Government Reform.

6166. A letter from the Chairman and Acting General Counsel, National Labor Relations Board, transmitting in accordance with Section 645 of Division F, Title VI, of the ConsolidatedAppropriations Act, FY 2004, Pub. L. 108–199, the Board's report covering fiscal year 2004; to the Committee on Government Reform.

6167. A letter from the General Counsel, Office of Government Ethics, transmitting the FY 2005 annual report under the Federal Managers' Financial Integrity Act (FMFIA), pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Government Reform.

6168. A letter from the Deputy Director for Administration and Information Management, Office of Government Ethics, transmitting in accordance with Section 647(b) of Title VI of the Consolidated Appropriations Act, FY 2004, Pub. L. 108–199, the Office's Report to Congress on FY 2005 Competitive Sourcing Efforts; to the Committee on Government Reform.

6169. A letter from the Chairman, Postal Rate Commission, transmitting a copy of the annual report in compliance with the Government in the Sunshine Act during the calendar year 2005, pursuant to 5 U.S.C. 552b(j); to the Committee on Government Reform.

6170. A letter from the Secretary to the Board, Railroad Retirement Board, transmitting in accordance with Section 647(b) of Division F of the Consolidated Appropriations Act, FY 2004, Pub. L. 108–199, and the Office of Management and Budget Memorandum M-06-01, the Board's report on competitive sourcing efforts for FY 2005; to the Committee on Government Reform.

6171. A letter from the Commissioner, Social Security Administration, transmitting the Administration's report to on Fiscal Year 2005 Competitive Sourcing Efforts as required by the Consolidated Appropriations Act of FY 2004; to the Committee on Government Reform.

6172. A letter from the Acting Director, FEMA, Department of Homeland Security, transmitting notification that funding under Title V, subsection 503(b)(3) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, has exceeded $5 million for the response to the emergency declared as a result of Tropical Storm Rita on September 18 through October 23, 2005 in the state of Florida, pursuant to 42 U.S.C. 5193; to the Committee on Transportation and Infrastructure.

6173. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class D Airspace, Modification to Class E; Galveston, TX [Docket No. FAA-2005-22999; Airspace Docket No. 2004-ASW-20] received January 25, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6174. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class D Airspace, Modification to Class E; Rogers, AR [Docket No. FAA-2004-19599; Airspace Docket No. 2004-ASW-12] received January 24, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6175. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Standard Instrument Approach Procedures; Miscellaneous Amendments [Docket No. 30470; Amdt. No. 3145] received January 24, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6176. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments [Docket No. 30471; Amdt. No. 3146] received February 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6177. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Standard Instrument Approach Procedures, Weather Takeoff Minimums, Miscellaneous Amendments [Docket No. 30469; Amdt. No. 3144] received February 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6178. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 767-200 and -300 Series Airplanes [Docket No. FAA-2005-20357; Directorate Identifier 2004-NM-120-AD; Amendment 39-14377; AD 2005-23-19] received January 24, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6179. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Fokker Model F27 Mark 050 Airplanes [Docket No. FAA-2005-23214; Directorate Identifier 2001-NM-338-AD; Amendment 39-14399; AD 2005-25-06] (RIN: 2120-AA64) received January 24, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6180. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Amendment to Class E Airspace, Wenatchee, WA [Docket FAA 2005-20417; Airspace Docket No. 05-ANM-06] received February 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6181. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Airspace; Hillsboro, TX [Docket No. FAA-2005-22998; Airspace Docket No. 2005-ASW-19] received February 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6182. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Revision of Class E Airspace; Egeglik, AK [Docket No. FAA-2005-22023; Airspace Docket No. 05-AAL-22] received February 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6183. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Kennett, MO [Docket No. FAA-2005-22746; Airspace Docket No. 05-ACE-32] received February 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6184. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Revision of Class E Airspace; Nikolai, AK [Docket No. FAA-2005-22094; Airspace Docket No. 05-AAL-28] received February 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6185. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of the Norton Sound Low Offshore Airspace Area; AK [Docket No. FAA-2005-22399; Airspace Docket No. 05-AAL-27] (RIN: 2120-AA66) received February 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6186. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Airspace; Nenana, AK [Docket No. FAA-2005-22022; Airspace Docket No. 05-AAL-21] received February 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6187. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Enroute Domestic Airspace Area, San Luis Obispo, CA [Airspace Docket No. 05-AWP-12] received February 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6188. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Airspace; Artic Village, AK [Docket No. FAA-2005-22021; Airspace Docket No. 04-AAL-06] received February 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[Filed on February 10, 2006]

Mr. HYDE: Committee on International Relations. House Resolution 593. Resolution directing the Secretary of State, the Secretary of Defense, the Secretary of Homeland Security, and the Attorney General, and requesting the President, to provide certain information to the House of Representatives relating to extraordinary rendition of certain foreign persons (Rept. 109–374), adversely. Referred to the House Calendar.

Mr. HYDE: Committee on International Relations. House Resolution 624. Resolution requesting the President of the United States and directing the Secretary of State to provide to the House of Representatives certain documents in their possession relating to United States policies under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Geneva Conventions (Rept. 109–375), adversely. Referred to the House Calendar.

Mr. HYDE: Committee on International Relations. House Resolution 642. Resolution requesting the President and directing the Secretary of State to provide to the House of Representatives certain documents in their possession relating to the Secretary of State's trip to Europe in December 2005. (Rept. 109–376), adversely. Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. BASS (for himself, Mr. GILCHREST, Mr. DELAHUNT, Mr. ORTIZ, Mr. CARDIN, Mr. FLAKE, Ms. HERSETH, Mr. MORAN of Kansas, Mr. STUPAK, Mr. WYNN, Ms. BORDALLO, Mr. SIMMONS, Mr. OLVER, Mr. RYUN of Kansas, Mr. POMEROY, Mr. BRADLEY of New Hampshire, Mr. BOUSTANY, Mr. VAN HOLLEN, Mr. MELANCON, Mr.

JONES of North Carolina, Mr. KIND, Mr. CANNON, Mr. RYAN of Wisconsin, Mr. LARSON of Connecticut, Mr. CAPUANO, Mr. BAKER, Ms. BALDWIN, Mr. KENNEDY of Minnesota, Mr. ALLEN, Mr. RUPPERSBERGER, Mr. MOORE of Kansas, Mr. WILSON of South Carolina, Mr. SWEENEY, Mr. BISHOP of New York, and Mr. MICHAUD):

H.R. 4740. A bill to extend the termination date for the exemption of returning workers from the numerical limitations for temporary workers; to the Committee on the Judiciary.

By Ms. ROS-LEHTINEN (for herself, Mr. LANTOS, Mr. SAXTON, Mr. WELLER, Mr. SCHIFF, Mr. ACKERMAN, Mr. WOLF, Mr. BURTON of Indiana, Mr. ISSA, Mr. MCCOTTER, Mrs. MUSGRAVE, and Mr. SIMMONS):

H.R. 4741. A bill to develop and deploy technologies to defeat Internet jamming; to the Committee on International Relations.

By Mr. SMITH of Texas (for himself, Mr. BERMAN, and Mr. GOODLATTE):

H.R. 4742. A bill to amend title 35, United States Code, to allow the Director of the Patent and Trademark Office to waive statutory provisions governing patents and trademarks in certain emergencies; to the Committee on the Judiciary.

By Mr. FORD:

H.R. 4743. A bill to amend part D of title XVIII of the Social Security Act to require prescription drug plans to provide enrollee notice of less expensive part D covered drugs that may be substituted for dispensed drugs; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SULLIVAN (for himself, Mr. LUCAS, Mr. COLE of Oklahoma, Mr. BOREN, and Mr. ISTOOK):

H.R. 4744. A bill to designate the Department of Veterans Affairs Outpatient Clinic in Tulsa, Oklahoma, as the Ernest Childers Department of Veterans Affairs Outpatient Clinic; to the Committee on Veterans' Affairs.

By Mr. LEWIS of California:

H.R. 4745. A bill making supplemental appropriations for fiscal year 2006 for the Small Business Administration's disaster loans program, and for other purposes; to the Committee on Appropriations, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BRADLEY of New Hampshire (for himself, Mr. MCCOTTER, Mr. STRICKLAND, Ms. CORRINE BROWN of Florida, Mr. SIMMONS, Ms. HERSETH, Mr. FILNER, Mr. KUHL of New York, Mr. WEXLER, Mr. MCDERMOTT, and Ms. JACKSON-LEE of Texas):

H.R. 4746. A bill to amend title 38, United States Code, to establish a financial assistance program to facilitate the provision of supportive services for very low-income veteran families in permanent housing, and for other purposes; to the Committee on Veterans' Affairs.

By Mrs. CAPPS (for herself and Mrs. CUBIN):

H.R. 4747. A bill to amend the Public Health Service Act to improve the prevention, diagnosis, and treatment of heart disease, stroke, and other cardiovascular diseases in women; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. JINDAL:

H.R. 4748. A bill to require the Secretary of the Army to submit to Congress a report identifying activities for hurricane and flood protection in Lake Pontchartrain, Louisiana, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. MARKEY (for himself, Mrs. MALONEY, Mr. GEORGE MILLER of California, Mr. EMANUEL, Mr. INSLEE, Mr. WAXMAN, Mr. PALLONE, and Mr. GRIJALVA):

H.R. 4749. A bill to suspend the application of any provision of Federal law under which persons are relieved from the requirement to pay royalties for production of oil or natural gas from Federal lands in periods of high oil and natural gas prices, to require the Secretary to seek to renegotiate existing oil and natural gas leases to similarly limit suspension of royalty obligations under such leases, and for other purposes; to the Committee on Resources.

By Mr. OSBORNE (for himself and Mr. MORAN of Kansas):

H.R. 4750. A bill to authorize the Secretary of the Interior to conduct a study to determine the feasibility of implementing a water supply and conservation project to improve water supply reliability, increase the capacity of water storage, and improve water management efficiency in the Republican River Basin between Harlan County Lake in Nebraska and Milford Lake in Kansas; to the Committee on Resources.

By Mr. PITTS (for himself, Mrs. JONES of Ohio, Mr. ENGLISH of Pennsylvania, Mr. MCINTYRE, Ms. HART, and Ms. HARMAN):

H.R. 4751. A bill to establish and provide for the treatment of Individual Development Accounts, and for other purposes; to the Committee on Ways and Means.

By Mr. RANGEL:

H.R. 4752. A bill to provide for the common defense by requiring all persons in the United States, including women, between the ages of 18 and 42 to perform a period of military service or a period of civilian service in furtherance of the national defense and homeland security, and for other purposes; to the Committee on Armed Services.

By Mr. STARK:

H.R. 4753. A bill to establish a congressional commemorative medal for organ donors and their families; to the Committee on Financial Services, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DOOLITTLE (for himself, Mr. WHITFIELD, Mr. MCCOTTER, Mr. WILSON of South Carolina, Mr. BROWN of South Carolina, Mr. TIAHRT, Mr. HERGER, Mr. GERLACH, Mr. AKIN, Mr. BONILLA, Mr. BUYER, Mr. SWEENEY, Ms. HARRIS, Mr. SCHWARZ of Michigan, Mr. KENNEDY of Minnesota, and Mr. FORBES):

H. Con. Res. 339. Concurrent resolution expressing the sense of Congress in support of military recruiting; to the Committee on Armed Services, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GERLACH:

H. Con. Res. 340. Concurrent resolution expressing the sense of the Congress with respect to the effective treatment of and access to care for individuals with psoriasis and psoriatic arthritis, and for other purposes; to the Committee on Energy and Commerce.

By Mr. SHIMKUS (for himself and Mr. GALLEGLY):

H. Res. 673. A resolution expressing support for the efforts of the people of the Republic of Belarus to establish a full democracy, the rule of law, and respect for human rights and urging the Government of Belarus to conduct a free and fair presidential election on March 19, 2006; to the Committee on International Relations.

By Mr. LEWIS of Kentucky:

H. Res. 674. A resolution amending the Rules of the House of Representatives to require parity and transparency in the earmark process; to the Committee on Rules, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. PALLONE (for himself, Mr. TANCREDO, Mr. PAYNE, Mr. LANTOS, Mr. BURTON of Indiana, Ms. LEE, Mr. MCCOTTER, Ms. WATSON, Ms. ROS-LEHTINEN, Mr. DELAHUNT, Mr. ROHRABACHER, Ms. MCCOLLUM of Minnesota, Mr. WILSON of South Carolina, Mr. ACKERMAN, Mr. BROWN of Ohio, Mr. ENGEL, Mr. CAPUANO, Mr. WOLF, Mr. HASTINGS of Florida, Ms. JACKSON-LEE of Texas, Mr. RANGEL, Mr. HOLT, Mr. WYNN, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. DOYLE, Mr. ISRAEL, Mr. HONDA, Mr. MCNULTY, Mr. EVANS, Mrs. MALONEY, Mr. AL GREEN of Texas, Mr. MCGOVERN, Ms. SCHAKOWSKY, Ms. BORDALLO, Mr. NADLER, Mr. DOGGETT, and Ms. LINDA T. SÁNCHEZ of California):

H. Res. 675. A resolution expressing disapproval of the Arab League's decision to hold its 2006 summit in Khartoum, Sudan and calling on the Arab League, the Government of Sudan, the Sudanese rebels, and the world community to do all they can to end acts of genocide in the Darfur region of Sudan; to the Committee on International Relations.

By Mr. POE:

H. Res. 676. A resolution amending rule XXV of the Rules of the House of Representatives to prohibit Members, officers, and employees of the House from accepting gifts from registered lobbyists; to the Committee on Rules.

By Mr. ROGERS of Alabama (for himself, Mr. WATT, Mr. OWENS, Mr. BURGESS, Mr. HASTINGS of Florida, Mr. PAYNE, Mr. ETHERIDGE, Mr. MCCAUL of Texas, Mr. BISHOP of Georgia, Mr. DAVIS of Alabama, Mr. RAHALL, Mr. MARSHALL, Mr. MCGOVERN, Ms. NORTON, Mr. LEWIS of Georgia, Ms. CARSON, Ms. KILPATRICK of Michigan, Mr. MCINTYRE, Mr. JONES of North Carolina, Mr. BUTTERFIELD, Ms. LEE, Mr. TOWNS, Mr. RANGEL, Mr. MEEKS of New York, Mr. WYNN, Mr. MCHENRY, Ms. MILLENDER-MCDONALD, Mr. PRICE of North Carolina, Mr. HAYES, Mr. MILLER of North Carolina, Mrs. MYRICK, Mr. COBLE, Ms. FOXX, Mrs. CHRISTENSEN, Mr. CLEAVER, Mr. JEFFERSON, Mr. FOLEY, Mr. FATTAH, Mr. SCOTT of Virginia, Mr. TAYLOR of North Carolina, and Mr. ENGLISH of Pennsylvania):

H. Res. 677. A resolution recognizing the creation of the NASCAR-Historically Black Colleges and Universities Consortium; to the Committee on Education and the Workforce.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 198: Ms. SCHAKOWSKY and Ms. WASSERMAN SCHULTZ.
H.R. 202: Mr. CLAY and Mr. WEXLER.
H.R. 282: Mr. BLUNT.
H.R. 333: Mr. BISHOP of Georgia.
H.R. 398: Mr. BERMAN.
H.R. 408: Mr. LANTOS.
H.R. 414: Mr. MEEHAN, Mr. BARTLETT of Maryland, and Mr. CANNON.
H.R. 415: Mr. SHUSTER.
H.R. 503: Mr. CASE.
H.R. 550: Mr. DAVIS of Tennessee.
H.R. 591: Mr. KUHL of New York, Mr. GOODE, Mr. MCCOTTER, Mr. ENGLISH of Pennsylvania, and Mr. PETERSON of Minnesota.
H.R. 601: Ms. BERKLEY.
H.R. 602: Mr. LATOURETTE.
H.R. 676: Ms. KAPTUR and Mr. REYES.
H.R. 698: Mr. PENCE.
H.R. 752: Mr. RAHALL, Mr. FRANK of Massachusetts, Mr. CLAY, and Mr. MCGOVERN.
H.R. 764: Mr. ENGLISH of Pennsylvania.
H.R. 791: Mr. MICHAUD.
H.R. 815: Mr. MILLER of Florida and Mr. ENGLISH of Pennsylvania.
H.R. 819: Mr. PASTOR and Mr. KLINE.
H.R. 839: Mr. MEEHAN and Mr. ENGEL.
H.R. 898: Mr. CLAY, Mr. DAVIS of Florida, Mr. BROWN of Ohio, Mr. BOEHLERT, Mr. NADLER, Mr. DAVIS of Tennessee, Mr. STARK, Mr. DINGELL, and Mr. PALLONE.
H.R. 939: Mr. ROTHMAN.
H.R. 941: Mr. HOSTETTLER.
H.R. 963: Mr. CALVERT and Mr. JEFFERSON.
H.R. 968: Mr. WAMP.
H.R. 986: Mr. ROGERS of Kentucky and Mr. CUELLAR.
H.R. 1002: Mr. ORTIZ, Mr. SCHIFF, Mr. HOYER, and Mr. WOLF.
H.R. 1053: Ms. CORRINE BROWN of Florida, Mr. MORAN of Virginia, and Mr. GUTIERREZ.
H.R. 1105: Mr. KILDEE.
H.R. 1108: Mr. STARK, Mr. HONDA, Mrs. CAPPS, Mr. OWENS, Mr. BARROW, Mr. LEWIS of Georgia, Mr. CUMMINGS, and Mr. GERLACH.
H.R. 1188: Mr. OLVER, Ms. NORTON, and Mr. HONDA.
H.R. 1217: Mr. HOLDEN.
H.R. 1227: Mr. ENGLISH of Pennsylvania.
H.R. 1259: Ms. ROS-LEHTINEN, Mr. PITTS, Mr. LAHOOD, Mr. NORWOOD, Mr. YOUNG of Florida, Mrs. BONO, and Mr. SOUDER.
H.R. 1333: Ms. DELAURO.
H.R. 1345: Mr. MCCRERY, Ms. PRYCE of Ohio, and Mr. SHAYS.
H.R. 1357: Mr. DOOLITTLE.
H.R. 1426: Mr. JEFFERSON.
H.R. 1431: Mr. OWENS, Mr. WAXMAN, Mr. FILNER, and Mr. WYNN.
H.R. 1494: Mr. PUTNAM.
H.R. 1578: Mr. DOGGETT and Mr. SHUSTER.
H.R. 1707: Mr. WEXLER, Mr. ROTHMAN, and Mr. LYNCH.
H.R. 1708: Mr. MURPHY and Mr. LEWIS of Georgia.
H.R. 1816: Mrs. NORTHUP.
H.R. 1849: Mr. MEEKS of New York.
H.R. 1898: Mr. STUPAK.
H.R. 1951: Mr. OWENS.
H.R. 2048: Mr. NEAL of Massachusetts, and Mr. SKELTON.
H.R. 2051: Ms. WOOLSEY.
H.R. 2052: Mr. WYNN.
H.R. 2063: Mrs. NORTHUP.
H.R. 2072: Mr. FATTAH and Ms. MCKINNEY.
H.R. 2101: Mr. BISHOP of Georgia.
H.R. 2129: Mr. STRICKLAND.
H.R. 2177: Mrs. WILSON of New Mexico.
H.R. 2233: Mr. KILDEE.
H.R. 2237: Mr. FRANK of Massachusetts.
H.R. 2345: Ms. WOOLSEY and Mr. FATTAH.
H.R. 2369: Mr. POMBO, Ms. ROS-LEHTINEN, Mrs. BONO, Mr. PENCE, Mr. CHANDLER, Mr. PITTS, Mr. BARROW, Mrs. CHRISSTENSEN, Mr. FALEOMAVAEGA, Mr. KIRK, Mr. JEFFERSON, Mr. REYES, Mr. AL GREEN of Texas, Mr. COOPER, Mr. GUTIERREZ, Mr. DOGGETT, Ms. MOORE of Wisconsin, Mr. AKIN, Mr. EMANUEL, Ms. LINDA T. SÁNCHEZ of California, Ms. MCCOLLUM of Minnesota, Mr. MCINTYRE, Mr. OTTER, Mr. LANGEVIN, Mr. CARDIN, Mr. POMEROY, Mr. MELANCON, Mr. ENGEL, Mr. ROTHMAN, Mr. GALLEGLY, Mr. RAMSTAD, Mr. BOUCHER, Mrs. NAPOLITANO, Mr. BRADY of Pennsylvania, Mr. KING of Iowa, Mr. PORTER, Mr. OBERSTAR, Mr. FOLEY, Mrs. NORTHUP, Ms. HOOLEY, Mr. PALLONE, Mr. BAIRD, Mr. EHLERS, Mr. SCHWARZ of Michigan, Mr. DELAHUNT, Mr. CLEAVER, Mrs. DAVIS of California, Mr. MARKEY, Mr. BOUSTANY, Mr. EVANS, and Mr. DEFAZIO.
H.R. 2386: Ms. HARRIS, Mr. GILCHREST, and Mrs. NORTHUP.
H.R. 2390: Mr. NADLER, Ms. MILLENDER-MCDONALD, Ms. WATSON, Mr. FARR, Mrs. TAUSCHER, Mr. BLUMENAUER, Ms. BALDWIN, and Mr. MORAN of Virginia.
H.R. 2553: Mr. ISRAEL.
H.R. 2658: Mr. MARCHANT and Mr. BACHUS.
H.R. 2716: Mr. MICHAUD.
H.R. 2717: Mr. WELDON of Pennsylvania.
H.R. 2793: Mr. SABO and Mr. SULLIVAN.
H.R. 2803: Ms. PRYCE of Ohio.
H.R. 2872: Mr. PASTOR, Mr. CONAWAY, Mr. MCCRERY, Ms. WATERS, Mr. KIRK, Mr. MARCHANT, Mr. GRAVES, Mr. NUSSLE, and Mr. REICHERT.
H.R. 2874: Mr. MELANCON and Mr. HINCHEY.
H.R. 3061: Mr. GRAVES.
H.R. 3111: Mr. RYAN of Wisconsin.
H.R. 3145: Mr. LOBIONDO, Ms. HOOLEY, Mr. BISHOP of Georgia, Mr. WYNN, Mr. MCINTYRE, and Ms. ZOE LOFGREN of California.
H.R. 3157: Mr. CONYERS.
H.R. 3186: Mr. CROWLEY and Mr. PAUL.
H.R. 3255: Mr. WELDON of Pennsylvania.
H.R. 3307: Mr. BARROW and Mr. CASE.
H.R. 3334: Mr. LARSON of Connecticut, Mr. AL GREEN of Texas, and Mr. DAVIS of Tennessee.
H.R. 3337: Mrs. TAUSCHER.
H.R. 3352: Mr. POE and Mr. DOGGETT.
H.R. 3401: Mr. RANGEL.
H.R. 3442: Mr. WEXLER.
H.R. 3476: Mr. PETERSON of Minnesota, Mr. PLATTS, and Mr. HOLDEN.
H.R. 3478: Mrs. DRAKE, Mr. SPRATT, Mr. CASE, Mr. ISRAEL, Mr. AKIN, Mr. COSTELLO, Mr. FATTAH, Ms. KILPATRICK of Michigan, and Mr. HOSTETTLER.
H.R. 3502: Ms. SCHAKOWSKY.
H.R. 3579: Mr. ALLEN.
H.R. 3681: Mr. DAVIS of Illinois.
H.R. 3753: Mr. WILSON of South Carolina and Mr. BACHUS.
H.R. 3778: Mr. KILDEE, Mrs. JOHNSON of Connecticut, Mr. MORAN of Virginia, Mrs. CAPPS, and Mr. FILNER.
H.R. 3861: Mr. TIERNEY, Ms. MCKINNEY, Mr. CLAY, Mr. DAVIS of Illinois, and Mr. CROWLEY.
H.R. 3883: Mr. KINGSTON, Mr. COBLE, Ms. FOXX, Mr. CALVERT, Ms. HART, Mr. ISTOOK, and Mr. COLE of Oklahoma.
H.R. 3888: Ms. DEGETTE and Mr. LYNCH.
H.R. 3917: Mr. CUMMINGS.
H.R. 3933: Mr. EVANS.
H.R. 3972: Mr. MCCOTTER.
H.R. 4005: Mr. GERLACH and Mr. CARDIN.
H.R. 4030: Ms. SCHWARTZ of Pennsylvania.
H.R. 4033: Mr. MCGOVERN and Mr. BARROW.
H.R. 4035: Mrs. MUSGRAVE.
H.R. 4063: Mr. DEFAZIO.
H.R. 4075: Mr. MCCOTTER.
H.R. 4140: Mr. BRADY of Pennsylvania, Mr. BROWN of Ohio, Mr. GRIJALVA, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. LOWEY, and Mr. SCOTT of Virginia.
H.R. 4141: Mr. BRADY of Pennsylvania, Mr. GRIJALVA, Ms. EDDIE BERNICE JOHNSON of Texas, and Mr. SCOTT of Virginia.
H.R. 4186: Ms. HOOLEY and Mrs. MILLER of Michigan.
H.R. 4197: Mr. STARK.
H.R. 4222: Mr. CARDOZA and Mr. MICHAUD.
H.R. 4236: Mr. CONAWAY.
H.R. 4265: Mr. MOLLOHAN, Ms. ROS-LEHTINEN, Mr. FERGUSON, Mr. WELDON of Pennsylvania, Mr. MURPHY, Mr. OBERSTAR, and Ms. KAPTUR.
H.R. 4298: Mr. SANDERS and Mr. DOGGETT.
H.R. 4304: Mr. CASE.
H.R. 4351: Mr. FARR.
H.R. 4366: Mr. BILIRAKIS.
H.R. 4409: Mr. SIMMONS, Ms. SCHWARTZ of Pennsylvania, Ms. WASSERMAN SCHULTZ, Mr. BROWN of South Carolina, Mr. MCCOTTER, Mr. SHUSTER, Mr. FITZPATRICK of Pennsylvania, and Mr. PLATTS.
H.R. 4411: Mr. WILSON of South Carolina and Mr. UPTON.
H.R. 4424: Mr. MARSHALL, Ms. SCHAKOWSKY, and Mr. GRIJALVA.
H.R. 4448: Ms. ZOE LOFGREN of California and Ms. SCHAKOWSKY.
H.R. 4460: Mr. PALLONE and Mr. WILSON of South Carolina.
H.R. 4463: Mr. BERMAN.
H.R. 4465: Mr. FATTAH, Mr. WU, Ms. ZOE LOFGREN of California, Ms. SCHAKOWSKY, Mr. DEFAZIO, Mr. PAYNE, Mr. PASTOR, Mr. BRADY of Pennsylvania, Ms. SCHWARTZ of Pennsylvania, Mr. WAXMAN, and Mr. MICHAUD.
H.R. 4472: Mr. REYNOLDS, Mr. WHITFIELD, and Mr. CRAMER.
H.R. 4479: Ms. PELOSI, Mr. NEAL of Massachusetts, and Mr. CUMMINGS.
H.R. 4494: Mr. BARROW.
H.R. 4511: Mr. SAM JOHNSON of Texas.
H.R. 4520: Mr. FATTAH.
H.R. 4526: Mr. BROWN of South Carolina.
H.R. 4542: Mr. CHANDLER, Mr. BERMAN, Mr. CAPUANO, and Ms. LORETTA SANCHEZ of California.
H.R. 4547: Mr. MURTHA, Mr. MCHENRY, Mrs. SCHMIDT, Mr. LARSEN of Washington, and Mr. BISHOP of Georgia.
H.R. 4574: Ms. BERKLEY.
H.R. 4625: Mr. POMBO, Mr. NORWOOD, and Mr. WELDON of Pennsylvania.
H.R. 4655: Mr. MILLER of Florida, Mr. CAPUANO, and Mrs. BIGGERT.
H.R. 4662: Mr. FOSSELLA.
H.R. 4663: Mr. SIMMONS.
H.R. 4665: Mr. CUELLAR.
H.R. 4666: Mr. GOODE, Mr. DOYLE, and Mr. CASE.
H.R. 4668: Mr. PRICE of Georgia.
H.R. 4672: Mr. BERRY, Mr. WYNN, Mr. CUELLAR, Mr. MCHUGH, and Mr. COSTA.
H.R. 4675: Ms. WOOLSEY.
H.R. 4676: Mr. PAYNE.
H.R. 4679: Mr. ENGLISH of Pennsylvania.
H.R. 4681: Ms. HART, Mrs. KELLY, Mr. KENNEDY of Minnesota, Mr. SULLIVAN, Mr. HENSARLING, Mr. FITZPATRICK of Pennsylvania, Mr. SOUDER, Mr. FOSSELLA, Mr. MARIO DIAZ-BALART of Florida, Mr. WESTMORELAND, Mr. DAVIS of Florida, Mr. RUPPERSBERGER, Mr. BLUNT, and Mrs. MALONEY.
H.R. 4685: Mr. SCHIFF and Mr. CLAY.
H.R. 4704: Mr. FRANK of Massachusetts, Mr. DAVIS of Tennessee, Mr. KILDEE, Mr. GRIJALVA, Mrs. DAVIS of California, and Mrs. MCCARTHY.
H.R. 4705: Mr. HINOJOSA.
H.R. 4708: Ms. MATSUI and Mr. MCDERMOTT.
H.R. 4722: Ms. SOLIS.
H.J. Res. 67: Mr. BRADLEY of New Hampshire, and Ms. HARRIS.
H. Con. Res. 68: Mr. FATTAH and Mrs. MCCARTHY.
H. Con. Res. 210: Mr. CHANDLER.
H. Con. Res. 231: Mr. WICKER.
H. Con. Res. 235: Mr. BOOZMAN.
H. Con. Res. 277: Mr. MCINTYRE, Mrs. MCCARTHY, and Mr. BOEHLERT.
H. Con. Res. 298: Mr. WAXMAN.
H. Con. Res. 299: Ms. LEE and Mr. MCDERMOTT.

H. Con. Res. 302: Mr. MCCOTTER, Mr. ALEXANDER, and Mr. CANTOR.

H. Con. Res. 306: Mr. BROWN of South Carolina and Mr. GENE GREEN of Texas.

H. Con. Res. 318: Mr. MEEHAN and Mr. FARR.

H. Con. Res. 322: Mrs. JO ANN DAVIS of Virginia.

H. Con. Res. 335: Mr. MORAN of Virginia, Mr. LEWIS of Georgia, Mr. SCHIFF, Mr. CONYERS, Mr. BERMAN, Mrs. JONES of Ohio, Mr. FILNER, Mr. SMITH of Washington, Mr. KILDEE, Mrs. MALONEY, Ms. LEE, and Ms. MOORE of Wisconsin.

H. Res. 116: Mrs. MALONEY and Mr. ACKERMAN.

H. Res. 323: Mr. ROGERS of Michigan, Mr. LANGEVIN, and Mr. RAMSTAD.

H. Res. 357: Mr. SCHIFF.

H. Res. 521: Mr. MEEKS of New York and Mr. GENE GREEN of Texas.

H. Res. 526: Mr. VAN HOLLEN.

H. Res. 544: Mr. GRIJALVA and Mr. POMEROY.

H. Res. 556: Mr. HENSARLING.

H. Res. 561: Mr. EVANS.

H. Res. 578: Mr. NORWOOD, Mr. MORAN of Virginia, Mr. GALLEGLY, Mr. MCINTYRE, Mr. OBERSTAR, Mr. AKIN, and Mr. LEACH.

H. Res. 628: Mr. ENGLISH of Pennsylvania.

H. Res. 635: Ms. VELÁZQUEZ and Ms. MOORE of Wisconsin.

H. Res. 641: Ms. BALDWIN.

H. Res. 643: Mr. ACKERMAN, Mr. KUCINICH, Mr. SERRANO, Mrs. MALONEY, Mr. CLEAVER, Mr. WATT, Mr. CAPUANO, Mrs. DAVIS of California, Ms. WATSON, and Mr. GEORGE MILLER of California.

H. Res. 647: Mr. MILLER of Florida and Mr. GUTKNECHT.

H. Res. 658: Mr. DOGGETT, Mr. MCDERMOTT, Mr. HONDA, Mr. LANTOS, Mr. GEORGE MILLER of California, Ms. MCCOLLUM of Minnesota, Mr. MORAN of Virginia, Mr. WEXLER, and Mr. ENGLISH of Pennsylvania.

H. Res. 665: Mr. WAMP, Mr. COOPER, Mr. ETHERIDGE, Mrs. CHRISTENSEN, Mr. DOYLE, Ms. KILPATRICK of Michigan, Mr. TANNER, Mr. HOLT, Ms. SCHWARTZ of Pennsylvania, Mr. MCINTYRE, Mr. SMITH of Washington, Mr. MCGOVERN, Mrs. MALONEY, and Mr. GORDON.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, SECOND SESSION

Vol. 152 WASHINGTON, TUESDAY, FEBRUARY 14, 2006 No. 18

Senate

The Senate met at 9:45 a.m. and was called to order by the Honorable DAVID VITTER, a Senator from the State of Louisiana.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Lord of all, who rules the raging of the sea, we celebrate the works of Your love and grace; early in the morning, our songs rise to You. Thank You for giving us answers to life's most difficult questions. Thank You also for undeserved blessings we enjoy each day.

Bless the Members of our legislative branch. Give them opportunities to be Your voice of hope in a world often filled with despair. Strengthen their families and the members of their staffs. Give them the talents they need to serve You in our time. Bring us all to the purposes which You have designed for us. Give us Your peace that can keep our hearts and minds from fear.

We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable DAVID VITTER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 14, 2006.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DAVID VITTER, a Senator from the State of Louisiana, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. VITTER thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will start a series of votes on motions to instruct conferees with respect to the tax relief bill. There could be up to as many as 16 votes on these motions and, therefore, votes will be kept to 10 minutes in length. I hope there will be fewer votes, and we will be working this morning to see if there is any way to lessen that number. Voting will begin momentarily, and thus Members should stay close to the Chamber today during these stacked votes so that we can move expeditiously. We will be recessing for lunch to accommodate the party luncheons, and we will lock in the time for that recess later in the morning. I would expect that we would continue the voting sequence around 2:15 after the luncheons today.

Following the appointment of conferees to the tax relief bill, we will be returning to the asbestos bill. As Members know, we filed cloture on the asbestos bill last night and that vote is scheduled to occur Wednesday morning.

FILING OF AMENDMENTS

Under the rule, first-degree amendments need to be filed by 1 p.m. today to be considered in order postcloture. We will likely be in recess at that time, so I ask unanimous consent that the deadline be until 2:30 today.

The ACTING PRESIDENT pro tempore. Without objection, so ordered.

Mr. FRIST. Mr. President, when we return to the asbestos bill later today, we have the motion to waive pending, and we will be talking to the two managers this morning to determine the best time for that vote to occur today. Having said that, we are going to have a very busy day with votes, and Senators should not stray far from the Chamber in order to not miss any votes so that we can accomplish all that we have set out to do over the course of the day.

We are ready to start with the motions and voting. Chairman GRASSLEY is on his way. We can have the Senator from Massachusetts start, if he is ready. Senator GRASSLEY should be here within the next couple of minutes.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

TAX RELIEF EXTENSION RECONCILIATION ACT OF 2005

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the House message to accompany H.R. 4297, which the clerk will report.

The assistant legislative clerk read as follows:

Resolved that the House disagree to the amendment of the Senate to the bill (H.R. 4297) entitled ''An Act to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006.''

Pending:

Kennedy motion to instruct conferees to reject the extension of the capital gains and dividends rate reduction contained in section 203 of the bill as passed by the House of Representatives.

Reed motion to instruct conferees to insist that the final conference report include funding to strengthen America's military

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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contained in title VI of the Senate amendment instead of any extension of the tax cuts for capital gains and dividends, which does not expire until 2009, contained in section 203 of the bill as passed by the House of Representatives.

Wyden motion to instruct conferees to insist that the final conference report include a provision that repeals accelerated depreciation for geologic and geophysical costs for oil and gas exploration by the five major oil companies.

Obama motion to instruct conferees to insist that the final conference report include tax relief for the most vulnerable members of our society, including the low-income victims of Hurricane Katrina and children in families that are too poor to benefit fully from the refundable child tax credit.

Hatch motion to instruct conferees to insist that the final conference report include a permanent extension of the credit for increasing research activities (based on section 108 of the amendment passed by the Senate), in order to improve American competitiveness.

DeWine motion to instruct conferees to insist that the final conference report accept the veterans' mortgage bonds expansion provisions contained in section 303 of the bill as passed by the House of Representatives with such revisions as are necessary to provide veterans in all 50 States with access to lower-rate mortgages.

Reid (for Menendez) motion to instruct conferees to insist that the final conference report include the Senate passed ''hold-harmless'' relief from the individual alternative minimum tax (AMT) in 2006, and does not include the extension of lower tax rates on capital gains and dividends.

Stabenow motion to instruct conferees to insist that the final conference report include a permanent extension of the credit for increasing research activities, and to reject any extension of the tax rate for capital gains and dividends which does not expire until 2009.

Grassley motion to instruct conferees to insist that the final conference report include the ''hold-harmless'' relief from the individual alternative minimum tax in 2006 (sections 106 and 107 of the amendment passed by the Senate) to protect middle class families and includes an extension of lower tax rates on capital gains and dividends (based on section 203 of the bill passed by the House of Representatives) to protect tax cuts for middle class families.

Grassley (for Lott) motion to instruct conferees to insist that the final conference report include the repeal of the individual alternative minimum tax (based on sections 106 and 107 of the amendment passed by the Senate).

Grassley (for Hutchison) motion to instruct conferees to insist that the final conference report include a permanent extension of the election to deduct State and local general sales taxes (based on section 105 of the amendment passed by the Senate).

Grassley (for Santorum) motion to instruct conferees to insist that the final conference report include a permanent extension of the above-the-line deduction for tuition and fees (based on section 103 of the amendment passed by the Senate).

Grassley motion to instruct conferees to insist that the final conference report ensure that in 2009 and 2010, the international competitiveness of the United States in attracting capital investment, and therefore job creation, is not weakened further by a higher combined corporate and individual income tax rate on corporate and capital income as a result of a higher dividend tax rate.

Grassley (for Talent/Snowe/Lincoln) motion to instruct conferees to insist that the final conference report include a permanent extension of the modifications to the child tax credit made by the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003.

Lautenberg motion to instruct conferees to insist that the final conference report does not increase the national debt of the United States.

Schumer motion to instruct conferees to insist that the final conference report include the Senate-passed provision to extend the above-the-line deduction for tuition and fees through December 31, 2009 (section 103), before it includes the House-passed extension of lower tax rates on capital gains and dividends (section 203), given budget constraints, noting that a conference report which maintains the tuition deduction will provide needed tax relief to more than 4,000,000 American families each year that are struggling to keep pace with rising tuition costs.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I understand that in the order that has been printed, the first instruction is by the Senator from Iowa, Mr. GRASSLEY, which includes both the alternative minimum tax relief and the tax cuts for dividends and capital gains. I understand that he has 2 minutes to speak in favor of that and there are 2 minutes in opposition to it. I, at this time, will use part of the 2 minutes in opposition.

I see the ranking member and I would suggest a brief quorum call so he may speak in opposition to the Grassley motion. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I would like to give a list of pending motions, and I ask unanimous consent that the time not be charged against the 2 minutes allocated to explaining the motion.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, the list of motions to instruct that we have thus far are in this order: No. 1 is the Grassley motion regarding AMT asking for both AMT relief and tax cuts. No. 2 is the Kennedy capital gains motion, which is in opposition to the former. No. 3 is the Lott motion on AMT. No. 4 is Senator MENENDEZ's AMT capital gains. No. 5 is Senator SANTORUM with respect to tuition deduction. No. 6 is Senator SCHUMER with respect to tuition deduction. No. 7 is Senator HATCH's motion with respect to R&D. No. 8 is Senator STABENOW's motion with respect to R&D and capital gains. That is where we are at this point. That is eight. There are a total of 16 on my list, and it is my hope that by the time we get through the eight maybe Senators will be a little less inclined to insist on recorded votes. But those are the first 8, with a total of 16 motions to instruct, which I understand will all be in order this morning.

I yield the floor.

MOTIONS TO INSTRUCT CONFEREES

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, would it be in order to call up my motion on the AMT and the capital gains dividend?

The ACTING PRESIDENT pro tempore. The Senator's motion is now pending.

Mr. GRASSLEY. I have 1 minute?

The ACTING PRESIDENT pro tempore. Two minutes.

Mr. GRASSLEY. Mr. President, 16 million additional American families could find themselves subject to the alternative minimum tax if we do not act quickly. Failure to pass a minimum level of alternative minimum tax relief, as was provided in the Senate-passed reconciliation bill, is not an option. In fact, I support full AMT repeal. Some of my colleagues are creating a false choice when they suggest that in order to provide AMT relief we need to remove incentives that encourage economic growth. We can design a tax package which will include dividends, capital gains, AMT, and a 1-year extension for all expiring tax relief, all within that $70 billion limit. I encourage my colleagues to vote for this motion which provides relief for alternative minimum tax and capital gains and dividends as well.

I yield.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, I urge my colleagues to oppose this motion. Why is that? Essentially, we must choose between extending protection from the AMT tax increase this year for 17 million working families or extending $50 billion in investor tax breaks which do not expire until 3 years from now, after the next Presidential election. That is the choice.

This motion says you can have it all. This motion says there is no deficit problem. This motion says: Don't worry, be happy. Our Senate bill, supported by 66 Senators, chose to protect millions of working families from the 2006 AMT hit rather than extending 2009 tax breaks for investors. The truth is, we cannot have it all. There is a deficit problem. Something will have to give, and I wish we could realistically hope the House will be willing to agree to a significant amount of offsets, crackdowns on tax shelters, so we could do more on this tax bill, but I am not optimistic. I have deep experience with the House, and they will not do so, and that is forcing us to choose. That is why we must choose. Is it the R&D credit? Is it incentives for businesses to hire the hard-to-employ? Is it a true AMT hold-harmless?

Those are our choices. The House made their choice. They chose not to protect 17 million families threatened by the AMT. Some items can wait until 2007, 2008, or even 2009. Capital gains can wait. AMT cannot wait. Protection from that tax increase—that is, the AMT—which expires now, must be extended this year, not capital gains. That AMT protection expired in December, and 17 million working families are waiting to hear our choice.

I urge my colleagues not to embark on this dangerous course. I urge them to reject this motion. We have to choose. We cannot have it all. I urge my colleagues to be responsible.

Mr. GRASSLEY. Mr. President, if I have 10 seconds——

The ACTING PRESIDENT pro tempore. The Senator from Iowa has 1 minute remaining.

Mr. GRASSLEY. I am only going to use 10 seconds. I hope my friend from Montana will agree with me on this, that we do have differences on this one part, the capital gains part of this bill, but I think we agree on everything else in the bill. I hope people listening to Senator BAUCUS and I maybe differing on this one point will remember that on most everything that goes on in our committee, we agree. I do not want them to get a distorted view of our friendship and our working together on this legislation.

I yield back my time, and I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The question is on agreeing to the Grassley motion to instruct conferees. The clerk will call the roll.

The assistant journal clerk called the roll.

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 16 Leg.]

YEAS—53

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Murkowski
Bennett	Ensign	Nelson (FL)
Bond	Enzi	Nelson (NE)
Brownback	Frist	Roberts
Bunning	Graham	Santorum
Burns	Grassley	Sessions
Burr	Gregg	Shelby
Chambliss	Hagel	Smith
Coburn	Hatch	Specter
Cochran	Hutchison	Stevens
Coleman	Inhofe	Sununu
Collins	Isakson	Talent
Cornyn	Kyl	Thomas
Craig	Lott	Thune
Crapo	Lugar	Vitter
DeMint	Martinez	

NAYS—47

Akaka	Clinton	Jeffords
Baucus	Conrad	Johnson
Bayh	Dayton	Kennedy
Biden	Dodd	Kerry
Bingaman	Dorgan	Kohl
Boxer	Durbin	Landrieu
Byrd	Feingold	Lautenberg
Cantwell	Feinstein	Leahy
Carper	Harkin	Levin
Chafee	Inouye	Lieberman
Lincoln	Reed	Snowe
Menendez	Reid	Stabenow
Mikulski	Rockefeller	Voinovich
Murray	Salazar	Warner
Obama	Sarbanes	Wyden
Pryor	Schumer	

The motion was agreed to.

THE ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I understand, the pending instruction is mine.

The ACTING PRESIDENT pro tempore. The Senator is correct. There is 4 minutes evenly divided.

Mr. KENNEDY. Mr. President, this Senate is not going to have a clearer opportunity in terms of the Nation's priorities than on this next vote. Under the current proposal before the Senate, it provides the dividends and capital gains of $50 billion. The President's proposal which was submitted is $50 billion in Medicare and Medicaid budget cuts.

We have the choice of $50 billion for the further tax reductions for the wealthiest individuals or we are going to stand up on Medicare and Medicaid. If we care about the culture of life, we will vote for this amendment since one-third of all the children born are born under Medicaid and receive well-baby treatment and mothers are treated.

If Members care about our seniors and disabled and those mentally challenged and disabled, they will vote for this motion because it protects Medicare.

If Members are talking about children, nursing homes, and the frail and elderly, Members will vote for this motion because it will preserve Medicaid.

If Members care about research and NIH and believe this is the life science century, Members will not tolerate the extraordinary cuts in the NIH budget in cancer and Alzheimer's research, the whole range of research, and will vote for this motion.

If Members care about fairness for America's families, vote for this motion over giveaways to the very wealthy.

It is as plain and simple as that. I hope our colleagues will support it.

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, this vote has nothing to do with Medicare or Medicaid. This motion by Senator KENNEDY calls for a tax increase in 2008 on millions of Americans. Critics of lower rates always want to persecute millionaires and at the same time punish everyone else trying to save money. The lower rates on capital gains have benefited low- and middle-income families in a very meaningful way and reduced the tax burden on citizens. They have contributed to our economic recovery and continue to help our economy grow. They have made capital investment in America more competitive so we can be competitive with global competition. They have helped impose transparency and discipline on corporate managers which is critical to protecting investors and workers. Business investors need certainty.

We need to act now. For these reasons, I encourage my colleagues to vote against this motion.

I point out something that directly involves the State of Massachusetts. We have heard the same old charge, that capital gains and dividends are only for rich folks. These charts behind me assert the opposite. According to Internal Revenue Service statistics on income for the State of Massachusetts, there are 589,000 individuals and families who benefit from the reduced tax on dividends, and 212,000 individuals and families benefit from the reduced tax on capital gains. There are not that many millionaires in that State regardless of how rich that State is. Not all of these folks are superrich. They are people like the average American benefiting from this. I don't know why anyone wants to persecute a few millionaires and punish everyone else.

The ACTING PRESIDENT pro tempore. The time has expired.

Mr. KENNEDY. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the Kennedy motion to instruct conferees.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 47, nays 53, as follows:

[Rollcall Vote No. 17 Leg.]

YEAS—47

Akaka	Feingold	Mikulski
Baucus	Feinstein	Murray
Bayh	Harkin	Nelson (FL)
Biden	Inouye	Obama
Bingaman	Jeffords	Pryor
Boxer	Johnson	Reed
Byrd	Kennedy	Reid
Cantwell	Kerry	Rockefeller
Carper	Kohl	Salazar
Chafee	Landrieu	Sarbanes
Clinton	Lautenberg	Schumer
Conrad	Leahy	Snowe
Dayton	Levin	Stabenow
Dodd	Lieberman	Warner
Dorgan	Lincoln	Wyden
Durbin	Menendez	

NAYS—53

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Murkowski
Bennett	Ensign	Nelson (NE)
Bond	Enzi	Roberts
Brownback	Frist	Santorum
Bunning	Graham	Sessions
Burns	Grassley	Shelby
Burr	Gregg	Smith
Chambliss	Hagel	Specter
Coburn	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Talent
Collins	Isakson	Thomas
Cornyn	Kyl	Thune
Craig	Lott	Vitter
Crapo	Lugar	Voinovich
DeMint	Martinez	

The motion was rejected.

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

Mr. REID. Mr. President, I have spoken to the majority leader. In fact, he and I spoke last night and again today.

I am going to, in a minute or so, suggest the absence of a quorum.

I would ask Democratic Senators to stay around the floor. We are going to see, if working with our manager and Senator CONRAD and others, we can maybe jointly agree on not having as many votes as are scheduled now.

So I would note the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I now ask unanimous consent that we proceed to immediate votes on the DeWine motion, the Wyden motion, and the Talent-Snowe-Lincoln motion—I would state for the record that these motions will be voice votes—provided further that following those votes, the Senate proceed to votes in relation to the Reed motion, the Hutchison motion, and the Lautenberg motion—and, again, we expect rollcall votes on these three; finally, I ask unanimous consent that following those votes the remaining motions be withdrawn and the Chair be authorized to appoint conferees.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, what we have just done is greatly simplify the course of the votes over the course of the morning. We will have three rollcall votes following the voice votes. I appreciate both sides of the aisle working together, condensing 14 motions down to 3 rollcall votes.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Ohio, Mr. DEWINE. Those in favor say aye. Those opposed say no.

The motion was agreed to.

The ACTING PRESIDENT pro tempore. The question is now on agreeing to the motion of the Senator from Oregon, Mr. WYDEN. Those in favor say aye. Those opposed say no.

The motion was agreed to.

The ACTING PRESIDENT pro tempore. The question is now on agreeing to the motion of the Senator from Missouri, Mr. TALENT. Those in favor say aye. Those opposed say no.

The motion was agreed to.

The ACTING PRESIDENT pro tempore. The question is now on agreeing to the motion of the Senator from Rhode Island, Mr. REED. There are 2 minutes, evenly divided, of debate on this motion.

The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, my motion to instruct conferees is simple. Our Army and Marine Corps have been engaged in combat operations for several years now. Their equipment is in a very difficult situation. It is estimated this year alone that the Army will need about $13.7 billion simply to repair the equipment, not to buy new equipment, that has been used in combat. The Marine Corps will need approximately $7.5 billion.

My instruction would simply say allocate $50 billion and pay for it by taking the capital gains and dividend preferences being awarded in this tax reconciliation bill. I think it makes a great deal more sense to give our troops the best equipment we can have rather than to give upper income Americans another tax break.

It is very simple: Are we going to give our troops a dividend in good functioning equipment or are we going to give the dividend to the wealthiest Americans?

The ACTING PRESIDENT pro tempore. The Senator's time has expired. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I appreciate Senator REED's attention to the issue of funding for our military. Proper funding for those serving our country should not be controversial. The method of providing this funding should not be made into a controversial issue, and that is where the controversy is.

My colleague suggests that in order to provide funding for our military, we need to eliminate a tax benefit that doesn't even arise until 2009. Look at how ridiculous this motion is. How can you provide funds that are so badly needed today to ensure that we meet the operational needs of our courageous military service personnel when it won't be funded until 2009? I remind you that last night all of us voted for my amendment to support the operational needs of our military that provides the same benefits but doesn't raise taxes.

I urge my colleagues to vote against the Reed motion. In addition, I remind my friend from Rhode Island that there are 79,000 families in his State that benefit from not having the tax on dividends at 15 percent.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Rhode Island.

Mr. REED. Mr. President, I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant journal clerk called the roll.

The PRESIDING OFFICER (Mr. ISAKSON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 45, nays 55, as follows:

[Rollcall Vote No. 18 Leg.]

YEAS—45

Akaka	Boxer	Clinton
Baucus	Byrd	Conrad
Bayh	Cantwell	Dayton
Biden	Carper	Dodd
Bingaman	Chafee	Dorgan
Durbin	Landrieu	Obama
Feingold	Lautenberg	Pryor
Feinstein	Leahy	Reed
Harkin	Levin	Reid
Inouye	Lieberman	Rockefeller
Jeffords	Lincoln	Salazar
Johnson	Menendez	Sarbanes
Kennedy	Mikulski	Schumer
Kerry	Murray	Stabenow
Kohl	Nelson (FL)	Wyden

NAYS—55

Alexander	Dole	Murkowski
Allard	Domenici	Nelson (NE)
Allen	Ensign	Roberts
Bennett	Enzi	Santorum
Bond	Frist	Sessions
Brownback	Graham	Shelby
Bunning	Grassley	Smith
Burns	Gregg	Snowe
Burr	Hagel	Specter
Chambliss	Hatch	Stevens
Coburn	Hutchison	Sununu
Cochran	Inhofe	Talent
Coleman	Isakson	Thomas
Collins	Kyl	Thune
Cornyn	Lott	Vitter
Craig	Lugar	Voinovich
Crapo	Martinez	Warner
DeMint	McCain	
DeWine	McConnell	

The motion was rejected.

The PRESIDING OFFICER. There are now 2 minutes equally divided on the Hutchison motion to instruct conferees.

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I rise to speak in favor of the motion. I certainly hope our colleagues will vote to instruct conferees on a basic issue of fairness.

Today, there are eight States that have sales taxes but not a State income tax. Until 2 years ago, they were disadvantaged by not being able to deduct their sales taxes from their Federal income taxes, whereas an income-tax State would allow their payers to do that.

It is very important in this country that we have tax equity. In fact, the motion to instruct would give equity to all. It creates jobs because there is more economic activity when we treat all people in our States the same and allow them to deduct the State taxes they pay. It is a matter of fairness.

The States of Washington, Nevada, Wyoming, South Dakota, Texas, Alaska, Florida, and Tennessee all have this situation in which their taxpayers will be disadvantaged if we do not instruct the conferees.

I urge my colleagues to support this motion.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I yield the 1 minute on our side to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 1 minute.

Mr. LAUTENBERG. Mr. President, the motion clearly says that taxpayers would have to choose between deducting their sales tax costs or their income tax costs. If a taxpayer lives in a State that chooses to have both a sales tax and an income tax, why should they be penalized? This motion is not fair for the people in my State or many States such as mine that have both sales and income taxes.

The Federal Government should not be micromanaging State tax systems. If we have the expense, we ought to allow the deduction. If we are going to allow the deduction of State sales taxes, we should allow it no matter where the taxpayers live.

I hope we will oppose this management from the Federal Government of how a State ought to conduct its tax system.

I yield the floor and urge opposition to the motion.

The PRESIDING OFFICER. The question is on agreeing to the Hutchison motion to instruct conferees.

Mrs. HUTCHISON. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 75, nays 25, as follows:

[Rollcall Vote No. 19 Leg.]

YEAS—75

Akaka	Dole	McCain
Alexander	Domenici	McConnell
Allard	Durbin	Murkowski
Allen	Ensign	Murray
Bayh	Enzi	Nelson (FL)
Bennett	Feinstein	Nelson (NE)
Boxer	Frist	Obama
Brownback	Graham	Pryor
Bunning	Grassley	Reid
Burns	Hagel	Roberts
Burr	Hatch	Salazar
Cantwell	Hutchison	Santorum
Chafee	Inhofe	Schumer
Chambliss	Inouye	Sessions
Clinton	Isakson	Shelby
Coburn	Johnson	Smith
Cochran	Kerry	Snowe
Coleman	Kohl	Specter
Collins	Kyl	Stevens
Cornyn	Levin	Talent
Craig	Lieberman	Thomas
Crapo	Lincoln	Thune
Dayton	Lott	Vitter
DeMint	Lugar	Voinovich
DeWine	Martinez	Warner

NAYS—25

Baucus	Feingold	Mikulski
Biden	Gregg	Reed
Bingaman	Harkin	Rockefeller
Bond	Jeffords	Sarbanes
Byrd	Kennedy	Stabenow
Carper	Landrieu	Sununu
Conrad	Lautenberg	Wyden
Dodd	Leahy	
Dorgan	Menendez	

The motion was agreed to.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, the motion is simple. It says the conferees need to come back with a final bill that does not increase the national debt. So if you vote against this, you are saying it is OK to increase the national debt. Lord knows what we have by way of debt. It is drowning us and will be paid for by our children and our grandchildren. It is reckless to charge $50 billion on our Nation's credit card when we have another option. We can pay for these tax cuts by closing the egregious tax loopholes such as the $6 billion for oil companies with record earnings—on the front page of the paper this morning.

Whether you voted for or against the bill, we should all agree that we should not stick future generations with the bill.

That is what my motion says. It is very simple.

On Valentines Day, vote against increasing the national debt.

Mr. GRASSLEY. Mr. President, I would like to inform the Senator from New Jersey that his motion would increase taxes on people in New Jersey through dividends of $838,000 and capital gains of $270,000.

If we don't do something about AMT, 600,000 people from New Jersey suffer; if we don't have the college tuition tax deduction, 121,000; and teacher deduction, 127,000.

I don't know how anybody would want to increase taxes on people in their States by that amount of money. If you take the approach of the Senator from New Jersey and have to offset all of these things, there are not enough offsets to go around to take care of the 100 ideas we have of where taxes ought to be reduced.

We now have taxes of 18 percent coming into the country into the Gross National Product for a 60-year high.

How high do taxes have to be to satisfy the Senator from New Jersey that taxes are high enough?

The PRESIDING OFFICER. The Senator's time has expired.

The question is on agreeing to the motion to instruct.

Mr. LAUTENBERG. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 46, nays 54, as follows:

[Rollcall Vote No. 20 Leg.]

YEAS—46

Akaka	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Biden	Harkin	Nelson (NE)
Bingaman	Inouye	Obama
Boxer	Jeffords	Pryor
Byrd	Johnson	Reed
Cantwell	Kennedy	Reid
Carper	Kerry	Rockefeller
Chafee	Kohl	Salazar
Clinton	Lautenberg	Sarbanes
Coburn	Leahy	Schumer
Conrad	Levin	Stabenow
Dayton	Lieberman	Voinovich
Dodd	Lincoln	Wyden
Dorgan	Menendez	
Durbin	Mikulski	

NAYS—54

Alexander	DeMint	Lott
Allard	DeWine	Lugar
Allen	Dole	Martinez
Baucus	Domenici	McCain
Bennett	Ensign	McConnell
Bond	Enzi	Murkowski
Brownback	Frist	Roberts
Bunning	Graham	Santorum
Burns	Grassley	Sessions
Burr	Gregg	Shelby
Chambliss	Hagel	Smith
Cochran	Hatch	Snowe
Coleman	Hutchison	Specter
Collins	Inhofe	Stevens
Cornyn	Isakson	
Craig	Kyl	
Crapo	Landrieu	
Sununu	Thomas	Vitter
Talent	Thune	Warner

The motion was rejected.

RECESS

Mr. GRASSLEY. Mr. President, I ask unanimous consent the Senate stand in recess until 2:15 today for weekly policy luncheons.

There being no objection, the Senate, at 12:23 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

TAX RELIEF EXTENSION RECONCILIATION ACT OF 2005—Continued

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the pending business is the motion to waive the budget point of order, is it not?

The PRESIDING OFFICER. H.R. 4297 is still the pending question.

Under the previous order, the Chair appoints Mr. GRASSLEY, Mr. KYL, and Mr. BAUCUS conferees on the part of the Senate.

Mr. ROCKEFELLER. Mr. President I am very pleased that the Senate is taking the necessary steps today to move forward with a reasonable tax relief package. In the coming days, conferees from the Senate and the House will work together to craft a final bill for the President to sign. Yesterday and today, I supported a number of motions offered by my colleagues to instruct our conferees to maintain the Senate's position because, indeed, the Senate package enjoys bipartisan support.

I am very proud that the Senate legislation also includes a bipartisan amendment that I worked hard to develop that will stimulate investment in mine safety. Our amendment has two key components. The first provision allows accelerated depreciation to encourage mines to invest in new telecommunications technology, tracking devices, improved breathing apparatus, and other critical safety equipment. The second major initiative provides incentives for the creation of additional mine safety rescue teams. While a miner is trapped, he or she should not have to wait for hours for a rescue team to arrive from far away.

West Virginia, Appalachia, and our entire Nation have been stunned and saddened by the recent mine tragedies in West Virginia, Kentucky, and Utah that took the lives of 18 miners and devastated families, friends, and communities. I have visited our West Virginia communities and spoken with families and officials. In the memory of these brave miners, we must take bold and swift action to promote mine safety. We owe it to coal miners who continue to work in mines to do all we can to improve their safety.

Coal mining is hard, dangerous work. But coal is the fuel for more than 50

percent of the electricity that powers our country and enables economic growth. The miners who produce the coal deserve the best technology to make our mines as safe as possible. But we must acknowledge that there will be future accidents in our coal mines because of the nature of the industry, and so we must also invest in additional mine rescue teams.

This tax package presented an immediate opportunity to promote mine safety. I deeply appreciate the work and support of West Virginia's senior Senator, ROBERT C. BYRD. We are a team when it comes to mine safety and coal issues, and we are working together on additional legislation that will impose strict new safety standards on the mining industry.

I am very pleased that the mine safety tax incentives have been included in this legislation. Indeed, I believe that the bill before the Senate includes many important tax provisions that we ought to enact without delay. Most of these tax cuts are longstanding, broadly supported policies that were unfortunately allowed to expire at the end of last year.

Among the tax provisions that the Senate is acting to extend here is relief from the alternate minimum tax for upper middle class families who are about to be hit with a tax only ever intended for the very wealthy. This bill would extend AMT relief for 2006 in order to be sure that families are able to benefit from the income tax cuts the Congress has enacted since 2001. I support this relief, and indeed, I believe Congress needs to act quickly to address fundamental AMT reform. I have cosponsored legislation to permanently repeal the individual AMT because this so-called millionaires' tax is no longer serving its original purpose. As part of overall tax reform that is fiscally responsible, Congress ought to permanently eliminate the specter of this parallel tax system. For now, I am pleased to at least be able to support a bill that will protect families for this year.

This bill also extends important tax incentives for the business community. For example, the bill extends the research and development tax credit to provide more than $20 billion to companies that do innovative research to keep America at the forefront of the competitive world economy. I have cosponsored legislation that would make the R&D tax credit permanent, but again, I am pleased to be able to at least support this bill which provides a 2-year extension of this valuable tax incentive.

I have also supported legislation to make permanent the welfare-to-work tax credits. The legislation before us today improves and extends these credits for 2 years. I know that many companies in West Virginia have used these credits to provide work opportunities to individuals who previously have been marginalized in our economy. There are many other provisions in this bill that enjoy my support, including an extension of the new markets tax credit, the creation of incentives for additional charitable giving, and tax breaks for our dedicated teachers who spend their own money improving the educational experiences of their students.

Having said that I support many of the provisions of this bill, I would like to take just a few moments to discuss some reservations I have with the process under which Congress is considering it. This bill is a tax reconciliation bill, meaning that it will enjoy some procedural protections in the Senate—the costs to the Treasury need not be offset and the final package can pass the Senate with a mere 51 votes.

I fear that the reconciliation procedure being used here has put us on a very dangerous course. As this legislation is conferenced with the House of Representatives, the reasonable, bipartisan tax relief that we have passed may be replaced with partisan priorities that do not serve the best interests of average Americans. The House-passed bill does not provide any relief from the alternative minimum tax but instead extends the capital gains and dividend tax cuts beyond 2008. In my own State of West Virginia, fewer than 17 percent of taxpayers reported any taxable dividend income, and fewer than 11 percent of taxpayers had any taxable capital gains. Indeed, nationwide, more than half of the benefits of these investor tax breaks goes to people with more than $1 million in income. The Senate must insist that AMT relief now is a higher priority than investor tax breaks 3 years down the road.

The impact on the deficit, facilitated by the reconciliation process, is also a serious concern. I supported a substitute amendment offered by my colleague, Senator CONRAD, which would provide all of the same tax relief but would have taken the fiscally responsible step of offsetting the losses to the Treasury. The cost of this bill could be covered by closing tax loopholes and insisting that corporations and individuals are not able to avoid taxes by gaming the system, including in some cases by simply abandoning their U.S. citizenship. I was disappointed that my colleagues did not support this fiscally responsible course at a time when the Treasury Secretary has informed us that the Congress already needs to increase the national debt limit to $9 trillion.

These reservations, and indeed the declared intention of some of my colleagues on the other side of the aisle to add investor tax breaks during conference, prevented me from supporting this legislation when the Senate first considered it last November. As I said at the time, and I would still prefer, the reasonable tax relief contained in this Senate bill could be passed using the normal legislative process, garnering well more than 60 votes.

However, earlier this month, I supported this Senate bill after two important improvements. First and foremost, the mine safety tax incentives were added to this bill. As a representative of so many coal miners and their families, I will do all I can to advance measures that encourage additional investment in mine safety. I was also encouraged that during consideration in early February, the Senate passed an amendment offered by Senator MENENDEZ, by a vote of 73 to 24. That amendment expresses the sense of the Senate that relief from the alternative minimum tax should take precedence over any additional tax cuts for capital gains and dividend income.

I hope to work with my colleagues as differences between the House and Senate bills are resolved. I hope that we can work together to enact reasonable tax relief that enjoys broad bipartisan support. And I will fight to be sure that the tax incentives for investment in mine safety are maintained in the final legislation.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005—Resumed

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 852) to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Pending:

Frist (for Specter/Leahy) amendment No. 2746, in the nature of a substitute.

Specter modified amendment No. 2747 (to amendment No. 2746), to provide guidelines in determining which defendant participants may receive inequity adjustments the Administrator shall give preference.

Kyl amendment No. 2754 (to amendment No. 2746), to reduce the impact of the trust fund on smaller companies and to expand hardship adjustments.

The PRESIDING OFFICER. The motion to waive the point of order is the pending question.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the point of order which has been raised has no substance on the merits. The point of order has no substance on the merits because there is no Federal funding involved in the legislation which creates a $140 billion trust fund. All of the money comes from private sources, from manufacturers, and from the insurance companies under the agreement reached by Senator FRIST, the Republican majority leader, and then-Senator Daschle, the Democratic minority leader, establishing this trust fund.

The Congressional Budget Office filed a letter yesterday, February 13, on the substitute which was offered. Instead of having a managers' package of some 47 amendments, which could have been considered one by one, they were added to the original text of S. 852 as a substitute bill.

The Congressional Budget Office letter made the essential conclusion that the substitute is budget neutral. The key paragraph reads as follows:

CBO also estimates that, so long as the fund's administrator does not borrow amounts beyond the means of the fund to repay (as the bill would require), the government's general funds would not be used to pay asbestos claims. Furthermore, section 406 of the bill states that the legislation would not obligate the federal government to pay any part of an award under the bill if the amounts in the asbestos fund are inadequate.

This is the crucial line:

Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.

So as a matter of the merits, the point of order has no substance because there is no Federal funding involved.

The argument which was made last Thursday by the Senator from Nevada, Mr. ENSIGN, was that some future Congress might obligate the Government to pay money. The obvious response to that, which I made on Thursday and repeat now, is that this Congress should not try to bind what some future Congress may do. It is difficult enough for us to decide what is the appropriate course of action in the year 2006, without trying to look ahead, as this budget point of order contemplates, for a 10-year period, from the year 2016 to the year 2055, on payments in excess of some $5 billion over a 10-year period.

The underlying merits of the bill, I think, have been established. You have a chaotic situation today where litigation costs on asbestos claims eat up 58 cents on the dollar, so that claimants only get 42 cents on the dollar. This has resulted in some 77 companies going bankrupt. Some $70 billion has been expended. The courts are overburdened, leading the Supreme Court of the United States to ask the Congress, on several occasions, to deal with this problem.

This legislation has been drafted and analyzed and amended and modified, I think, more than any bill in the history of legislative action. I know that is a grandiose statement. I made it last week, and I repeat it today. I would challenge anybody who knows of any bill which is as complicated to step forward.

Shortly after the bill was reported out of the Judiciary Committee in July of 2003, I asked a distinguished senior Federal judge, Edward R. Becker, who had been chief judge of the Third Circuit, to undertake the mediation of the great many complex issues involved. For 2 days in August of 2003, Judge Becker and I met with about 20 so-called stakeholders in his chambers in Philadelphia, the stakeholders being the manufacturers, the insurers, the trial lawyers, and the AFL–CIO, to try to work through the problems.

Since that time, there have been some 36 meetings held in my office. We reported a bill out of the Judiciary Committee last May 26. We have accepted a great many amendments and are here today to move ahead with the amendment process.

I have urged my colleagues and have talked to most of the Senators on an individual basis, and visited many of my colleagues in their offices, talked to many more on the floor when we have had a break in between votes. When I have talked to people and explained to them the intricacies of this complex legislation, the responses have been good. There is a proposal for a medical criteria bill. I think that is not a preferable solution because it would not provide a fund for the employees of companies which have gone bankrupt, nor would it provide funds for the veterans who have sustained their damages at shipyards or in military service. But that is something which could be debated and voted upon before cloture is invoked, or perhaps a germane amendment can be drafted which would survive cloture, which is scheduled for tomorrow.

But, in any event, it is my expectation that we ought to be ready to vote some time this afternoon. So I urge any of my colleagues who have anything to say about this budget point of order to come to the floor so we may debate the issue and be prepared to vote.

In the absence of any Senator seeking recognition, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SPECTER. Mr. President, the distinguished Senator from California is preparing to take the floor.

I wish to present a chart. I am not big on charts, but I think this is one which has some special significance; and that is, there were some projections which were made by the Senator from North Dakota, Mr. CONRAD, last week about asbestos claims going up, which is simply not factual. The fact is—as this chart shows—these are findings from the Congressional Budget Office, which show the projection of asbestos claims in a sharp decline. This is based upon the fact that the latency period for asbestos to produce damage is some 30 years. They are going to be on a sharp decline, which is one of the reasons the Congressional Budget Office has estimated that $140 billion is more than sufficient.

The other chart I want to put up is the key paragraph which comes from the Congressional Budget Office report. This is the critical paragraph in which CBO concludes definitively that the FAIR Act is deficit neutral:

CBO also estimates that, so long as the fund's administrator does not borrow amounts beyond the means of the fund to repay (as the bill would require), the government's general funds would not be used to pay asbestos claims. Furthermore, section 406 of the bill states that the legislation would not obligate the federal government to pay any part of an award under the bill if the amounts in the asbestos fund are inadequate. Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.

The line in red is the conclusion, which is the most emphatic: ''Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.''

So what you have here is a private trust fund taking care of people who have asbestos-related injuries, where the companies have gone bankrupt and they have no one to collect from, where you would be stopping the tremendous clogging of the Federal courts, where the Supreme Court has asked Congress to act, and where you have a situation where people can collect for their damages.

I note the Senator from California is on the floor of the Senate. So at this time, I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I thank the chairman of the committee. I note that the ranking member is here also. If he would like to go ahead of me, I have no problem with that.

Mr. LEAHY. Mr. President, the Senator from California has been a strong and consistent voice on this issue. I will follow her. Thank you.

Mrs. FEINSTEIN. I thank the Senator very much for that.

Mr. President, let me give you at least my bottom line of this bill. Up to 2004, 74 American companies had been bankrupted. Salaries have been diminished for a large number of people. More people are thrown into the unemployment market as a product of bankruptcy. Victims receive less than 50 percent on the settlement dollar. Those are facts. It is deeply disturbing to me. I deeply believe that a no-fault fund, which has a medical board that evaluates the medical condition of an individual and automatically grants that individual an amount of money, is a much sounder way to go.

Now, clearly, this is complicated legislation and there are difficult and technical issues involved. But a lot of misinformation has plagued the asbestos debate, and it continues to be repeated. I cannot say we have a perfect bill, but we have tried, and tried very hard. This has not been a take-it-or-leave-it bill. The chairman and the ranking member have been open to suggestions. They have been open to requests for amendments. There will be a substitute amendment that further refines the bill.

Today, I want to discuss the concerns raised by those who oppose the bill and provide what I hope are important points.

On Thursday, one Senator argued:

It really comes down to a very basic question—the question of whether or not this bill has been carefully crafted, whether or not it contains enough money in the trust fund to compensate the hundreds of thousands of asbestos victims that will have to count on it.

Let me address the beginning of that statement, Mr. President. I cannot think of any other bill where more

time, more effort, and more man-hours have been committed to thoroughly understanding and trying to address all of the complex issues, and even to respond to the hypothetical issues that might potentially come up. The drafters of this legislation have worked for literally thousands of hours through the process of dozens of meetings over the past six years. The Judiciary Committee has held at least 8 hearings on the asbestos bill—4 just in the past year—and has heard testimony from 57 witnesses. We have met with experts from all sides who currently evaluate asbestos claims and make statistical projections for companies, for victims, and the courts. We met with doctors, victims, corporate CEOs, and general counsels. We met with trial lawyers, insurance representatives, and individuals who work for asbestos bankruptcy trusts.

I recognize that there are real concerns from the opponents of the bill. Some people are unsatisfied with some of the compromises that have been incorporated. But to assert that the legislation was not carefully drafted is one argument that has no basis in reality.

Now for the second part of the argument. Again, it is important to remember the history. Through this extensive consultation process, it became clear that there was an expected range of claims that could come into the fund. From this, several different experts, including Goldman Sachs, calculated the amount of funding necessary to cover the claims' values that the bill provided and the number of claims that the fund would pay based on the range of claims.

We learned that the amount necessary to create a national trust was between $90 billion and $155 billion. The legislation now on the floor has funding of $140 billion—clearly, on the high side of the range of what the technical experts expect.

I also think it is important to remember that previous versions of the asbestos bill had significantly less guaranteed contributions. S. 1125 provided $108 billion, with a $45 billion contingent fund. S. 2290 provided $104 billion, with a $10 billion contingent fund. However, each of these bills assumed that part of the money to pay claims would be collected through interest on savings. They did not meet the full funding through guaranteed contributions by businesses and insurers as this bill does. That is a significant difference.

The underlying assumption of the prior two bills was that the amount of money being paid into the trust would be more than sufficient to pay claims and, instead, there would be an excess that the administrator could invest to help build the trust fund's assets. So the amount of money being paid into the fund was much less than $108 billion and $104 billion. In addition, neither of those bills contained provisions to guarantee that the remaining companies would be required to make up any potential shortfall. Yet the bill on the floor of the Senate today is over $30 billion above S. 1125 and S. 2290 in guaranteed contributions, with no contingency funding.

In addition, when the CBO was asked to evaluate how much money the fund would need to pay claims, it projected that ''the proposed fund would be presented with valid claims worth $120 billion to $150 billion.'' This is the CBO language:

> CBO expects that the value of valid claims likely to be submitted to the fund over the next 50 years could be between $120 billion and $150 billion, not including possible financing (debt service costs) costs and administrative expenses.

Again, $140 billion is well within the expected range. I think it is also important to note that throughout the process, the medical criteria has been tightened. I don't believe anybody really speaks to this. One category of claims—individuals who had lung cancer but no underlying asbestos markers—has been eliminated from the bill. An Institute of Medicine study has been added to the legislation that requires an evaluation of the link between asbestos exposure and cancer, other than lung cancer. If that link cannot be established by the IOM, then those claims will not receive compensation. With these modifications, the number of claims coming into the trust will be substantially reduced.

Finally, many protections have been put in place that ensure that if, in the long run, the trust does not have sufficient funding to cover all claims, individuals will be returned to the tort system—the very solution opponents are advocating now. So if the trust were to run out of money, the individual would go back to the tort system.

Some opponents also argue that passage of this act would lead to federalizing the responsibility for asbestos claims. We just heard this in the Democratic Caucus. It is this argument that is being used to make the case for a budget point of order against the bill. Some opponents have argued that the trust creates a new, albeit capped, entitlement for claimants. However, this statement is very misleading.

According to the Congressional Research Service, entitlement programs are a form of mandatory spending which require the payment of benefits to persons if specific criteria established in the authorized law are met. If one only looked at the first part of the definition of entitlement, this concern may be understood. However, CRS further states that entitlements are not subject to discretionary appropriation from Congress. Instead, they are subject to mandatory appropriations. Entitlement payments are legal obligations of the Federal Government, and beneficiaries can sue to compel full payment. This is not the case here.

Let me state that again. This is not the case here. The trust fund created by this legislation will be privately funded. The money collected for the trust comes from businesses and insurance companies. It does not come from the U.S. Treasury. While some opponents acknowledge that the Federal Government must play a role in the trust fund for it to be classified as an entitlement, they inaccurately conclude that if an individual satisfies the medical criteria and filing deadlines, then he or she is entitled to compensation from the Federal Government. This is not true.

Although the program will be housed in the Department of Labor, the bill ensures that all expenses, including administrative expenses, are paid by the moneys collected from businesses and insurers. In addition, as an extra protection, it is expressly stated several times throughout the bill that the United States, or the U.S. Treasury, will in no way be required to satisfy any claim or any costs if the amount in the trust is inadequate.

This bill expressly provides:

> Repayment of moneys borrowed by the administrator is limited solely to amounts available in the fund.

It also states that nothing in this act shall be construed to create any obligation of funding from the U.S. Government, including any borrowing authorized. Read section 406(b). This is what the opponents say is not there. This is the face of the bill. It is there:

> Nothing in this act shall be construed to create an obligation of funding from the United States Government . . . or obligate the United States Government to pay any award or part of an award, if amounts in the fund are inadequate.

I don't know what better guarantee there can be. If someone can suggest one, I am sure the chairman and the ranking member, and certainly myself, would agree to add it to the bill. With these explicit statements throughout the bill, it is abundantly clear that this legislation will not be a burden on the U.S. Treasury.

While Congress can obviously pass any law it so chooses in the future, this bill specifically states multiple times in the text that taxpayers and the U.S. Treasury will in no way be required to cover any shortfall, any administrative costs, any debt or interest costs, or any costs incurred by the trust fund. Therefore, the only way taxpayers will be called upon to subsidize this legislation is if a future Congress chooses to pass, and the President signs, new legislation which would create such an obligation. This seems to me very unrealistic and highly unlikely. But even if it were to come to pass, we should not defeat this bill because of what some other Congress and some other President may or may not do at some time in the future.

Opponents also argue that the Federal Government's liability is likely to arise through the debt service. They argue that the administrator could borrow beyond the fund's ability to repay the Treasury.

I wish to respond to that. This statement ignores the plain text of the bill.

The administrator's ability to borrow funds from the Federal Financing Bank is only available for the first 5 years. Section 221 states:

The administrator may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 as needed for performance of the Administrator's duties under this Act for the first 5 years.

So for the first 5 years, there can be some borrowing. How is that borrowing limited and how is the loan paid back? This same section specifically limits the borrowing capacity of the administrator so that he or she may not overextend the fund's assets by borrowing beyond what the trust fund will be able to repay.

Again, section 221 states:

The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations to the fund at the time of borrowing, can be repaid in full with interest in a timely fashion from the available assets of the fund as of the time of borrowing, and all amounts expected to be paid by participants during the subsequent 10 years.

So it requires the administrator to look at what he or she could potentially repay and what contributions are still outstanding. It is hard to believe that any private lending institution would risk lending money to the trust fund which it could not clearly repay in the future. However, even if some private institution decided to take that risk, the bill specifically prohibits the administrator from entering into such a financially risky transaction.

As I just read, the explicit language in the bill limits the administrator's borrowing capacity to an amount that can be repaid in full with interest from the available assets of the fund as of the time of borrowing and all amounts expected to be paid by participants during the subsequent 10 years.

Finally, those who support the budget point of order argue that collection of the contributions by the businesses and insurers could fail to materialize, leaving the U.S. taxpayer on the hook to cover the costs, and we should look at that. We should look at it very carefully. But this ignores explicit provisions contained in the legislation.

Senator LEAHY and I fought hard to ensure that the payment obligations included in the bill were enforceable and guaranteed.

First, the bill gives the administrator enforcement authority to compel payment by the companies, both defendant businesses and insurers alike.

Let me quote section 223. It provides:

If any participant fails to make any payment in the amount of, and according to, the schedule under this Act or as prescribed by the Administrator after demand and a 30-day opportunity to cure the default, there shall be a lien—

Not there may be a lien; there shall be a lien, mandatory language—

for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

The participants of the fund are liable for the maintenance of the fund. I don't see how it could be any clearer.

The chairman of the committee who is the author of this bill is in the Chamber. If someone has an amendment and comes to the chairman and says: Look, we think there is an oversight here or there, it could be tightened up by doing X or Y, I am sure this chairman will listen. But the language is very specific: If any participant fails to make any payment in the amount in the schedule under this act or as prescribed by the administrator after a demand and 30 days to pony up to cure the default, there shall be a lien for the amount of the payment, including interest, upon all property and rights to property. That includes every big business, every big insurance company, everyone that is in this fund, and it is only within that initial period that the administrator can, in fact, borrow. So how people come to the conclusion that the Government is on the hook for $40 billion I will never understand. If the company refuses to pay or fails to pay, the administrator must get a lien from a court on the company's assets in order to compel payment.

Secondly, the bill ensures that if any one company cannot pay its obligation under the trust fund—and this is important—if any one company can't pay its obligation under the trust fund, the other companies must shoulder the cost.

Specifically, section 204(h)—please read it, opposition—Guaranteed Payment Surcharge, states that if the required contribution does not come in,

The administrator shall assess a guaranteed payment surcharge.

Here it is, section 204(h)(3):

To the extent it is insufficient to satisfy the required minimum aggregate annual payment, the administrator—

Not may—

shall assess a guaranteed payment surcharge.

So the administrator shall collect any shortfall in contributions from other defendant companies. This legislation contains specific language to require that companies pay and that if the enforcement mechanism should fail for any reason, the the money still comes into the trust through payments from other companies.

With explicit language protecting the American taxpayer and the U.S. Treasury from ever having to contribute to the fund, with explicit language limiting the administrator's borrowing authority, and with explicit language ensuring that the anticipated contributions are made, this legislation makes it abundantly clear that in no way, shape, or form can the trust harm the Federal budget.

Opponents of the bill argue that those of us who support the bill have ''significantly distort[ed] CBO's conclusions'' and, at the same time, they assert that CBO ''likely understates'' the amount of money needed for the trust. They argue that because CBO uses qualifiers in their estimates such as acknowledging uncertainties in calculating the number of claims and the amounts to be paid, that one must draw the conclusion that CBO actually believes the cost to be much higher than that which is contained in their paper. Yet time and time again, when CBO has been asked to review their estimate and make changes based on new information, including the rather notorious Bates White study, they have declined to make changes. I was in that hearing; I heard the Director of CBO decline to make changes directly after the Bates White testimony. With each request, CBO has refused to alter its estimate of the projected costs. This is what they said in a letter to Chairman SPECTER dated December 19, 2005:

The Bates White Report contains no new information that would cause CBO to revise its cost estimate.

The size of the fund is based on the strongest statistical data and economic models available. Now, that is the best that is out there. That is the state of the art. Some can say it isn't enough. I can't counter that. All I know is that the committee sought the best, the committee sought the most responsible.

As I said on the floor previously, a leading actuary with Tillinghast-Towers Perrin, an actuarial firm for the Manville Trust, testified before the committee that ''$108 billion appears to be more than adequate,'' and the RAND Institute estimates the future remaining costs of asbestos-related loss and expense at $130 billion. In addition, the new projections calculated by Tillinghast also confirm that the contributions to the asbestos trust fund should be sufficient.

While opponents argue that the latest Tillinghast studies support their argument that there is inadequate funding, a closer analysis reveals that the new Tillinghast projections are actually in line with the projections used to calculate the money necessary to pay claims under the bill. Let me tell you how that happens.

The new Tillinghast claims projections include claims for foreign exposures as well as Manville's level VI cancers. Both of these categories of claimants are ineligible for compensation under this bill's medical criteria. When these changes are accounted for and the Tillinghast numbers are adjusted, their new projections fall squarely within the range that the asbestos trust fund is based on, and the adjusted Tillinghast numbers are actually less than CBO's projections.

In addition, by using a no-fault administrative system, the fund will significantly reduce the substantial transaction costs of the current tort system, costs which almost all experts agree consume more than half of the total amount paid out for asbestos claims.

Remember at the beginning I said that one of the most startling things to me was to realize what happens with settlements, what happens to the dollars of settlements. The fact is that 61 percent of all of the settlement monies go for defendant costs, go for plaintiff costs, go for court costs, go for legal fees. Sixty-one percent. Sixty-one percent, then, of any tort court sum goes not to the victim but to lawyers and to tort costs.

In addition, by using a no-fault administrative system, the fund significantly reduces the substantial transaction costs of the current tort system: (A) you don't need a lawyer; and (B) if you want to come in with a lawyer, that lawyer is limited to a 5-percent fee—not 30, 40, 50, 60, or 70 percent of a recovery, but 5 percent.

According to the RAND Institute, 58 percent of the money spent on asbestos claims goes toward attorney's fees—31 percent to defense attorneys, and 27 percent to plaintiff attorneys.

I urge everyone to read the RAND Institute's recent study. It is 168 pages. It describes what is happening in the tort system, and it is an independent, very good analysis.

The bottom line: The asbestos bill needs less money to pay victims fair compensation since it eliminates these transaction costs which drain money away from the individual.

This bill as amended obligates defendant and insurer participants to contribute $136 billion—that is a lot of money—$136 billion to the fund, and at least $4 billion more would be contributed from confirmed bankruptcy and other asbestos compensation trust funds. In fact, CBO recently estimated that the amount to be contributed by bankruptcy trusts will likely be around $8 billion. Here is what CBO said:

> The value of cash and financial assets of the asbestos bankruptcy trust funds would be $7.5 billion in 2006 and $8.1 billion when liquidated.

As I stated previously, if the projections are wrong and the amount of money available proves to be insufficient in the long run, victims will be allowed to return to the courts. With this safety net, the legislation ensures that no one is left without an avenue of recourse.

Some people have said there is a lack of certainty. A lack of certainty is not unusual when projecting what might occur in the future for the Federal budget or for future programs. I do not believe that uncertainty or ambiguity necessarily leads to the conclusion that the trust fund will require more funding. But I would hope opponents would view the ambiguities for what they are—an acknowledgment that no one can predict the future with 100 percent certainty, and the best anyone can do is make projections using sound statistical analyses, which this committee's bill has attempted to do.

We don't know how many people have been exposed to asbestos and, of course, who will develop a disease—nor can we possibly know. However, that should not mean that we do nothing, that we let the present system, which we know is not good, prevail. That does not mean that the analyses and projections that have been done are useless, not valuable, or inaccurate. Instead, we have to find the best projections available, the most sound, the ones that are based on sound calculation and real-world experience of other trusts. That is what this legislation does.

Another argument made by opponents is that there will be additional costs related to the debt service that could overwhelm the trust. Some have declared:

> Debt service contributes greatly to the trust fund's insolvency, underlining the severe mismatch between the timing of payments into the fund.

Opponents have said that this conclusion is based on the argument that there will be a flood of claims at the start of the trust. However, this concern has also been examined and addressed through the process of drafting this bill. The so-called upfront funding has been significantly increased to the point where the trust fund now will have $42 billion in the first 5 years to pay claims. Under S. 2290—the old bill—the administrator would have collected up to $19 billion during the first 3 years and only $29 billion in the first 5 years. The difference is $15 billion has been added to the upfront funding of this bill. That is a 30-percent increase in the startup funding from what was provided in the bill last Congress.

In addition, the Judiciary Committee adopted an amendment to speed up the initial contributions by insurers, defendant companies, and bankruptcy trusts so that the administrator can pay claims quickly.

Section 204 requires the defendant companies to pay their initial payment within 90 days from the date of the enactment, and we are very serious about that. Section 212 requires the insurers to make their first payment within the same time line. And Section 402 requires the bankruptcy trusts to also make their first payment within the first 90 days.

Here is what the bill says:

> Each defendant participant shall file, not later than 90 days; insurer participants, not later than 90 days.

This is bill language.

> The assets in any trust established to provide compensation shall be transferred to the fund not later than 90 days after enactment.

So everything is done in this bill to move a fast start forward. Within 3 months, the administrator will have collected initial payments from all the participants and will have almost $9 billion.

Next, the bill includes a streamlined process to settle claims of terminally ill individuals immediately—immediately—upon enactment of this legislation. That is what is so attractive to me. Someone who has a very short time to live, someone with mesothelioma, has a chance of getting paid upfront, right away—much more than a chance, a commitment. This provision ensures the terminally ill individuals will have their claims processed quickly, and it should resolve some of the most pressing and most expensive claims before the trust is up and running so that there will not be an overwhelming flood of claims filed with the trust on day one.

Senator SPECTER included language in the statute of limitations to give individuals sufficient time to file their claims—5 years—so there will not be a need to rush to the fund for fear of being cut off and the administrator and the medical board can concentrate on the sickest people first.

Finally, as I mentioned previously, there are tight restrictions on how much the administrator may borrow for the express purpose of ensuring that the trust does not face a shortfall simply because of a debt service problem.

I would like to address the Bates White study in a little more depth. When opponents argue that the projections are too low, many of the arguments made to support this conclusion appear to be based on the Bates White study.

During consideration of this legislation, the Committee held a hearing on the Bates White study and asked CBO to review its conclusions. I was present and listened carefully to the testimony. Several criticisms and concerns were raised about the Bates White study, its assumptions, and its methodology. Witnesses before the Committee made several points that significantly undermined the credibility of the Bates White study.

First, witnesses argued that the Bates White study overestimated occupational exposure. In determining the overall number of individuals who could recover from the bill the Bates White study appears to have counted every employee who ever worked in an industry where there was asbestos exposure. This conclusion was reached by comparing the Bates White study to the Nicholson study.

The Nicholson, Perkel and Selikoff study, conducted in 1982, set the standard on this subject and is considered the most comprehensive asbestos study. It provides a good foundation for estimating the future cases of asbestos disease, and has been utilized in many of the models to develop future asbestos disease claims projections, including claims projections made for the Manville Trust. Yet, Bates White's conclusions are almost triple Nicholson's.

Navigant is a consulting firm that has worked on asbestos claims since the 1980s doing evaluations of claims projections and costs to companies. During the hearing, Navigant's witness explained that this discrepancy seemed to occur because Bates White simply used a straight percentage of the total U.S. workforce, whereas Nicholson conducted an extensive analysis of the industry and occupational exposure to asbestos.

Next, Bates White did not make a distinction in its calculations between exposed populations and eligible populations. This means that in the Bates White study it appears that every person who was ever exposed to asbestos was counted as eligible under the trust fund. However, not all individuals who are exposed to asbestos will become sick, nor will all individuals who are exposed to asbestos be able to meet the medical criteria and the exposure requirements necessary to receive compensation.

While considering asbestos legislation, several witnesses have pointed out that just because someone may have been exposed to asbestos at some point in their lifetime, it does not follow that they will become sick or will qualify for payment. I think this is an important point and is feeding some of the misperceptions around this bill. The science has not determined that every person who is exposed to asbestos will get sick.

This is true not just because each individual is different from one another and has differences in their immune systems, but because developing an asbestos-related disease usually requires prolonged and sustained exposure. Asbestos is a naturally-occurring mineral and most of us have been exposed to asbestos dust simply by walking outdoors. However, the current science concludes that casual contact is rarely sufficient to develop an asbestos disease.

Dr. James Crapo is Professor of Medicine at the National Jewish Medical and Research Center. He has more than 25 years of experience with asbestos-related issues, including medical research and clinical treatment of patients suffering from asbestos-related diseases and has published in the field of environmental toxicology, including the basis of asbestos-induced lung injury.

He testified that:

> All of us are exposed to asbestos from the environment and consequently have asbestos in our lungs. This background level of exposure does not cause any asbestos-related disease. Those diseases normally require substantial occupational exposures or the equivalent.

In addition, the Navigant and the labor witnesses pointed out that the Bates White study did not seem to take into account that exposure rates within certain occupations decreased over time. This means that the Bates White study did not account for the fact that as companies became more aware of the dangers of asbestos they often did more to protect their workers.

The committee also heard from Dr. Laura Stewart Welch, a board-certified physician in internal medicine and occupational medicine. She has an active medical practice and treated many workers with asbestos-related disorders. She is currently medical director for The Center to Protect Workers Rights, a research institute affiliated with the Building and Construction Trades department of the AFL–CIO, and has authored over 50 peer-reviewed publications and technical reports in the field of occupational and environmental medicine, including papers describing the findings of asbestos-related disease in this group of construction workers.

She pointed out that the overall number from which Dr. Bates calculated the claims that will go into the trust is at least ten times too big. She explained that Dr. Bates extrapolated from a study that uses 2–3 fiber years as the basis for what constitutes significant exposure. The reference to fiber years is a way to calculate how much asbestos an individual has been exposed to. However, the legislation requires at least 25–40 fiber years to constitute significant exposure. So the legislation requires a much higher level of exposure to qualify.

Witnesses concluded that by failing to adequately consider each of these factors, the Bates White study provided a significant overestimation of claims.

Next, the committee heard testimony that argued the estimates made by the Bates White study do not reflect current experiences. The Bates White study asserts that by creating a no-fault system there will be a huge increase in filing of other cancer claims because it is no-fault rather than the adversarial system in the courts. However, the Manville Trust has similar, and in some cases exactly the same, medical criteria as the criteria in the FAIR Act, and it does not have litigation costs nor the deterrent of the adversarial system.

The Manville Trust was formed in 1988, and is the first and largest asbestos trust. In fact, it is not just the largest asbestos trust, but it is the largest toxic tort or personal injury trust of any kind. As of mid-2005 the trust had paid about $3.3 billion to settle 655,096 claims. The Manville Trust has gained so much experience in the field of asbestos claims settlements that it plans to begin offering claims-resolution services to other companies. Therefore, the experience of the Manville Trust should be considered a fair starting point for projections.

When comparing the Bates White study to Manville, witnesses from the committee hearing asserted Bates White projections are four times higher for other cancers than Manville. This was viewed as well outside a reasonable difference.

In addition, witnesses pointed out that there are several evidentiary requirements that do not seem to be adequately accounted for. In the two areas where the Bates White study predicts significant growth in claims, it does not account for the role of the physicians panel which is made up of three doctors who will personally review claims.

Lastly, the committee heard from experts who stated that the Bates White study used a methodology that has not been accepted by the unions, businesses, insurers, trial lawyers, CBO, the current bankruptcy trusts, or the courts now hearing asbestos cases.

For all these reasons, many of us concluded that the Bates White analysis fell far outside acceptable ranges for projections. To be clear, throughout this process both the AFL–CIO witness as well as business witnesses disputed the assumptions underlying the Bates White study and rejected its conclusion.

The next argument used by opponents is that the asbestos trust fund is going to fail because other trust funds have failed. This is not a new concern. In fact, throughout the process we looked at previous trust funds and attempted to evaluate the problems that arose.

The Black Lung Disability Fund was established by the Black Lung Benefits Revenue Act to pay black lung benefits to eligible miners whose mine employment ended before 1970 or whose employers were no longer in existence and therefore could not be assigned liability for their benefits. It was funded by excise taxes levied on coal sold by mine operators, but the Act includes language for repayable advances to the fund from the U.S. Treasury. This meant that when the Black Lung Trust Fund's resources were inadequate to meet its obligations the U.S. Treasury could advance the fund money to cover the costs. This provision is intentionally not included in the asbestos bill and instead language stating the opposite is included.

It is true that the number of black lung benefit claims were vastly underestimated and the costs of the black lung program were also underestimated. However, while the Black Lung Fund's costs were to be paid by industry, by 1977, 7 years after enactment, industry had made very few payments to the fund. The fund then sustained a deficit and the U.S. Treasury had to pay claims because of this default by mining companies. We did not ignore the problems created by the Black Lung Fund, rather we included several provisions in the asbestos bill to prevent this situation from taking place.

They are: explicit language prohibiting the Administrator from requiring any costs to be paid by U.S. Treasury; limits on borrowing authority and capacity; strong enforcement provisions if businesses default; requirements that other companies cover any potential shortfall; and reversion to the tort system if the trust runs out of money. I have already discussed the language in the asbestos bill to ensure that the business and insurer contributions are made and enforced, and to limit how much the administrator may borrow.

Finally, I would like to address an overarching concern that has been repeated throughout the debate. Interestingly, opponents keep arguing for 100-percent certainty. I don't know when we are ever provided 100-percent certainty. Congress is supposed to look at all the information available, hold

hearings, raise questions, draft legislation, offer amendments and then try to pass a statute. That is exactly what has been done here.

Senators SPECTER and LEAHY have gone well beyond what is normally done around here to address problems. Every time an issue has been raised, they have tried to address the problem and find a solution. This stands in sharp contrast to the take-it-or-leave-it process that often describes legislative craftsmanship.

To now hear my colleagues express such an intense level of outrage that the bipartisan bill before the Senate does not contain adequate certainty or enough compromises is hard to swallow. To argue that a bill should not move forward because there might be unintended consequences would mean we would almost never pass legislation. And if we can't pass legislation unless we can guarantee there will never be an unintended outcome, then we might as well pack up and go home.

I should say I think this is a very important bill. Let me end with what I started. People who think the tort system is the way to go, who think it is OK that 61 percent of the settlement dollars go to transaction costs, who think that the victims who do not get this money are best served by the tort system—they are going to vote to sustain the point of order against the bill.

For those of us who believe it is the sickest victims who are going to be best taken care of in this trust, that this trust sets up an orderly and medically oriented protocol for a no-fault trust system and that victims are going to benefit from it and businesses will cease going into bankruptcy because of it, if you think that is a worthy thing, then you will vote for us.

I thank the Chair. I particularly thank the chairman and the ranking member of the committee. This has not been an easy bill. I truly believe they have both done a wonderful job, in the finest interests of the Senate, by working together across the aisle.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Vermont.

Mr. LEAHY. Mr. President, parliamentary inquiry: Are we operating under controlled time?

The PRESIDING OFFICER. We are not.

Mr. LEAHY. Mr. President, first, I thank the distinguished Senator from California. She has talked about the daunting hours the senior Senator from Pennsylvania has put in on this legislation, as well as those of us who have been concerned with it.

I note the Senator from California has spent those hours with us. She has been there, her staff has been there—I don't know how many times I have received calls that start with: Patrick, I have been thinking about this—and off we go. Usually, that is about points to which I should be paying more attention. All of that has gone toward a better bill.

The senior Senator from Pennsylvania is not on the floor looking for praise, but I am going to take a moment to praise him from this side of the aisle. I do not know a single Senator, Republican or Democrat, who came to him and said: I want to talk to you about this, who was not given a fair, thorough hearing. If they had a better way of doing it, the Senator from Pennsylvania would say: Let's consider it. He and I would talk about it, and if we were convinced it was a better way, it became part of the bill.

I have been here 31 years, as I am sometimes wont to say. My children remind me they had forgotten I was that old. But I have been here 31 years, and I very rarely have seen a chairman of either party take that much time and effort to accommodate every single Senator. I applaud my friend from Pennsylvania for doing that.

But the proof comes in the pudding. Because he did do that, we have an even better bill than when we started. We spent several years on this. I recall conducting one of the first hearings on this several years ago. We have done this through two different Congresses. We have had numerous markups, and we have come out with a better bill. It is on the floor now because it is the aggregate of great ideas.

This is why the point of order is so frustrating, the point of order that the nonpartisan Congressional Budget Office said they would not expect this legislation to add to the Federal debt. Yet we still have to face this point of order because the point of order has become for many a backdoor way of killing this bill. If it is done to kill the bill, Senators should ask themselves what they are then faced with? I will tell you what they are faced with. They are faced with thousands upon thousands of victims—and we are all for the victims. Lord knows everybody said that. But if you vote to sustain this point of order what you are telling thousands upon thousands of victims is: You are on your own. You probably have no chance of getting the recovery you would have here.

Certainly, you tell all those veterans who have no place of recovery that they are gone. That is why every single veterans group I can think of has endorsed the legislation, the Specter-Leahy legislation. They have endorsed it. That is why all those veterans organizations said: Don't vote to sustain this point of order.

I have a great deal of respect for the Senate Budget Committee. Certainly, I do for my friend, the ranking member, and my friend the chairman. But I disagree with any position that says this legislation would add to our deficit. If you fully read the text of our legislation and the testimony of the Congressional Budget Office and the recent analysis of the fiscal impact of this legislation, it does not support the point of order. We have heard people who are opposed to this say that somehow a privately funded trust will add to the Federal debt. This week, the Congressional Budget Office made it very clear that the trust fund set up under this bill does not add to the Federal debt. CBO stated in its letter that ''the legislation would be deficit neutral over the life of the fund.''

I ask unanimous consent that that letter from CBO be printed in the RECORD.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 13, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: At the request of the Committee on the Budget, the Congressional Budget Office (CBO) has reviewed Senate Amendment No. 2746 to S. 852, the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005, a substitute amendment that was printed in the Congressional Record on February 9, 2006. This review addresses the amendment's year-by-year budgetary impact over the first 10 years, its aggregate impact in succeeding 10-year periods, and its cumulative budgetary impact over the life of the proposed Asbestos Injury Claims Resolution Fund (Asbestos Fund). It also addresses the potential costs of intergovernmental and private-sector mandates in the legislation.

BUDGETARY IMPACT

Assuming that the bill as amended is enacted before the end of 2006, and based on the assumptions underlying our August 2005 cost estimate for S. 852, CBO estimates that payments to eligible claimants, start-up costs, investment transactions, and administrative expenses of the Asbestos Fund would total about $64 billion over the 2006–2015 period (excluding debt-service costs). Those sums would appear in the federal budget as direct spending (see the table below). Over the same 10-year period, we estimate that the fund would collect about $58 billion from firms and insurance companies with past asbestos liability and from certain private asbestos trust funds. CBO expects that those sums would be treated in the budget as federal revenues. In addition, the Joint Committee on Taxation (JCT) estimates that enactment of the legislation would lead to a reduction of about $1.1 billion in receipts from corporate income taxes over the 2007–2015 period; this would affect the budget totals but would not affect the balances of the Asbestos Fund. Thus, CBO estimates federal revenues would increase by about $57 billion over the next 10 years under the bill.

ESTIMATED BUDGETARY IMPACT OF S. 852, IF AMENDED BY AMENDMENT NO. 2746

	By fiscal year, in billions of dollars—									
	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
CHANGES IN DIRECT SPENDING										
Estimated Budget Authority	*	8.7	23.1	11.1	5.3	4.0	5.1	5.0	4.9	4.7
Estimated Outlays	*	8.7	6.7	8.2	9.3	9.4	6.6	5.2	5.1	5.0
CHANGES IN REVENUES										
Asbestos Fund Revenues	0	8.7	7.0	8.2	9.3	9.1	4.0	4.0	4.0	4.0
Corporate Income Taxes	0	−0.1	−0.2	−0.2	−0.2	−0.1	−0.1	−0.1	*	*
Total Revenues	0	8.6	6.8	8.0	9.1	9.0	3.9	3.9	4.0	4.0
CHANGES IN THE DEFICIT										
Estimated Net Increase or Decrease (−) in the Budget Deficit	*	0.1	−0.1	0.2	0.2	0.4	2.7	1.3	1.2	1.0

Note: *= Between $50 million and −$50 million.

CBO's estimate of spending from the Asbestos Fund over the 2006–2015 period differs from that in CBO's August 2005 cost estimate for S. 852 because we now assume a later enactment date for the legislation. In addition, certain provisions in section 402 regarding when assets would be transferred from private asbestos bankruptcy trust funds to the proposed federal Asbestos Fund would slightly reduce both spending and revenues, relative to the amounts shown in the earlier cost estimate. CBO estimates that other provisions of the amendment would not significantly affect spending or receipts over the 10-year period, relative to the amounts shown in CBO's earlier estimate.

The revenue effects shown in the table also incorporate a change in CBO's cost estimate unrelated to the amendment. That change involves effects of the legislation on the amounts that insurers and defendant firms would deduct to arrive at taxable corporate income. In CBO's earlier estimate, it was judged that the amounts deducted as payments made over the life of the trust fund were approximately the same as would be deducted to cover claims under the current tort compensation system, producing no net effects on corporate income tax collections over the life of the fund.

This assessment has not changed. But while total deductions over the life of the trust fund would not change, their distribution over those years could. Larger deductions up front, as a result of S. 852, could produce less revenue from corporate income taxes in the earlier years, which would be offset by a revenue gain in later years. Lacking any basis for estimating this timing effect, CBO elected not to incorporate it into its cost estimate. Recently, the Joint Committee on Taxation produced an estimate of this timing effect. In its estimation, receipts from corporate income taxes would be reduced by about $1.1 billion over the 2007–2015 period. CBO has elected to incorporate JCT's estimate of this effect in its projections. That adjustment does not affect spending or receipts of the proposed Asbestos Fund.

CBO also estimates that, so long as the fund's administrator does not borrow amounts beyond the means of the fund to repay (as the bill would require), the government's general funds would not be used to pay asbestos claims. Furthermore, section 406 of the bill states that the legislation would not obligate the federal government to pay any part of an award under the bill if amounts in the asbestos fund are inadequate. Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.

Substantial payments from the fund would continue well after 2015. Consequently, pursuant to section 407 of H. Con. Res. 95 (the Concurrent Resolution on the Budget, Fiscal Year 2006), CBO estimates that enacting the bill as amended would cause an increase in net direct spending greater than $5 billion in at least one of the 10-year periods from 2016 to 2055.

MANDATES

The proposed amendment contains the same intergovernmental and private-sector mandates as the reported bill. It would preempt state laws relating to asbestos claims and prevent state courts from ruling on those cases. It also would require state governments to comply with requests for information from the Asbestos Insurers Commission. CBO estimates that any cost associated with those intergovernmental mandates would be insignificant and well below the threshold—$64 million in 2006, adjusted annually for inflation—established in the Unfunded Mandates Reform Act (UMRA).

The proposed amendment would also impose mandates on certain individuals filing claims for compensation for injuries caused by exposure to asbestos; certain companies with prior expenditures related to asbestos personal injury claims; certain insurance companies; trusts established to provide compensation for asbestos claims; health insurers; and persons involved in manufacturing, processing, or selling certain products containing asbestos. Based on information from academic, industry, government, and other sources, CBO concludes that the aggregate direct cost to the private sector of complying with all of the mandates in the bill would well exceed the annual threshold established by UMRA ($128 million in 2006, adjusted annually for inflation).

If you wish further details on this estimate, we would be pleased to provide them. The CBO staff contact is Mike Waters, who may be reached at 226–2860.

Sincerely,

DONALD B. MARRON,
Acting Director.

Mr. LEAHY. Former Senator Don Nickles, with whom many of us served, raised this concern. The Government Accountability Office responded:

> [T]o ensure the Government incurs no liability for repayment of borrowing under this act, Congress may wish to explicitly state repayment of borrowing is limited solely to balances available in the fund.

That is precisely what we did in the FAIR Act.

A simple reading of the text of the bill shows that defendants and their insurers are obligated to pay $136 billion to the fund, and additionally another $4 billion of the assets from existing bankruptcy trusts. If this level of funding proves to be insufficient—most doubt it will not, but if it does—then we revert back to the tort system which we have now.

If we pass this legislation, thousands of people who had their health severely impacted through no fault of their own because of asbestos will have a chance to recover. Will some recover as much as some of the lucky few who were able to get through the whole tort system? No, nor will their attorneys even begin to recover the huge amounts some of the attorneys did.

The private companies are required under this legislation to continue making payments to the fund even after sunset until all of the fund's obligations are satisfied under section 405. Even the administrative expenses are paid from this private fund.

Finally, the bill clearly states:

> Nothing in this Act shall be construed to create any obligation of funding from the United States Government, including any borrowing authorized . . .

The Senator from Pennsylvania and I have this as a touchstone all the way through, that we are not passing a piece of legislation for the taxpayers to fund. We are seeking help for those who have been injured.

Senator SPECTER and I have been working on this issue for years. We have carefully considered the design of the compensation program for asbestos victims and ways to avoid the pitfalls of other Federal compensation programs that have been enacted by Congress. Many of the compensation programs cited by the opponents of S. 852 were created by Congress with mandatory Federal spending and did not contain a provision to sunset the program if it went under-funded. We rejected such proposals for asbestos legislation.

Many opponents of our trust fund wanted the claims processing to be in a private corporation. Labor groups and victims testified that operating this trust fund in a new, private entity would delay compensation to sick victims and would entail significant administrative costs. Accordingly, we agreed to house the asbestos trust fund within the Department of Labor because it has expertise with compensation programs. It has existing staff with relevant experience and critical infrastructure and contracting capabilities to ensure an accelerated pace to pay the sickest victims within months of enactment.

Members of the financial services community recently contacted my office to rebut the conclusions made in the recent ''white paper'' distributed by the minority staff of the Senate Budget Committee. The investment community indicates that this minority staff report circulated last week dramatically overstates the financing expenses to be expected under this legislation.

This document alleges that $125 billion will be spent by the fund on borrowing because it vastly overstates claims projections and interest rates. The minority staff document ignores the fact that section 221 of the legislation provides that borrowing by the trust fund will be within a 10-year time frame. The document alleges that the FAIR Act will pay borrowing at an interest rate of a whopping 25 percent. This assumes an interest rate six times higher than the current 10-year Treasury bond rate.

In fact, the financial community opines that due to the structural aspects of the legislative language, it is ''overwhelmingly likely that financial markets will treat the trust fund as an investment grade credit'' and therefore it would have access to highly favorable borrowing rates.

I ask unanimous consent to have printed in the RECORD the FIAR letter.

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

FINANCIAL INSTITUTIONS FOR ASBESTOS REFORM,
Washington, DC, February 10, 2006.

Re Senate Budget Committee Democratic Staff White Paper.

Hon. ARLEN SPECTER,
Hon. PATRICK LEAHY,
Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATORS: As members of the investing community we must take issue with the recent report prepared by the Democratic staff of the Senate Budget Committee. This staff paper flunks ''Finance 101''. The analysis by Democratic staff of S. 852 displays a basic misunderstanding of the financing that will occur in the proposed asbestos claims trust fund. It suggests that the trust fund's obligations will exceed designed contributions by a hair-raising total of $150 billion in nominal terms. This suggestion lacks any credible basis.

The Democratic staff report attributes $117 billion of this $150 billion to increased financing expenses. The report estimate of $125 billion in financing costs contrasts with a Congressional Budget Office estimate that net financing expenses for the trust will be $8 billion. This huge discrepancy is the result of flawed and unrealistic assumptions in the staff report.

The staff study projects that the trust fund will make $160 billion in claims payments, vs. $130 billion estimated by the CBO. In a worst case scenario where the incremental $30 billion of claims would be financed by borrowing in the trust fund's initial years of operation, the trust would need to borrow $50 billion as opposed to the $20 billion estimated by CBO.

Section 221 of the FAIR Act provides that borrowing by the trust fund will be within a ten year time frame. Doing the math, the trust fund would be borrowing $50 billion at an unheard of interest rate of 25% in order to generate $125 billion of net financing expenses over the ten-year borrowing period. It should be noted that ten-year Treasury bonds currently yield 4.54%.

There is not even a remote possibility that the trust fund administrator will have to borrow at rates even approaching 25%. Structural aspects of the proposed trust, including a super priority lien securing obligations of the payers, make it overwhelmingly likely that financial markets will treat the trust fund as an investment grade credit.

If the trust gets even the lowest investment grade rating (BBB) and pays market rates, which are under 6%, its total borrowing costs under the staffs draconian scenario would be under $30 billion; a far cry from $125 billion.

Sincerely,

Financial Institutions for Asbestos Reform.

Mr. LEAHY. Mr. President, at the heart of most arguments against the funding structure provided under the FAIR Act are allegations that predictions about the number of claims expected to come to the fund have been underestimated. Over the past 5 years, the Judiciary Committee received extensive testimony from a variety of auditing companies, economic analysts and existing asbestos trusts about claims projections. Three years ago, a leading actuary with Tillinghast-Towers Perrin testified that ''$108 billion appears to be more than adequate'' while other firms estimated that $130 billion would be sufficient to cover the trust fund expenses.

It is not surprising that projections about future behavior vary from firm to firm because the assumptions are different. Some professional analysts have estimated that we will experience significantly less than $140 billion in claims and others have estimated that we will experience more.

Last week's document produced by some staff on the Budget Committee assumes that $160 billion will be paid out in claims based on a worst case scenario of one projection of claims activity.

The minority staff document circulated last week adopted claims projections plainly at odds with the experience of the Manville trust and without consideration for the medical criteria in S. 852. The overwhelming majority of nonmalignant claims paid by the Manville trust go to unimpaired claimants. The fund created by the FAIR Act would not compensate these claims, so this significant disparity must be taken into account.

The minority staff document also fails to account for the different medical criteria for malignant claims paid by the Manville trust. Thankfully, the CBO's estimate takes the FAIR Act's specific medical criteria into account when it considered its claims projections.

The CBO considered all relevant estimates and met with scores of stakeholders, financial experts, economists and auditors in determining whether the compensation provided for victims under S. 852 would be adequate. After years of analysis, they found that while victim compensation could range from $120 to $150 billion, its middle range estimate using its chosen claims projections would yield approximately $130 billion in claimant compensation, and that $140 billion, plus investment income, would be sufficient to cover all claims payments, administrative costs, and borrowing costs.

Of course opponents can seize upon worst case scenarios in an 11th hour attempt to scuttle this bipartisan legislation, but $130 billion in expected claims is the CBO's middle range and is provided for under our legislation.

Finally, opponents of this legislation contend that the fund will not actually receive $140 billion from the private companies obligated to contribute based on their previous asbestos expenditures. In his testimony before the Senate Judiciary Committee last Fall, then-CBO Director Douglas Holtz-Eakin clearly stated that: ''CBO projects that total receipts to the fund over its lifetime would amount to about $140 billion, including a small amount of interest earnings on its balances.''

The FAIR Act contains several provisions to ensure that the contributions will be collected through numerous enforcement provisions which provide the administrator with subpoena power and the ability to pursue punitive damages for nonpayment. In addition, our legislation contains a funding guarantee so that other companies will make up the difference if some companies are unable to pay their own contribution.

Even if the fund sunsets and victims are allowed to return to the tort system, the private companies are nonetheless required to continue to pay into the fund until all of the fund's obligations from borrowing costs and resolving victim claims are satisfied.

I understand that some of my colleagues have raised this budget point of order to sink the FAIR Act, but I urge them to consider the purpose of such budgetary mechanisms in light of the simple fact that we have created a privately financed structure that the Congressional Budget Office has estimated will not add to the Federal debt.

This point of order is a procedural mechanism intended to promote fiscal discipline. In light of CBO's explicit statement that ''CBO concludes that the legislation would be deficit-neutral over the life of the fund,'' no point of order should prevent such important, completely privately funded legislation as the FAIR Act.

This latest analysis from CBO reinforces the fact that the asbestos trust fund legislation would not add to the Government's Federal debt. The bottom line from CBO is that this bill is ''deficit-neutral.'' There is no reason to sustain the budget point of order. The FAIR Act is the right solution for victims and businesses. This bipartisan bill offers fair and efficient relief to long-suffering victims of asbestos exposure while providing business with financial certainty and an alternative to bankruptcy.

I recently received a letter from the International Association of Heat and Frost Insulators and Asbestos Workers. The workers represented by this union know first hand the devastation caused by asbestos, and I know they would hate to see the unique opportunity we have before us be destroyed by a technicality.

They wrote:

We believe S. 852 offers the best hope of providing fair and equitable compensation on a national basis for those who have suffered or will suffer from the devastating effects of asbestos exposure in decades to come.

For these reasons, we urge you to reject the budget point of order, which holds the potential to kill this legislation that is so important to our members.

Let us not let down the very people we are seeking to help. I ask unanimous consent that the letter from the International Association of Heat and Frost Insulators and Asbestos Workers of February 13, 2006 be printed in the RECORD.

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

INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS,

Lanham, MD, February 13, 2006.

DEAR SENATOR: We write you to express our concern regarding the budget point of order that is currently being considered with respect to the Fairness in Asbestos Injury Resolution (FAIR) Act, S. 852. It is frankly very troubling to see critical legislation that impacts our members be imperiled by a mere technical procedural motion.

The Fund at the heart of S. 852 is financed by private dollars and it does not make sense to us that the legislation could have any real impact in the U.S. budget. We urge you to support waiving this false point of order so the Senate can work on this important legislation.

We represent tens of thousands of members and retirees who have been exposed to asbestos in the workplace.

We believe the current system is broken and must be fixed for the current victims and the victims of the future. More than seventy-five companies have gone into bankruptcy. What is most disturbing to us is the fact that only 42 cents of every dollar spent goes to the victims, their widows, and children.

We believe S. 852 offers the best hope of providing fair and equitable compensation on a national basis for those who have suffered or will suffer from the devastating effects of asbestos exposure in decades to come.

We strongly support the FAIR Act. For these reasons, we urge you to reject the budget point of order, which holds the potential to kill this legislation that is so important to our members. We believe to kill the FAIR Act on a disingenuous technicality would be wrong and, as appalling as the current system itself. Our members and their families know the horrors of asbestos-induced disease and the heartache associated with it. We also know that the problem is not going away soon.

Senators Specter and Leahy along with many others have worked extremely hard over the past three years to address what almost everyone concedes is a national crisis.

Senators who oppose this Bill may vote against it in the end, but the members of our Union (International Association of Heat and Frost Insulators and Asbestos Workers Union) deserve to see this bill put to a final vote.

Sincerely,

JAMES A. GROGAN,
General President.
JAMES P. MCCOURT,
General Secretary-Treasurer.

Mr. LEAHY. Mr. President, I urge my colleagues to consider all the work that has gone into the crafting of this legislation including the specific provisions I have highlighted in this statement making it absolutely clear that the Federal Government is simply not liable under this legislation.

The Judiciary Committee received extensive testimony from economists and experts in claims projections. All of this process and expertise was considered as part of the Congressional Budget Office official estimate.

The CBO has testified that the FAIR Act is not predicted to add to the Federal debt; therefore, it should not suffer from the budget point of order raised against it. I urge my colleagues to waive the point of order. The victims of asbestos exposure will not benefit from this latest tactic to stop this legislation.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. FRIST. Mr. President, discussions have proceeded since this morning on the point of order and the motion to waive the point of order, and we have come to an agreement whereby we will have a vote sometime around 6 o'clock tonight.

I ask unanimous consent that there now be 3 hours for debate in relation to the motion to waive prior to a vote on the motion, with the time divided as follows: 40 minutes for Senator SPECTER, 40 minutes for Senator LEAHY, 40 minutes for Senator ENSIGN, 40 minutes for Senator DURBIN; provided further that if the point of order is sustained, the two filed cloture motions are vitiated.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object, I would be the last to put forward my proficiency in math, but I do think that math is wrong.

Mr. FRIST. Mr. President, I modify my unanimous consent request, that there now be 3 hours minus 20 minutes—2 hours 40 minutes—for debate with the times as designated.

Mr. REID. Mr. President, reserving the right to object, this point of order which has been raised is a difficult vote for Democrats and Republicans. I express to my friend, the Senator from Vermont, that I hope my advocacy here on this issue has not offended anyone. I know there was a time when it did offend my friend from Pennsylvania. I have already apologized in that regard, if in fact I offended him. But Senator SPECTER, Senator LEAHY, and I have been in courtrooms long hours, and you have to put all of this stuff behind you, no matter the feeling at the time. Senator FRIST has been in the operating room involved in very critical stuff. He looks at this a little differently than I do, but our intent is the same. We need to have this vote, find out what happens there, and move on to this legislation, or whatever else comes up.

Again, if I have offended Democrats or Republicans because of my advocacy on this issue, I apologize.

I have no objection.

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

Mr. FRIST. Mr. President, to clarify, given my math being incorrect, that vote would be a little bit after 6 o'clock tonight on the motion to waive the point of order.

Mr. REID. Although people do not have to use all time.

Mr. FRIST. That is correct. It could be earlier than that. Then we would not have any more rollcall votes after that vote tonight.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I am advised that Senator HATCH, Senator DOMENICI, and Senator ALEXANDER would like time, and they are welcome to it if they would come to the floor. I have already spoken on this issue at some length and reserve my time for rebuttal.

At this time, I ask unanimous consent to have printed in the RECORD a letter from the International Union of Painters and Allied Trades, dated February 14, and a letter from the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, dated February 13, objecting to the point of order.

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

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, AFL–CIO, CLC,

Washington, DC, February 14, 2006.

Subject: FAIR Act of 2005 (S. 852).

DEAR SENATOR: This week, the Senate continues consideration of the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005 (S. 852), sponsored by Senators Specter and Leahy. The International Union of Painters and Allied Trades (IUPAT) strongly supports this legislation and urges all Senators to reject the technical budget point of order that has been raised against the bill.

The asbestos trust fund that would be established by the passage of this bill will be entirely financed by contributions from defendant companies and insurers and will have no impact on the federal budget, thereby invalidating the point of order against the bill. While all of the funding will be provided from private sources, the actual administration of the fund will be housed within the Department of Labor, causing this technical point of order to be raised. The IUPAT strongly feels that housing this fund within the Department of Labor will ensure that this newly established trust fund is administered in an orderly and professional manner that will be fair to victims. Therefore, we urge all Senators to defeat this budget point of order and any attempt to remove the administration of this fund from the Department of Labor at this stage in the process.

As this process moves forward, the IUPAT strongly believes that the FAIR Act represents the best opportunity to provide timely, equitable compensation to the victims of

asbestos related diseases. We urge you to reject the budget points of order and any other obvious attempts that seek to derail the bill or weaken any of its core provisions.

Thank you for your time and attention to this matter.

Sincerely,

JAMES A. WILLIAMS,
General President.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, DC, February 13, 2006.

DEAR SENATOR: This week the Senate is expected to continue consideration of the Specter-Leahy asbestos compensation legislation, the FAIR Act (S. 852). The UAW strongly supports this critically important legislation.

We are pleased that Senators Specter and Leahy have offered a manager's amendment that substantially addresses various concerns that have been raised by some unions. Specifically, this amendment will:

Clarify that binding settlements between victims and defendants will be preserved, not canceled by the bill;

Expressly state that civil rights and disability claims are not pre-empted by the bill;

Establish a paralegal program to help asbestos victims process claims before the trust fund, and allow lawyers to collect additional attorneys fees beyond the 5% cap for work on administrative appeals;

Ensure that individuals with both asbestos and silica disease who are sufficiently impaired to satisfy medical criteria for levels III, IV and V will in fact receive compensation under these higher award levels, and will not be required to rule out silica exposure as a ''more likely cause'' of their impairment;

Allow increased awards for mesothelioma victims with dependent children;

Improve the start up provisions so that non-exigent claimants may continue to receive payments from existing bankruptcy trusts, and thus will not have to wait for lengthy periods of time to begin receiving compensation; and

Improve the sunset provisions, both by requiring an independent audit of the status of the asbestos compensation trust fund, and by requiring the administrator's annual reports to be more comprehensive.

The UAW commends Senators Specter and Leahy for proposing these improvements to S. 852. We urge Senators to approve the manager's amendment.

At the same time, the UAW strongly urges Senators to vote against the technical budget point of order that has been raised against the bill. Because the asbestos compensation trust fund is financed entirely by contributions from corporations and insurers, there should not be any valid point of order against the bill. The only reason a technical point of order exists is because the asbestos compensation program would be administered by the Department of Labor. This is something the entire labor movement has supported, to ensure that the program is administered in a competent manner that is fair to victims. The UAW urges Senators to reject the technical budget point of order, both because it could threaten the provisions that involve the Labor Department in the administration of the program, and because it represents an obvious attempt to kill the entire legislation.

The UAW firmly believes that the FAIR Act is the best opportunity to establish a program that will provide prompt, equitable compensation to the victims of asbestos related diseases. We urge you to reject amendments that seek to undermine this legislation, to support cloture to cut off debate on this measure, and to support passage of the overall bill.

Thank you for considering our views on this measure.

Sincerely,

ALAN REUTHER,
Legislative Director.

Mr. LEAHY. Mr. President, I ask unanimous consent that at the appropriate time the Senator from Montana gain the floor and that he be granted 10 minutes of my time.

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

The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I rise today to speak to you again about a special place in my state, Libby, MT.

It is important for my colleagues to know that the vote on the budget point of order affects the lives of Libby residents dramatically.

It affects the thousands of people who are sick and the hundreds more who will die.

I ask my colleagues to vote on the merits of this bill. Budget points of order should not be misused. They should not impede consideration of this important legislation.

The budget point of order should not be used to hurt the folks in Libby. They have suffered enough.

The situation in Libby is unique. The asbestos in Libby is different. It is a much different asbestos than other parts of the country. It is much more pernicious. It is wicked, awful stuff.

Libby is different because we are talking about community exposure to asbestos—not a few workers.

The entire Libby community was exposed to asbestos because of the vermiculite mine and mill.

Until the mid-1970s in Libby, W.R. Grace milled vermiculite from a mountain in Libby. W.R. Grace exposed the entire community to this deadly disease.

I have been up there. I have been at that site. It is an unbelievably dusty mess.

This asbestos bill will make W.R. Grace pay Libby residents for the intentional harm this company caused these people.

I do not use the word ''intentional'' loosely because it was intentional. Documents show it was intentional. Documents show the company knew it was harmful, that it was sending this stuff out to the people in Libby, and that many of them would become very ill and would die.

Not only were mine workers employed by W.R. Grace exposed to high levels of asbestos, but the mill's ventilation stack released 5,000 pounds of asbestos every day. Mill workers swept dust outside. Often, they could not even see their broom handles because it was so dirty with asbestos.

They dumped it down the mountainside. White dust covered the entire town.

The layers of rock where people found the vermiculite contained harmful asbestos and this vermiculite in Libby is laced with a particularly dangerous type of asbestos, called tremolite.

Asbestos in Libby is tremolite asbestos rather than the more common, chrysotile asbestos. Tremolite asbestos is a significantly more toxic than chrysotile asbestos.

The Libby tremolite disease process is different. It's far more disabling and deadly than ordinary asbestos, as bad as ordinary asbestos is and 76 percent of diagnosed patients progress to serious disease or death in Libby, MT.

Just compare this to chrysotile asbestos, where 25 percent of diagnosed patients progress to serious disease or death.

People in Libby are uniquely affected by asbestos related disease. They are sick. They suffer from asbestos-related disease at a rate 40-to-60 times the national average.

And people from Libby suffer from the asbestos cancer, mesothelioma, at a rate 100 times the national average.

The asbestos has contaminated the whole town. In addition to the mines and the mill, extensive asbestos contamination is found in homes, in ball fields, and in schools. It's found in the playgrounds and in the gardens. A recent study even found asbestos contamination in the tree bark.

I have worked very hard with the Judiciary Committee and my colleagues, the chairman of committee, Senator SPECTER, and Senator LEAHY, ranking member, to tailor a solution that addresses the unique problems in Libby. We are extremely grateful to Chairman SPECTER and Senator LEAHY for all their work to protect Libby. They have worked very hard. They have sent staffers to Libby, MT. They have seen it. I am thankful for the staff they have sent to Libby to see how bad this stuff is.

I urge my colleagues not to use this point of order to kill the bill and to kill all this hard work. Many Senators have worked very hard for years to try to find a solution, a way to get compensation to people who otherwise will not get compensation and who desperately deserve it. The people who suffer from asbestos-related diseases need our help. Let's stand up for the people of Libby, MT. Let's not turn our backs on them. If this bill goes down, this Senate will be turning its back on the people of Libby, MT.

I urge my colleagues to oppose the point of order and vote on the merits of this bill. Senators can always decide later to oppose this bill. There are many opportunities for Senators to reexamine their positions on this bill and offer amendments.

We should not kill this bill simply on a technical point of order. It will undermine months and months of very hard work of well-meaning people to try to find justice for people who are suffering from asbestos. Let's stand up for the people of Libby and not turn our backs on them.

I urge my colleagues to oppose the budget point of order and vote on the merits of the bill. The people of Libby have been through enough. They need our help. They need it now. If you do not support the bill, say so, but do not hold the people of Libby and the community of Libby hostage. We cannot do that. That would be grossly unfair.

I will do whatever it takes to continue fighting for the people of Libby and fighting for the justice they deserve.

I wish all Members of this Senate were able to sit in the living room of Gayla Benefield—when I first learned how bad things are in Libby—and look in the eyes of Les Skramstad. He is a great guy. He is dying from asbestos. He worked on the mine. He is not old. He is not an old man at all. He is a middle-age guy. He would go home, embrace his wife, the kids would jump in his lap. They now all have asbestos-related diseases. That is common.

I ask my colleagues, please, vote to waive this point of order so we can stay on the bill, work on it, and help the people of Libby. Let's work our will so these folks in Libby can get justice. W.R. Grace is bankrupt. People in Libby cannot get justice from them. W.R. Grace has turned its back on these people.

Let's say yes to the people of Libby and find a way for this to work.

I yield the floor.

Mr. LEAHY. I suggest the absence of a quorum, and I ask unanimous consent the time be equally charged.

The PRESIDING OFFICER (Mr. MARTINEZ). Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Who yields time? The time is controlled by the Senator from Pennsylvania and the Senator from Vermont.

Mr. HATCH. I yield myself time from the time of the Senator from Pennsylvania.

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

Mr. HATCH. Mr. President, every couple of years, this august chamber is given a chance to make good on its billing as the greatest deliberative body in the world, to set aside the predictable partisanship that today passes for deliberation and, instead, work together to solve a real problem besetting our Nation.

We face such a moment today. Later this afternoon, each of us will have a choice. Either we will vote to address a litigation crisis that has made a mockery of our judicial system—and demonstrate that we, as a body, can still function when absolutely necessary—or we will use a clever, parliamentary maneuver to avoid having to face a problem that is too inconvenient and confounding to fix without political cost.

We have been here before, and we have failed miserably. Why? Because, unfortunately, the most effective legislative solution is also the most politically impracticable. To solve the asbestos crisis, conservatives are being asked to turn a deaf ear to many of our traditional supporters and endorse the very kind of Federal structure against which we battle daily—a cumbersome, unwieldy program that seems to teeter on the brink of obsolescence before it even begins.

And liberals are being asked to say enough is enough to one of their most important and influential constituencies and to set aside the one governmental institution over which they feel they can still exert some control—the courts. It is a legislative formula that seems designed for failure.

And then there is the greed. Oh, yes, the greed. For years, Members from both sides have waxed eloquent condemning the pecuniary gluttony of one side or the other but, in truth, there is so much greed among so many that it has obliterated any chance for an accurate debate of the realities we should be confronting.

What are those realities? Let us be honest. By this time, we all understand that asbestos litigation has swallowed companies whole, driving them into bankruptcy, wiping out jobs, careers, pensions, health care, and hope. All of us know that those who mined asbestos and used it to manufacture products are long gone, demolished in the first wave of lawsuits. All of us appreciate that today, far too many businesses are being targeted more because of their perceived wealth than their presumed culpability.

All of us realize that under the current system, tens of thousands of Americans who are the most sick, the most deserving, have no place to seek compensation. Veterans exposed by their government and hard working men and women left sick by their now bankrupt employers have become the jetsam of this litigation—cast aside by the new potentates of asbestos—a small, infamous gaggle of personal injury lawyers who have manipulated victims, companies, and the courts to divert billions and billions of dollars to their own pockets. Amazingly, not even such a massive transfer of wealth from so many to so few is enough. Even as we speak today, their lobbyists stand literally feet away, pandering advice, counsel, and contributions to those who will prevent their despicable avarice from being stopped.

But the greed can not be laid just at the feet of some lawyers. There are also companies who have grown weary of paying, not just the wrong people, but paying for their real and technical complicity. There are corporations who want to be free of mistakes they made during the merger and acquisition madness of the late 1990's. And there are businesses that believe they can game the current system, relying upon insurance and the inherent lethargy of litigation to delay paying what they owe.

Then there are insurance companies, some of which fear having to make good on the policies they sold. Even after nearly a decade of debate on this issue, no one is certain exactly who is responsible, especially with the tangled web of insurance and reinsurance and domestic insurance and foreign reinsurance.

Of course, all of us know there is also an unacknowledged giant in the room. For nearly half a century, the Federal Government of the United States was one of the biggest consumers and promoters of asbestos. Today, people are dying from mesothelioma, not because of corporate misdeed but because they worked in the boiler room of a naval ship or in a military shipyard or in the furnace room of an Army base. The Government required asbestos to be used in buildings and workplaces, in factories, homes, and schools. Yet today, as we discuss how best to solve the asbestos epidemic, the Government's own responsibility is not to be mentioned.

Finally, all of us know the current tragedy will not abate on its own. Over the last 6 years, we have proven conclusively, beyond any shadow of doubt, that while we have stood frozen, incapable of any, even the slightest remedial act, the avarice of asbestos has become an industry unto itself.

These are the realities we face today. What are our options? Some on my side of the aisle have suggested the adoption of a medical criteria bill, legislation that would make changes in the applicable litigation rules in State courts. I understand their motivation, but they have to appreciate that it falls short with respect to the most compelling players in this tragic tale—veterans and employees of bankrupt companies who have no place to seek relief. It does nothing to address the manipulation of liability and responsibility which has become commonplace at the State court level. Such a solution was inadequate 4 years ago, it is inadequate today, and it will still be inadequate 2 years from now.

Then again, at least it represents an attempt to solve this crisis. For the past decade, there has been a thundering silence from too many on the other side of the aisle. They are quick to criticize what has been suggested, but not once in more than a decade have they proposed their own solution. Not once have they come up with one idea that might possibly help solve this crisis, for a very good reason: their top hard-money contributors happen to be the people who bring these suits.

This year, they have raised the canard of lost days in court. They are like people who, when they find a man dying of thirst in the desert, give him an empty glass. Now, if by some miracle you find water, they proclaim, you can quench your thirst with the dignity and decorum you deserve. As the man slowly dies from dehydration, they marvel at their own benevolence.

They know that a day in court is meaningless to a veteran who cannot sue his government or an employee who cannot sue a bankrupt company. They know a day in court is worthless to those who currently are being paid only pennies for every dollar of their settlements. For nearly a decade, their objections have been endless and their solutions nonexistent.

So, Mr. President, we arrive today at a critical juncture. We have rejected the suggestion of a medical criteria bill. Our choice is simple: We can act or we can hide. We can vote to keep working on the Specter-Leahy legislation, or we can vote for the budget point of order and stop the legislation dead in its tracks. It is a clever tactic, using the mantle of fiscal responsibility as an excuse not to legislate. Of course, leaving the asbestos crisis unresolved is the ultimate act of fiscal irresponsibility. And, since the Specter-Leahy bill does not require 1 cent of Federal money—this budget point of order is a sham. And we all know it.

Or we can hide behind a cloture vote, knowing that without cloture, the bill will be pulled from the floor and the status quo—the ridiculous and irresponsible status quo—will be preserved. In today's world of relentless stalemate and partisanship, it is a vote easy to explain and justify. But each of us also knows these measures are nothing more than procedural subterfuges—some parliamentary arcanum designed to confuse the public about what is really happening. The Senate has failed the country on this issue before. The time really has come to act.

The Specter-Leahy bill before us is by no means without flaws. All of us admit that. All of us understand that the legislation is—like major pieces of legislation at a similar juncture—a work in progress, the inevitable product of a political process that to date has been as dysfunctional as it has been prolonged. Yet even with its shortcomings, the legislation represents the best hope, the most salient chance for an effective legislative solution. And we will not even have a chance to get that far if we do not pass it on the floor of the Senate.

We know this is step one—actually step two in at least a four-act play. The committee passed it out of the committee. If we can succeed in passing it out of the Senate, the House has to pass its bill, and then we have to go to conference, and then the final play will be a vote in both Houses of Congress. In all of those steps, I have seen our chairman and ranking member willing to compromise and resolve problems as they come up, as colleagues have brought them up. They cannot blame the distinguished Senator from Pennsylvania or the distinguished Senator from Vermont in this matter.

I beseech my colleagues, do not let this bill die today. Do not end what could very well be the last chance we have to solve a crisis we all have universally condemned. Let's stop the debilitating games and tactics. For once, let's give to the bill the same energy and creativity that to date have been invested in its downfall and destruction.

There are thousands of veterans throughout our Nation who are watching us today. When the Nation asked for their service, their blood, they gave it willingly, without complaint. They did their part. Now it is time for us to do ours.

There are thousands and thousands of sick working men and women with no place to turn but us. They, too, are watching. They ask for our assistance, not excuses. They have asked for candor, not cold calculation. They ask for compassion, not clever procedural ploys.

If there is any justice, we will be remembered long after we have left elected office, not for the unfulfilled promises we have made or the good intentions we have so readily proclaimed but for the votes like the ones we will soon cast. For, in truth, this vote is about more than asbestos. It may well signal the last chance this body will have to be productive, to break free from our respective orthodoxies and legislate for the public good. Did any of us really seek public office so that in the face of a crisis, we could hide behind a budget point of order or a cloture vote?

The time has come to reveal who we are, who we have become. Can the Senate legislate in an area in which the Supreme Court has said we need legislation—three times? The real frustration with this institution is not a lack of ethics or the unseemly tangle of lobbyists, Members, and campaigns. No. Our real failing is our collective trepidation, our fear of stepping free of the pack to work together to solve real problems without concern for political advantage or personal benefit.

If we cannot find a common will to address something as pernicious as the asbestos litigation crisis, then one has to ask what real purpose this legislature serves. Too often, we find it convenient to act like mice. Today, our country needs lions. Let us not give it mice. Vote against the budget point of order. Vote to invoke cloture. And, for once, let us consider fixing the asbestos crisis with the honesty, candor, and ingenuity the American people deserve.

Mr. President, I compliment the distinguished Senator from Pennsylvania and the ranking member from Vermont. This has been a monumentally difficult bill to bring to the floor. As I say, this is step one in probably a five- or six-act play. We do not have to make it perfect here; we just have to do the best we can. The House then, if we pass this bill, will have to do its work. Then conference committees will have to meet together, and we will have to do the final work on this bill after listening, during all of that time, to complaints, suggestions, good ideas, bad ideas, but at least—at least—we will be doing the people's business, the people's work in helping people who really have no other place to turn.

Above all, we will help our country because we all know what has been going on in asbestos litigation around the country has been horrendously wrong. I would like to see us do what is right today. So I hope we will vote against this budget point of order. And I hope we will vote to invoke cloture, so we can proceed with this bill and hopefully get it into conference. Ultimately, that is where we will continue to work on it and see if we can make it more perfect and resolve some of the conflicts and problems people feel they have with this bill today. I have every confidence in the chairman and ranking member that they will work to do exactly that. They have been doing it every day I have worked with them, and I am very proud of both of them.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CARPER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CARPER. Mr. President, I ask unanimous consent that 10 minutes of Senator LEAHY's time be yielded to me.

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

Mr. CARPER. Mr. President, in the next several hours, I expect we are going to have a critically important vote, a vote with respect to how we are going to proceed or not proceed with respect to the asbestos litigation reform. There is more at stake than a parliamentary squabble. This is a question to say whether we are going to continue to have a system where the people who are sick and dying from asbestos exposure are going to be quickly compensated for the harm that has been done to their bodies. And there is a question as to whether companies will be bankrupted by the dozens, and you continue to see that sort of thing happen. There is a question of whether we are going to continue to see a situation where a majority of the moneys that are paid out for damages end up not in the pockets of those who have been harmed or their families but in the pockets of others.

The status quo, in my judgment, is not acceptable. We have an opportunity today to take an important step toward improving that situation. The legislation before us today has evolved over the time that I have served in the Senate. A question that has been raised again and again, as it should be, is: Is the money that is going to be set aside in a trust fund that we propose to create adequate?

Earlier in our deliberations, the committee of jurisdiction, as they wrestled with this problem, trying to figure out

how much money to ask of the defendant companies, how much to ask of their insurers—initially, I think thought was given that a $90 billion trust fund would be adequate to compensate people whose breathing has been impaired by exposure to asbestos. Over time, we have seen that number raised from $90 billion to $100 billion, to $110 billion, to $120 billion, to $130 billion, and now to $140 billion. Still the question is asked, as it should be: Is even $140 billion adequate?

CBO has been asked to be the arbiter in this debate. They have come and testified a couple of times before the Judiciary Committee, and I guess they have provided letters as recently as yesterday and today to attempt to deal with this issue and this question: What do we do if we run out of money, if the $140 billion is not enough—with the moneys coming in over the next 30, 40 years, if it is not sufficient to meet the demands of the claims that ought to be paid? Concerns have been raised, sort of leading to this budget point of order, that in the end the responsibility may fall back on the taxpayers. It is a question that ought to be raised and a question that ought to be answered.

There is nothing in this bill that is before us today that stipulates that taxpayers should pay for any shortfall that may occur if the legitimate demand on funds exceeds the amount of funds paid into this trust fund that we propose to establish. There is nothing that stipulates that taxpayers would have an obligation or should have an obligation. In fact, the opposite is the case. The legislation clearly stipulates that any obligation to people who are harmed that exceeds the amount of money in the trust fund would not be borne by the taxpayers. CBO is not absolutely sure that $140 billion is the right number or $130 billion or $120 billion or maybe even $150 billion. But in reading the different letters they have submitted, and reading their testimony, they believe $140 billion is in the ballpark.

What if they should be wrong? What if more money needs to be funneled into the trust fund to meet legitimate claims? What does the trust fund do? The only reason this is a budgetary issue at all is because the moneys paid for by insurers and by defendants are going to go into a trust fund established and administered by the Department of Labor. That is why it is considered even remotely a Federal obligation—because of the desire on the part of some, including those representing folks who have been injured, that the Department of Labor, that has been able to do this sort of thing and has experience in dealing with these kinds of issues, should play a role. It is because the Department of Labor is playing a role as a conduit through which moneys are paid from the private sector, through which moneys are paid to those who are harmed, that there is even a question of whether a budget point of order can be raised against the flow of funds or against this bill.

What if the moneys are not enough? What if $140 billion is not enough? What do we do? Some have suggested that we are going to go right into the taxpayers and ask them to pick up the tab. That is not the case. What will we do? First of all, there is a recognition that during the first 5 years of the trust fund, when there is going to be a lot of demand on the funds and moneys are going to be paid in by insurers and defendants, there is going to be a shortfall. That is freely acknowledged, I think, by everyone.

With that expectation, there is an opportunity spelled out in the bill for the fund administrator to go to the Federal Finance Bank to borrow moneys against future revenues of the fund—payments by defendants, payments by insurers—to seek those from the Federal Finance Bank. I might add that the cost of Federal funds probably available through that funding mechanism is probably 5 percent in today's environment, maybe even less than that. Some have said that we are so short, so far off target that we are looking for a shortfall of $150 billion or $200 billion or $300 billion over the life of this fund.

Let's say, in the first 5 years, there is a shortfall, and say it is $10 billion a year. I don't know if that is right; it may be high or low. So if there is a $10 billion shortfall and the fund administrator has to go to the Federal Finance Bank and borrow the money—$10 billion for year one and $10 billion for year two and up through year five, at a rate of 5 percent a year for 5 years; how much money would that amount to with respect to the debt service? Well, 5 percent of $10 billion is about a half-billion dollars through year two. So it is roughly $2.5 billion at the end of the 5-year period. That is not a debt service cost of $50 billion or $100 billion or $150 billion. That is a debt service cost of about $2.5 billion. That is a reasonable amount of money that may be needed to borrow from the Federal Finance Bank.

Who has to pay that back? The folks who are paying into the trust fund have to pay it back. The insurers and the defendants have an obligation to repay the money, through the fund administrator, back to the Federal Finance Bank. They have that responsibility.

What if the amount of money that is coming into the trust fund is not repaid—and each year there is an obligation, I think, of $3 billion a year for the defendant companies that had an obligation and have been paying these claims in the past—cumulatively and in the aggregate they have to pay something like $3 billion a year into the fund. What if they are not paying enough and they have an obligation of $90 billion over 30 years? Maybe they are only paying $2.5 billion a year. What can be done about that?

Under this bill, the fund administrator has the discretion to impose a surcharge on the defendant companies to make sure their $3 billion-a-year obligation is being met. What happens, though, if, despite that discretion that might be used and the ability to borrow money for short periods of time from the Federal Finance Bank—what if it becomes clear that there is not enough money coming into this trust fund to pay the claims that are going to be needed? Do we leave people, the victims, the folks who are suffering from an impairment of their breathing who have been exposed to asbestos—do we hang them out to dry? No.

Under the language of the bill—and this is in large part due to the work of Senator DIANNE FEINSTEIN—if it becomes clear that people are not going to have a chance to be made whole by the trust fund because it runs out of money, we revert back to the tort system. And folks who have a claim, if they are not going to get satisfied through the fund itself, will go back into the tort system. They can go back into the State where they live, and they can go back to the tort system in the State where they were harmed or they can go back into Federal Court.

There is no obligation that falls on the taxpayers. I believe the committee has done a good job of trying to make sure that at the end of the day the money needed to pay these benefits is adequate. And if, for some reason, it is not, they provide a number of steps along the way that could be taken to provide the funding that is needed, either in the first 5 years or in the years subsequent to that.

If, in the end, it is recognized that this dog is not going to hunt or this fund we are creating is not up to doing the job of meeting the need to pay the claims, we go back into the tort system, and folks will have the opportunity, in their State and their courts or in the State where they were damaged or in a Federal court, to be made whole. Is this perfect? No, it is not. I will tell you this. From the day we started this bill about 2 years ago, 3 years ago, it has sure gotten a lot better. My guess is that it is going to get better still.

I thank Senators SPECTER and LEAHY for their willingness to listen to us and work with us and develop amendments. If you look at the managers' amendment, they have tried to accommodate the concerns that lot of us have raised. Are there more amendments that could be offered? You bet there are. My hope is to be able to support some of those, and I suspect some of my colleagues will as well.

I will tell you what is not acceptable. A system is not acceptable where we have people who are harmed, where their breathing is impaired and they are sick and dying, and for them not to be able to get the money they deserve and their family deserves quickly. What is not acceptable is a system that exists—and for years it has existed—where people who have been exposed to

asbestos, whose breathing is not impaired, and who may never be impaired, for them to be receiving payments and siphoning off money that ought to be going to people who are sick and, in many cases, dying from asbestos-related illnesses. What is not acceptable is a situation where, in a day and age when we are losing manufacturing jobs not by the tens of thousands or by the hundreds of thousands but by the millions, for us to turn our backs on what is a hard-fought and, I think, well-crafted, much-improved proposal to get us to where we need to go.

With that, Mr. President, I yield back whatever time I have not consumed.

The PRESIDING OFFICER. Who yields time.

The Senator from California is recognized.

Mrs. BOXER. Mr. President, what is the rule? Can I speak for up to 15 minutes or 10 minutes?

The PRESIDING OFFICER. The Senator can take time from one of the two Senators who hold time.

Mrs. BOXER. Mr. President, I ask unanimous consent I be yielded 10 minutes of Senator DURBIN's time with the hope that I can finish in that time. If not, I will ask for another 5 minutes.

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

Mrs. BOXER. Mr. President, I am going to support the budget point of order on S. 852. I want to explain why I am doing this. First, I want to say if anybody has listened to Senator KENT CONRAD talk about what is going to happen in the outyears with this bill, the trust fund, if anyone listened to him, it seems very difficult to me to vote against this budget point of order.

We are on the edge of passing a bill that is masquerading as a solution to a deadly problem, and asbestos victims need to know the truth. Frankly, they were lied to once when companies exposed their workers to asbestos without telling them of the danger, and I don't want to lie to these victims again. The simple truth is there are not sufficient funds in the trust fund to compensate all the current and future asbestos victims. We should not compound the problem of the past by offering false promises and cutting victims off from help.

I know there are many who don't agree with what I have just said, but I think if, again, you listen to Senator CONRAD, and you go back to see what has happened to other trust funds, I think it is very clear there are not enough funds in this trust fund. Some estimates are it is perhaps 50 percent of what it ought to be.

Some say that people will go back to court if there are not enough funds. I know that is a very well meaning part of this bill, but it isn't as easy as all that. It is going to be very difficult for people in the future years. I think we are going to see more companies claim they are bankrupt. There will be a lot of lawsuits.

That is not to say there is no problem for asbestos victims today. Providing them with just compensation is something they deserve. If we were able to increase the size of the fund and include all of the victims who deserve to be compensated, that would be a good solution. I know this is what many honorable and hard-working Senators on both sides have tried to do, but the current legislation doesn't get us there.

Asbestos kills 10,000 Americans every year. Such a large number of deaths is hard to comprehend, so let me tell my colleagues about just a few of the victims in California and why this bill will hurt them, not help them.

Here is a picture of Rebecca Martinez. Rebecca is the wife of Margarito who lived in Baldwin Park, CA, and she is pictured here on the right. Margarito worked as a plasterer and Rebecca would clean his asbestos-covered clothes when he came home, breathing in the dust as she shook them out and did the laundry. They were never warned about the dangers of asbestos.

Rebecca was diagnosed with mesothelioma in 2002, as we all know, a deadly cancer caused only by asbestos. She died 4 months later, leaving behind her husband and three children.

Her husband has spent more than $50,000 on a pending wrongful death suit. However, if this bill is passed, he will never get to go to court and face the people who are responsible for his wife's death. This bill will force him back to square one, and he will face, potentially, years of delay. And here he is, a widower having to raise his kids.

For those who are about to resolve their court cases, I see no reason to force them into a trust fund process. It is wrong. People have invested time in the court system, and this bill will rip them out of the court system just as they are about to get justice.

This is a picture of Georgina Bryson. She lived in Riverside, CA, when she died of mesothelioma. From 1962 until 1980, Georgina lived downtown from two cement companies that used asbestos to manufacture their products. Georgina was also exposed to asbestos when she lived with her dad who worked with gaskets that contained asbestos.

Georgina was only 40 years old when she died from mesothelioma. Her family filed a wrongful death action and, to the credit of the California court system—to the credit of the California court system—the suit settled. The cement plants agreed to pay 90 percent of the award, recognizing that they were primarily responsible for the death.

The problem with the legislation before us is, if Georgina's family didn't have access to the courts, and they filed the claim with the asbestos fund, they could receive possibly no compensation. Because Georgina's asbestos exposure was not work related, she lived downwind from the cement manufacturers, she would not meet the occupational requirements of the bill.

There are many people in California and elsewhere who never worked with asbestos but were exposed to it because they lived near factories, mines, and processing plants with asbestos. This certainly was the case in Libby, MT, and residents of that town are taken care of in the bill. That is a wonderful thing for them. Lord knows there is suffering there. The exposure requirements for anyone who lived or worked for at least 12 months within 20 miles of the mining or milling facility in Libby are waived, so the people in Libby are taken care of, and I am happy for them. But the bill fails to provide the same relief to people in at least 41 other communities across the country who live near a plant that processed vermiculite from Libby. How is that equal justice under the law? It also fails to protect people who lived near other mines or plants that released asbestos into the air.

For example, Santa Ana is one of roughly 23 cities in California that received more than 1 million tons of Libby's vermiculite. Yet this bill would compound the injuries to affected community members by largely barring nonoccupational exposures. As I said, no one can call this justice.

The bill also fails to adequately address another problem important to my State, as well as the Nation—naturally occurring asbestos. I am going to show you a map of California where we show the counties containing naturally occurring asbestos. Forty-four of California's 58 counties are known to have naturally occurring asbestos. The problem, however, is not California specific. Twenty-nine States are known to have naturally occurring asbestos.

This asbestos can threaten public health. This shows in red where the States have this problem with naturally occurring asbestos. In 2005, a University of California-Davis study found that the risk of mesothelioma decreased by 6.4 percent for every 6 miles further away a person lived from a naturally occurring asbestos source.

Under the bill, people who get a terminal illness from naturally occurring asbestos may take their case to the medical exceptions panel, but there are three problems.

First, I want to thank my colleague, Senator FEINSTEIN, for getting that into the bill. At least they can go to this special panel. But there are problems. First, the level of funding established by the bill for the trust fund, as I said before, is insufficient to pay for the claims expected to be filed with the exceptional medical claims panel. It is insufficient. There wouldn't be funding left.

The CBO stated in a letter on February 1 to Senator SPECTER that:

There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs.

This is, in part, because the CBO explicitly stated that it did not include ''the costs of any exceptional medical claims'' in its estimate. What kind of chance do my people have for being exposed to naturally occurring asbestos

and the people who live in all of these States?

This isn't justice. If we want to do justice, we need a bill that is sufficiently funded through the trust fund to take care of all of our people, not just some of our people.

The Democratic staff of the Budget Committee predicts a shortfall in the trust fund of $150 billion or more. That is $150 billion that taxpayers may have to pay to bail out the trust fund. It is easy to say: Oh, you will just go back to the courts. But that is a time period in which we don't know what the situation will look like, more companies will claim bankruptcy, and people will then have to move from the trust fund over to the courts. It is a giant nightmare.

Second, it is not clear that the companies paying into the fund should be the ones responsible for compensating people who become sick from naturally occurring asbestos. Construction companies disturbing naturally occurring asbestos may expose residents to fibers, but those companies are generally not the ones paying into the fund. So this makes no sense at all for people who live in areas with naturally occurring asbestos. They are different defendants that need to step up and pay compensation.

Third, there is no deadline by which the medical exceptions panel must act on a claim. Given the number of people who may file claims with the panel, it could be years before the panel makes a decision on a particular case. Is this better than the current court system?

Mr. President, I ask unanimous consent for just 2 more minutes.

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

Mrs. BOXER. Mr. President, I don't think it is better than the current court system, certainly not in my State. In California, we have an expedited processing of suits for sick plaintiffs. Roughly 22 States have procedures that ensure mesothelioma victims and those with other very serious cancers have their cases heard in a year or less. In California the courts can hear such cases within 120 days. There are States where the courts work, and they should be allowed to continue their good work without getting taxpayers involved in this trust fund. Where it is working, do no harm. Let it proceed.

Most, if not all, of us could support an asbestos trust fund that is fair to victims, but this proposal is not. I have gone through the ways that it is not. I have shown my colleagues the faces of those who would be harmed or would have been harmed if this trust fund were in place.

We can fix this. We can make the trust fund bigger, that is one solution, or we can say in the 22 States that are dealing with this, let them deal with it. Let's grandfather in the cases that are already in the system.

I am very fearful—very fearful—that a lot of people who are going to depend on this trust fund are going to find out that it isn't what it is cracked up to be. The bill promises the Moon, and I don't even know if it will deliver a sliver of the Moon.

I just want to say to those who are following this debate who are suffering, I honestly believe that everybody thinks, everybody thinks they are working for you, but what I say is this: If the system is already working for you, let it work for you. Let's not promise you the Moon and not be able to deliver it. Let's make sure there is justice for people who live, say, downwind in California from a company that received the product from Libby.

The people in Libby are taken care of. The people in my State and many other States are not taken care of. This isn't fair. What happened to equal justice? What happened to fairness? We can do it. People of goodwill on both sides can do the right thing. This isn't a question of this bill or no bill.

So I honestly think that by supporting this point of order, first of all, we are being honest with the people. We are being honest with the people. We are saying there is not enough money in this trust fund and the taxpayers are going to have to bear the burden and who knows what will happen at that time. With the kind of deficits that are being racked up here, with the kind of national debt that is being racked up here, where is the money going to come from?

Some say: Go back to the court system. That is a very complicated matter. Every State has its own way. In some States it works well, like California. In other States, it doesn't. So I urge my colleagues, yes, to protect asbestos victims who may not be so lucky as the people in Libby. Let's take care of the people in Libby, and let's take care of all of the victims and potential victims and vote against waiving this budget point of order.

A budget point of order lies against this bill. The Parliamentarian has told us; the CBO has told us. Let's do the honest thing. Let's support the budget point of order, go back to the drawing board. Let's take care of these people and do it in the right way.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BURNS. Mr. President, I come to the floor today, and after a discussion over lunch about Libby, MT, and some of the provisions found in this legislation, listening to the distinguished Senator from California, I think we had better answer some of the questions that are being asked about this.

As you know, I am here on the floor again, joining Senator BAUCUS, my colleague, urging our colleagues not to support this budget point of order. We have to deal with this terrible thing. If the point of order on the bill is successful, the bill dies and we will get no bill at all. There will be nothing to go to final passage, nothing to go to the House of Representatives, nothing to be considered in conference. I do not think that serves the interests of the victims of asbestosis or other asbestos-related diseases.

I want to talk about Libby, MT, I guess, because I live there—not in Libby, but in Montana. Many of my great friends live in Libby, MT. Families are watching this together in their living rooms today, watching this broadcast on C–SPAN. Televisions are set up in restaurants and dining rooms and hotel lobbies so people can continue to see what happens here as they go about their day.

I have been in close contact with the community leaders and people directly affected by health problems on a daily basis. For some of my colleagues, this debate is about technical details of a very complicated bill. For people in Libby, of course, it is life or death.

I want to show some pictures that have been sent to us. We want to give you an idea about how important this is.

Behind me—I don't know whether the cameras are picking it up; I assume they are from somewhere—is a picture of a baseball field. This field was built in 1959. You have to remember, this vermiculite mine started in 1924. For many years we didn't know anything about asbestos. We didn't know anything about the problems it caused. But we know if you are exposed, these diseases develop over time, and it takes a long time.

This baseball field was built in 1959, next to the processing plant. For years, the children of Libby played baseball in asbestos-contaminated fields while their siblings played on actual vermiculite piles of asbestos next to the fields. It is unbelievable. The former Governor of Montana was raised in Libby, MT. They thought it was a lot of fun because it was slick and, boy, you could slide a long way. The high school running track and football field were built on tailings from that mine site. For over 25 years, children have been directly exposed to tremolite-laced tailings which were used to line the track and, of course, the football field.

Maybe I can consider myself lucky; I never had to referee a football game up there and I had some 20 years refereeing that game in that State.

The saddest of all is it is all now coming home. It is now being identified. This is the photo of 250 crosses at Libby, MT, memorializing those residents who have died from asbestos-related diseases. Mr. President, 250 is 10 percent of the entire population of the town. Gayla Benefield told my office recently about how much this matter affected her life:

> Slow suffocation from tremolite asbestos is a terrible way to die but worse yet, watching our parents die and then, watching the looks on their grandchildren's faces when we tell them we have the disease is worse than dying.
>
> To watch one person die from the effects of our fiber is horrific. But to know that your own fate is no better, and that you cannot

even protect your children or assure them that help will be there is even worse.

Earlier this week I read a letter I received from Jim Davidson who has been diagnosed with mesothelioma. He is one of many cases in the small town of Libby. His pleas were to get this legislation passed and to do the right thing—get something to conference and get something to the House, because a lot of these folks will not live long enough to ever hear their case pleaded in court.

Jim has been watching these debates with his family. Yesterday, Jim's son, Dr. Steve Davidson, wrote me a letter about some of the statements that have been made here on the floor. He said:

As a past board member of our local hospital and as a past board member of our federally funded community health center, I have seen firsthand the impact of asbestos exposure on my hometown. As a health care provider, I am reminded daily of the price that has to be paid by my community. And as a son who is helping his father cope with mesothelioma, I must watch him struggle with his mortality. My father worked at the Grace facility for several months in the 1950s.

This is way back in the 1950s. Now, later, this terrible disease surfaces.

We rely on Congress to do the will of the people. Since the Grace bankruptcy was ignored by Congress, we must now seek a reasonable remedy.

There exists no empirical medical data to support the assertion on the Senate floor that ''Libby is like East Hampton. . . .''

I and my community would appreciate access to any facts to support such a statement. In their absence, we would appreciate an apology from the Senate floor. These remarks seek to minimize the humanity of the crisis in Libby and my Father's struggle.

It is something when it touches your life.

We are uncertain if your remarks were made from ignorance or malice. Please help us to understand your position.

He is asking the Senate to clarify some of the statements that were made that seem unfair to some of the folks who are victims of the situation around Libby.

This is a photograph of Vernon Riley putting flowers on his wife's grave. Darlene Riley never worked at the mine or had anything to do with it. She died of the most severe type of asbestosis in 1995.

The fact is, no other asbestos location in the United States created as widespread a catastrophe as is in Libby, MT. To suggest that enclosed asbestos treatment facilities are the same as an open-pit mine that blew dust and the winds took it for miles and miles into the air since 1924, and it rained down on a town—to say that is not different than any other situation in this country is not true.

I think it is important that we pass a bill. That is why I urge my colleagues not to support this point of order because it will kill this piece of legislation. How many hours have all of us put in, trying to pass something that would give justice to people who right now stand to collect nothing for their injuries?

I urge my colleagues to support the motion to waive the budget point of order. It is necessary that we get a bill out of this Senate, send it to the House of Representatives. Let them deliberate. Let them carry on this argument. Let's get to conference and let's do what is right for the people who have been impacted by asbestos and asbestosis and the diseases related to it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I thank the Senator from Montana for his impassioned advocacy for the people of Montana. I want to make sure he has completed his remarks. I have plenty of time to wait if he has not.

Mr. BURNS. I completed. I yield to the Senator from Tennessee.

Mr. ALEXANDER. I wish to add to those remarks. This morning I met with a number of Tennesseans here in an event we call Tennessee Tuesday. It is a meeting we have every Tuesday. Senator FRIST and I host it for Tennesseans who are visiting Washington, and it is a chance to let them know what we are working on.

I talked with them about asbestos. One of my friends on the other side of the aisle began this debate, which should have started earlier, by saying: Why are we talking about asbestos when we have a war, when we have deficits out of control, when jobs are going overseas, when kids are not learning in schools, when Medicaid costs are rising and prescription drug benefits are not being delivered as efficiently as we would like? Why are we talking about asbestos?

I think we have an obligation to say to the American people, and to ourselves, we know exactly why we are talking about asbestos. We are talking about asbestos because it has to do with tens of thousands, maybe hundreds of thousands of American jobs. We are talking about asbestos because it has to do with whether we are going to retain our preeminence as the leader in the world in competitiveness, whether we are going to be able to lead the world in terms of the standard of living we have. We are talking about asbestos because we have thousands of Americans who have been hurt and who deserve compensation and who cannot be compensated.

Asbestos is right where it ought to be. It is at the top of our agenda. We have Democrats and Republicans working together to solve the problem because it is about jobs, it is about America's role in the world, and it is about Americans who have been hurt and who have no way to be compensated unless we decide to help them.

Let's take the first point. The FAIR Act, as we call it—and that is a good name for it—is about jobs because since the 1980s, more than 70 companies have gone bankrupt as a result of asbestos lawsuits. These lawsuits have occurred because people were working for those companies and they were exposed to asbestos and many of them died or were seriously ill. More than 60,000 workers lost their jobs since the 1980s because 70 companies have gone bankrupt over asbestos lawsuits.

If we picked up the paper and read in the morning that 60,000 jobs had gone to China, there would be speeches made all across this Senate floor about whose fault it was. It will be our fault if we do not solve the asbestos problem and 60,000 more jobs are lost. Those are real, good-paying, manufacturing jobs that will be lost if we do not solve the asbestos problem.

My State of Tennessee has its share of those jobs. The auto industry, as an example, has one-third of the manufacturing jobs in Tennessee. We are glad that Saturn and Nissan have come to our state, and that we have gone from a handful of suppliers to nearly a thousand. But those companies, those suppliers, those jobs are at risk if we do not solve the asbestos problems.

The FAIR Act is about America's role in the world. It's about our competitiveness. The President talked about that in his State of the Union Address. He talked about it in Nashville. He is now talking about it wherever he goes. We are confident in our ability to lead the world. We know we are only 5 percent of the people and that last year we produced 30 percent of the wealth. We know the rest of the world is eyeing that statistic and saying, If American brainpower and economic conditions produced a growth economy that gives Americans 30 percent of the wealth for 5 percent of the people, we want to emulate that. So we have to work hard every day to make sure we create an environment in this country in which American businesses can grow the largest number of new American jobs. The last thing we want to do is lose American jobs.

How do we do that? We keep costs down. We stop runaway lawsuits. We solve the health care problem. We invest in science and technology because 85 or 90 percent of our new jobs since World War II have come from advances in science and technology. That is why we have introduced the Protecting America's Competitive Edge or PACE Act in this Senate, where we have 31 Democrats and 31 Republicans who have signed onto legislation recommended by the National Academies that would invest 9 billion new dollars this year in keeping our advantage in science and technology. We want to stay competitive.

According to a report from NERA Economic Consulting, ''Asbestos litigation has damaged U.S. competitiveness.'' For example, if you are worried about asbestos lawsuits, you want to put your plant somewhere overseas and your jobs somewhere overseas, and we lose out.

Productivity growth in the United States, according to that report, in asbestos-affected manufacturing sectors

has lagged behind growth in their counterparts in other countries by half a percent.

We Tennesseans worry about that because we like manufacturing jobs. As I said, one-third of them are auto jobs, and many of them are chemical jobs. We don't like lagging behind. We like our standard of living. That report says we lose $51 billion annually, with a total loss of $303 billion. The dollars are hard to comprehend. But jobs and competitiveness are what we are talking about here.

Finally, the FAIR Act is about compensation to Americans who have been hurt. We say the words ''compensation to victims,'' but that doesn't really say it as plainly as ''Americans have been hurt.''

Here is a fact that got my attention. This is one reason I am speaking about this issue. This is the reason I am a cosponsor of the bill offered by Senator SPECTER and Senator LEAHY. Seventy billion dollars has been spent on asbestos litigation through 2002. Asbestos litigation is litigation to help people who have been hurt, who are going to die, in many cases, from asbestos. Nearly 60 percent of that $70 billion was spent on attorney's fees and other transaction costs. In other words, the people who are hurt got 40 percent of the $70 billion. That is not right.

In addition, it is taking up to 3 years for victims to collect their compensation as a result of complex litigation. Some businesses have gone bankrupt, so you don't collect from them. Some people have died, so they are in no position to collect. The legal process has taken too long for them, and 60 percent of the money that is collected is going to the lawyers.

This is not about plaintiffs' lawyers. Half the money goes to defense lawyers and half to the plaintiffs' lawyers. Whose fault is that? I don't know whose fault it has been, but I will tell you whose fault it will be if we allow this to continue. Former Chief Justice Rehnquist and Justice Ginsburg both said it to us. They said: We can't fix this problem in the judiciary; the Congress needs to do it. In one case, the Supreme Court said:

> The elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.

That is us. That is what we are here for. That is why we get the big bucks. That is why we have the salaries. This is a big problem. We are supposed to solve it, and we ought to solve it. We have been trying to solve it. For the last 10 years, some of the best Members of this body on both sides of the aisle have been working on it. I could not begin to name them. I have heard Senator SPECTER say that Senator Gary Hart, more than 20 years ago, came to see him about it. Senator SPECTER and Senator LEAHY have worked hard, as have Senator HATCH and many other Members. Some of them don't agree about the eventual result, but many of the best Senators are working hard because they see this as a problem of jobs and competitiveness and Americans who have been hurt.

Where do we come at this point today? We have a budget point of order against the bill. If the point of order succeeds, the bill fails. Those of us who believe it is our job to solve the asbestos problem won't get to take the next step to actually debate the bill and see if we can bridge our differences and save jobs, improve competitiveness, and help Americans who have been hurt. I urge my colleagues not to let this point of order kill the asbestos legislation because we in Congress are the only ones who can solve this problem properly.

I respect the fact that the point of order is being made. But a point of order, as the Senator from New Mexico, the former chairman of the Budget Committee for so long, has said, doesn't automatically kill a bill; it just says to us: Stop and think; consider the point of order. And when we consider the point of order, which is designed for the purpose of making sure we don't slip in the legislation provisions which will cause big expenses in future years, we find this doesn't cause big, unanticipated expenses in future years. In fact, a February 13, 2006 letter from the Congressional Budget Office concludes that ''this legislation would be deficit neutral over the life of the fund.'' So the point of order deserves respect, but this bill does not deserve to be killed by a point of order.

I implore my colleagues. We have a job to do. This is a tough piece of legislation. We are divided on our side. We have some who like the trust fund, but we have other Members who like another approach. There are some Democrats who like the trust fund and some who prefer another approach. I believe it is our responsibility to the people who put us here to solve this big problem. It will save tens of thousands of jobs, it can help tens of thousands of Americans who have been hurt, and it will help to assure America's preeminence 10, 15, 20 years from now.

I urge my colleagues, don't let the point of order kill the bill and kill our opportunity to solve this problem.

I thank the Chair. I yield the floor.

Mr. DORGAN. Mr. President, we are voting on a motion to waive the Budget Act in order that the bill creating an asbestos trust fund can continue to be considered on the floor of the Senate.

For the past couple of years, I have encouraged the creation of some kind of a trust fund to settle the many asbestos claims that are clogging our court system.

The current tort system does not work at all, in my judgment, with respect to asbestos-related claims.

According to the RAND study, lawyers on both sides of the issue are getting 58 cents of every dollar spent on asbestos litigation, which means that the victims are only getting 42 cents of every dollar expended. In addition, there are some very sick people who are getting no help while some people who will never get sick are getting awards. Frankly, that isn't fair or equitable.

So I have been sympathetic to the creation of some kind of a trust fund, and I know that the chairman and ranking member of the Judiciary Committee have worked very hard to develop the trust fund proposal now being considered.

I also know that the motion to waive the Budget Act is considered by some a technical issue. But some recent studies, including one done by my colleague Senator CONRAD, the ranking member on the Senate Budget Committee, suggest that the potential budget exposure to the United States Government is substantial.

The Conrad study indicates that this trust fund could fall short by more than $150 billion, which in the out years will put powerful pressure on the Congress to fund the shortfall.

This country has a Federal budget that is increasing its indebtedness by $704 billion in this fiscal year alone. We also have a trade deficit of $720 billion this year, for a combined $1.4 trillion debt problem. Our country's economic future is threatened by this massive debt, and I am reluctant to put in place anything that might substantially add to that burden.

The prospect that this trust fund could fall far short of that which is necessary to reimburse asbestos victims makes it a very real possibility that the Federal Government would be forced to add to its debt by covering the extra liability for those asbestos victims.

Until or unless those issues are resolved, I feel that the best course is to support the point of order in the hope that the authors of the legislation can resolve these differences and offer us greater confidence that this legislation will not add to the crushing debt that America already faces.

Therefore, while I will support the point of order, I will continue to work with my colleagues to find a solution that addresses this important issue.

Mr. GREGG. Mr. President, section 307 of H. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2006, permits the chairman of the Senate Budget Committee to make adjustments to the allocations and aggregates provided certain conditions are met relating to Asbestos Injury Trust Fund legislation.

Pursuant to sections 307, I hereby submit the following revisions to H. Con. Res. 95. I ask unanimous consent they be printed in the RECORD.

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

	($ in millions)
Current Allocation to Senate Judiciary Committee:	
FY 2006 Budget Authority	7,387
FY 2006 Outlays	6,528
FY 2006–2010 Budget Authority	32,071
FY 2006–2010 Outlays	31,766
Adjustments:	
FY 2006 Budget Authority	0

	($ in millions)
FY 2006 Outlays	0
FY 2006–2010 Budget Authority	48,200
FY 2006–2010 Outlays	32,900
Revised Allocation to Senate Judiciary Committee:	
FY 2006 Budget Authority	7,387
FY 2006 Outlays	6,526
FY 2006–2010 Budget Authority	80,271
FY 2006–2010 Outlays	64,666
Original Senate Paygo Point-of-Order 2006 Budget Resolution policy balances:	
FY 2006	16,849
FY 2006–2010	75,580
FY 2011–2015	274,999
Adjustment:	
FY 2006	0
FY 2006–2010	400
FY 2011–2015	6,600
Revised Senate Paygo Point-of-Order 2006 Budget Resolution policy balances:	
FY 2006	16,849
FY 2006–2010	75,980
FY 2011–2015	281,599

Mr. GREGG. Mr. President, as we worked through the Budget last year, one of the main dilemmas confronting us as a government was clearly the unsustainably high levels of entitlement spending now and in the future. This spending in the not too distant future will crowd out the Government's ability to do much more than merely pay the costs of the entitlement programs themselves. Eventually, it will rob us of the ability to fund most essential discretionary Federal programs. So layering on new payments and programs, which claimants in time will come to expect as another entitlement from the Federal Government rather than the private sector, will threaten the Nation's economy with even more damage from too much Government borrowing and high tax burdens.

I, too, am concerned about the immense hardship that the asbestos litigation explosion has imposed on our economy for more than a decade now. The immense volume of litigation from occupational exposure to asbestos has already bankrupted numerous companies, large and small. The greatest harm from the litigation is that genuinely and critically sick individuals cannot get their day in court—and the financial help they desperately need—because the court system is overwhelmed by asbestos claims from tens of thousands of individuals who are not even sick yet, and may never be sick. Moreover, a disproportionate amount of victim compensation is being siphoned off in attorney fees.

Congress needs to address this crisis so that those who are truly sick from asbestos exposure are quickly and fully compensated. Yet our national economy also needs to be protected from further damage due to these thousands of protracted, unnecessary, and unfounded asbestos claims in our courts. But as part of that effort, we also need to ensure that the costs of compensating asbestos victims are not shifted off of the companies that would be legally liable in court and onto America's taxpayers.

I therefore hope the Senator, who is one of the authors of the bill, will allow me to ask him a few questions to clarify the legislative intent behind the bill we have before us and the degree of confidence he has that the trust fund established by the FAIR Act will be funded from nontaxpayer sources for the life of the fund, as required by the budget resolution for fiscal year 2006.

This past August CBO estimated that paying claims as provided for under this legislation would cost between $120 and $150 billion. CBO also estimated that the trust fund would incur an additional $10 billion in administrative and interest costs. CBO's total estimate for the bill then was that it would cost between $130 billion and $160 billion in order to meet the obligations of the trust fund over its 50-year life.

Then in a letter on December 19 to the Senator as chairman of Judiciary Committee, CBO elaborated on its earlier estimate for S. 852 and its ability to stay within the $140 billion provided for under the bill by stating:

> There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs. There is also some likelihood that the fund's revenues would be sufficient to meet those needs. The final outcome cannot be predicted with great certainty [over 50 years].

Given the uncertainty of this statement, I have been concerned that the fund could rapidly run up a deficit and that the taxpayers would then be asked to bail the asbestos trust fund out.

The clear track record of Government administered compensation programs designed to mandate a ''no-fault'' solution for liability claimants as in this case—has been that Congress ends up bailing out such funds' exploding costs with tax dollars. The Government Accountability Office, GAO, released a report just this past November that found that four victim compensation programs—the Black Lung Program, the Vaccine Injury Compensation Program, the Energy Employees Occupational Illness Compensation Program, and the Radiation Exposure Compensation Program—all expanded significantly over time after their creation to include additional categories of victims, to cover more medical conditions, or to provide significant additional benefits. GAO also found that those new and added costs ended up being paid by the taxpayers even if the victim compensation programs started out as privately funded.

So, again, while I strongly agree—as most everyone does—that the asbestos litigation crisis needs to be solved, it is unfair to do it by making hard working American taxpayers pay the tens of billions of dollars in additional compensation instead of the private companies responsible for the problem.

So, I would ask the senior Senator from Pennsylvania and the manager of the bill, what assurances can he provide—beyond the uncertain and not entirely inspiring CBO estimate regarding this bill—that the taxpayers will not end up footing the bill for this program, and that the new asbestos trust fund will not increase the Federal Government's budget deficit over the 2006–2056 period, as required by section 307 of the budget resolution for fiscal year 2006, the so-called reserve fund.

Mr. SPECTER. First, I want to commend my colleague for raising this important issue; that is, the potential impact to the American taxpayer of the asbestos trust fund. In response to my colleague's inquiry, I have been working very diligently to make every effort to tailor the trust fund so it remains solvent and to ensure that the American taxpayer will never be required to spend money to bail out the fund.

As you know, the measure would create a $140 billion trust fund, financed by companies facing lawsuits and their insurers, to compensate victims of asbestos exposure. This amount of funding was a difficult issue to resolve and took a long time to negotiate.

However, the bill contains several provisions that express our intent for the fund to remain funded by private, nontaxpayer sources for its full life. First off, the bill should not cause the deficit to go up because the FAIR Act requires a commensurate amount of revenues to come in from the private sector as is paid out in claims and program costs.

Second, the bill explicitly states that the American taxpayer should never bear the burden to pay for asbestos claims should the fund become insolvent. Indeed, section 406(b) of the bill expressly provides that the legislation would not obligate the Federal Government to pay any part of an award under the bill if amounts in the asbestos fund are inadequate. In addition, the ranking member and I added a finding to the managers' amendment to underscore our intent that the taxpayer should not have any obligation whatsoever under the proposed trust fund.

Admittedly, we as a Congress now cannot tie the hands of a future Congress, but our expectation is that future Congresses will honor our commitment in this regard.

The FAIR Act also provides the trust fund administrator with the ability to sunset the fund if he or she finds that it ''will not have sufficient resources to pay 100 percent of all resolved claims while also meeting all other obligations of the fund under this act. . . .'' After such a determination, the trust fund is supposed to terminate.

In the event a sunset does occur, all pending and future claims will revert back to the tort system. Some claimants would then have to litigate their claims in court and would not have a predetermined award. Many companies would also be thrown back into the tort system—even as they and their insurers have to continue payments into the trust fund to pay off any outstanding debt incurred by the fund.

While that will hopefully not occur, we also fully expect that future Congresses will not step in and try to take over the asbestos trust fund's obligations using taxpayer funds.

Mr. GREGG. I appreciate my colleague's willingness to clarify this important point. I would note the Congressional Budget Office yesterday released an estimate of the chairman's substitute on the asbestos trust fund bill, consistent with what the chairman just said, which states:

> . . . so long as the fund's administrator does not borrow amounts beyond the means of the fund to repay (as the bill would require), the government's general funds would not be used to pay asbestos claims. Furthermore, section 406 of the bill states that the legislation would not obligate the federal government to pay any part of an award under the bill if amounts in the asbestos fund are inadequate. Thus, CBO concludes that the legislation would be deficit-neutral over the life of the fund.

So given Chairman SPECTER's assurances and this conclusion by CBO; it is my intention to adjust the Judiciary Committee's 302(a) allocation to the extent that such legislation would not increase the deficit for the life of the fund—which brings me to my second concern. There is no argument that the genesis of this crisis was fueled primarily by the aggressive and abusive tactics of trial lawyers. I think you will agree that those same trial lawyers should not now gain a windfall from this legislation. However, they should be compensated fairly and adequately for their work on any claim on behalf of injured victims.

Under this bill, an attorney may not receive more than 5 percent of a final award made under the trust fund. This is more than generous compensation for filing a claim under a no-fault compensation system where no litigation cost will be incurred and which for the most part will only involve filling out forms for clients.

Under the tiered compensation scheme using set medical criteria and awards for multiple levels of asbestos-related injury, awards to claimants will range from $25,000 for level II claimants, with a so-called ''mixed disease with impairment'', to $1.1 million for mesothelioma victims in level IX. At a 5 percent fee, attorneys who merely prepare forms in order to file a claim on behalf of a client can receive between $1,250 and $55,000. This is very generous compensation for merely filling out paperwork.

Does the Senator foresee any circumstances under which the 5 percent limit on attorney fees could be increased?

Mr. SPECTER. I agree with my colleague's assessment that a 5 percent cap on attorney's fees will ensure that victims and not attorneys are the ones that actually receive the lion's share of the compensation that they are entitled to. That is one of the primary goals of this litigation reform bill. The bill makes no provision anywhere that would allow the 5 percent cap to be exceeded for filing a claim with the fund; however, in the case of appeals of an award under the fund, attorneys are permitted to receive reasonable hourly rates for their services rendered.

Mr. FEINGOLD. Mr. President, I wish to speak about S. 852, the so-called Fairness in Asbestos Injury Resolution Act of 2005. Because this legislation does not provide fairness for asbestos victims or small businesses, I oppose it. We need to take more time to address the problems with this bill and work to produce a result that is fair to all parties involved.

At the outset, I commend my colleagues on both sides of the aisle who have been working for years to develop a bill that addresses this issue appropriately. There is no doubt that this is one of the most difficult and complicated issues that the Judiciary Committee and the Senate have dealt with in recent years. Both last year, and in 2003, the Judiciary Committee spent weeks and weeks marking up legislation. In both cases, the end result was not satisfactory. But this was not because of lack of effort on the part of the Senators who want to find a solution.

Unfortunately, the solution this bill provides is badly flawed. This bill simply is not ready for floor consideration. That, if nothing else, is evident from the managers' package or substitute that will include over 40 significant changes to the bill. When the managers of a bill are still working on a managers' package with that many changes, before many amendments have even been offered, the only conclusion to be drawn is that the bill is not ready for the floor.

Asbestos victims around the nation deserve just and fair compensation for the exposure and resulting injuries they have suffered. My own State of Wisconsin ranks 16th in the Nation in asbestos-related deaths, and I know many Wisconsinites are following this debate closely because the outcome could have a substantial effect on their pending legal claims and their right to fair and just compensation.

Many Wisconsinites who were employed at mills and factories around my state were exposed to asbestos. Some of these workers even unknowingly brought asbestos material home on their clothes. A number of these asbestos victims, or their survivors, have pending claims in court. Under this legislation, their claims would be extinguished and they would have to start over to seek compensation from the trust fund. These are real people who have endured horrible disease and loss. Some had a loved one cut down in the prime of life, just months after getting a diagnosis. We need to find a solution that compensates these victims in both a fair and timely way and ensures they are protected after we force them to give up their rights to pursue their claims in court.

I support the concept of a national trust fund to compensate victims of asbestos-related diseases and address the strain that these asbestos cases have placed on our legal system and our economy. But I will only support a bill that in my judgment is fair to all parties involved, including, most especially, the victims of asbestos disease. That means, not only do the medical criteria and claims values have to be fair, but the design and funding of the system has to be adequate to pay the victims properly and completely.

There are, in my mind, enough conflicting reports regarding the adequacy of the fund that this bill creates to warrant opposition to the legislation. During this debate, many of my colleagues have referenced the CBO study that was completed last fall. Supporters of this bill cite the CBO report and its estimate that valid claims submitted to the asbestos fund over the next 50 years could be between $120 billion and $150 billion as justification for the $140 billion asbestos fund pricetag.

But as CBO itself points out, the pricetag could run higher than $150 billion for a variety of reasons. As the Senate Budget Committee minority staff pointed out in its analysis, CBO said the legislation is designed to produce incoming revenue of $140 billion. It did not conclude that the fund will in fact be able to collect $140 billion. According to CBO, it is possible that defendant companies could go bankrupt and therefore would not be able to pay into the asbestos fund, thereby raising the possibility that the fund could not raise $140 billion.

In addition, the pricetag could run significantly higher than $140 billion because according to CBO, it is very likely the administrator is going to have to borrow money from the Treasury Department at the outset of this process. Numerous studies and experts have predicted that there will be more claims filed than revenue collected in the initial years of the fund. That borrowed money will have to be repaid with interest, adding considerably to the cost of the fund. More important, having a large portion of the trust fund dedicated to interest payments means less money for asbestos victims. There is more than a little doubt that $140 billion is an adequate amount to keep the fund solvent and functioning. Until Congress can be virtually certain that the amounts to be raised by the fund will cover all victims' claims, I do not believe we can fairly ask asbestos victims in Wisconsin and around the nation to give up their legal rights and take a gamble with this fund.

And so a budget point of order was raised against this measure. Supporters of the bill have asserted that the point of order and other budget points of order that also potentially lie against the legislation are purely technical in nature. Their arguments suggest that it is only through some unintended fluke of the Budget Act that supporters must find 60 votes to waive the budget points of order so they can proceed with the proposal.

In fact, while some may view the points of order as technical in nature, the budget issues raised by this bill are significant. Indeed, the risk to taxpayers created by this bill would be

considerable even were the nation not already in the most dire of fiscal straits. The budget policies of the White House and Congress for the past 5 years have been nothing short of reckless, and the last thing we should be doing is to add to our budget problems by roping taxpayers with a massive new underfunded commitment.

The analysis presented by the Senator from North Dakota, Mr. CONRAD, the ranking member of the Budget Committee, a few days ago is telling. Based on conservative estimates, a review by professional staff of the Senate Budget Committee projects that over time the trust fund established by this legislation to compensate people made sick by asbestos will fall $150 billion short of the funds it needs. Moreover, the analysis shows that the shortfall may amount to $300 billion under even reasonable assumptions.

Lest some argue that these figures aren't meaningful, $300 billion is more than we spent last year on the Departments of Agriculture, Commerce, Education, Energy, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, and Veterans Affairs, and the Environmental Protection Agency, combined.

This bill presents a potentially massive new burden for taxpayers on top of the record government debt with which they have been saddled. And because they face that burden, taxpayers are entitled to the full protection of the Budget Act, no matter how technical such protection may be in the eyes of the bill's supporters. Taxpayers deserve the safeguard of a 60-vote budget point of order. I will not vote to waive the Budget Act.

There is no doubt that this bill will require a significant number of asbestos victims to give up their legal rights and, in many cases, pending claims in court. Under the language of this bill, unless a claimant is already presenting evidence before a judge or jury or the final verdict has been issued, the claimant's case is stayed and the claimant is redirected to the asbestos trust fund. We are all aware that there will be victims who have invested a significant amount of their time and resources into pursuing legal claims, but for whatever reason, their cases have not yet reached the evidentiary stage. As any legal observer knows, cases can take years to reach the evidentiary stage. Is it fair to ask asbestos victims who have invested years of their lives and extensive resources to give up their legal rights and instead file claims with a fund that may not have enough money to pay out all the claims? I do not think it is fair or reasonable and I had hoped we would take more time to ensure the fund will remain solvent before moving forward with this legislation.

I am also concerned about the ability of victims to reenter the legal system in the event the asbestos fund is declared insolvent. This issue involves fundamental questions of fairness for victims, but also for the businesses and insurers that are paying into this fund. Again, I want to reiterate that I support the concept of a trust fund to compensate victims of asbestos disease and I understand that if correctly created and administered, the fund could guarantee certainty to both victims and defendant companies. This legislation, however, does not give that certainty to either party. If the fund's ability to pay claims declines, asbestos victims could find themselves at the mercy of Congress. Last week, Senator SPECTER voiced a willingness to make modifications to medical standards or criteria if it looks like the fund might exceed $140 billion. This is anything but fair to asbestos victims. To change the medical standards or criteria midstream introduces great uncertainty for these victims, which I find unacceptable. If we are going to ask victims to forgo their legal rights and enter this system, the least we can do is assure them that they will receive just compensation.

There are two things we absolutely have to do in any asbestos legislation. First, we have to be sure that there is adequate money right away to pay the large number of claims that we know will be filed almost immediately. I think this debate has shown that there is not enough money to pay out the initial claims and substantial disagreement as to whether there is even enough total money in the fund to pay out claims over the life of the fund.

The other thing we must do is make sure there is a strong sunset provision that will allow victims to file suit in the future if this trust fund isn't able to pay their claims. Under this bill's language, asbestos victims have to wait until the administrator has declared that the fund can no longer pay claims and has followed procedures before they can file their cases in court again. Moreover, the bill states that the termination of the fund takes effect 180 days after the date that the administrator determines that the fund will not have sufficient resources to pay all of its obligations. So, even though the administrator has declared that the fund does not have enough revenue to meets its obligations, asbestos victims would have to wait until the fund formally terminates 180 days later to file their claims in court. For some victims, 180 days of waiting seems a lot to ask, after they were forced to give up their legal rights to enter this fund in the first place. I would hope that we can legislate a more prompt and certain sunset provision before asking asbestos victims to give up their legal rights.

I have also heard concerns from small business owners that this bill will unfairly impact their businesses, in some cases even driving them out of business. There are a number of small and medium-sized businesses around the nation that have purchased insurance in the past to cover their asbestos liability. Under this legislation, that coverage would not be taken into account. Small businesses will have to pay into the trust fund at levels comparable to their past asbestos liability, even if that liability had been covered by insurance. In effect, small businesses will be punished for responsibly ensuring their liability. A number of these smaller businesses have said these mandatory payments would drive them into bankruptcy. Meanwhile, larger businesses that also have asbestos liability would benefit from paying into this trust fund because of the way the mandatory payments are structured. Under the bill, many of these larger businesses would pay far less than they currently pay to resolve these claims. I cannot support legislation that unnecessarily hurts smaller businesses while allowing more culpable and larger businesses the chance to evade their full responsibility to asbestos victims.

In addition, like many of my colleagues, I have concerns about the impact that this legislation will have on the Federal budget. Supporters of the bill assert that no taxpayer money will ever be used to keep this trust fund solvent. But what happens if the fund does become insolvent? I agree with my colleagues who say that if we pass this bill, Congress will find it very difficult to let the trust fund expire. Senator SPECTER is on record as saying medical standards and criteria could be altered, which I already noted is incredibly unfair to victims. Others in this chamber have voiced concerns that the obligation for the fund could be shifted to taxpayers and I share those concerns also. I know Senator SPECTER and Senator LEAHY, two colleagues whom I deeply respect and who have worked tirelessly on this issue, say that taxpayer money will not be used for this fund. But there is no way to say that with absolute certainty. If the fund runs out, one possibility is that taxpayer money will have to be used to continue to pay claims. This option is no more desirable than changing the medical standards under the bill or forcing claimants and companies back into the legal system. The potential budgetary impact is one more reason that this legislation should be studied further so that we can ensure the trust fund will provide fair compensation to asbestos victims.

We can do better by both the victims and business interests looking to us for a solution to this problem. I believe that if we take more time to ensure the solvency of the fund, to ensure that victims' legal rights are adequately protected, and to ensure that taxpayer money will not have to finance the fund, we can reach a solution that truly can be called fair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DURBIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DEMINT). Without objection, it is so ordered.

Mr. DURBIN. I ask unanimous consent I be given an additional 5 minutes to speak to compensate for the 5 minutes requested by the Senator from Tennessee.

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

Mr. DURBIN. Mr. President, the issue before the Senate today could not have more importance for hundreds of thousands of American peoples. Unbeknownst to many, in their workplace environment, in their homes, places they have visited during the course of their lives, innocent people have been exposed to asbestos fibers. The fibers are inhaled into the lungs and sit like tiny detonation devices that someday may explode. If they do, they could cause asbestosis which reduces the efficiency of the lungs or, even worse, mesothelioma, a fatal condition similar to lung cancer which claims the life of the innocent victim.

As I have said repeatedly, I don't know of a single worker or person afflicted with this disease who willingly put themselves in this circumstance. But for many thousands of people, they find themselves infected and dying.

Conversely, we know that many companies that made products with asbestos over the years knew for decades that it was a dangerous substance, a substance which was shortening the lives of their employees and a danger to their customers. They said nothing. As a result, when these little detonation devices or timebombs went off in the lungs of Americans, thousands and hundreds of thousands and millions of Americans, it created a wave of lawsuits against the companies that made products containing asbestos.

That has been going on for decades. Those who estimated the number of afflicted victims have been way off. The Johns Manville trust fund said there would be 200,000 victims. It turned out there were 2.1 million. So it has been a test of our legal system to give fair compensation to the people who have been hurt. Many people have gone through the system and received compensation.

Of course, there have been some who have abused the system on both sides. There have been some filing lawsuits for people who were not sick. There have been businesses, which were clearly liable, that did everything they could to avoid paying victims. Those things happen in courts of justice across America every single day.

Now comes the bill before the Senate, this so-called Fairness in Asbestos Injury Resolution Act, which says that we should basically deny to hundreds of thousands of Americans their day in court, their due process, their chance to stand before a judge and jury to have their fate decided, their chance to say that we believe the person on the other side of this lawsuit is responsible for the illness and death in our families. This bill is designed to close down that opportunity, to shut the courthouse doors and to replace them.

As I said before, it is quite a bold undertaking to replace the court system in America with something new. That something is this trust fund. And in a few moments, we will have a vote on in this Senate. The vote is critically important. It is a budget point of order. It goes to the heart of this trust fund and as to whether we can trust that $140 billion in the trust fund will do the job. It asks the most basic question: Are we, in fact, not creating a private-funded trust fund but, rather, an obligation of the American Government, the Government, to pay in years to come for these victims? Are we replacing a court system, where the businesses which have some exposure, some liability, pay up in court, with a system where the taxpayers take care of the victims?

If you believe that the companies that are most liable are paying into this trust fund the amounts they otherwise would pay in court—we know that is not true. Three weeks ago, U.S. Gypsum, a major company, announced if they were to pay off all the asbestos claims against their company they would be paying out somewhere in the range of $4 billion. However, under this bill, U.S. Gypsum will pay into the trust fund somewhere in the range of $800 million, maybe $900 million at the most. So for this company, this is a windfall. They will escape some $3.1 billion in exposure and liability and others will step in to pay the difference. Companies will step in to make up the difference and ultimately, it is my belief, when the trust fund fails, as it is likely to fail, then it will fall on the shoulders of the American taxpayers to make up the difference.

If this bill passes, you can expect the stock of many of these companies that are on the line for asbestos claims to go up dramatically, declare dividends, pay more to their CEOs, make sure that their profits are larger and shared by more. But when it comes to the stock of the American people, it will go down because we will be accepting responsibility not for just this generation but generations to come.

The budget point of order before the Senate raises this fundamental question. It is one that, on its face, few would argue with; that ultimately, the American taxpayers are going to be holding the bill, making up for these corporations which will be off the hook.

This afternoon, Senator CONRAD, the ranking member on the Committee on Budget, received a letter from the Congressional Budget Office, signed by Donald Marron, the Acting Director. The letter clarifies a letter that has been talked about in the Senate a lot. I will not read the entirety of the letter but it says, to clarify an earlier letter:

> As CBO has noted in previous assessments of asbestos legislation, there is an enormous amount of uncertainty about the potential costs under the proposed amendment. Operating the Asbestos Injury Claims Resolution Fund would be an entirely new government task, and CBO and other analysts have little basis for judging how the fund's administrator would implement the legislation. No one can be certain, because of the limited data that are available, as to how many claimants there would be and how much would have to be paid to them. The revenues under the amendment would be, at most, $140 billion, but could be significantly less.

He goes on to say:

> CBO concluded, in its February 13 letters to Senators Gregg and Specter, that the proposed amendment would be ''deficit-neutral over the life of the fund.'' That conclusion is based on the fact that the sunset provisions of the legislation would limit spending for claims compensation, debt service, and administrative costs to an amount no greater than the budgetary resources that would be available to the fund from assessments on liable firms, assets of existing bankruptcy trust funds, any interest earnings. Thus, if valid claims and other costs of the funds were to exceed its resources, the administrator would not have the authority to spend amounts in excess of those resources.

Senator SPECTER admitted it. He came to the Senate last week and was asked: What happens if this fund runs out of money? What if our guess that it is going to cost $150 billion is wrong? He gave an honest answer: We will just cut the compensation to victims and give them less money.

I think that is right. That is the only place to turn because the alternative is to turn back to the U.S. Treasury. That is what this budget point of order is all about.

Members of Congress in the Senate and House who are mindful of the budget deficit we face together understand that we are not only plunging into the darkness with this trust fund, into something that has never been tested or tried at this magnitude but, more importantly, we are putting at risk the lives and fortunes of families across America, innocent victims of asbestos exposure, who simply want justice so that before their loved one dies, before the suffering continues from asbestos exposure, that, in fact, they will have a chance for fair compensation. With this trust fund they will not. Their lawsuit will stop the minute this bill is signed into law, if it reaches that point. Their day in court is over. They will wait to see if this trust fund, as promised, will make them whole.

I reserve the remainder of my time. I see the Senator from Delaware. How much time is remaining on our side?

The PRESIDING OFFICER. There is 15½ minutes.

Mr. DURBIN. I yield to the Senator from Delaware 5 minutes.

Mr. BIDEN. Mr. President, I have refrained from speaking on this bill up until now because, quite frankly, my colleague, our leader, Senator DURBIN, and our ranking Member of the Committee on the Budget and others have spoken with eloquence and precision, I believe, about this point of order.

I have a number of amendments if this point of order fails. But before the

time closes on this vote, I did want to ask the indulgence of my colleagues to make a few very brief points.

No. 1, this is a Herculean attempt by one of my best friends in the Senate—one of my best friends, period, Senator SPECTER—to try to deal with the real problem. The real problem is that there are a lot of people out there suffering from the effects of asbestos. There are not a lot of companies out there with the money to pay all of these claims. There is the concern that some of the very companies we have to go to, to recover from, may very well declare bankruptcy. So I understand the motivation. It is a decent, honorable motivation.

But the bottom line is, what we are asking an awful lot of people to do is to give up a right in tort that has existed in common law for hundreds and hundreds of years prior to our Nation's history but throughout our Nation's history. The deal was it would be in return for a guarantee. They would take less, they would get in line, people who had claims they could pursue now would not be able to pursue them immediately until the medical effects occurred. All kinds of limitations were prepared to be put on individuals' rights and claims in return for a deal.

What was the deal? The deal was that they—the victim—having met the criteria of the bill, would be guaranteed a payment and guaranteed a payment within a time certain and that everyone would know the rules.

When I was a young Senator my first year here, I was No. 100 in seniority. I sat in the back corner. Russell Long was in the Senate with the finance bill. Senator Schweiker of Pennsylvania and Senator Case from New Jersey and I worked out an agreement related to a compact relating to the Delaware River area. I walked up to the Senator from Louisiana, Mr. Long, and I said: Senator, I hope you can support this. We have worked this out. He said: Yes, I will be with you. I will be with you.

I had a staffer who had a lot more experience than I. I had only been here months, maybe a year. This staffer worked here before and was seasoned and said: By the way, ask for a rollcall vote. I asked for a rollcall vote. And in the process, when the vote came, it got to Long and Long voted ''no.'' I said: He just told me ''yes.''

Well, he told me, yes, he would vote for it, if it were not a rollcall vote. I didn't know he said that, but he meant that only if it was a voice vote he would vote for it—meaning he could drop it in conference. I walked up to him and I said: Senator, we had a deal. And I was referring to my colleagues from Pennsylvania and New Jersey and Delaware. And he put his arm around me, as only he could do, he pulled me in close like he used to do to everyone: JOE, as my Uncle Earl used to say: I ain't for no deal I ain't in on.

Guess what. The victims are not in on this bill. They are not in on this bill. Because if my colleagues are right—and I believe they are—about how short this fund is going to come and how quickly it is going to reach that point, and how underfunded right from the very beginning this is likely to be, guess what happens. At some point, the administrator of this whole outfit can look down the road and say: By the way, we are going to run out of money, and he can recommend a couple of things. He can recommend that the criteria to qualify change. He can recommend that the amount of money recovered change or he can recommend the fund sunset and people go back, in part, to what they had before.

What would happen if I had said to the business community: There is one other thing he could do. He could go back and change the contributions and what category each of the businesses fall in. He has the discretion to do that. He can go to a company that had more money than another company, even though not as much responsibility, and kick them up into a higher category. I wonder how many of my friends would be saying: Wait, wait, wait a minute. That is not fair. Businesses have to plan. Businesses have to have certainty. You have to make sure that what you tell them in here is going to happen.

Guess what, folks. That is what we are doing to the victim. That is what we are doing to you, the person who gave up your right that only the Congress can take away from you. Give up your right.

There is much more to say. I hope I will not have to say it because I hope this point of order is sustained. But if it is not, there are a number of amendments I have.

Mr. DURBIN. Mr. President, I yield the Senator 2 additional minutes.

Mr. BIDEN. Mr. President, I thank the Senator very much.

The bottom line is, I do not, for a moment—and, again, because he is on the floor and he is my friend—I do not question the motivation, the intention, the desire, the intensity with which my friend from Pennsylvania feels about this issue. I believe he believes if this passes we are going to be doing the victims of asbestosis—and all other aspects of the exposure to asbestos—we are going to be doing them more good than harm.

But I disagree. If the money were here, if the money were guaranteed, under no circumstances could it fall short, then, in fact, that would be the case. But the last piece I will mention here is, I heard my good friend from California talk about Goldman Sachs has a list. Isn't this amazing? We are about to vote on a bill that by some measure will cost at least $140 billion to somebody—I think a lot more—and there is a list that Goldman Sachs has. And we don't? I ain't for no deal I ain't in on. I ain't in on this deal. I am not for it. I am not for it.

I thank the Chair and thank my colleague.

Mr. DURBIN. Mr. President, I thank the Senator from Delaware.

I wish to add, we brought up this whole issue of this secret list last week, and Senator SPECTER came to the floor and he said he believes for a variety of reasons he cannot tell us, cannot disclose to the public, the contributors, the businesses that will contribute to this fund and how much they are going to be asked to give. So we are dealing with an amount, $140 billion, that many people question. Serious groups have analyzed it and said it is not nearly enough. And when it comes to the contributions from businesses to create the fund, we are dealing with a secret list.

This may be the first time in the history of the Senate we have spoken on the floor openly about how things are determined. Apparently this one company that has been mentioned on the floor created a list of businesses and decided how much, under the criteria, they would be paying in.

Mr. SPECTER. Will the Senator from Illinois yield for a question?

Mr. DURBIN. On your time I would be happy to yield.

Mr. SPECTER. I have no time.

The PRESIDING OFFICER. The Senator from Pennsylvania has no time.

Mr. DURBIN. How much time do I have remaining?

The PRESIDING OFFICER. Seven and one-half minutes.

Mr. DURBIN. I yield for a question, if it is pointed.

Mr. SPECTER. When you refer to the so-called secret list, as I pointed out to you on several occasions over the past several days, isn't it true you have seen the list?

Mr. DURBIN. No, I have not. And I thank the Senator for raising that point.

Mr. SPECTER. Isn't it true the list has been made available to you to see?

Mr. DURBIN. I would say to the Senator the same thing I said last week when we engaged in this conversation: For some reason, the Senator—whom I respect very much, and I have said this publicly, and it is not to be construed otherwise—has decided this list is confidential. So the list is made accessible to staff members and Members of the Senate to view but not to take notes or copies. Now, that is fact.

Mr. SPECTER. Mr. President, will the Senator yield——

Mr. DURBIN. And when I asked the Senator from Pennsylvania if he would make this list part of the RECORD, so we could see it right here in the CONGRESSIONAL RECORD, published for America to see, he said he would take it under advisement. He came back the next day and said for a variety of reasons, he could not do it. The fact remains——

Mr. SPECTER. Will the Senator yield for a question?

Mr. DURBIN. Not until I complete my thought. The fact remains that this list is secret to the public. If this is a public forum, if we are considering legislation that will impact the public, why, then, is the most fundamental

question about who will pay into this trust fund being kept confidential and secret?

It strikes me as straining credulity that this process is so open and transparent that we cannot tell the businesses of America how much they have to pay in or the victims of America how much they can expect to receive into this trust fund for their own payments. That is a fact. And because staff members or Senators can go to the hearing room and look through the report—not make a note, not make a copy—does not create a lot of confidence.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SPECTER. Mr. President, will the Senator from Illinois at this point yield for a question?

Mr. DURBIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Five and one-half minutes.

Mr. DURBIN. I believe the Senator from New Jersey is coming to the floor and asked to speak. With only 5½ minutes remaining, I reserve the remainder of my time.

Mr. SPECTER. Will the Senator yield for 30 seconds?

Mr. DURBIN. To show the Senator from Pennsylvania how much I respect him, yes.

Mr. SPECTER. Would the Senator from Illinois be willing to accept, in open court, the list?

Mr. DURBIN. If I am allowed to put it in the RECORD.

Mr. SPECTER. The Senator from Illinois would be bound by the denomination on the list, which is law and Senate rules. It is not something ARLEN SPECTER has made up. But this is a list which you can have in your hand. It is not a secret list, but there are rules of confidentiality established by law and by Senate rule.

Mr. DURBIN. I would say to the Senator——

Mr. SPECTER. And if the Senator from Illinois declines, that is fine with me.

Mr. DURBIN. I would say to the Senator from Pennsylvania, I think he has constructed a situation here that isn't fair to this process. To think that we would be dealing with the lives and fortunes of so many hundreds of thousands of families, and that we are saying we cannot share with them the most fundamental information about how this trust fund is created, I think we could do better, we should do better in the Senate.

Mr. SPECTER. Would the Senator from Illinois accept my characterization of his position as ridiculous?

Mr. DURBIN. No. I would accept my characterization as challenging the Senator from Pennsylvania to accept the obvious. If this list has been created by some private company and cannot be shared with the people of America in the midst of the debate on this important bill, there is a serious flaw in this legislation, a flaw that cannot be overcome, even with the good feelings I have for the chairman of this committee.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Nevada.

Mr. ENSIGN. Mr. President, I want to speak. We are debating a budget point of order. People in America are thinking this is some kind of a technical jargon that Senators are using. What does it mean?

A budget point of order is a parliamentary rule that can be used to make sure that the Senate carefully weighs whether we are putting undue burdens and obligations on future Congresses, which obviously means to future generations of Americans.

We are raising—and I have raised—this budget point of order today. I will be the first one to admit, it is a very technical budget point of order. But let me explain the reasons I believe it is a real budget point of order in its effect, stopping huge obligations by this Government in the future.

In the wisdom, I believe, of the Senate in last year's budget, we put in a budget point of order that would say beyond 10 years, if there is spending of more than $5 billion obligated, a bill would be subject to a budget point of order. It is because it had become practice around here to make things kind of ramp up, and, then, in the future spend the money so it did not look as though we were spending money now. It looked as though things were either budget neutral or had very little impact on the budget.

I said the other day on this very floor, talking about what is going to happen with Medicare, Medicaid, and Social Security, as the baby boomers retire in this country, it is a serious problem we are facing. If there is a problem with this trust fund—which many people believe there will be a huge problem with this trust fund, that it will be grossly underfunded—if the problem ends up coming back to the taxpayer, it will happen at a time when the baby boomers are starting to retire.

I know the Presiding Officer from South Carolina is one of the most fiscally responsible people in this body. I have followed his short record in the Senate and know how passionate he is about our entitlement programs. I feel the same way he does. But with that looming problem of the baby boomers coming up, the last thing we can afford to do is to enact a bill that potentially could have a major impact—literally, maybe with a number in the hundreds of billions of dollars—that could have a drain on our Government.

The Senator from Pennsylvania says there are no Federal revenues at stake here, the trust fund does not allow for that. Here is why I think it is a real budget point of order. I have been around this place long enough—I have only been here in the Senate 5 years, and in the House before that 4 years, but that is long enough to see how this town works. The Congress is creating this trust fund. If this trust fund runs out of money and there are still victims around, the people in this very body will stand up and say: Congress created the problem, Congress needs to fix the problem. Everybody will join in because there will be victims and people will have posters of victims out there. And there are real victims, people who are suffering, people who are not getting the help they need today. That is why I believe this is a real budget point of order because I think the Congress will act and will give the money to supplement the trust fund. It will not be their money; it will be the taxpayers' money. But they will give the money.

Now, I have heard a lot of people come down here and say why there is a problem. The fact is, we have a broken legal system that needs to be fixed. The trial lawyers in this country have discovered these class action lawsuits: Bring your Rolodex in and we will see who we can sue. And so many people who are not victims are clogging up the courts, who I believe are led there by unscrupulous lawyers. It is blocking real victims from receiving compensation.

It has been said that many businesses have gone out of business. The chairman of the Judiciary Committee has argued one of the reasons we need the trust fund is because a lot of businesses have gone out of business so there is nobody left to sue. Why did they go out of business in the first place? It is because of frivolous lawsuits, having to spend millions and millions of dollars defending themselves. In a lot of these cases, the businesses had nothing to do with asbestos.

I remember this one company that came in to visit me. They were an insurance company thinking of getting into insuring folks in the asbestos field. So they did a study. They came to the conclusion it was too risky, and they decided not to go into that business. I forget the exact figure, but I know since that time they have paid hundreds of millions of dollars out defending themselves because they did not release the study.

This was their own internal document they used to decide whether they were going to go into a certain business. But because they did not release the study, trial lawyers brought them in to the courts and sued them. In many cases, it is cheaper to settle than it is to defend yourself in court. So they paid out umpteen millions of dollars.

The problem with that is insurance companies are a passthrough. Americans are paying the bills. They are just a company that takes in premiums and pays out claims. They are there to make a profit. And if they have to pay things out, they have to raise the premiums, which we all pay.

So we know there is a serious problem. We know it has been caused because of a bad system, and we need to fix the system. I am the first one who wants to stand up here to fix the system. The alliance that has been formed here to try to support this budget point of order is a little strange. There are some fiscal conservatives. There are some people who support the trial lawyers. I have never been exactly claimed by the trial lawyers as being one of their friends, and I feel a little uncomfortable to be in this position, to be honest with you. But I am standing up for this budget point of order because I believe this bill is fiscally irresponsible to the taxpayers into the future.

Now, I want to address one other portion or one other thought no one has addressed on the floor of the Senate. I was in the House of Representatives for 4 years, and there I served on the Ways and Means Committee. The Constitution of the United States says something very clear. It is a very simple writing. That is the beauty of the Constitution, how simple the writing is. Section 7 of article I of the Constitution states:

All Bills for raising Revenue shall originate in the House of Representatives. . . .

That is a very simple statement. In the letter to the budget chairman, the Congressional Budget Office says:

CBO expects those sums—

Talking about the sums for the trust fund—

would be treated in the budget as Federal revenues.

Section 7:

All bills for raising revenue shall originate in the House of Representatives.

Any Member of the House of Representatives can raise this constitutional question. I cannot remember a time when somebody raised this constitutional question when the House of Representatives did not support it. It is called a blue slip. I raised one when I was there. It was on the nuclear waste bill that was up. I raised that budget point of order, and that was at a time when the vast majority of House Members supported the nuclear waste bill. Yet they supported me on that blue slip, that constitutional question, because they wanted to protect their rights as a body.

Well, beyond the budget point of order, we may be spinning our wheels because this trust fund raises revenues, and it is the prerogative of the House of Representatives to start a bill like that. So even beyond the budget point of order, we may be wasting our time with this bill because of the trust fund that has been set up.

So I encourage my colleagues, let's sustain this budget point of order and start over. Let's get a good medical criteria bill, work in a bipartisan fashion, get together and limit it.

Let's make sure that victims of asbestosis and mesothelioma are compensated. Let's get rid of all of the phony claims. It will quit clogging up our court system. We won't have all these lawyers getting rich over all these class action lawsuits. We will actually get the victims their just compensation.

If we join together and get something done and quit making partisan political points, I believe the actual victims will be better off, but so will those businesses that are threatened to go out of existence even as we speak.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. LAUTENBERG. Mr. President, I think I have been yielded time. I would like to check with the people at the desk to see whether that is the case. I heard the Senator from Illinois say I was expected on the floor. Is that noted in the RECORD in any way?

The PRESIDING OFFICER. We have no record of the Senator from Illinois yielding time.

Mr. LAUTENBERG. Mr. President, since I am on the floor and there is nobody else here on the Democratic side, I ask unanimous consent that I be permitted to speak for not more than 5 minutes or so.

Mr. ENSIGN. Whose time is that coming off of, Mr. President?

Mr. LAUTENBERG. I believe it is our time.

The PRESIDING OFFICER. There would be an additional 5 minutes, unless someone else yields time.

Mr. LEAHY. Mr. President, parliamentary inquiry: The opponents of the position of the Senator from Nevada, how much time do they have?

The PRESIDING OFFICER. The Senator from Nevada has 23 minutes. The Senator from Illinois has 3 minutes 22 seconds.

The Senator from Vermont has 15 minutes.

Mr. LEAHY. This is in opposition to the position. I will reserve my 15 minutes for the Senator from Pennsylvania and myself.

Mr. ENSIGN. Mr. President, before the Senator from New Jersey speaks, I yield 15 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from New Jersey made a unanimous consent request for 5 minutes. Is there objection to that?

Mr. LAUTENBERG. Mr. President, I would like to use Senator DURBIN's time. He has 3 minutes left. I ask unanimous consent that I be permitted to use Senator DURBIN's time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, since time is limited, I am going to get down to the nuts and bolts. I come from a State in which asbestos was prominent in manufacturing in many places. As a matter of fact, early in the 1950s, a doctor named Irving Selikoff, who was a researcher as well as a physician, discovered the lethality of asbestos. He is the one who raised the alarm about the dangers of that product.

He saw mesothelioma and asbestosis.

In my office in New Jersey, I had a man and his wife and his mature son, who was about 30 years old, come in to see me because they all had mesothelioma, but only the father worked in the manufacturing facility, the mill. His wife and child, his son, were made ill as a result of the mother washing her husband's clothes. That is how lethal, how dangerous asbestos is.

This bill is an abstract exercise. There are real people involved, people who are going to die as a result of the exposure. I have seen it up front and personal. A friend of mine who was a lawyer, after practicing 20 years, got a call from a member of a union one day that had asbestos workers, and he was told to get a chest x ray. He did. After 20 years of no illness, nothing, suddenly they found that he had a spot on his lung, and it turned into mesothelioma and he was dead soon thereafter.

I recently had a World War II vet—I am one as well—come into my office, sick from mesothelioma, from work he did 40 years ago. We have seen so many cases where the gestation period is so long, so that to suddenly close this out and say that is going to be enough money, $140 billion—it sounds like a lot, but it is not a lot when it comes to individuals who need help and who need to be able to continue to conduct their lives and do whatever they can to make life comfortable.

The Congressional Budget Office has stated that the fund will need $10 billion more. Other analysts put the figure as high as $300 billion. So it is fairly obvious that I am going to oppose this bill and support the point of order. I urge my colleagues to do the same because what we are doing is dismissing the suffering of people who have been exposed to this, even though the companies knew how dangerous the material was they were working with. They permitted people to work with it and did not do anything about it, except ultimately, in many cases, they went bankrupt as a result of their behavior.

I yield the floor, and I hope my colleagues will oppose this bill and support the point of order.

The PRESIDING OFFICER. Who yields time?

Mr. ENSIGN. Mr. President, I yield 15 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. CONRAD. Mr. President, first, I want to acknowledge the extraordinary amount of work that the chairman of the committee and the ranking member have put into this bill, and how much I admire the diligence they have brought to the task.

I rise today on the question of a budget point of order that has been raised by the Senator from Nevada. That budget point of order is clearly well taken. A number of months ago, my technical staff on the Budget Committee came to me and said they had

been reviewing this legislation and they wanted to alert me that they believed this legislation was underwater, that it was underfunded, that it would lead to severe consequences not only for taxpayers but also for those who were the victims; it might also lead to severe consequences to companies that thought they were escaping the court system.

Why is that? Well, it is true because the analysis that has been done demonstrates it is much more likely this fund will go insolvent than not. Why?

First, because claims and administrative expenses are likely to exceed the contributions to the asbestos trust fund.

Second, upfront claims will far exceed contributions, so the trust fund will have to borrow substantial amounts, and that borrowing will come from the Federal Treasury, increasing the ultimate cost.

Third, small adjustments in the amount and timing of the assumptions quickly bankrupt the trust fund.

Finally, it is very unrealistic to assume that the trust fund, once initiated, will ever terminate.

Mr. President, CBO said in a letter today:

> CBO cannot estimate any costs or savings that might result from several features or consequences of the legislation. A number of those features could add to the cost of the legislation.

What are those features? Here are a number of things that CBO said they could not estimate. They said they made no provision for dormant claims. Dormant claims are cases that were brought previously but for which there is nobody to pay under the current system. No. 2, we also know there are trusts that are only paying cents on the dollar. Those dormant claims could come back against this fund.

Second, exceptional medical claims: Exceptional medical claims are claims that don't fit neatly into one of the nine categories provided for in this bill. CBO said they could not make an estimate for those.

Third, CBO made no estimates for family members' claims; that is, family members who have been affected because a loved one comes home with asbestos on their work clothes. I had a family come to me where both the mother and the daughter became ill because the husband brought asbestos home on his work clothes and that made them ill. They will have claims.

Then there was no provision for CT scans, which were omitted; that is, costs associated with using CT scans for plural abnormalities as evidence of asbestosis.

It also omitted the cost of compensating victims at other Libby-like sites. Libby is an unusual circumstance, but it is not the only one where an entire community has been badly hurt. That will increase the cost.

We have only found one area where there might be potential savings, and that is the medical studies area. That is a circumstance where there could preclude some tier VI cancer claims, and that could reduce costs. But it will affect fewer than 1 percent of claims.

There are additional areas of uncertainty in the CBO analysis: the number of future cancer claims. CBO estimated 78,000 new cancer claims. The Tilling-Hast study, financed by Johns Manville—so it is not financed by the trial bar or by labor unions, not financed by companies who are against this legislation. Instead, it was financed by the Johns Manville trust. The Tilling-Hast study did 14 different scenarios. They concluded, on average, there would be 133,000 new cancer claims, not the 78,000 provided for in the CBO analysis. If they are right, this bill is $295 billion underwater instead of the $150 billion we have assumed, based on increasing the cancer claims from the 78,000 in the CBO study to 90,000.

The percent of nonmalignant claims is another area we believe will increase costs. CBO says only 15 percent of the people will fall into tier II and tier III. Tier II gets $25,000 cash reimbursement. Tier III gets $100,000. They say only 15 percent of the claims will fall there. Other objective experts say it is more like 10 to 40 percent. We took the midrange of that estimate, 25 percent. We think that is a more prudent estimate of the amount of financing costs on fund borrowing.

We have heard over and over that this will only cost $120 billion to $140 billion or $120 billion to $150 billion, depending on the estimates, and that CBO has said there is an assumption that the claims will cost in that range: $120 billion to $150 billion. That leaves out something. That leaves out something pretty important. That leaves out the financing costs because everyone acknowledges that the early claims will be far in excess of the early revenue. The result is an enormous mismatch between funds going out and funds coming in. That borrowing is going to be made from the Federal Treasury. The interest cost on that money has not been calculated in the work of CBO. They acknowledge that. That is the biggest single difference we have identified. You have to include financing cost.

In addition to that, the amount of revenue in the trust fund may well reduce revenue. In fact, CBO notes that revenues will be, at most, $140 billion, and that revenues could be significantly less.

When we put all of these factors together, our analysis, using very conservative assumptions, including the asbestos trust fund, faces a shortfall of at least $150 billion over its lifetime or $50 billion in net present value.

Using what I believe is a more realistic estimate of future cancer claims, the 133,000 average in the Tillinghast study, the shortfall would grow to nearly $300 billion. That really shouldn't be a surprise because if we look at what has happened with other funds like this, what we have found is that very often the initial estimates are entirely wrong.

If we look at the original range of the Manville claims, this estimate was done back in the late 1980s, and they estimated there would be 50,000 to 200,000 claims. Already, there have been 690,000 claims. They now estimate there will be 1.4 million, for a final total of over 2.1 million claims. When they initially started, they said there would be 50,000 to 200,000. They were wrong by a country mile.

We looked at the black lung fund. Back in the late 1960s when it was initiated, they said the total cost would be $3 billion. We are at $41 billion today and counting.

The hard reality is that CBO has reaffirmed there is a significant likelihood that the asbestos funding is inadequate. Here is what they said in a letter today:

> CBO's analysis indicates that the proposed trust fund under Senate amendment 2746 might not have adequate resources to pay all valid claims. There is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs.

Let there be no doubt. This is what it says.

In the point of order which has been brought by the Senator from Nevada, it shall not be in order to consider any bill, joint resolution, amendment, motion, or conference report which would cause a net increase in direct spending in excess of $5 billion in any of the four 10-year periods beginning in 2016 through 2055.

S. 852 creates an entitlement. The language could not be more clear. It says in section 131:

> An asbestos claimant who meets the requirements of section 111 shall be entitled to an award in an amount determined by reference to the benefit table and the matrices developed under section (b).

Are these all just words? Are all these just numbers on a page? Or does this have some real-world consequence?

We can look to the Johns Manville trust for the answer to that question. Because they estimated incorrectly, because they dramatically underestimated the number of claims, claimants today are getting 5 cents on the dollar. Five cents on the dollar. That could happen to victims. The other possibility, of course, is that people will come to Congress and say: Look, you designed this fund. You said it was going to produce. You said it was going to work. Now it has failed. You have to pony up. You have to pay. What do my colleagues think is the most likely outcome in the years ahead?

CBO has also confirmed that the long-term spending point of order exists against this legislation. Here is what they said, and this was on February 13, yesterday:

> Substantial payments from the fund would continue well after 2015. Consequently, pursuant to section 407 of H. Con. Res. 95, CBO estimates that enacting the bill as amended

would cause an increase in net direct spending greater than $5 billion in at least one of the 10-year periods from 2016 to 2055.

CBO also reaffirmed that the fund is governmental:

Operating the Asbestos Injury Claims Resolution Fund would be an entirely new governmental task, and CBO and other analysts have little basis for judging how the fund's administrator would implement the legislation.

CBO's estimate shows that the asbestos bill will worsen the Federal deficit by $7 billion over the first 10 years. We believe that is very conservative. We believe the amount of increase to the deficit will be far in excess of that when we adjust for the dormant claims, when we adjust for the debt service, when we adjust for the other expenses that have been left out.

There have been some who have said: Well, these really aren't Federal funds. Oh, yes, they are. These are Federal funds because the money, just as it is in all of these instances of trust funds, is considered Federal—in the airport and airway trust fund, in the black lung disability fund, in the hazardous substance Superfund, in the highway trust fund, and in the unemployment insurance fund. It doesn't matter that, yes, there are private funds here; without question, that is part of the picture, but it is not the whole picture. In every one of these cases where we have private funds being mixed with Government funds, the final result is considered governmental payments. The above trust funds receive ''private'' receipts that are designated for specific purposes. Spending from these trust funds is treated as Federal.

At the end of the day, we have to make a judgment. Some have said: The Federal Government's exposure is limited, it is restricted, because after $40 billion, it shuts down. I think we have to ask ourselves: Is that likely? Is that really likely to occur? Can we imagine the companies being told they owe $40 billion back to the Federal Treasury and they are exposed to going back to court? If we want a march on Washington, enact this legislation, because it will go insolvent in the second 10-year period, according to our estimates, and we will have a run on Washington unlike anything we have seen in the modern age.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, how much time is remaining to the various parties?

The PRESIDING OFFICER. The Senator from Vermont has 15 minutes, and the Senator from Nevada has 8 minutes. That is all the remaining time.

Mr. LEAHY. Mr. President, I am prepared to yield the remainder of my time to the Senator from Pennsylvania, but I would like to make just a couple of points, if he doesn't mind, before I do that.

Mr. President, with all of the talk, let us not lose sight of a couple of things. This bill does not violate 407(b), no matter what anybody says, because we specifically say the taxpayer funds will not be spent to compensate victims of asbestos exposure. That has been our position from day one, and that is what the bill says today: not a single dollar is spent. In fact, the CBO states that over the life of the fund, whether or not it sunsets, we would not expect the legislation to add to the aggregate Federal debt. It just doesn't add to debt. The Federal Government is involved only because it acts as a conduit for the private funding of $140 billion. All the parties said they wanted that in the Department of Labor because they had the experience and the infrastructure necessary to set up a quick start for the victims.

We have heard the figures about projection of interest rates. If we follow those projections, the interest rates would have to be at 25 percent. Twenty-five percent. Even with the recent increases by the Federal Reserve Board, we are still way in the low single digits.

The CBO considered all the estimates. They met with dozens of financial experts, economists, auditors, everybody. They say payments were raised from $120 billion to $150 billion, at most. They said $140 billion will cover all claims, payments, administrative costs, and borrowing costs. That is why we have the financial institutions, we have our veterans, we have labor. As this chart shows, labor organizations are strongly for it.

Then we ought to keep in mind that these are the people who are not going to recover unless this bill goes through, and 26 veterans organizations have come out to say they oppose this budget point of order. Twenty-six veterans organizations oppose it because they know they need this bill.

Mr. President, I yield the remainder of my time to the distinguished Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I would like to comment briefly on the disagreement I had with the Senator from Illinois, Mr. DURBIN. He has made the false representation that there is a secret list of who is going to provide the money. It is not a secret list. It has been made available, and I offered it to him on the floor. But under the law, when it contains confidential information, it is available for the Senators and their staffs and those preparing the legislation, but it is not available for the general public on trade secrets. When the bill is certified, then it goes into the public record and the public domain. But to say that it is a secret list is the purest form of demagoguery and a specious argument.

On to the essential point of this budget point of order, it does not have any substantive merit because there is no Federal money involved. The Federal Government is implicated only because the Department of Labor is a conduit. That is the only reason the Federal Government is involved.

The Congressional Budget Office has said flatly in the letter to me dated yesterday:

CBO concludes that the legislation would be deficit-neutral over the life of the fund.

CBO, in their letter today to Senator CONRAD, repeated:

CBO concluded in its February 13 letter to Senators Gregg and Specter that the proposed amendment would be deficit-neutral over the life of the fund.

So there is no Federal money involved, pure and simple, and there is no basis to say that the budget would be impacted, so that on the merits, there is no basis for this point of order.

The practical application is that if this point of order is sustained, this bill will die. This is an issue which has been before the Judiciary Committee for the better part of three decades, and it has been before the committee in the past 3 years on a very intense basis. The majority leader has set aside 2 weeks for the consideration of this bill. If this point of order is overruled, we will proceed to a cloture vote tomorrow, and we will proceed to take up amendments, and we have a realistic chance of concluding this bill yet this week. It is backed up against a recess period, and we have a chance to finish this bill.

If this point of order is sustained, then the work which Judge Becker has done in presiding over some 36 meetings, attended by 20 to 50 to 60 representatives, countless meetings, will be in vain. If the point of order is upheld, the bill is gone. If it is rejected, there will be ample opportunity for amendments to be presented and for the bill to be improved.

There are those who wish to offer an alternative of a medical criteria bill. I do not think a medical criteria bill is as good as the current bill because the medical criteria bill would not cover employees whose companies are bankrupt or veterans who have no one to sue. But at least that would be an alternative which would be preferable to the current system. I believe it is fair to say that the Presiding Officer might be attracted to a medical criteria bill, and certainly many who oppose the trust fund would prefer to have something such as a medical criteria bill rather than have nothing.

If the point of order is upheld and the bill is dropped, you can't do anything. There is a question as to whether it is germane, but that is a matter for the Parliamentarian and that is a matter for ingenuity and that may be worked out. If you do not go to a medical criteria bill, there are germane amendments which could be offered to change the medical criteria.

Here again, I am opposed to the modifications, but they could be made and the bill could be altered. The whole beauty about the Senate is that—when we have these complex issues and we have the synergism of 100 Senators and our staffs—with our experience, with our analysis of what we have done, we have a chance to establish public policy in the interests of Americans.

Everybody agrees. Not one person who has taken the floor has disagreed with the enormity of the problem. Everybody agrees that it is horrible that people are dying of deadly diseases from exposure to asbestos and have no one from whom to collect.

There is disagreement about how to handle it. There is no disagreement about the tremendous amount of work which has been done in this bill. On a strictly personal level, the committee, the staffs, and I have put in countless hours that ought not to go down the drain on a technicality. If we have this bill on the floor for 3 more days this week and if at the end of that time, or whatever time the bill is on the floor, there is a decision made that no bill is better than the bill we come to, then so be it. It is rejected. But to have it rejected on a technicality is a terrible waste of so much time and effort which has gone into bringing this bill to this position.

I have made a statement which I believe to be true—although I can't prove it—that there has never been a bill subjected to more analysis and scrutiny than this bill. Or in the alternative of accepting that assertion—I know it is a grandiose assertion—can anybody point to any bill which has had more analysis or more scrutiny? What a waste it would be to have it dismissed on a technicality when the consequences are that thousands of victims of asbestos will continue to die without compensation, the 77 companies now in bankruptcy will be multiplied, and the economy will withstand a $300 billion loss.

Let us take 3 more days, as we have taken the past 3 years, to see if we can produce a bill which will satisfy the critics of the present measure.

We have done a count as to how the Senators are going to vote. It is impossible to say with certainty exactly what is going to happen. There are too many people who are still undecided. So as I talk to my 99 colleagues, I ask you to weigh very heavily this vote because this is a measure, as many are, which might be decided by a single vote. Why let it all go down the drain on a technicality when we might be able, in the course of 3 more days, to produce something which would be satisfactory to a majority of this body?

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator has 3 minutes 15 seconds.

Mr. SPECTER. I am willing to yield back the remaining time if the Senator from Nevada is.

Mr. ENSIGN. Yes.

Mr. SPECTER. Mr. President, parliamentary inquiry: The pending motion is my motion to waive?

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The question is on agreeing to the motion.

The clerk will call the roll.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. No response having been made to the roll-call, the quorum call is in order.

The clerk will call the roll to ascertain the presence of a quorum.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, I will use leader time, in that all time has expired.

Mr. President, I urge my colleagues to vote ''no'' on the motion to waive the valid budget point of order raised by my colleague, Senator JOHN ENSIGN. This is not a technicality, it is the absolute foundation of this flawed program, this trust fund. A vote on the budget point of order is the key vote on this bill.

Cloture was filed last night by the majority leader on both the bill and the Specter substitute amendment. The first cloture motion will ripen tomorrow morning. The effect of that action will be to ensure there will be no meaningful opportunity to amend this bill.

The chairman of the committee says we should not defeat the bill on a budget point of order and should instead attempt to improve the bill by amendment. Mr. President, please, that is not very sensible. The majority leader's decision to file cloture last night completely undercuts that argument. There is no serious chance this bill will be improved through amendment.

Why do I say that? After cloture is invoked on the substitute, only germane amendments will be in order, and after the substitute is adopted, no amendments at all will be in order. Many of the most important amendments to the bill are highly relevant but nongermane. There are lots of them.

How about the amendment of Senator LINDSEY GRAHAM to deal with environmental exposure to asbestos across the country? Senator GRAHAM's amendment, which he has talked about for months now, dealing with asbestos exposure around the rest of the country would not be in order. That is hard to accept. There are many other amendments of comparable significance to that of Lindsey Graham. Any Senator with concerns about the bill should vote to sustain the point of order because the only meaningful way to improve the legislation is by committing it back to the Judiciary Committee.

I have said that Senator DURBIN and I will work with Senator CORNYN and others to find an alternative approach along the lines of the Texas and Illinois State statutes. The pending bill may be well-intentioned, but it is ill-conceived. It would deprive asbestos victims of their right to obtain compensation for their injuries in court and throw them into an administrative system that is doomed to fail. It is doomed to fail.

If someone doesn't like the entitlement programs in this country, then you should hate this bill before us because it is another entitlement program, and it will make the black lung program look insignificant.

This program started at $3 billion; it is now $41 billion and on the rise still.

The trust fund is undercapitalized and structured in a way that will deprive seriously injured victims of fair treatment.

The bill is opposed by every major asbestos victims group, as well as numerous scientists and doctors and experts on asbestos-caused diseases, and nearly every labor union.

In addition, virtually the entire insurance industry and a large number of small- and medium-sized businesses oppose this bill. It is death to too many companies.

People stand on the floor of the Senate and talk about cases where they have had to file bankruptcy. When those companies went into bankruptcy, they did just fine. Victims did not get their money but others did. A lot of the companies have come out of bankruptcy.

Yesterday, Senator FRIST and I received a letter signed by more than 350 individual veterans and their families, representatives of large numbers of people around this country.

Among other things in this letter, they state:

> We are aware of the repeated claims by proponents of S. 852 that this legislation is good for veterans. We are also aware that several veterans' organization officials have endorsed the legislation. We, as individual veterans and families, want to make it clear that these officials and organizations do not represent the position, nor the complete position, of the veterans' community. We strongly oppose this legislation. We believe that a system as envisioned by S. 852 would exacerbate, not relieve, the suffering of veterans with asbestos-related diseases.

The budget point of order before us is significant and goes to the heart of the bill. In addition to being unfair to victims, the bill is unfair to the Federal taxpayer.

I repeat: I have received calls in recent days from Karl Rove saying: What are we going to do about entitlement programs in this country?

He, of course, is concerned.

We have a debt ceiling vote that is going to be coming up in the next several weeks. That is why he called me on behalf of the President.

If he is concerned about the entitlement programs that are now in existence, they should really be frightened about this one. This is open ended. Some have said it will be as much as $600 billion underwater.

The budget point of order raised by Senator ENSIGN is clearly valid. Yesterday, responding to an inquiry from

Chairman GREGG of the Senate Budget Committee, the Congressional Budget Office reaffirmed its conclusion from last August that the bill violates section 407 of the Budget Act. You can manipulate, twist, and try to say it doesn't say what it says, but they say it violates section 407 of the Budget Act. CBO estimates that enacting the bill as amended would cause an increase in net direct spending.

In the same letter, the Congressional Budget Office predicted that in the years 2006 through 2015, the cost of the fund will exceed industry contributions to it by at least $6 billion. The only way to make up that difference is to borrow it. Who do you borrow it from? From the Federal Treasury.

In a letter to Senator CONRAD today, the Congressional Budget Office highlighted the extraordinary uncertainties associated with the cost of this bill.

Senator CONRAD read parts of this into the RECORD today, as have others.

Senator CONRAD, of all people in this body, of all people in this body, is seen as a fair man. His main concern about what is going on in Government today is spending.

I remind everyone that when Senator CONRAD was elected in 1986, he took a vow. He said: If the budget is not reduced by the time I stand for reelection, I will not run for reelection. He fulfilled that commitment because the budget deficit had not gone down. He is a man of his word.

Unfortunately, the sitting Senator, Mr. Burdick, died, and as a result Senator CONRAD is back with us. But he gave up his Senate seat because he believed the deficit was not right.

I think those of you on the other side of the aisle who have worked with Senator CONRAD would have to acknowledge that when he deals with matters of fiscal responsibility of this country, he is fair. His own individual analysis indicates that this will be at least $150 billion and maybe as much as $290 billion in the red.

I remind my colleagues that this bill effectively creates an entitlement for asbestos victims and obligates the Federal Government to provide compensation to those victims. Throughout the fund's existence, the Federal Government is obligated to pay regardless of the actual amount raised by the fund through company contributions; thus this obligation remains so long as the fund is operational. Experts conclude that the amount of payouts will outpace the contributions to the fund not just in the near term but in the long term as well.

I say to my friends, Democrats and Republicans, read the Wall Street Journal of today. If there is ever a publication that is concerned about what is happening to the financial situation in this country, we all have to acknowledge it is the Wall Street Journal. I don't like a lot of their political editorials. But whenever they talk about money, I read and listen.

In an editorial this morning, that newspaper pointed out, for example, repeating what I said, that the black lung program ''which was initially supposed to cost $3 billion and was later supposed to be financed by the coal industry, it has since paid out more than $41 billion, borrowing some $9 billion from the Treasury.''

They acknowledge that the bill before us is bad.

There are alternatives to solving this difficult problem. My friend, the distinguished junior Senator from Texas, is on the Senate floor. I pledge to work with him on his proposal to establish a medical criteria system that will assure a more orderly resolution of the asbestos claims. That is the way it is going to be no matter what the outcome of this. The current bill is not the answer.

I urge my colleagues to establish a medical criteria system that will do what we think should be done.

I very much appreciate the work of Senator LEAHY and Senator SPECTER. I think these two Senators have done a wonderful job and are doing the best they can.

If my friend, Senator SPECTER, is on the floor, I would be happy to ask unanimous consent that he be allowed to speak to respond to anything I have said, if he believes that is appropriate.

No one on our side will object. I have finished using my leader time. I would be happy, if he feels so inclined, to ask unanimous consent that he be given whatever time he wants to respond to what I said.

Mr. SPECTER. Mr. President, I thank the Democratic leader for that. I shall accept it.

Mr. REID. How much time does the Senator need or want?

Mr. SPECTER. I didn't know there was a limitation on how much I want.

Mr. REID. As minority leader, I was entitled to 10 minutes. I think anything over that would be out of the ordinary.

Mr. SPECTER. I will take less than 5 minutes.

Mr. REID. Mr. President, I ask unanimous consent that Senator SPECTER be allowed to speak for up to 6 minutes.

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

Mr. SPECTER. Mr. President, whatever arguments are advanced by skillful advocates and skillful Senators, the underlying question of this budget point of order is whether the budget will be impacted and hurt. The fact is, there is no Federal money. So there is no substantive merit to the point of order. The Federal Government is implicated only because the Department of Labor is involved as a conduit.

That is fact No. 1.

Fact No. 2 is if this budget point of order is upheld, this bill is killed after 3 intense years of work, with hundreds of meetings, with numerous conferences, and 36 meetings presided over by Judge Becker and myself. And there will be no opportunity to have amendments to improve it.

We may yet be able to pass a bill which will satisfy the critics.

So let us have 3 more days as we have worked 3 years. It has been a process by the committee for three decades. But let us have 3 more days with all the work that has been done to bring it to this point. Everyone agrees with the need for a bill.

Everyone agrees there are tens of thousands of asbestos victims who are dying without compensation because their companies are bankrupt, or because they are veterans who sustained their injuries in the service and have no one to sue. Everyone agrees it has a tremendous impact on the economy.

So let us take 3 more days. This vote is razor thin. Nobody knows how it is going to come out. It may well be decided by a single vote, as so many votes are in this body.

I ask each of my colleagues to ponder carefully—there are many, as last reported, undecided—and give us the benefit of the doubt. Give me the benefit of the doubt as chairman of the committee who has brought this forward. Give the Judiciary Committee the benefit of the doubt, and give the benefit of the doubt to substantially more than 50 Senators. We are at least in the high fifties—maybe higher. But give us the benefit of the doubt with 3 more days of the time of the Senate.

I thank the Chair. I thank the Senator from Nevada for yielding.

The PRESIDING OFFICER. All time having expired, the question is on agreeing to the motion. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 58, nays 41, as follows:

[Rollcall Vote No. 21 Leg.]

YEAS—58

Alexander	Dodd	Lugar
Allard	Dole	Martinez
Allen	Domenici	McConnell
Baucus	Enzi	Murkowski
Bayh	Feinstein	Roberts
Bennett	Grassley	Santorum
Bond	Hagel	Sessions
Brownback	Harkin	Shelby
Burns	Hatch	Smith
Burr	Hutchison	Snowe
Carper	Isakson	Specter
Chafee	Jeffords	Stabenow
Chambliss	Kohl	Stevens
Coburn	Kyl	Talent
Cochran	Landrieu	Thomas
Coleman	Leahy	Vitter
Collins	Levin	Voinovich
Cornyn	Lieberman	Warner
Craig	Lincoln	
DeWine	Lott	

NAYS—41

Akaka	Conrad	Frist
Biden	Crapo	Graham
Bingaman	Dayton	Gregg
Boxer	DeMint	Inhofe
Bunning	Dorgan	Johnson
Byrd	Durbin	Kennedy
Cantwell	Ensign	Kerry
Clinton	Feingold	Lautenberg

McCain	Obama	Sarbanes
Menendez	Pryor	Schumer
Mikulski	Reed	Sununu
Murray	Reid	Thune
Nelson (FL)	Rockefeller	Wyden
Nelson (NE)	Salazar	

NOT VOTING—1

Inouye

The PRESIDING OFFICER. On this vote, the yeas are 58, the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader is recognized.

Mr. FRIST. Mr. President, I enter a motion to reconsider the last vote.

The PRESIDING OFFICER. The motion to reconsider is entered.

Mr. FRIST. Mr. President, I switched my vote from a ''yes'' to a ''no'' vote. Without my switching the vote, it would have been 59 to 40. We have one absentee tonight, and that may well have determined which way this particular vote had gone. Thus, I switched my vote from a yea to a nay, thus the vote was 58 to 41. That allows us to, at some point in the future, have the option to reconsider the motion. We will make a decision on that at some point in the future.

The PRESIDING OFFICER. The point of order against the bill is sustained. Pursuant to section 312(f) of the Budget Act, the bill is recommitted to the Judiciary Committee.

Mr. FRIST. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THUNE). Without objection, it is so ordered.

USA PATRIOT ACT ADDITIONAL REAUTHORIZING AMENDMENTS ACT OF 2006—MOTION TO PROCEED

Mr. FRIST. Mr. President, in a few moments I will have a very brief statement about what went on with the vote on the asbestos bill, but for our colleagues, I wish to outline where we are going tonight and over the next several days.

Calendar No. 360, S. 2271, is the USA PATRIOT Act Additional Reauthorizing Amendments Act. This bill addresses some of the concerns of Members on both sides of the aisle as it relates to the PATRIOT Act. I believe that we strongly support it and we are prepared to consider this measure next.

Therefore, I now ask unanimous consent that the Senate proceed to the consideration of S. 2271, the USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Mr. President, on behalf of Senator FEINGOLD, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, I had hoped we would at least be able to proceed to that bill tonight. As our colleagues know, this bill is ready to go. It is an important bill. It is important for the safety and security of the American people. It is a bill we have worked on for a long period of time, and we believe there is overwhelming support for this bill. The consent I asked for was for the Senate to begin consideration of that legislation. We had the objection from the other side of the aisle that was expressed.

I now move to proceed to S. 2271. The motion to proceed is now pending and is debatable. We have been told that there will be an effort to filibuster the motion to proceed. Therefore, I now send a cloture motion to the desk and ask for its consideration.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 2271: to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive National Security Letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

Bill Frist, James Inhofe, Richard Burr, Christopher Bond, Chuck Hagel, Saxby Chambliss, John E. Sununu, Wayne Allard, Johnny Isakson, John Cornyn, Jim DeMint, Craig Thomas, Larry Craig, Ted Stevens, Lindsey Graham, Norm Coleman.

Mr. FRIST. Mr. President, again, the motion is pending, and if the Senators desire to debate the motion they should be prepared to do so. The Chair is obligated to put the question. I put Members on notice that they should remain on the floor if they feel the need to hold up this important legislation; otherwise, we will be proceeding to the underlying bill.

Mr. FRIST. Mr. President, with respect to the vote we took minutes ago on the asbestos legislation, it does mean that legislation is, in essence, off the floor now, and that we are proceeding with the consideration of the PATRIOT Act, although we have an obstruction underway and we have a threatened filibuster underway, and we will address that in the coming days.

The vote on the motion to waive the point of order on the asbestos bill was 59 to 40. In order to have the option to keep a heartbeat at least in this piece of legislation, because it is so important to victims, to our economy, to jobs, what I did, as an advocate for the Specter-Leahy bill, is I switched my vote from yes to no. From a procedural standpoint, what that allows me to do as leader is to bring that back to the floor at some appropriate time if there is indication to do so in the future.

We did have one absentee vote tonight that could have made the difference, and with that I switched my vote. I do want to make it very clear, because there is always misunderstanding in terms of when a Senator switches his vote, I strongly support the Specter-Leahy bill, and I switched my vote for procedural reasons.

So this vote did reflect 59 to 40 on the floor, although the actual vote is depicted as 58 to 41.

Let me also add, and I think I speak for the majority of my colleagues, that I am disappointed in the fact we are not able to proceed with this asbestos litigation bill. The consequence of this vote tonight is that victims who are in need are not going to receive fair and just compensation. They deserve it. They need it. The problem has been clearly spelled out on the floor of this body.

We have made progress over the last couple of weeks in that people recognize this is a serious problem that has gone on for too long, yet has to be addressed in a legislative way, that it denies justice to victims, that it hurts and punishes our economy and, unless it is addressed, will continue to destroy jobs in this country.

Unfortunately, by refusing to move forward on this bipartisan bill, a bipartisan bill, the Senate chose to protect special interest groups rather than the interests of those innocent victims who deserve more. The cost to our society will be felt unless it is addressed sometime in the future.

I do thank all of those who acknowledge there is a real and serious problem that Congress should debate, and it must be resolved at some point in the future.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I wish to address the issue that was just considered before the Senate and say that I hope, now, that we can work together on a bipartisan basis to find some accommodation—not to create a trust fund, in an amount that has never been established, with contributions that have never been disclosed publicly but, rather, something that is much more open and transparent.

The starting point is obvious. Some States have already addressed this issue with significant changes in the existing tort system that make it more fair and quicker for victims to get compensation. I think that is the way to address this, and I hope that now we can have an effort by Members from both sides of the aisle on a bipartisan basis to establish this.

I do quarrel with the leader's conclusion that special interests defeated this legislation. Let's be very honest with the American people. This bill was a clash of the special-interest titans on both sides. Senator BENNETT of Utah, on the other side of the aisle, whom I respect very much, came to the floor

and listed 10 major corporations that, with the passage of this legislation, would have saved $20 billion in liability—$20 billion that they would otherwise have to pay to victims of asbestos exposure around America. To say that everyone opposing this bill was a special interest but 10 companies that were $20 billion ahead if this bill passed were not special interests defies a rational explanation.

I would also add that I think we have to consider the fact that when we come down to consider this bill, there is going to have to be give and take on both sides, and I hope we can reach that point. Those in the legal community, as well as those who represent the businesses and insurance companies who have stakes in this fight, have to be willing to give some ground and to work toward compromise.

I came to Congress years ago, and when I arrived the first issue with which I was confronted was asbestos. It is still here today and there are more victims today and we have to find a reasonable way to help those victims.

I am heartened by Senator CORNYN of Texas, who has been willing to come to this floor and talk about the medical criterion alternative. I don't know if we can reach an agreement, but I sure want to try. I have said to my colleagues on this side of the aisle who did not agree with the disposition on the last vote that we should put our heads together and see if we can come out with a reasonable answer to this challenge we face. I sincerely hope that can be done.

I do have to say I wish the first bill we were considering would not have been this so-called Armageddon of the special interest groups. Wouldn't it have been much better for us to have considered Medicare prescription drug Part D reform when we have millions of seniors across America struggling to understand this complicated system, wrestling with plans that may offer the drugs that they need for their life-and-death situations; wanting the pharmacies they have always trusted to be included; hoping that they can pay the price of this plan?

I hear from these people every day. You would think that Members on both sides of the aisle would be receiving these phone calls and, if they have, you wonder why that was not the first bill that was brought up. It would have been a reasonable thing. Some have even suggested we should have brought up ethics reform before we did anything else, and we have introduced a bill on the Democratic side that will try to move toward significant ethics reform. I hope those on the Republican side who feel the same way will join us and make their own suggestions. But shouldn't we move to that legislation? That may not be popular with some of the power brokers in this town, but if we want to restore the confidence of the American people in Congress and the people who work here, it certainly ought to be high on their agenda.

There again is another issue that we have not considered—ethics. Medicare; prescription drugs Part D; addressing the issue of LIHEAP—that's the Low Income Heating and Energy Assistance Program—are critically important across the Nation. We left that undone—underfunded from last Congress. I think there is bipartisan support—I know there is—for us to return to that issue, another one which will help a lot of needy families, vulnerable Americans across our Nation who are faced with staggering and record heating bills. That, again, is an issue that does not have a special interest constituency, but it is certainly one that families are concerned about across our country.

I know we are not ready to bring up the issue of health care because we need to do some work on it. For 5 years, we have done virtually nothing and the cost of health insurance has gone up, the coverage has gone down, people are more vulnerable today than they were a few years ago and more people are uninsured. We ought to be talking about reasonable bipartisan efforts to deal with health insurance and making it more affordable and more accessible for every American family. That is something that could be done.

When some come to the floor and say: This is the No. 1 issue facing Congress, the people I represent think there are other issues far more important, issues that relate to their everyday lives and the livelihoods of their families. I hope we can return to those issues.

We have expended a lot of effort and energy on this issue. Perhaps by working on a bipartisan basis we can find a way through this. But in the meantime, let's take up some of these equally important, if not more important, issues for families across America.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

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

HONORING OUR ARMED FORCES

SPECIALIST ALLEN KOKESH, JR.

Mr. JOHNSON. Mr. President, today I pay tribute to Specialist Allen Kokesh, Jr. who died on February 7, 2006, from injuries sustained while serving in Iraq. He was a member of Charlie Battery, First Battalion 147th Field Artillery Brigade of Yankton.

Specialist Kokesh was one of five South Dakota National Guard members involved in a roadside bomb attack on December 4, 2005, en route to Baghdad. Two soldiers were killed in the immediate aftermath, Sergeant First Class Richard Schild and Staff Sergeant Daniel Cuka. Specialist Kokesh suffered severe wounds, and after being medically evacuated out of Iraq, he was transferred to the Brook Army Medical Center at Fort Sam Houston in San Antonio, TX.

Sadly, Specialist Kokesh didn't recover from his wounds and died after developing severe complications. He was a graduate of Yankton High School and is remembered as a scholar athlete. In fact, he was a member of the Yankton High School championship football team that won the 2002 Class 11AA State title. The leadership skills Specialist Kokesh demonstrated during high school were clearly evident when he joined the South Dakota National Guard that same year. He even successfully convinced a fellow classmate, and member of his football team, to join the National Guard the following year.

While I am deeply saddened by the loss of any military member serving in defense of our great Nation, the loss of the brave soldiers in the 147th hits close to home. My oldest son, Brooks, served in that unit prior to joining the Army as an enlisted soldier with the 101st Airborne Division. On behalf of my entire family, I extend our heartfelt condolences to Specialist Kokesh's family and friends.

Specialist Kokesh's commitment to his fellow members of the South Dakota National Guard, as well as all those who served in uniform with him, is a testament to the strength of his character and the family that instilled in him these values. His dedicated service to our grateful Nation will never be forgotten.

DEFENSE AUTHORIZATION, 2006

Mr. LEVIN. Last week, Senator KYL placed a statement in the CONGRESSIONAL RECORD regarding the Graham-Levin amendment, which was enacted last year as section 1405 of the National Defense Authorization Act for Fiscal Year 2006 and as section 1005 of the Detainee Treatment Act of 2005, as included in the Department of Defense Appropriations Act, 2006. Senator KYL and Senator REID cosponsored the Graham-Levin amendment in the Senate.

Senator KYL argues that this provision was intended to retroactively strip the Federal courts, including the Supreme Court, of jurisdiction over pending cases. Senator KYL's statement attached a January 18, 2006, letter from Senator KYL and Senator GRAHAM to Attorney General Gonzales, which makes the same argument.

As I stated when the Graham-Levin amendment was before the Senate and

reiterated when the Senate adopted the conference report containing the legislation, this is not the case. The statute that we enacted does not retroactively strip the Supreme Court and other Federal courts of cases over which they had already assumed jurisdiction at the time the statute was passed.

I do not believe that the unexpressed intentions or after-the-fact statements of Senators—Senator KYL, myself, or anyone else—can change the facts or the legislative history that existed at the time Congress acted on a piece of legislation. The relevant considerations are the language of the law itself, the changes that were made to that law as it went through the drafting process, and what was clearly stated before the bill was voted on by the Senate. I make this statement today for the sole purpose of reiterating that history.

While section 1405(e)(1) provides that ''no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus,'' the applicability of this language to pending cases is addressed in a separate provision—section 1405(h)—the structure and history of which make it clear that the courts are not stripped of cases over which they have already assumed jurisdiction.

Section 1405(h) clearly provides that only one portion of the act applies to pending cases: sections (e)(2) and (e)(3), which govern direct appeals from final decisions by military commissions and CSRTs. The rest of the statute becomes effective ''on the date of enactment,'' which, as Justice Scalia has pointed out, ''is presumed to mean 'shall have prospective effect upon enactment,' '' Landgraf v. USI Films.

At CONGRESSIONAL RECORD page S970, Senator KYL argues that the original Graham amendment was never ''modified to carve out pending litigation.'' He is incorrect. In fact, the amendment was modified, and it was modified for the precise purpose of carving out pending litigation.

The original Graham amendment specified that all provisions—including the restrictions on habeas petitions—applied to pending cases. On November 10, 2005, the original Graham amendment was debated and adopted by the Senate by a vote of 49–42. At that time, I objected to the Graham amendment's provision stripping jurisdiction in pending cases. In fact, I explicitly urged at CONGRESSIONAL RECORD page S12,663 that we not adopt this amendment, in part, because ''It would eliminate the jurisdiction already accepted by the Supreme Court in Hamdan.''

Because of my concerns, after the original Graham amendment was adopted, I began working on a revised version of the amendment, which became known as the Graham-Levin amendment. This new version removed the language applying the habeas restrictions to pending cases, and instead limited its retroactive effect only to the standards applicable to direct appeals of final determinations that may have been made by CSRTs or military commissions.

On November 14, 2005, Senator GRAHAM and I introduced this new version to the Senate together. In introducing the new Graham-Levin amendment, Senator GRAHAM did not specifically address the issue of the amendment's effect on pending cases before yielding the floor to me. I did address the issue. In particular, I explained to the Senate that one of the principal reasons that so many of us voted against the prior version of the amendment was its effect on pending cases and that this problem had been addressed in the Graham-Levin amendment that was then before us. I stated at CONGRESSIONAL RECORD page S12,755:

> The other problem which I focused on last Thursday [November 10] with the first Graham amendment was that it would have stripped all the courts, including the Supreme Court, of jurisdiction over pending cases. What we have done in this amendment, we have said that the standards in the amendment will be applied in pending cases, but the amendment will not strip the courts of jurisdiction over those cases. For instance, the Supreme Court jurisdiction in Hamdan is not affected. . . . I cosponsored the Graham amendment with Senator Graham because I believe it is a significant improvement over the provision which the Senate approved last Thursday. . . . The direct review will provide for convictions by the military commissions, and because it would not strip courts of jurisdiction over these matters where they have taken jurisdiction, it does, again, apply the substantive law and assume that the courts would apply the substantive law if this amendment is agreed to. However, it does not strip the courts of jurisdiction.

Senator GRAHAM took the floor again immediately after I concluded my explanation of what our new amendment accomplished. He did not disagree with my statement about the effect of the revised bill on pending cases anywhere in his remarks. Indeed, neither Senator GRAHAM nor Senator KYL said anything at that time to contest my very clear statement that the new amendment did not retroactively strip the courts of jurisdiction over pending cases.

When the Senate approved the Graham-Levin Amendment by a vote of 84 to 14 on November 15, 2005, I explained again at S12,802 that our amendment would not strip the courts of jurisdiction over pending cases:

> The Graham-Levin-Kyl amendment would not apply the habeas prohibition in paragraph (1) to pending cases. So, although the amendment would change the substantive law applicable to pending cases, it would not strip the courts of jurisdiction to hear them. Under the Graham-Levin-Kyl amendment, the habeas prohibition would take effect on the date of enactment of the legislation. Thus, this prohibition would apply only to new habeas cases filed after the date of enactment. The approach in this amendment preserves comity between the judiciary and legislative branches. It avoids repeating the unfortunate precedent in Ex parte McCardle, in which Congress intervened to strip the Supreme Court of jurisdiction over a case which was pending before that Court.

Again, neither Senator GRAHAM nor Senator KYL offered a contrary interpretation of the Graham-Levin amendment at that time.

The bill then went to a House–Senate conference. At this time, the inapplicability of the jurisdiction-stripping provision to pending cases was so clear that the administration's allies in the House tried in vain to alter the language of the effective date provision to make the jurisdiction-stripping provision apply retroactively to pending cases, as it had in the original Graham amendment. I objected to this language, and it was rejected by the Senate conferees.

At CONGRESSIONAL RECORD page S14,258, I explained this history when the Senate adopted the conference report on December 21, 2005:

> Under the Supreme Court's ruling in *Lindh* v. *Murphy*, 521 U.S. 320, the fact that Congress has chosen not to apply the habeas-stripping provision to pending cases means that the courts retain jurisdiction to consider these appeals. Again, the Senate voted affirmatively to remove language from the original Graham amendment that would have applied this provision to pending cases. The conference report retains the same effective date as the Senate bill, thereby adopting the Senate position that this provision will not strip the courts of jurisdiction in pending cases.
>
> Let me be specific.
>
> The original Graham amendment approved by the Senate contained language stating that the habeas-stripping provision 'shall apply to any application or other action that is pending on or after the date of the enactment of this Act.' We objected to this language and it was not included in the Senate-passed bill.
>
> An early draft of the Graham-Levin-Kyl amendment contained language stating that the habeas-stripping provision 'shall apply to any application or other action that is pending on or after the date of the enactment of this Act, except that the Supreme Court of the United States shall have jurisdiction to determine the lawfulness of the removal, pursuant to such amendment, of its jurisdiction to hear any case in which certiorari has been granted as of such date'. We objected to this language and it was not included in the Senate-passed bill.
>
> A House proposal during the conference contained language stating that the habeas-stripping provision 'shall apply to any application or other action that is pending on or after the date of enactment of this Act.' We objected to this language and it was not included in the conference report.
>
> Rather, the conference report states that the provision ''shall take effect on the date of the enactment of this Act.'' These words have their ordinary meaning—that the provision is prospective in its application, and does not apply to pending cases. By taking this position, we preserve comity between the judicial and legislative branches and avoid repeating the unfortunate precedent in Ex parte McCardle, in which Congress intervened to strip the Supreme Court of jurisdiction over a case which was pending before that Court.

As a result, the language sought by the administration and its allies, which would have applied the jurisdiction-stripping provision to pending cases, was not included in the final version of the bill.

It was not until after we concluded the conference and the conference report passed the Senate on December 21,

2005, that Senator KYL placed a colloquy in the CONGRESSIONAL RECORD arguing that Section 1005 should be interpreted to retroactively strip the courts of jurisdiction over pending cases. At the same time, a number of other Senators placed statements in the CONGRESSIONAL RECORD stating their belief that the provision would not strip the courts of jurisdiction over pending cases.

Those statements, coming as they did after the conclusion of the conference and final action on the bill in both the House and the Senate, carry no more weight as legislative history than the statement that Senator KYL placed in the CONGRESSIONAL RECORD last week or any other after-the-fact statement in the CONGRESSIONAL RECORD. Both the contemporaneous legislative history and the language and structure of the Graham-Levin amendment itself demonstrate that this provision was not intended to, and did not, retroactively strip the Federal courts of jurisdiction over pending cases.

BLACK HISTORY MONTH

Ms. MIKULSKI. Mr. President, I rise today during Black History Month to celebrate and remember the rich history of the millions of African Americans who have made this country what it is today.

It is a time to honor leaders from across the country—some who are well known and others who are almost forgotten. It is a time to cherish the pioneers to give them the recognition they deserve and to preserve their names, faces, and stories for generations to come.

This Black History Month, we especially remember and mourn the recent loss of two of the key players in the civil rights movement Rosa Parks and Coretta Scott King.

In October, we said goodbye to the ''First Woman of Civil Rights,'' Rosa Parks. When Ms. Parks refused to give up her seat on a city bus in Montgomery, AL, in 1955, we know that a movement had already begun, but she poured fuel on the fire—inspiring the historic Montgomery bus boycott. She refused to give up her seat to a White man because she was tired—tired of being treated like a second-class citizen, tired of being forced to move because someone else decided they deserved to sit more than she did. And she became a model and a hero for me and generations of Americans looking to make our country truly the land of the free.

And then we just lost another icon. Not only was Coretta Scott King married to Dr. Martin Luther King Jr., but she was a pioneer with her own voice in the civil rights movement at a time when women were not often recognized for their own talents and merit. She was resolute, but she was feisty—someone after my own heart. She founded the King Center for Nonviolent Social Change and saw to it that the center became deeply involved with the issues that she believed breed violence—hunger, unemployment, voting rights and racism. And when her husband was tragically shot, she comforted a nation that was torn apart. She is the reason we have a national holiday that honors Dr. King.

While we remember the lives and deeds of Rosa Parks, Coretta Scott King, and countless others, we need to honor their memory not just with words, but with deeds. We need to reexamine what this country must still do to ensure equality every day. We need to evaluate the work we still need to do to guarantee that African Americans are not left behind when it comes to the issues that matter.

This Black History Month, I am still concerned and dedicated to fighting for the issues that matter to African Americans. We must make higher education more affordable for families. We must fight for adequate health care. We must fight to keep our neighborhoods and communities safe. We must fight to make sure the needs of Hurricanes Katrina survivors are not forgotten.

The cost of college tuition has been skyrocketing. It is putting stress on the families and students who have to struggle just to be able to pay their bills. That is why I have introduced legislation to create a tuition tax credit to families and to students who pay for their own tuition. This legislation would offer a tax credit of up to $4,000 a year per student to help them with the cost of the education they deserve. America needs our young people to know that they will not be limited by the size of their wallet to follow their big dreams.

I also want to assure African Americans that they are not limited in the health care they receive because of spartan or skimpy funding for the health issues that affect them most. That is why I teamed up with Congresswoman STEPHANIE TUBBS JONES in the Uterine Fibroids Research and Education Act of 2005, to double fibroid research funding and to launch an education campaign for patients and physicians. Uterine fibroids are a terrible, painful ailment that plague mostly African-American women. Fibroids affect the entire family—not only the woman who has to endure them but also those who love her and who hate to see the lady they love in so much pain. They have gone ignored for too long. We need to fight for the resources to find the cause, to find better treatments, and hopefully to find a cure for this devastating disease so that women and families don't have to deal with this pain in their lives.

Families also want to know the neighborhoods they live in are safe. The number of gangs nationwide and in my own home State of Maryland has been rising. Families don't want to have to worry about gang violence in their streets. That is why in Maryland I have helped launch a statewide antigang initiative that I hope can serve as a model for the country. This initiative will not only go after the bad guys through suppression and enforcement, but it will offer prevention and intervention efforts to help the good kids in the communities who are trying so hard. Mothers and fathers shouldn't have to worry about losing their children to gang violence in their neighborhoods, and that is why I am going to continue to give help to our communities to protect themselves.

We need to offer protection to the survivors of Hurricane Katrina in the gulf coast communities because the Federal Government really let them down. I know the African-American community feels very prickly about this and feels abandoned. They should know that even though President Bush hires cronies and doesn't have competent people working for him, the American people haven't abandoned them. We are going to work to rebuild the communities in Louisiana. We are going to get the survivors housing and jobs and health care. We are going to open the schools. We are going to stick with them, and we are going to fight for them.

So this year during Black History Month, I honor the memories of the great leaders who have come before us with my commitment to fighting for these important year-round issues. And I am going to do it not just with words, but with deeds. I urge you all to join me.

ADDITIONAL STATEMENTS

IN RECOGNITION OF DR. ROBERT W. GORE

• Mr. CARPER. Mr. President, today I rise to recognize the lifetime of accomplishments of Dr. Robert W. Gore, who was recently inducted into the National Inventors Hall of Fame.

In 1957, during his sophomore year at the University of Delaware, Bob Gore came up with the idea of using polytetraflouroethylene, PTFE, to insulate wire. Little did he know how this seemingly simple idea would impact everything from supercomputers to Arctic exploration.

In 1958, Bob's parent's, W.L. ''Bill'' Gore and his wife Genevieve, began W.L. Gore & Associates in the basement of their Delaware home. Bill was a research chemist at DuPont and, based on Robert's idea, developed and patented a process for insulating wire with PTFE.

Bob Gore went on to graduate from the University of Delaware 2 years later and joined his parents in developing and expanding their home business. After an order for 7½ miles of insulated cable from the city of Denver, W.L. Gore & Associates opened their first manufacturing plant in Newark, DE, in 1961.

In 1969, insulated cables from W.L. Gore & Associates were used during the

first moon landing, connecting seismic readers to the landing craft during Neil Armstrong's historic moonwalk. Also in 1969, Dr. Gore began manufacturing cables for use in high-tech supercomputers.

While many people would be satisfied with having one of the most successful and cutting-edge companies in America, Bob Gore and his parents continued to explore the possibilities of polytetraflouroethylene. In 1975, a spinoff of this compound, called expanded polytetraflouroethylene, ePTFE, was used to develop vascular grafts that heart surgeons around the world still rely on today. Recognized for exceptional performance and quality, they have earned the endorsement of renowned surgeons worldwide and are credited with saving countless lives.

In 1976, Bob Gore took the reigns as CEO of W.L. Gore & Associates. This same year, the company received its first order for GORE–TEX fabric, which was the first fabric that was both waterproof and breathable. Initially used to make rainwear, this groundbreaking fabric would revolutionize the clothing industry and forever change how people interacted with their environments.

In 1990, GORE–TEX proved its toughness in the wilds of Antarctica. An international team of explorers wore GORE–TEX outerwear while traversing the polar continent. After braving the wilds of this hostile environment, one member of the team credited the revolutionary fabric with saving his life.

Besides the cutting-edge innovation and consistent quality that W.L. Gore & Associates provides to its customers, the organization has consistently been ranked as one of the ''100 Best Companies to Work For'' by Fortune magazine. This honor is especially significant when you think about the impact that a good corporate environment has on the health and well-being of its employees. The morale and team structure that W.L. Gore & Associates uses in its day-to-day work environment helps ensure that their employees continue to provide the world with cutting-edge products that make our lives easier and better.

Bob Gore was named to the University of Delaware's College of Distinguished Alumni in 1990 and was inducted into the National Academy of Engineering in 1995. In 2005, Dr. Gore was awarded the Perkin Medal, which is considered to be one of the most prestigious awards for applied chemistry.

By fostering an environment where people are free to test the boundaries of innovation, Bob Gore has created a workplace that encourages energy, enthusiasm, and creativity. Whether it is extreme weather clothing, surgical components, or guitar strings, the employees of W.L. Gore & Associates never settle for second best. The leadership of Dr. Gore has made this possible, and all of Delaware is proud that he continues to make sure that the First State remains a leader in innovative products.●

IDAHO'S FRIEND IN THE IRS

● Mr. CRAPO. Mr. President, for the first time in many years, Idaho taxpayers and, congressional staff will face the season without a very special friend in the business. Merry Trudeau, local taxpayer advocate with the Internal Revenue Service, is retiring after 30 years of lending a compassionate ear and helpful hand to many Idaho taxpayers. Over three decades of working in different sections of the IRS but most notably as a taxpayer advocate, Merry distinguished herself on both sides of the phone. She helped many Idahoans through the mazes of Federal tax law and working out resolutions to different problems, and she was the person who fellow employees reached out to when they needed guidance. She is perhaps best known for her generosity and willingness to volunteer her time and resources with the Combined Federal Campaign and helping needy families and children enjoy beautiful and plentiful Christmases.

Merry's grandchildren and husband will certainly enjoy all the additional attention as she turns her time from work to family and friends in retirement. Still, people like Merry never truly retire from helping others, and I am positive that her generosity, compassion, and kindness will continue to leave an indelible mark on all the lives she touches. My congratulations go to Merry and her family as she opens the page to a new chapter in her life.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT PREPARED BY THE NATIONAL SCIENCE BOARD ENTITLED ''SCIENCE AND ENGINEERING INDICATORS—2006''—PM 40

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation.

To the Congress of the United States:

Consistent with 42 U.S.C. 1863(j)(1), I transmit herewith a report prepared for the Congress and the Administration by the National Science Board entitled, ''Science and Engineering Indicators—2006.'' This report represents the seventeenth in the series examining key aspects of the status of science and engineering in the United States.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 14, 2006*.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5714. A communication from the Deputy Director, Office of Protected Resources, National Oceanic and Atmospheric Administration, transmitting, pursuant to law, the report of a rule entitled ''Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches from Kodiak Island, AK'' (RIN0648-AP62) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5715. A communication from the Assistant Chief Counsel, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Hazardous Materials: Requirements for Lighters and Lighter Refills'' (RIN2137-AD88) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5716. A communication from the Program Analyst, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Anthropomorphic Test Devices, Hybrid III 6-year-old Weighted Test Dummy'' (RIN2127-AJ79) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5717. A communication from the Regulations Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Project Authorization and Agreements'' (RIN2125-AF05) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5718. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska'' (I.D. No. 012506A) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5719. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Pilatus Aircraft Ltd. Models PC-12 and PC-12/45 Airplanes'' ((RIN2120-AA64)(2005-CE-35)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5720. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Empresa Barsileira de Aeronautical S.A . Model EMB-135 Airplanes; and Model EMB-145, -145ER, -145MR, -145LR, -145XR, -145MP, and -145EP Airplanes'' ((RIN2120-AA64)(2002-NM-89)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5721. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A300 B4-600, B4-600R, and F4-600R Series Airplanes, and Model A300 C4-605R Variant F Airplanes; and Model A310-200 and -300 Series Airplanes'' ((RIN2120-AA64)(2004-NM-234)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5722. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; BURKHARDT GROB LUFT-UND RAUMFAHRT GmbH and CO KG Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, G103C TWIN III ACRO, and G103C Twin III SL Sailplanes'' ((RIN2120-AA64)(2005-CE-19)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5723. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; American Champion Aircraft Corporation Models 7AC, 7ACA, S7AC, 7BCM, 7CCM, S7CCM, 7DC, S7DC, 7EC, S7EC, 7ECA, 7FC, 7GC, 7GCA, 7GCAA, 7GCB, 7GCBA, 7GCBC, 7HC, 7JC, 7KC, 7KCAB, 8KCAB, and 8GCBC Airplanes'' ((RIN2120-AA64)(2005-CE-50)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5724. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 727 Airplanes'' ((RIN2120-AA64)(2005-NM-122)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5725. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Hamilton Sundstrand Power Systems Auxiliary Power Units Models T-62T-46C2, T-62T-46C2A, T-62T-46C3, T-62T-46C7, and T-62T-46C7A'' ((RIN2120-AA64)(2005-NE-19)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5726. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—General Electric Company CF6-80E1A1, 80E1A2, 80E1A4, and 80E1A4/B Turbofan Engines'' ((RIN2120-AA64)(2005-NE-24)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5727. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Cessna Aircraft Company Models 208 and 208B Airplanes'' ((RIN2120-AA64)(2005-CE-28)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5728. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Frakes Aviation Model G 73 Series Airplanes and Model G 73 Airplanes That Have Been Converted to Have Turbine Engines'' ((RIN2120-AA64)(2005-NW-256)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5729. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Pacific Aerospace Corp Ltd Model 750XL Airplanes'' ((RIN2120-AA64)(2005-CE-54)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5730. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Airbus Model A300 B2 Series Airplanes; A300 B4-103 and B4 203 Airplanes; and A310-203 Airplanes'' ((RIN2120-AA64)(2005-NM-04)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5731. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Dassault Model Falcon 2000 Airplanes'' ((RIN2120-AA64)(2005-NM-55)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5732. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Engine Components Incorporated Reciprocating Cylinder Assemblies'' ((RIN2120-AA64)(2005-NE-20)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5733. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—DG Flugzeugbau GmbH Models DG 800B, and DG 500B Sailplanes'' ((RIN2120-AA64)(2005-CE-45)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5734. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Burkhardt Grob Luft-und Raumfahrt Gmbh and Co. Kg Model Twin Astir Sailplanes'' ((RIN2120-AA64)(2005-CE-43)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5735. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Boeing Model 777-200 and 300 Series Airplanes'' ((RIN2120-AA64)(2005-NM-223)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5736. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Boeing Model 767-200, 300, and 300F Series Airplanes'' ((RIN2120-AA64)(2005-NM-080)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5737. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Dassault Model Falcon 2000 Airplanes Equipped with CFE Company CFE738-1-1B Turbofan Engines'' ((RIN2120-AA64)(2005-NM-061)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5738. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—BAE Systems Limited Model 4101 Airplanes'' ((RIN2120-AA64)(2005-NM-129)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5739. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Sabreliner Model NA 365, 265-20, 265-30, 265-40, 265-50, 265-60, 265-65, 265-70, and 265-80 Series Airplanes'' ((RIN2120-AA64)(2005-NM-133)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5740. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Empressa Brasileira de Aeronautica Model ERJ 170 Airplanes'' ((RIN2120-AA64)(2005-NM-136)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5741. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Airbus Model A300 B2 and A300 B4 Series Airplanes; A300 B4–600, B4–600R, and F4–600R Series Airplanes, and C4–605R Variant F Airplanes; and Airbus Model A310–200 and A310–300 Series Airplanes'' ((RIN2120–AA64)(2005–NM–033)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5742. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Boeing Model 737–600, 700, 700C, and 800 Series Airplanes'' ((RIN2120–AA64)(2005–NM–88)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5743. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Empressa Brasilira de Aeronautica SA Model DMB 135BJ, 135ER, 135KE, 135KL, and 135LR Airplanes; and Model EMB 145, 145ER, 145MR, 145LR, 145XR, 145MP, and 145EP Airplanes'' ((RIN2120–AA64)(2005–NM–149)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5744. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Pratt and Whitney PW400 Series Turbofan Engines'' ((RIN2120–AA64)(2005–ANE–66)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5745. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Boeing Model 767–200 and 300 Series Airplanes'' ((RIN2120–AA64)(2005–NM–277)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5746. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives—Airbus Model A300 B4 Series Airplanes, Model A310–200 Series Airplanes, Model 310–300 Series Airplanes, and Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes'' ((RIN2120–

AA64)(2005–NM–131)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5747. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 737 Airplanes'' ((RIN2120–AA64)(2005–NM–070)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5748. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, and A340–300 Series Airplanes'' ((RIN2120–AA64)(2005–NM–032)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5749. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 747–400, 747–400D, and 747–400F Series Airplanes'' ((RIN2120–AA64)(2005–NM–082)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5750. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A330–300, A340–200, and A340–300 Series Airplanes'' ((RIN2120–AA64)(2002–NM–20)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5751. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Model EMB–120, –120ER, 120FC, –120QC, and –120RT Airplanes'' ((RIN2120–AA64)(2005–NM–183)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5752. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 767–300 Series Airplanes'' ((RIN2120–AA64)(2004–NM–266)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5753. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Model EMB–135 Airplanes and Model EMB–145, –145ER, –145MR, –145LR , –145XR, –145MP, and –145EP Airplanes '' ((RIN2120–AA64)(2004–NM–218)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5754. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A330–243, –341, –342, and –343 Airplanes Equipped with Rolls-Royce RB211 TRENT 700 Engines'' ((RIN2120–AA64)(2004–NM–146)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5755. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747SP, and 747SR Series Airplanes'' ((RIN2120–AA64)(2006–0020)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5756. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes'' ((RIN2120–AA64)(2006–0021)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation .

EC–5757. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A320–111 Airplanes'' ((RIN2120–AA64)(2006–0022)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5758. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Boeing Vertol Model 107–II Helicopters'' ((RIN2120–AA64)(2006–0023)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5759. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A318–100, A319–100, A320–200, A321–100, and A321–200 Series Airplanes'' ((RIN2120–AA64)(2006–0024)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5760. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Empresa Brasileira de Areonautica S.A. Model EMB–135 Airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes'' ((RIN2120–AA64)(2006–0026)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

EC–5761. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Airbus Model A319–100 Series Airplanes; Model A320–111 Airplanes; Model A320–200 Series Airplanes, and Model A321–100 and –200 Series Airplanes'' ((RIN2120–AA64)(2006–0027)) received on February 8, 2006; to the Committee on Commerce, Science, and Transportation.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Ms. STABENOW (for herself and Ms. MURKOWSKI):

S. 2278. A bill to amend the Public Health Service Act to improve the prevention, diagnosis, and treatment of heart disease, stroke, and other cardiovascular diseases in women; to the Committee on Health, Education, Labor, and Pensions.

By Mr. FEINGOLD (for himself and Mr. KYL):

S. 2279. A bill to make amendments to the Iran and Syria Nonproliferation Act; to the Committee on Foreign Relations.

By Mr. OBAMA (for himself, Mr. DURBIN, and Mr. MENENDEZ):

S. 2280. A bill to stop transactions which operate to promote fraud, risk, and underdevelopment, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SANTORUM:

S. 2281. A bill to amend the Internal Revenue Code of 1986 to allow Americans to age with respect and dignity by providing tax incentives to assist them in preparing for the financial impact of their long-term care needs; to the Committee on Finance.

By Mr. SANTORUM:

S. 2282. A bill to amend title XVIII of the Social Security Act to provide for access to telehealth services in the home; to the Committee on Finance.

By Mr. FRIST:

S. 2283. A bill to establish a congressional commemorative medal for organ donors and their families; to the Committee on Banking, Housing, and Urban Affairs.

By Ms. MIKULSKI (for herself, Mr. WARNER, Mr. DAYTON, Mr. KERRY, Mr. JEFFORDS, Mr. SARBANES, Ms. SNOWE, Mr. ALLEN, Mr. LEVIN, Mr. GREGG, Ms. COLLINS, Mr. JOHNSON, Mr. SUNUNU, and Mr. DORGAN):

S. 2284. A bill to extend the termination date for the exemption of returning workers from the numerical limitations for temporary workers; to the Committee on the Judiciary.

By Mr. LAUTENBERG:

S. 2285. A bill to improve the protection of witnesses, victims, and informants; to the Committee on Homeland Security and Governmental Affairs.

By Mr. OBAMA (for himself and Mr. BAYH):

S. 2286. A bill to amend part A of title IV of the Social Security Act to eliminate the separate work participation rate for 2-parent families under the temporary assistance for needy families programs; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. THOMAS (for himself, Mr. BINGAMAN, Mr. DORGAN, Mr. BURNS, Mr. ALLARD, Mr. JOHNSON, Mr. REID, Mr. MARTINEZ, Mr. INHOFE, Mr. SALAZAR, Mr. BAUCUS, Mr. CRAIG, Mr. ENZI, Mr. STEVENS, Mr. ALLEN, and Mr. ENSIGN):

S. Res. 371. A resolution designating July 22, 2006, as ''National Day of the American Cowboy''; to the Committee on the Judiciary.

By Mr. KERRY:

S. Res. 372. A resolution expressing the sense of the Senate that oil and gas companies should not be provided outer Continental Shelf royalty relief when energy prices are at historic highs; to the Committee on Energy and Natural Resources.

ADDITIONAL COSPONSORS

S. 424

At the request of Mr. BOND, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 424, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 1141

At the request of Mr. COCHRAN, the name of the Senator from Idaho (Mr.

CRAIG) was added as a cosponsor of S. 1141, a bill to authorize the Secretary of Homeland Security to regulate ammonium nitrate.

S. 1881

At the request of Mrs. FEINSTEIN, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1881, a bill to require the Secretary of the Treasury to mint coins in commemoration of the Old Mint at San Francisco otherwise known as the ''Granite Lady'', and for other purposes.

S. 1991

At the request of Mr. BURR, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S. 1991, a bill to amend title 38, United States Code, to establish a financial assistance program to facilitate the provision of supportive services for very low-income veteran families in permanent housing, and for other purposes.

S. 2178

At the request of Mr. SPECTER, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 2178, a bill to make the stealing and selling of telephone records a criminal offense.

S. 2197

At the request of Mr. DOMENICI, the names of the Senator from Delaware (Mr. CARPER), the Senator from Kentucky (Mr. BUNNING), the Senator from North Carolina (Mr. BURR) and the Senator from Iowa (Mr. GRASSLEY) were added as cosponsors of S. 2197, a bill to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories.

S. 2198

At the request of Mr. DOMENICI, the names of the Senator from Delaware (Mr. CARPER) and the Senator from Georgia (Mr. ISAKSON) were added as cosponsors of S. 2198, a bill to ensure the United States successfully competes in the 21st century global economy.

S. 2199

At the request of Mr. DOMENICI, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 2199, a bill to amend the Internal Revenue Code of 1986 to provide tax incentives to promote research and development, innovation, and continuing education.

S. 2201

At the request of Mr. OBAMA, the names of the Senator from Colorado (Mr. SALAZAR) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. 2201, a bill to amend title 49, United States Code, to modify the mediation and implementation requirements of section 40122 regarding changes in the Federal Aviation Administration personnel management system, and for other purposes.

S. 2235

At the request of Mr. SCHUMER, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 2235, a bill to posthumously award a congressional gold medal to Constance Baker Motley.

S. RES. 320

At the request of Mr. SANTORUM, his name was added as a cosponsor of S. Res. 320, a resolution calling 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.

S. RES. 359

At the request of Ms. LANDRIEU, the names of the Senator from Oklahoma (Mr. INHOFE) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. Res. 359, a resolution concerning the Government of Romania's ban on intercountry adoptions and the welfare of orphaned or abandoned children in Romania.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. STABENOW (for herself and Ms. MURKOWSKI):

S. 2278. A bill to amend the Public Health Service Act to improve the prevention, diagnosis, and treatment of heart disease, stroke, and other cardiovascular diseases in women; to the Committee on Health, Education, Labor, and Pensions.

Ms. STABENOW. Mr. President, I rise today to introduce the ''HEART for Women Act of 2006.'' I want to thank Senator LISA MURKOWSKI for joining me on this important legislation. I am also pleased that Congresswomen LOIS CAPPS and BARBARA CUBIN are introducing companion legislation in the House of Representatives.

We face an alarming situation in this country. While over the last 25 years we have made good progress in reducing the death rate for men with heart disease, stroke, and other cardiovascular diseases, the same does not hold true for women. Not only have we not lowered the cardiovascular disease mortality rate for women—the death rate has actually gone up for women during that same period.

A lot of people think of heart disease as a ''man's disease.'' But while heart disease is certainly a significant problem for men, it is an equally important problem for women.

Fact: Heart disease and stroke actually kill more women each year than men.

Fact: Heart disease, stroke, and other cardiovascular diseases are the number 1 killer in the United States and in my home State of Michigan. In Michigan, 43 percent of all deaths in women are due to cardiovascular disease.

Fact: 1 in 3 adult women has some form of cardiovascular disease.

Fact: Minority women, particularly African American, Hispanic and Native American women are at even greater risk from heart disease and stroke.

The first step in addressing any problem is acknowledging it—that's why efforts to educate women about their risk of heart disease are so important.

The good news is that we have made progress in educating women: nearly half of women can now identify heart disease as the leading cause of death in women. The bad news is that while women are now more aware of their risk of heart disease many of their doctors are not.

Astoundingly, 4 out of 5 doctors do not know that more women die of heart disease each year than men. Those numbers are alarming because doctors decide how aggressively to treat their patients based on the amount of risk they perceive for that patient.

I suspect we all know women who have been to their doctors or to emergency rooms exhibiting symptoms of a heart attack, only to be told they were suffering from ''stress'' or indigestion.

As a result, women don't get the same care that men do. Even though women make up 53 percent of all deaths from cardiovascular disease, they receive only 33 percent of coronary interventions such as angioplasties and stints.

Likewise, 61 percent of total stroke deaths are in women, but only 38 percent of the procedures to prevent stroke are performed on women.

And when women do receive treatment, it is often based on research that was solely done on men. For too many years, everyone has just assumed that treatments that are effective for men work equally well in women.

But now we know that gender really does make a difference. Diagnostic tests, prescription drugs, and medical devices may work differently in women than in men. When there is a difference, patients and their healthcare providers need and deserve to know this. And right now, all too often that kind of information simply isn't available to clinicians and researchers.

That is why Senator MURKOWSKI and I are introducing the ''HEART for Women Act'' to help to turn this problem around. This legislation takes a 3-pronged approach to reducing the heart disease death rate for women.

First, the bill would authorize grants to educate doctors on how to prevent, diagnose and treat heart disease and strokes in women. Doctors and other healthcare providers first and foremost need to know that heart disease is a major problem in women, so that they treat it accordingly.

The bill would also require that health information that is already

being reported to the federal government be gender-specific, and would require annual recommendations to Congress for improving the treatment of heart disease in women. Doctors need to know what medical treatments are safe and effective for their women patients.

Finally, the bill would also expand a current program run by the Centers for Disease Control and Prevention, CDC called WISEWOMAN, Well-Integrated Screening and Evaluation for Women Across the Nation.

The WISEWOMAN program provides free heart disease and stroke screening to low-income, uninsured women. While Michigan is fortunate to be one of the 14 States that has a WISEWOMAN program, every State should have this important program.

These are simple, cost-effective, but meaningful steps that Congress can take that will help get the death rate for women from heart disease and stroke going in the right direction—down.

Today is Valentine's Day, a day for showing our loved ones how much we love and appreciation them.

As women, we tend to be really great at taking care of everyone around us—our children, our husbands, our aging parents. Unfortunately, we're not nearly so good about taking care of ourselves.

So I hope that this Valentine's Day will also be a day to raise awareness about the risks of heart disease for women and to encourage our loved ones—our mothers, sisters, and friends—to take good care of themselves. I urge my colleagues to join me in passing this critical legislation.

Ms. MURKOWSKI. Mr. President, February is American Heart Month, and heart disease remains the Nation's leading cause of death.

Many women believe that heart disease is a man's disease and, unfortunately, do not view it as a serious health threat. Yet, in every year since 1984, cardiovascular disease claimed the lives of more women than men. In fact, cardiovascular disease death rates have declined in men since 1979, while the death rate for women during that same period has actually increased. The numbers are disturbing: cardiovascular diseases claim the lives of more than 480,000 women per year; that's nearly a death per minute among females and nearly 12 times as many lives as claimed by breast cancer. One in four females has some form of cardiovascular disease.

That is why I am pleased to join with my colleague from Michigan, Senator STABENOW, to introduce important legislation, the HEART for Women Act, or Heart disease Education, Analysis and Research, and Treatment for Women Act. This important bill improves the prevention, diagnosis and treatment of heart disease and stroke in women.

In Alaska, cardiovascular diseases are the leading cause of death, totaling nearly 800 deaths each year. Women in Alaska have higher death rates from stroke than do women nationally. Mortality among Native Alaskan women is dramatically on the rise, whereas, it is declining among Caucasian women in the Lower 48.

Despite being the number one killer, many women and their health care providers do not know that the biggest health care threat to women is heart disease. In fact, a recent survey found that 45 percent of women still don't know that heart disease is the number one killer of women.

Perhaps even more troubling is the lack of awareness among health care providers. According to American Heart Association figures, less than one in five physicians recognize that more women suffer from heart disease than men. Among primary care physicians, only 8 percent of primary care physicians—and even more astounding—only 17 percent of cardiologists recognize that more women die of heart disease than men. Additionally, studies show that women are less likely to receive aggressive treatment because heart disease often manifests itself differently in women than men.

This is why the HEART Act is so important. Our bill takes a three-pronged approach to reducing the heart disease death rate for women, through; 1. education; 2. research; and 3. screening.

First, the bill would authorize the Department of Health and Human Services to educate healthcare professionals and older women about unique aspects of care in the prevention, diagnosis and treatment of women with heart disease and stroke.

Second, the bill would require disclosure of gender-specific health information that is already being reported to the Federal Government. Many agencies already collect information based on gender, but do not disseminate or analyze the gender differences. This bill would release that information so that it could be studied, and important health trends in women could be detected.

Lastly, the bill would authorize the expansion of the Centers for Disease Control and Prevention's WISEWOMAN program, the Well-Integrated Screening and Evaluation for Women Across the Nation program. The WISEWOMAN program provides free heart disease and stroke screening to low-income uninsured women, but the program is currently limited to just 14 States.

My State of Alaska is fortunate to have two WISEWOMAN program sites. These programs screen for high blood pressure, cholesterol and glucose in Native Alaskan women and provide invaluable counseling on diet and exercise. One program in Alaska alone has successfully screened 1,437 Alaskan Native women and has provided them with a culturally appropriate intervention program that has produced lifesaving results.

Heart disease, stroke and other cardiovascular diseases cost Americans more than any other disease—an estimated $403 billion in 2006, including more than $250 billion in direct medical costs. We, as a nation, can control those costs—prevention through early detection is the most cost-effective way to combat this disease.

Today, as we celebrate Valentine's Day and see images of hearts just about everywhere, let us not forget that the heart is much more than a symbol—it is a vital organ that can't be taken for granted. Coronary disease can be effectively treated and sometimes even prevented—it does not have to be the number one cause of death in women. And, that is why I encourage my colleagues to support the HEART for Women Act.

By Mr. OBAMA (for himself, Mr. DURBIN, and Mr. MENENDEZ):

S. 2280. A bill to stop transactions which operate to promote fraud, risk, and under-development, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. OBAMA. Mr. President, today, I am introducing new legislation to address a growing problem in our country, one that is robbing thousands of Americans of their dream of homeownership, and costing the mortgage industry hundreds of millions of dollars each year.

I am talking about the problem of mortgage fraud—the practice of defrauding individuals of their rightful property, and using tricks and schemes to steal from banks and other financial institutions. Mortgage fraud comes in a variety of forms, from inflated appraisals to the use of straw buyers, but the net result is the same: financial institutions lose out to the tune of approximately $1.01 billion each year, and consumers lose their savings, their good credit, and their homes.

Although the data in this area is limited, mortgage fraud is clearly on the rise. According to the FBI, mortgage fraud cases were up 25 percent last year, and 400 percent since 2002. Further, in 2004, the mortgage industry noted 12,000 cases of suspicious activity, three times the amount reported in 2001. This is due largely to the housing boom which is driving up housing prices across the country. Nearly $2.5 trillion in mortgage loans were made during 2005, and the number is only expected to rise this year.

But mortgage fraud is about more than just dollars and statistics; it's about real people, real homes, and real lives. My hometown Chicago Tribune has featured a series of articles about mortgage fraud in Illinois, which, along with Georgia, South Carolina, Florida, Missouri, Michigan, California, Nevada, Colorado and Utah, is among the FBI's top-ten mortgage fraud 'hot spots.'

The stories highlight, for example, the plight of the good folks on May Street in Chicago, who saw a block's worth of homes go boarded up in the span of a just few years, as swindlers

racked up hundreds of thousands of dollars in bad loans, and left shells of houses behind. The Tribune stories highlighted the plight of 75-year-old Ruth Williams, who had to spend her personal funds to clear the title to her home after fraudsters secured $400,000 in loans on three buildings they didn't own. And two doors down from Ms. Williams, Corey Latimer can't sell his building or borrow against it, because a lending company hasn't released a phony mortgage that Corey didn't authorize.

Law enforcement, consumer groups and many in the mortgage industry are doing what they can to combat fraud, and I applaud their good work. Now, Congress needs to come to the table and do its part.

I, along with Senator DURBIN and Senator MENENDEZ, am introducing the STOP FRAUD Act today to address the critical problem of mortgage fraud. STOP FRAUD (Stopping Transactions which Operate to Promote Fraud, Risk and Under-Development) would provide the first Federal definition of mortgage fraud and authorize stiff criminal penalties against fraudulent actors. STOP FRAUD requires a wide range of mortgage professionals to report suspected fraudulent activity, and gives these same professionals safe harbor from liability when they report suspicious incidents. It also authorizes several grant programs to help State and local law enforcement fight fraud, provide the mortgage industry with updates on fraud trends, and further support the Departments of Treasury, Justice and Housing and Urban Development's fraud-fighting efforts.

The STOP FRAUD Act will build upon the good work of the FBI, the Treasury Department, HUD, consumer groups, many in the mortgage industry, and State and local law enforcement, giving them the tools they need to stop mortgage fraud in its tracks. The cost of this bill is well worth the benefit to American taxpayers and companies, and it has been endorsed by a range of law enforcement and consumer groups. The Illinois Attorney General's office and the Chicago Police Department have told me how valuable this bill would be to their enforcement efforts, and ACORN, the Center For Responsible Lending, the National Association of Consumer Advocates, the National Community Reinvestment Coalition, National Consumer Law Center, and U.S. PIRG said in a recent letter that this bill would ''help protect consumers from fraudulent and abusive practices in the mortgage industry.''

The STOP FRAUD Act is a tough, cost-effective, and balanced way to address the serious problem of mortgage fraud in our country. I urge my colleagues to join me in this important effort.

By Mr. FRIST:

S. 2283. A bill to establish a congressional commemorative medal for organ donors and their families; to the Committee on Banking, Housing, and Urban Affairs.

Mr. FRIST. Mr. President, each day, 74 people receive an organ transplant. And each day, another 18 patients die waiting.

While it doesn't get a lot of public attention, for every family who struggles with the pain and uncertainty of waiting for that life saving gift, the organ donation shortage is an urgent crisis.

Right now, over 97,000 people are on the waiting list. Fewer than half of them will get the transplant they need. Almost 2,000 of the patients on the list are from my home state of Tennessee.

As a heart and lung transplant surgeon, I have direct and intimate experience with this issue. I've devoted two decades of my life to giving others a second chance through transplantation.

I have sat next to the hospital bed and looked into eyes of patients and their families and seen the frustration, desperation and fear they feel as they wait and hope for the miraculous gift that can reverse a fatal diagnosis.

I've personally shared in the elation when the donation came through. I also know very well the tragedy when a patient dies before they could receive a transplant—a direct result of a large and growing shortage of organ donors.

The medical community is trying to raise public awareness. I'm proud to say that four Tennessee hospitals are participating in the nationwide, ''Organ Donation Breakthrough Collaborative Gift of Life Initiative.''

Led by the Department of Health and Human Services, this is a multiphase national collaboration designed to increase access to transplantable organs and promote organ donation among the public.

In Tennessee, we have two active organ procurement organizations, the Tennessee Donor Services and the Mid South Transplant Foundation. There are also 10 transplant centers throughout the state.

As a transplant surgeon and a Tennessean, I am proud of these path breaking efforts. But, the sobering fact remains, we still have far too few donors to meet the urgent demand.

I understand that it's a difficult and emotional decision to, literally, give part of oneself away. Many people, understandably, feel squeamish about choosing donation. But by giving the gift of life, miracles can come from tragedy, and a whole family can be saved.

I bring all of this up because there is something we can do here in the Senate.

Today, I am proposing that we create a congressional commemorative medal to honor organ donors and their families under the Gift of Life Congressional Medal Act of 2006.

At no cost to the Government, we can recognize the extraordinary generosity of a donor's gift and send a message to the broader public about how vitally important organ donation is to thousands of people desperately waiting for that precious gift.

Congressman PETE STARK of California has introduced companion legislation in the House. He shares my belief that organ donation is one of the most precious gifts an individual can give to a fellow human being.

I urge my colleagues to join me in this simple and sincere gesture of support. By honoring our fellow citizens in this way, we, too, can help give the gift of life.

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

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

S. 2283

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 ''Gift of Life Congressional Medal Act of 2006''.

SEC. 2. CONGRESSIONAL MEDAL.

The Secretary of the Treasury shall design and strike a bronze medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary of the Treasury, to commemorate organ donors and their families.

SEC. 3. ELIGIBILITY REQUIREMENTS.

(a) IN GENERAL.—Any organ donor, or the family or family member of any organ donor, shall be eligible for a medal described in section 2.

(b) DOCUMENTATION.—The Secretary of Health and Human Services shall direct the entity holding the Organ Procurement and Transplantation Network (hereafter in this Act referred to as ''OPTN'') to contract to—

(1) establish an application procedure requiring the relevant organ procurement organization, as described in section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1)), through which an individual or their family made an organ donation, to submit to the OPTN contractor documentation supporting the eligibility of that individual or their family to receive a medal described in section 2; and

(2) determine, through the documentation provided, and, if necessary, independent investigation, whether the individual or family is eligible to receive a medal described in section 2.

SEC. 4. PRESENTATION.

(a) DELIVERY TO THE SECRETARY OF HEALTH AND HUMAN SERVICES.—The Secretary of the Treasury shall deliver medals struck pursuant to this Act to the Secretary of Health and Human Services.

(b) DELIVERY TO ELIGIBLE RECIPIENTS.—The Secretary of Health and Human Services shall direct the OPTN contractor to arrange for the presentation to the relevant organ procurement organization all medals struck pursuant to this Act to individuals or families that, in accordance with section 3, the OPTN contractor has determined to be eligible to receive medals under this Act.

(c) LIMITATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), only 1 medal may be presented to a family under subsection (b). Such medal shall be presented to the donating family member, or in the case of a deceased donor, the family member who signed the consent form authorizing, or who otherwise authorized, the donation of the organ involved.

(2) EXCEPTION.—In the case of a family in which more than 1 member is an organ

donor, the OPTN contractor may present an additional medal to each such organ donor or their family.

SEC. 5. DUPLICATE MEDALS.

(a) IN GENERAL.—The Secretary of Health and Human Services or the OPTN contractor may provide duplicates of the medal described in section 2 to any recipient of a medal under section 4(b), under such regulations as the Secretary of Health and Human Services may issue.

(b) LIMITATION.—The price of a duplicate medal shall be sufficient to cover the cost of such duplicates.

SEC. 6. NATIONAL MEDALS.

The medals struck pursuant to this Act are national medals for purposes of section 5111 of title 31, United States Code.

SEC. 7. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

No provision of law governing procurement or public contracts shall be applicable to the procurement of goods or services necessary for carrying out the provisions of this Act.

SEC. 8. SOLICITATION OF DONATIONS.

(a) IN GENERAL.—The Secretary of the Treasury may enter into an agreement with the OPTN contractor to collect funds to offset expenditures relating to the issuance of medals authorized under this Act.

(b) PAYMENT OF FUNDS.—

(1) IN GENERAL.—Except as provided in paragraph (2), all funds received by the Organ Procurement and Transplantation Network under subsection (a) shall be promptly paid by the Organ Procurement and Transplantation Network to the Secretary of the Treasury.

(2) LIMITATION.—Not more than 5 percent of any funds received under subsection (a) shall be used to pay administrative costs incurred by the OPTN contractor as a result of an agreement established under this section.

(c) NUMISMATIC PUBLIC ENTERPRISE FUND.—Notwithstanding any other provision of law—

(1) all amounts received by the Secretary of the Treasury under subsection (b)(1) shall be deposited in the Numismatic Public Enterprise Fund, as described in section 5134 of title 31, United States Code; and

(2) the Secretary of the Treasury shall charge such fund with all expenditures relating to the issuance of medals authorized under this Act.

(d) START-UP COSTS.—A 1-time amount not to exceed $55,000 shall be provided to the OPTN contractor to cover initial start-up costs. The amount will be paid back in full within 3 years of the date of the enactment of this Act from funds received under subsection (a).

(e) NO NET COST TO THE GOVERNMENT.—The Secretary of the Treasury shall take all actions necessary to ensure that the issuance of medals authorized under section 2 results in no net cost to the Government.

SEC. 9. DEFINITIONS.

In this Act:

(1) ORGAN.—The term ''organ'' means the human kidney, liver, heart, lung, pancreas, and any other human organ (other than corneas and eyes) specified by regulation of the Secretary of Health and Human Services or the OPTN contractor.

(2) ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK.—The term ''Organ Procurement and Transplantation Network'' means the Organ Procurement and Transplantation Network established under section 372 of the Public Health Service Act (42 U.S.C. 274).

SEC. 10. SUNSET PROVISION.

This Act shall be effective during the 5-year period beginning on the date of the enactment of this Act.

By Mr. OBAMA (for himself and Mr. BAYH):

S. 2286. A bill to amend part A of title IV of the Social Security Act to eliminate the separate work participation rate for 2–parent families under the temporary assistance for needy families programs; to the Committee on Finance.

Mr. OBAMA. Mr. President, I rise today to speak about the ''Equality for Two-Parent Families Act of 2006'' that I am introducing with Senator BAYH. When Congress reauthorized the Temporary Assistance for Needy Families program as part of the Spending Reconciliation bill two weeks ago, we failed to eliminate a pernicious disincentive to marriage that was contained in that bill. The Equality for Two-Parent Families Act will correct that unfortunate error.

Republicans and Democrats often have different ideas about how best to promote self sufficiency and economic mobility for low-income families. But one thing on which we all can agree is that children are better off when they grow up with two responsible parents.

The evidence shows that, on average, children in two-parent families do better in school and are more likely to lead successful, independent lives. That is why recent TANF legislation, including the bipartisan PRIDE Act in the Senate and H.R. 240 in the House, and Administration proposals have recognized that the separate two-parent work participation standard, which introduces an anti-marriage bias in TANF, should be eliminated.

Unfortunately, the recent TANF reauthorization failed to reflect this long-standing consensus. Instead, the new law compels States to meet an unequal work participation standard with their own State-funded programs. Whereas States must ensure that 50 percent of their single parents satisfy the work requirements, they will be penalized if fewer than 90 percent of their two-parent families meet what are even greater work requirements.

As a result, many States, including Illinois which until now has successfully served two-parent families in its state program, may now face an unfortunate choice: stop serving two-parent families or face a penalty. I even heard one welfare official joke that States may be better off paying couples to split up in order to avoid possible penalties. What kind of incentive is that?

Requiring States to treat two-parent families differently undermines efforts on both the state and federal level to promote and strengthen two-parent families. It is especially ironic that the policy is part of a bill that includes funding for marriage promotion and fatherhood programs.

The remedy for this contradiction is clear; we must eliminate the separate two-parent work participation standard. Senator BAYH and I have introduced the ''Equality for Two-Parent Families Act of 2006'' to eliminate this standard and rectify the inequity in current TANF policy. Our bill does not change two-parent work requirements or interfere with State efforts to promote employment and reduce caseloads. Instead, our bill reinforces State efforts to support two-parent families in the ways that they know best.

I urge my colleagues to support this legislation and join us in promoting stronger families. Thank you for your attention to this important matter.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 371—DESIGNATING JULY 22, 2006 AS ''NATIONAL DAY OF THE AMERICAN COWBOY''

Mr. THOMAS (for himself, Mr. BINGAMAN, Mr. DORGAN, Mr. BURNS, Mr. ALLARD, Mr. JOHNSON, Mr. REID, Mr. MARTINEZ, Mr. INHOFE, Mr. SALAZAR, Mr. BAUCUS, Mr. CRAIG, Mr. ENZI, Mr. STEVENS, Mr. ALLEN, and Mr. ENSIGN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 371

Whereas pioneering men and women, recognized as cowboys, helped establish the American West;

Whereas that cowboy spirit continues to infuse this country with its solid character, sound family values, and good common sense;

Whereas the cowboy embodies honesty, integrity, courage, compassion, respect, a strong work ethic, and patriotism;

Whereas the cowboy loves, lives off of, and depends on the land and its creatures, and is an excellent steward, protecting and enhancing the environment;

Whereas the cowboy continues to play a significant role in the culture and economy of the United States;

Whereas approximately 800,000 ranchers are conducting business in all 50 States and are contributing to the economic well being of nearly every county in the Nation;

Whereas rodeo is the sixth most-watched sport in the United States;

Whereas membership in rodeo and other organizations encompassing the livelihood of a cowboy transcends race and sex and spans every generation;

Whereas the cowboy is an American icon;

Whereas to recognize the American cowboy is to acknowledge the ongoing commitment of the United States to an esteemed and enduring code of conduct; and

Whereas the ongoing contributions made by cowboys to their communities should be recognized and encouraged: Now, therefore, be it

Resolved, That the Senate—

(1) designates July 22, 2006, as ''National Day of the American Cowboy''; and

(2) encourages the people of the United States to observe the day with appropriate ceremonies and activities.

Mr. THOMAS. Mr. President, I rise today to submit a resolution designating July 22, 2006, as ''National Day of the American Cowboy.''

The cowboy has influenced American culture in literature, music, art, fashion, theater, and sport. What's more, these folks contribute substantially to the economic well-being of our country. In 2005 alone, United States cash receipts from the sale of cattle and calves exceeded $48 billion, accounting

for nearly 40 percent of all livestock sales and nearly half of all farm receipts. Clearly, the cowboy is not merely a romantic figure, but an integral part of our Nation's economy.

As many Americans know, last year's celebration was a great success. The first observance of the National Day of the American Cowboy was commemorated across the country with various festivities and events. In Wyoming, the day fell within Cheyenne Frontier Days, one of the world's largest outdoor rodeos and our State's premier cowboy competition.

Cheyenne Frontier Days can be traced as far back as 1896 when a group of cowboys from the Two Bar Ranch put on an impromptu cowboy contest in Cheyenne. Frontier Days has come a long way since that time, incorporating Indian war dances, artillery drills, a full carnival, rowdy street dances, country and western entertainers, and renown musical performances. However, Frontier Days stays true to its roots, showcasing cowboys and cowgirls in sports such as saddle bronc riding, wild horse racing, bull dogging, steer wrestling, calf roping, and bareback riding, events which truly demonstrate their cowboy skills.

While in Wyoming for the 2005 Cheyenne Frontier Days celebration, I had the distinct honor of delivering a statement from President Bush supporting the National Day of the American Cowboy. His statement outlined the importance of the cowboy, ''as a symbol of the grand history of the American West,'' and recognized the Cowboy's love of land and country as character traits which should be revered by all Americans. I could not agree more.

Although the National Day of the American Cowboy came and went in 2005, the celebration has continued throughout the United States and across the world. For example, Arizona's Governor recently issued an official proclamation declaring July 22, 2006 as the Second Annual National Day of the Cowboy in Arizona. T.J. Casey, a country musician and cowboy poet from Montana, is helping to promote the National Day of the Cowboy by carrying his flag on tour with him, and Pro Rodeo Hall of Fame Executive Director Larry McCormack and his staff are planning a National Day of the Cowboy flag presentation during their upcoming annual induction ceremony on July 15, 2006.

Support for the National Day of the American Cowboy is not confined to our Nation's borders. The Desert Cowboys, a group of men and women in the United States Military and Department of Defense civilians who have been serving our country in Iraq since December of 2005, planted their National Day of the Cowboy flag prominently in their camp shortly after their arrival. Some of these folks are in Iraq for their, third, fourth and even fifth rotations. This touching display of support by those completing dangerous missions so far from home certainly tugs at my heart strings. It also serves to illustrate how important this day is to the American people and those who support American ideals.

I call on the Senate to once again recognize our country's cowboys and cowgirls and their significant contributions through designation of the second annual National Day of the American Cowboy.

SENATE RESOLUTION 372—EXPRESSING THE SENSE OF THE SENATE THAT OIL AND GAS COMPANIES SHOULD NOT BE PROVIDED OUTER CONTINENTAL SHELF ROYALTY RELIEF WHEN ENERGY PRICES ARE AT HISTORIC HIGHS

Mr. KERRY submitted the following resolution; which was referred to the Committee on Energy and Natural Resources:

S. RES. 372

Whereas the Federal Government is on the verge of one of the biggest oil and gas giveaways in American history, costing American taxpayers at least $7,000,000,000 in lost revenue over the next 5 years;

Whereas according to the budget plan of the Department of the Interior, it is projected that the Government will allow companies to pump approximately $65,000,000,000 worth of oil and natural gas from Federal territory over the next 5 years without paying any royalties to the Government;

Whereas the Minerals Management Service of the Department of the Interior, which oversees the leases and collects the royalties, estimates that the amount of royalty-free oil will quadruple by 2011, to 112,000,000 barrels;

Whereas the volume of royalty-free natural gas is expected to climb by almost half, to about 1,200,000,000,000 cubic feet by 2011;

Whereas approximately 30 percent of all oil and over 20 percent of all gas produced in the United States comes from the outer Continental Shelf;

Whereas it was the intent of Congress to provide royalty relief to promote exploration and production in deep waters of the outer Continental Shelf only at a time when oil and gas prices were comparatively low;

Whereas the Department of the Interior has always insisted that companies should not be entitled to royalty relief if market prices for oil and gas climbed above certain trigger points;

Whereas the 12 United States oil companies in the Standard & Poor's 500 that have reported fourth-quarter results have seen an average 48 percent rise in earnings and are expected to see full-year earnings of $96,500,000,000;

Whereas the profit growth for oil companies is not nearing an end, with energy analysts expecting 15 percent growth in earnings at those companies in 2006;

Whereas, at the same time oil and gas companies are posting record profits, families in the United States are struggling with record energy costs including a 48 percent increase in the cost of natural gas for this heating season and a projected 7.3 percent increase in gasoline price from the previous year;

Whereas the Energy Information Administration projects that these prices will hold steady or increase over the course of the next 2 years; and

Whereas royalty revenues benefit 38 States, 41 Indian tribes, and fund the National Historic Preservation Fund, and the Land and Water Conservation Fund: Now, therefore, be it

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

(1) the Minerals Management Service should suspend all future royalty relief until the Secretary can ensure that the citizens of the United States receive a fair return from oil and gas resources from the outer Continental Shelf; and

(2) Congress must take steps to ensure that the oil and gas industry does not receive a windfall and is not unjustly enriched at the expense of the citizens of the United States.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2767. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table.

SA 2768. Mr. KERRY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2769. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2770. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2771. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2772. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2773. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2774. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2775. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2776. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2777. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2778. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2779. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2780. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2781. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2782. Mr. COBURN submitted an amendment intended to be proposed by him

to the bill S. 852, supra; which was ordered to lie on the table.

SA 2783. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2784. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2785. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2786. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

SA 2787. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2788. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2789. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2790. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2791. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2792. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2793. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2794. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2795. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2796. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2797. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2798. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2799. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2800. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2801. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2802. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2803. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2804. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2805. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2806. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2807. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2808. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2809. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2810. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2811. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2812. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2813. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2814. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2815. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2816. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2817. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2818. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2819. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2820. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2821. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2822. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2823. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2824. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2825. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2826. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2827. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2828. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2829. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2830. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2831. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2832. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2833. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2834. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2835. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2836. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2837. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2838. Mr. LAUTENBERG (for himself and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2839. Mr. LAUTENBERG (for himself and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2840. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2841. Mr. BURNS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2842. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2843. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2844. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2845. Mr. BURNS (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2846. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2847. Mr. ISAKSON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2848. Mr. THUNE (for himself, Mr. COLEMAN, and Mr. GRAHAM) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2849. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2850. Mr. KYL (for himself and Mr. CHAMBLISS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2851. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2852. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2853. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2854. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2855. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2856. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2857. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2858. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2859. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2860. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2861. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2862. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2863. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2864. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2865. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2866. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2867. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2868. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2869. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2870. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2871. Mr. LAUTENBERG submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr.

LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2872. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2873. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2874. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2875. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2876. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2877. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S . 852, supra; which was ordered to lie on the table.

SA 2878. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S . 852, supra; which was ordered to lie on the table.

SA 2879. Mr. REID (for Mr. BIDEN) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2880. Mr. MARTINEZ (for himself, Mr. ALLEN, Mr. ROBERTS, and Mr. BURR) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S . 852, supra; which was ordered to lie on the table.

SA 2881. Mr. BURNS (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2882. Mr. SPECTER (for himself, Mr. LIEBERMAN, and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2883. Mr. SPECTER (for himself, Mr. LIEBERMAN, and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2884. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2885. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2886. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2887. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, supra; which was ordered to lie on the table.

SA 2888. Mr. ISAKSON submitted an amendment intended to be proposed by him to the bill S. 852, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2767. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 98, strike lines 6 through 17, and insert the following:

(4) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE MINING AND PROCESSING COMMUNITIES.—

(A) IN GENERAL.—Because of the nature of asbestos exposure related to the vermiculite mining operations in Libby, Montana, and the vermiculite processing operations associated with such mining operations, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked—

(i) at the vermiculite mining operations in Libby, Montana, or lived or worked within a 20-mile radius of such mining operations, for at least 12 months before December 31, 2004; and

(ii) at sites processing vermiculite mined from mining operations in Libby, Montana; or

(iii) or lived within a 20 mile radius of a processing site described in clause (ii), for at least 12 months before December 31, 2004.

(B) REQUIRED DOCUMENTATION.—Claimants under this paragraph shall provide such supporting documentation as the Administrator shall require.

On page 118, strike line 6 and all that follows through page 120, line 4, and insert the following:

(8) VERMICULITE MINING AND PROCESSING CLAIMANTS.—

(A) IN GENERAL.—A vermiculite mining and processing claimant, as described under subsection (c)(4), may elect to have the claimant's claim designated as an exceptional medical claim and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by such a claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in vermiculite mining and processing operations, including the nature of the pleural disease related to asbestos exposure from such sites.

(B) CLAIMS.—For all claims for Levels II through IV filed by vermiculite mining and processing claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to such claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award determined in accordance with section 114, such claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by vermiculite mining and processing claimants, such claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

On page 366, strike lines 2 through 8, and insert the following:

(a) VERMICULITE MINING AND PROCESSING CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of vermiculite mining and processing communities, as described under section 121(c)(4). The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

SA 2768. Mr. KERRY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 123, between lines 2 and 3, insert the following:

SEC. 122. WAIVER FOR VETERANS.

Notwithstanding any other provision of this Act, because of the unique, short-term nature of the asbestos exposure related to service in the United States military, the Administrator shall waive the exposure requirements of this subtitle for individuals who are veterans of any service of the United States military. Claimants under this section shall provide such supporting documentation as the Administrator shall require.

SA 2769. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, strike line 13 and all that follows through page 111, line 2.

On page 116, strike lines 1 through 23, and insert the following:

(e) INSTITUTE OF MEDICINE STUDY.—

(1) STUDY ON OTHER CANCERS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data

safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on causation, which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in the report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall be deemed to be insufficient to show causation.

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If the report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor to other cancers not covered by the Fund.

(ii) RECOMMENDATIONS OF ADDITIONAL TIERS.—If the report required under subparagraph (A) determines that asbestos exposure is a substantial contributing factor to other cancers not covered by the Fund, in accordance with the requirements of clause (i), the Administrator may recommend that Congress create additional tiers, appropriate criteria, and claims values.

SA 2770. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 72, line 14, strike ''(f)(8)'' and insert ''(g)(8)''.

On page 111, strike line 3 and all that follows through page 112, line 14.

On page 115, line 23, strike ''(g)'' and insert ''(h)''.

On page 116, between lines 23 and 24, insert the following:

(f) INSTITUTE OF MEDICINE STUDY ON LUNG CANCER.—

(1) STUDY ON LUNG CANCER.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and lung cancer where there is evidence of bilateral pleural plaques or bilateral pleural thickening or bilateral pleural calcification, but no asbestosis.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on causation, which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in the report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall be deemed to be insufficient to show causation.

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If the report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor to lung cancer not covered by the Fund.

(ii) RECOMMENDATIONS OF ADDITIONAL TIERS.—If the report required under subparagraph (A) determines that asbestos exposure is a substantial contributing factor to lung cancer not covered by the Fund, in accordance with the requirements of clause (i), the Administrator may recommend that Congress create additional tiers, appropriate criteria, and claims values.

On page 116, line 24, strike ''(f)'' and insert ''(g)''.

On page 118, line 7, strike ''(g)'' and insert ''(h)''.

On page 125, line 23, strike ''(h)'' and insert ''(i)''.

SA 2771. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, strike line 13 and all that follows through page 112, line 14.

On page 116, strike lines 1 through 23, and insert the following:

(e) INSTITUTE OF MEDICINE STUDIES.—

(1) STUDY ON OTHER CANCERS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers.

(2) STUDY ON LUNG CANCER.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and lung cancer where there is evidence of bilateral pleural plaques or bilateral pleural thickening or bilateral pleural calcification, but no asbestosis.

(3) STUDY CRITERIA.—In conducting any study required under paragraph (1) or (2), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(4) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on causation for each study described under paragraph (1) or (2), each such report shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in a report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (3) shall be deemed to be insufficient to show causation.

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If a report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (3), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor to cancers not covered by the Fund.

(ii) RECOMMENDATIONS OF ADDITIONAL TIERS.—If the report required under subparagraph (A) determines that asbestos exposure is a substantial contributing factor to cancers not covered by the Fund, in accordance with the requirements of clause (i), the Administrator may recommend that Congress create additional tiers, appropriate criteria, and claims values.

SA 2772. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 126, between lines 6 and 7, insert the following:

(i) GUIDELINES FOR CT SCANS.—

(1) IN GENERAL.—Not later than _____, 2006, the Administrator shall commission the American College of Radiology to develop standard guidelines and a methodology for the use of CT

scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification under the Fund.

(2) LIMITATION ON USE OF CT SCANS.—No CT scans may be used for diagnostic purposes under the Fund unless the standard guidelines and methodology developed by the American College of Radiology under paragraph (1) are followed.

SA 2773. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 105, line 14, strike ''or'' and insert ''and''.

SA 2774. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 106, line 8, strike all after ''pathology'' through line 10 and insert ''with a College of American Pathologists National Institute for Occupational Safety and Health level of 3 or 4;''.

On page 106, line 14, strike all after ''percent'' through ''spirometry'' on line 18.

SA 2775. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 107, line 13, strike all beginning with the comma through ''greater'' on line 15.

SA 2776. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 108, line 13, strike all beginning with the comma through ''greater'' on line 15.

On page 108, line 18, insert ''or'' after the semicolon.

On page 108, strike lines 19 through 21.

On page 108, line 22, strike ''(iii)'' and insert ''(ii)''.

SA 2777. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, line 13, strike all through page 111, line 2.

SA 2778. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 111, line 3, strike all through page 112, line 14.

SA 2779. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, strike line 13 and all that follows through page 112, line 14.

SA 2780. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 92, strike lines 1 through 6.

On page 108, line 18, insert ''or'' after the semicolon.

On page 108, strike lines 19 through 21.

On page 108, strike ''(iii)'' and insert ''(ii)''.

SA 2781. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 113, line 16, insert ''or'' after the semicolon.

On page 113, line 19, insert ''and'' after the semicolon.

On page 113, line 20, strike all through page 114, line 2.

On page 120, strike lines 10 through 11 and insert the following:

(D) X-RAY.—A claimant may submit an x-ray.

SA 2782. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 113, line 16, insert ''or'' after the semicolon.

On page 113, lines 19 and 20, strike ''; or'' and insert ''; and''.

On page 113, strike line 21 and all that follows through page 114, line 2.

On page 116, strike line 24 and all that follows through page 118, line 6, and insert the following:

(f) INSTITUTE OF MEDICINE STUDY ON CT SCANS.—

(1) STUDY ON THE USE OF CT SCANS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health on the use of CT scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on the use of CT scans, such report shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in a report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall—

(i) be deemed to be insufficient to show that it is appropriate to use CT scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification; and

(ii) not be used for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If a report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether a CT scan is an appropriate test to use for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

(ii) DETERMINATION AS AN APPROPRIATE TEST.—If a CT scan is determined to be an appropriate test, the Administrator may acknowledge CT scans as appropriate for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

On page 120, strike lines 10 through 11, and insert the following:

(D) X-RAY.—A claimant may submit an x-ray.

SA 2783. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 111, strike lines 12 through 14 and insert a semicolon.

On page 111, line 17, strike ''and''.

On page 111, line 24, strike the period and insert ''; and''.

On page 111, add after line 24 the following:

(v) evidence of TLC less than 80 percent, and FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent.

On page 114, line 2, strike ''and''.

On page 114, line 11, strike the period and insert ''; and''.

On page 114, between lines 11 and 12 insert the following:

(iv) evidence of TLC less than 80 percent, and FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent.

SA 2784. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 116, strike line 1 and all that follows through page 118, line 6, and insert the following:

(e) INSTITUTE OF MEDICINE STUDY.—

(1) STUDY ON OTHER CANCERS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health to determine whether there is a causal link between asbestos exposure and other cancers, including colorectal, laryngeal, esophageal, pharyngeal, and stomach cancers, except for mesothelioma and lung cancers.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on causation, which shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—Any finding of the Institute of Medicine contained in the report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall be deemed to be insufficient to show causation.

(ii) AFFECT ON MALIGNANT LEVEL VI .—If the report required under subparagraph (A) is not based on a study conducted in accordance with the requirements described in paragraph (2), subsection (d)(6) shall cease to have force or effect for any purpose under this Act.

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If the report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether asbestos exposure is a substantial contributing factor under subsection (d)(6)(B).

(ii) AFFECT ON MALIGNANT LEVEL VI.—If the report required under subparagraph (A) determines that asbestos exposure is not a substantial contributing factor under subsection (d)(6), such subsection shall cease to have force or effect for any purpose under this Act.

(f) INSTITUTE OF MEDICINE STUDY ON CT SCANS.—

(1) STUDY ON THE USE OF CT SCANS.—Not later than _____, 2006, the Institute of Medicine of the National Academy of Sciences shall complete a study contracted with the National Institutes of Health on the use of CT scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification.

(2) STUDY CRITERIA.—In conducting the study required under paragraph (1), the Institute of Medicine—

(A) shall—

(i) base any evaluation completed during the course of the study only on multicentered, double masked, placebo controlled, randomized clinical trials with explicit data safety and monitoring boards incorporated into the data acquisition process of any such evaluation;

(ii) if the clinical trials described in clause (i) are not available, base any evaluation completed during the course of the study only on single centered, masked, nonrandomized clinical trials; or

(iii) if the clinical trials described in clauses (i) or (ii) are not available, employ meta–analysis of all available studies;

(B) may not consider any studies that did not take out confounding variables; and

(C) shall reference any other study used to reach the conclusions reported by the Institute.

(3) REPORT.—

(A) IN GENERAL.—The Institute of Medicine shall issue a report on its findings on the use of CT scans, such report shall be transmitted to Congress, the Administrator, the Advisory Committee on Asbestos Disease Compensation or the Medical Advisory Committee, and the Physicians Panels.

(B) EFFECT OF REPORT IF STUDY NOT BASED ON APPROPRIATE CRITERIA.—Any finding of the Institute of Medicine contained in a report required under subparagraph (A) that is not based on a study conducted in accordance with the requirements described in paragraph (2) shall—

(i) be deemed to be insufficient to show that it is appropriate to use CT scans as a diagnostic tool for asbestosis, bilateral pleural plaques, bilateral pleural thickening, or bilateral pleural calcification; and

(ii) not be used for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

(C) EFFECT OF REPORT IF STUDY IS BASED ON APPROPRIATE CRITERIA.—

(i) IN GENERAL.—If a report required under subparagraph (A) is based on a study conducted in accordance with the requirements described in paragraph (2), such report shall be binding on the Administrator and Physicians Panels for purposes of determining whether a CT scan is an appropriate test to use for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

(ii) DETERMINATION AS AN APPROPRIATE TEST.—If a CT scan is determined to be an appropriate test, the Administrator may acknowledge CT scans as appropriate for diagnostic purposes under—

(I) paragraphs (7) or (8) of subsection (d); or

(II) subsection (g).

SA 2785. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 91, line 6, strike ''⅙'' and insert ''¼''.

On page 106, line 4, strike ''⅙'' and insert ''¼''.

On page 112, line 24, strike ''⅙'' and insert ''¼''.

SA 2786. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 87, after line 25, add the following:

(5) Any B-reader who has received compensation before the date of enactment of this Act for assigning an ILO grade level to an x-ray, where the amount of compensation depended on the assigned ILO grade level, is disqualified from inclusion on the Administrator's list.

SA 2787. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 181, between lines 21 and 22, insert the following:

(4) LIMITATION ON PAYMENTS BY DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Under expedited procedures established by the Administrator, any defendant participant may apply for a limitation on its annual payment obligation to the Fund by showing that it qualifies under subparagraph (C). The Administrator shall promptly grant that application if the requirements under subparagraph (C) are satisfied.

(B) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (A) shall have the payment required under subsection (i)(1)(A)(iv) stayed until the Administrator has made a determination with respect to the application of that defendant participant.

(C) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if that defendant participant—

(i) is included in Tiers II, III, IV, V, or VI under section 202; and

(ii) has prior asbestos expenditures less than $200,000,000 and has revenues as determined under section 203 that are less than $10,000,000,000.

(D) LIMITATION.—

(i) IN GENERAL.—A defendant participant that qualifies for a limitation under this paragraph may apply for only 1 of the limits under subclause (I), (II), or (III) of clause (ii). A defendant participant may not change its application once the application has been approved by the Administrator.

(ii) APPLICATION FOR 1 LIMITATION.—Subject to clause (i), a defendant participant may apply for a limit of an amount equal to—

(I) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant;

(II) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant, excluding—

(aa) the amount of any payments by insurance carriers for the benefit of that defendant participant or on behalf of that defendant participant; and

(bb) any reimbursements of the amounts actually paid by that defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(III) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which that defendant participant belongs.

(E) JUDICIAL REVIEW.—A defendant participant is entitled to judicial review under section 303 of a denial of an application under this paragraph. During the pendency of that review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(F) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application under this paragraph is approved by the Administrator, shall not be exempt from the guaranteed payment surcharge established under subsection (l), unless otherwise provided in this Act.

(G) MINIMUM PAYMENT.—Notwithstanding any other provision of this paragraph, a defendant participant that is granted a limitation by the Administrator shall pay not less than 5 percent of the amount the participant is scheduled to pay under section 202.

On page 182, line 15, strike ''(5)'' and insert ''(6)''.

On page 184, line 9, strike ''(6)'' and insert ''(7)''.

SA 2788. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after ''**SECTION 1. SHORT TITLE;**'' in the bill and insert the following: This Act may be cited as the ''Asbestos and Silica Claims Priorities Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Asbestos is a mineral that was widely used before the mid-1970s for insulation, fireproofing, and other purposes.

(2) Many American workers were exposed to asbestos, especially during the Second World War.

(3) Long-term exposure to asbestos has been associated with mesothelioma and lung cancer, as well as with such non-malignant conditions as asbestosis, pleural plaques, and diffuse pleural thickening.

(4) Although the use of asbestos has dramatically declined since 1980 and workplace exposures have been regulated since 1971 by the Occupational Safety and Health Administration, the diseases caused by asbestos often have long latency periods and past exposures will continue to result in significant claims well into the future.

(5) Asbestos related claims, driven largely by unimpaired claimants, have flooded our courts such that the United States Supreme Court has characterized the situation as ''an elephantine mass'' that ''calls for national legislation'' (Ortiz v. Fibreboard Corporation, 119 S. Ct. 2295, 2302 (1999).

(6) The American Bar Association supports enactment of Federal legislation that would allow persons alleging non-malignant asbestos-related disease claims to file a cause of action in Federal or State court only if those persons meet the medical criteria in the ''ABA Standard for Non-Malignant Asbestos-Related Disease Claims'' and toll all applicable statutes of limitations until such time as the medical criteria in such standard are met.

(7) Reports indicate that up to 90 percent of asbestos claims are filed by individuals who allege that they have been exposed to asbestos, but who suffer no demonstrable asbestos-related impairment. Lawyer-sponsored x-ray screenings of workers at occupational locations are used to amass large numbers of claimants, the vast majority of whom are unimpaired.

(8) The costs of compensating unimpaired claimants and litigating their claims jeopardizes the ability of defendants to compensate people with cancer and other serious diseases, threatens the savings, retirement benefits, and jobs of current and retired employees, and adversely affects the communities in which the defendants operate.

(9) More than 73 companies have declared bankruptcy due to the burden of asbestos litigation. The rate of asbestos-driven bankruptcies is accelerating. Between 2000 and 2004, there were more asbestos-related bankruptcy filings than in either of the prior 2 decades.

(10) Bankruptcies have led plaintiffs and their lawyers to expand their search for solvent peripheral defendants. The number of asbestos defendants now includes over 8,500 companies, affecting many small and medium size companies and industries that span 85 percent of the United States economy.

(11) Efforts to address asbestos litigation may augment silica-related filings.

(12) Silica is a naturally occurring mineral and is the second most common constituent of the earth's crust. Crystalline silica in the form of quartz is present in sand, gravel, soil, and rocks.

(13) Silica-related illness, including silicosis can develop from the inhalation of respirable silica dust. Silicosis was widely recognized as an occupational disease many years ago.

(14) Silica claims, like asbestos claims, often involve individuals with no demonstrable impairment. Claimants frequently are identified through the use of interstate, for-profit, screening companies.

(15) Silica screening processes have been found subject to substantial abuse and potential fraud in Federal silica litigation (In re Silica Prods. Liab. Litig. (MDL No. 1553), 398 F. Supp. 2d 563 (S.D. Tex. 2005)) and it therefore is necessary to address silica legislation to preempt an asbestos-like litigation crisis.

(16) Concerns about statutes of limitations may prompt unimpaired asbestos and silica claimants to bring lawsuits prematurely to protect against losing their ability to assert a claim in the future should they develop an impairing condition.

(17) Sound public policy requires that the claims of persons with no present physical impairment from asbestos or silica exposure, be deferred to give priority to physically impaired claimants, and to safeguard the jobs, benefits, and savings of workers in affected companies.

(18) Claimant consolidations, joinders, and similar procedures used by some courts to deal with the mass of asbestos and silica cases can—

(A) undermine the appropriate functioning of the court system;

(B) deny due process to plaintiffs and defendants; and

(C) further encourage the filing of thousands of cases by exposed persons who are not sick and likely will never develop an impairing condition caused by exposure to asbestos or silica.

(19) Several states have enacted legislation to prioritize asbestos and silica claims that serve as a model for national reform including Texas, Ohio, Florida, and Georgia.

(20) Asbestos litigation, if left unchecked by reasonable congressional intervention, will—

(A) continue to inhibit the national economy and run counter to plans to stimulate economic growth and the creation of jobs;

(B) threaten the savings, retirement benefits, and employment of defendant's current and retired employees;

(C) affect adversely the communities in which these defendants operate; and

(D) impair interstate commerce and national initiatives.

(21) The public interest and the interest of interstate commerce requires deferring the claims of exposed persons who are not sick in order to—

(A) preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries; and

(B) safeguard the jobs, benefits, and savings of American workers and the well-being of the national economy.

(b) PURPOSES.—The purposes of this Act are to—

(1) give priority to current claimants who can demonstrate an asbestos-related or silica-related impairment based on reasonable, objective medical criteria;

(2) toll the running of statutes of limitations for persons who have been exposed to asbestos or to silica, but who have no present asbestos-related or silica-related impairment; and

(3) enhance the ability of the courts to supervise and control asbestos and silica litigation.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.—The term ''AMA Guides to the Evaluation of Permanent Impairment'' means the most current version of the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required by this Act.

(2) ASBESTOS.—The term '''asbestos''' means—

(A) chrysotile;

(B) amosite;

(C) crocidolite

(D) tremolite asbestos;

(E) anthophyllite asbestos;

(F) actinolite asbestos;

(G) winchite;

(H) richterite;

(I) asbestiform amphibole minerals; and

(J) any of the minerals described in subparagraphs (A) through (I) that have been chemically treated or altered, including all minerals defined as asbestos under section 1910 of title 29, Code of Federal Regulations in effect at the time an asbestos claim is filed.

(3) ASBESTOS CLAIM.—The term ''asbestos claim''—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or related to the alleged health effects associated with the inhalation or ingestion of asbestos, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to a workers' compensation law or a veterans' benefits program.

(4) ASBESTOSIS.—The term ''asbestosis'' means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos.

(5) BOARD-CERTIFIED INTERNIST.—The term ''Board-certified internist'' means a qualified physician—

(A) who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(6) BOARD-CERTIFIED OCCUPATIONAL MEDICINE SPECIALIST.—The term ''Board-certified occupational medicine specialist'' means a physician—

(A) who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(7) BOARD-CERTIFIED PATHOLOGIST.—The term ''Board-certified pathologist'' means a qualified physician—

(A) who holds primary certification in anatomic pathology or combined anatomic or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Internal Medicine;

(B) whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or post mortem specimens; and

(C) whose certification was current at the time of—

(i) any tissue or slide examination; or

(ii) rendition of any report required under this Act.

(8) BOARD-CERTIFIED PULMONOLOGIST.—The term ''Board-certified pulmonologist'' means a qualified physician—

(A) who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(9) CERTIFIED B-READER.—The term ''Certified B-reader'' means a person—

(A) who has successfully passed the B-reader certification examination for x-ray interpretation sponsored by the National Institute for Occupational Safety and Health; and

(B) whose certification was current at the time of any readings required under this Act.

(10) CHEST X-RAYS.—The term ''chest x-rays'' means radiographic films taken in accordance with all applicable Federal and State standards and in the posterior-anterior view.

(11) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any party asserting an asbestos or silica claim, including a—

(i) plaintiff;

(ii) counterclaimant;

(iii) cross-claimant; or

(iv) third-party plaintiff.

(B) CLAIMS ON BEHALF OF AN ESTATE.—If any claim described in subparagraph (A) is brought through, or on behalf of, an estate, the term claimant includes the executor, surviving spouse, or any other descendant of the decedent.

(C) CLAIMS ON BEHALF OF A MINOR.—If any claim described in subparagraph (A) is brought through, or on behalf of, a minor or incompetent person, the term claimant includes the parent or guardian of such minor.

(12) DLCO.—The term ''DLCO'' means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(13) EXPOSED PERSON.—

(A) IN GENERAL.—The term ''exposed person'' means a person whose claimed exposure to asbestos or silica is the basis for an asbestos or silica claim.

(B) SILICA CLAIMS.—With respect to any claim for exposure to silica, the term ''exposed person'' means a person whose claimed exposure to silica is by means of the alleged inhalation of respirable silica.

(14) FEV–1.—The term ''FEV–1'' means forced expiratory volume in the first second, which is the maximal volume of air expelled in 1 second during performance of simple spirometric tests.

(15) FVC.—The term ''FVC'' means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(16) ILO SCALE.—The term ''ILO scale'' means the system for the classification of chest x-rays set forth in the most current version of the International Labor Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect at the time of the performance of any examination or test on the exposed person required by this Act.

(17) PREDICTED LOWER LIMIT OF NORMAL.—The term ''predicted lower limit of normal'' means the calculated standard convention lying at the fifth percentile, below the upper 95 percent of the reference population, based on age, height, and gender, according to the recommendations of the American Thoracic Society as referenced in the AMA's Guides to the Evaluation of Permanent Impairment.

(18) QUALIFIED PHYSICIAN.—The term ''qualified physician'' means a board-certified internist, occupational medicine specialist, pathologist, or pulmonologist—

(A) who is licensed to practice in any State;

(B) who has personally conducted a physical examination of the exposed person, or in the case of a board-certified pathologist, has examined tissue samples or pathological slides of the exposed person, or if the exposed person is deceased, based upon a detailed review of the medical records and existing tissue samples and pathological slides of the deceased person;

(C) who is treating or has treated the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination or, in the case of a board–certified pathologist, has examined tissue samples or pathological slides of the exposed person at the request of such treating physician; and

(D) whose diagnosing, examining, testing, screening or treating of the exposed person was not, directly or indirectly, premised upon, and did not require, the exposed person or claimant to retain the legal services of any attorney or law firm.

(19) SILICA.—The term ''silica'' a respirable crystalline form of the naturally occurring mineral form of silicon dioxide, including quartz, cristobalite, and tridymite.

(20) SILICA CLAIM.—The term ''silica claim''—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or in any way related to the alleged health effects associated with the inhalation of silica, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to silica dust, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to the workers' compensation law or a veterans' benefits program.

(21) SILICOSIS.—The term ''silicosis'' means fibrosis of the lung produced by inhalation of silica, including—

(A) acute silicosis;

(B) accelerated silicosis; and

(C) chronic silicosis.

(22) STATE.—The term ''State''—

(A) means any State of the United States; and

(B) includes—

(i) the District of Columbia;

(ii) Commonwealth of Puerto Rico;

(iii) the Northern Mariana Islands;

(iv) the Virgin Islands;

(v) Guam;

(vi) American Samoa; and

(vii) any other territory or possession of the United States, or any political subdivision of any of the locales described under this paragraph.

(23) SUBSTANTIAL CONTRIBUTING FACTOR.—The term ''substantial contributing factor''—

(A) in the context of an asbestos claim, means that—

(i) a claimant shall identify—

(I) the specific asbestos product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable asbestos fibers in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific asbestos exposure; and

(B) in the context of a silica claim, means that—

(i) a claimant shall identify—

(I) the specific silica product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable silica particles in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific silica exposure.

(24) TOTAL LUNG CAPACITY.—The term ''total lung capacity'' means the volume of gas contained in the lungs at the end of a maximal inspiration.

(25) VETERANS' BENEFITS PROGRAM.—The term ''veterans' benefits program'' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(26) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) and chapter 81 of title 5, United States Code; and

(C) does not include—

(i) the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer; or

(ii) any claim for exemplary or punitive damages by an employee, estate, heir, representative, or any other person or entity against the employer of an exposed person arising out of, or related to, an asbestos-related injury or silica-related injury.

SEC. 4. ELEMENTS OF PROOF FOR ASBESTOS OR SILICA CLAIMS.

(a) IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM.—

(1) IN GENERAL.—It shall be an essential element to bring or maintain an asbestos or silica claim, that an exposed person suffer a physical impairment, of which asbestos or silica was a substantial contributing factor to such impairment.

(2) EVIDENCE AS TO EACH DEFENDANT.—Any requirement of a prima facie showing under this section shall be made as to each defendant against whom a claimant alleges an asbestos or silica claim.

(b) PRELIMINARY PROCEEDINGS; SERVICE OF PRIMA FACIE EVIDENCE OF IMPAIRMENT.—

(1) FILING OF REPORT.—A claimant in any civil action alleging an asbestos or silica claim shall file, together with the complaint or other initial pleading, a written report and supporting test results constituting prima facie evidence of the exposed person's asbestos-related or silica-related impairment meeting the requirements of this section as to each defendant.

(2) TIMING.—For any asbestos or silica claim pending on the date of enactment of this Act, a claimant shall file the written report and supporting test results described in paragraph (1) not later than 180 days after such date or not later than 60 days prior to the commencement of trial, whichever occurs first.

(3) DEFENDANTS RIGHT TO CHALLENGE.—A defendant shall be afforded a reasonable opportunity to challenge the adequacy of any proffered prima facie evidence of impairment.

(4) DISMISSAL.—A claim shall be dismissed without prejudice upon a finding of failure to make the prima facie showing required under this section.

(c) NEW CLAIM REQUIRED INFORMATION.—

(1) IN GENERAL.—Any asbestos claim or silica claim filed in a Federal or State court, on or after on the date of enactment of this Act shall include a sworn information form containing the following information:

(A) The name, address, date of birth, social security number, and marital status of the claimant.

(B) The name, last address, date of birth, social security number, and marital status of the exposed person.

(C) If the claimant alleges exposure to asbestos or silica through the testimony of another person or other than by direct or bystander exposure to a product or products, the name, address, date of birth, social security number, and marital status, for each person by which claimant alleges exposure (hereafter in this subsection referred to as the ''index person'') and the relationship of the claimant to each such person.

(D) For each alleged exposure of the exposed person and for each index person—

(i) the specific location and manner of each such exposure;

(ii) the beginning and ending dates of each such exposure; and

(iii) the identity of the manufacturer of the specific asbestos or silica to which the exposed person or index person was exposed.

(E) The occupation and name of the employer of the exposed person at the time of each alleged exposure.

(F) If the asbestos claim or silica claim involves more than 1 claimant, the identity of the defendant or defendants against whom each claimant asserts a claim.

(G) The specific disease related to asbestos or silica claimed to exist.

(H) Any—

(i) supporting documentation of the condition claimed to exist; and

(ii) documentation to support the claimant or index person's identification of the asbestos or silica product that such person was exposed to.

(2) INDIVIDUAL REQUIREMENT.—

(A) IN GENERAL.—All asbestos claims and silica claims along with any sworn information required under paragraph (1) shall be individually filed.

(B) CLASS CLAIMS NOT PERMITTED.—No claims on behalf of a group or class of persons shall be permitted.

(d) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR NONMALIGNANT ASBESTOS CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged nonmalignant asbestos–related condition in the absence of a prima facie showing of physical impairment of the exposed person for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis.

(D) A determination by the diagnosing, qualified physician, on the basis of a medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, that the claimant had a permanent respiratory impairment rating of at least Class 2 as defined by, and evaluated under, the AMA's Guides to the Evaluation of Permanent Impairment.

(E) Evidence verifying that the exposed person has an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale—

(i) bilateral small irregular opacities (s, t, or u) graded 1/0 or higher on the ILO scale;

(ii) bilateral pleural thickening graded b2 or higher on the ILO scale including blunting of the costophrenic angle; or

(iii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(F) A determination by the diagnosing, qualified physician that asbestosis or diffuse pleural thickening is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the claimant has—

(i) either—

(I) forced vital capacity below the predicted lower limit of normal and FEV–1/FVC ratio (using actual values) at or above the predicted lower limit of normal; or

(II) forced vital capacity below the predicted lower limit of normal and total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; and

(ii) diffusing capacity of carbon monoxide below the lower limit of normal or below 80 percent of predicted.

(G) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or silica-related disease does not meet the requirements of this subsection.

(H) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume

loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(e) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged asbestos-related cancer, other than mesothelioma, in the absence of a prima facie showing of a primary cancer for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis of the cancer.

(D) Evidence verifying that the exposed person has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral small irregular opacities (s, t, or u) graded 1/0 or higher on the ILO scale; or

(ii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or asbestos-related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(f) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED MESOTHELIOMA.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to alleged mesothelioma in the absence of a prima facie showing of an asbestos-related malignant tumor with a primary site of origin in the pleura, the peritoneum, or pericardium.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a report by a qualified Board-certified pathologist certifying the diagnosis of mesothelioma and a report by a qualified physician certifying that the mesothelioma was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person.

(g) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related condition, other than a silica-related cancer, in the absence of a prima facie showing of physical impairment as a result of a medical condition to which exposure to silica was a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of such history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/0 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis);

(iii) pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988);

(iv) progressive massive fibrosis radiologically established by large opacities greater than 1 centimeter in diameter; or

(v) acute silicosis.

(D) If the claimant is asserting a claim for silicosis, evidence verifying there has been a sufficient latency period for the applicable type of silicosis.

(E) A determination by the diagnosing, qualified physician, on the basis of a personal medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment.

(F) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related disease does not meet the requirements of this subsection.

(G) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(h) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related cancer in the absence of a prima facie showing of a primary cancer for which exposure to the defendant's silica is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including silica and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed

medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of that history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/0 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis); or

(iii) a pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988).

(D) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to silica; and

(ii) the date of any such diagnosis of the cancer.

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(i) COMPLIANCE WITH TECHNICAL STANDARDS.—Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies—

(1) shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment in the AMA's Guides to the Evaluation of Permanent Impairment, the most current version of the Official Statements of the American Thoracic Society regarding lung function testing, including general considerations for lung function testing, standardization of spirometry, standardization of the measurement of lung volumes, standardization of the single-breath determination of carbon monoxide uptake in the lung, and interpretative strategies for lung testing in effect at the time of the performance of any examination or test on the exposed person required by this Act;

(2) may not be based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of any State in which the examination, test, or screening was conducted; and

(3) may not be obtained under the condition that a claimant retains the legal services of an attorney or law firm sponsoring the examination, test, or screening.

SEC. 5. PROCEDURES.

(a) NO PRESUMPTION AT TRIAL.—Evidence relating to the prima facie showings required under section 4 shall not—

(1) create any presumption that a claimant has an asbestos or silica-related injury or impairment; and

(2) be conclusive as to the liability of any defendant.

(b) ADMISSIBILITY OF EVIDENCE.—No evidence shall be offered at a trial, and a jury shall not be informed of—

(1) the granting or denial of a motion to dismiss an asbestos or silica claim under the provisions of this Act; or

(2) the provisions of section 4 with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) DISCOVERY.—Until such time as a trial court enters an order determining that a claimant has established prima facie evidence of impairment, no asbestos or silica claim shall be subject to discovery, except discovery—

(1) related to establishing or challenging such prima facie evidence; or

(2) by order of the trial court upon—

(A) motion of 1 of the parties; and

(B) for good cause shown.

(d) CONSOLIDATION.—

(1) AT TRIAL.—

(A) IN GENERAL.—A court may consolidate for trial any number and type of asbestos or silica claims with the consent of all the parties.

(B) ABSENCE OF CONSENT.—In the absence of any consent under subparagraph (A), a court may consolidate for trial only asbestos claims or silica claims relating to the same exposed person and members of the household of such exposed person.

(2) CLASS ACTIONS.—No class action or any other form of mass aggregation claim filing relating to more than 1 exposed person, except claims relating to the exposed person and members of the household of such exposed person, shall be permitted for asbestos or silica claims.

(3) AT DISCOVERY.—Any decision by a court to consolidate claims under paragraph (1) shall not preclude consolidation of asbestos or silica claim cases by a court order for pretrial or discovery purposes.

(e) FORUM NON CONVENIENS.—

(1) IN GENERAL.—Any asbestos or silica claim filed on or after the date of enactment of this Act, if the court in which such claim is pending, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this Act applies would be more properly heard in a forum outside the State, district, or division in which such claim was filed, the court shall—

(A) decline to exercise jurisdiction under the doctrine of forum non conveniens; and

(B) shall stay or dismiss such claim.

(2) CONSIDERATIONS.—In determining whether to grant a motion to stay or dismiss a claim under paragraph (1), a court shall consider whether—

(A) an alternate forum exists in which such claim or action may be tried;

(B) the alternate forum provides an adequate remedy;

(C) maintenance of such claim in the court of the State in which the claim was filed would work a substantial injustice to the moving party;

(D) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to such claim;

(E) the balance of the private interests of the parties and the public interest of the State in which such claim was filed predominate in favor of such claim being brought in an alternate forum; and

(F) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(3) WAIVER OF STATUTE OF LIMITATIONS DEFENSE.—A trial court may not abate or dismiss a claim under this subsection until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff, the defendant waives the right to assert a statute of limitations defense in all other States, districts, or divisions in which such claim was not barred by limitations at the time such claim was filed in the State where such claim was originally filed as necessary to effect a tolling of the limitations periods in those States —

(A) beginning on the date such claim was originally filed; and

(B) ending on the date—

(i) such claim is dismissed; or

(ii) an abatement period of 1 year ends.

(4) COURT DUTIES.—A court may not abate or dismiss a claim under paragraph (3) until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff in another State, district, or division, that the claimant and the defendant may—

(A) rely on responses to discovery already provided under the rules of civil procedure of the State, district, or division in which such claim was originally filed; and

(B) rely on any additional discovery that may be conducted under the rules of civil procedure in another State, district, or division.

(f) VENUE.—

(1) IN GENERAL.—An asbestos or silica claim filed after the date of enactment of this Act may be filed only in the county of the State or the district or division of the United States where—

(A) the claimant resided for a period of at least 180 consecutive days immediately prior to filing suit; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which such claim is based.

(2) IMPROPER VENUE.—With respect to asbestos or silica claims pending as of the date of enactment of this Act, and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, has not commenced with presentation of evidence to the trier of fact as of the date of enactment of this Act, any claim as to which venue would not have been proper if the claim originally had been brought in accordance with paragraph (1) shall, not later than 90 days after the date of enactment of this Act, be transferred to the court of general civil jurisdiction in the county, district, or division of the State in which the action is pending in which either—

(A) the claimant was domiciled at the time the asbestos or silica claim originally was filed; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or

silica related impairment on which the claim is based.

(3) REMOVAL.—

(A) IN GENERAL.—If a State court refuses or fails to apply the provisions of this Act, any party in a civil action for an asbestos claim may remove such action to a district court of the United States in accordance with chapter 89 of title 28, United States Code.

(B) JURISDICTION OVER REMOVED ACTIONS.—The district courts of the United States shall have jurisdiction of all civil actions removed under this paragraph, without regard to the amount in controversy and without regard to the citizenship or residence of the parties.

(C) REMOVAL BY ANY DEFENDANT.—A civil action may be removed to the district court of the United States under this paragraph by any defendant without the consent of all defendants.

(D) REMAND.—A district court of the United States shall remand any civil action removed solely under this paragraph, unless the court finds that—

(i) the State court failed to comply with procedures prescribed by law; or

(ii) the failure to dismiss by the State court lacked substantial support in the record before the State court.

(E) LIMITATION.—Civil actions in State court subject to this Act may not be removed to any district court of the United States unless such removal is otherwise proper without regard to the provisions of this Act or is removed under this paragraph.

(g) PREEMPTION.—

(1) IN GENERAL.—This Act shall govern all asbestos and silica claims filed in Federal or State courts on or after the effective date of this Act, or which are pending in Federal or State courts on the effective date of this Act and in which the trial, or any new trial or retrial following motion, appeal or otherwise, has not commenced with presentation of evidence to the trier of fact as of the effective date of this Act, except for enforcement of claims for which a final judgment has been duly entered by a court and that is no longer subject to any appeal or judicial review on the effective date of this Act.

(2) GREATER LIMITATIONS BY STATES.—Nothing in this Act shall limit or preempt any State law or precedent having the effect of imposing additional or greater limits or restrictions on the assertion or prosecution of an asbestos or silica claim.

SEC. 6. STATUTE OF LIMITATIONS; 2–DISEASE RULE.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—An asbestos or silica claim not barred in a State as of the date of enactment of this Act, a claimant's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date—

(A) on which an exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment;

(B) on which an exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment; or

(C) of death of the exposed person having an asbestos-related or silica-related impairment.

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred as a matter of applicable State law as of the date of enactment of this Act.

(3) NO EFFECT ON SETTLEMENT AGREEMENTS.—Nothing in this section shall be construed so as to adversely affect, impair, limit, modify, or nullify any settlement agreement with respect to an asbestos or silica claim entered into before the date of enactment of this Act.

(b) 2–DISEASE RULE; DISTINCT CLAIMS.—

(1) IN GENERAL.—An asbestos or silica claim arising out of a non-malignant condition shall be a distinct cause of action, wholly separate from a claim for an asbestos-related or silica-related cancer.

(2) NO DAMAGES FOR FEAR.—No damages shall be awarded for fear or increased risk of future disease in any civil action asserting an asbestos or silica claim.

SEC. 7. EXPERTS.

(a) IN GENERAL.—A person who holds a valid medical license in good standing in a State, but who is not licensed to practice medicine in that State, and who testifies, whether by deposition, affidavit, live, or otherwise, as a medical expert witness on behalf of any party in an asbestos or silica claim is deemed to have a temporary license to practice medicine in the State in which the claim is pending solely for the purpose of providing such testimony and is subject to that extent to the authority of the medical licensing board or agency of that State.

(b) PENALTY FOR FALSE TESTIMONY.—If a physician renders expert medical testimony that is false, intentionally misleading or deceptive, or that intentionally misstates the relevant applicable standard of care, the medical licensing board or agency of the State in which the claim is pending may take such action as is permitted under the laws and regulations of that State governing the conduct of physicians.

(c) RULE OF CONSTRUCTION.—This section shall not be construed to permit an out of State physician to practice medicine in any other State other than as provided in this section.

SEC. 8. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) CONSTRUCTION WITH OTHER LAWS.—This Act shall not be construed to—

(1) affect the scope or operation of any workers' compensation law or veterans' benefit program;

(2) affect the exclusive remedy or subrogation provisions of any such law; or

(3) authorize any lawsuit which is barred by any such provision of law.

(b) CONSTITUTIONAL AUTHORITY.—The constitutional authority for this Act is contained in Article I, section 8, clause 3 and Article III, section 1 of the Constitution of the United States.

SEC. 10. EFFECTIVE DATE.

(a) IN GENERAL.—This Act applies to all asbestos or silica claims filed on or after the date of enactment of this Act.

(b) PENDING PROCEEDINGS.—This Act also applies to any pending asbestos or silica claims in which a trial has not commenced as of the date of enactment of this Act.

SA 2789. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 171, between lines 17 and 18, insert the following and re-number accordingly:

(4) LIMITATION ON PAYMENTS BY DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Under expedited procedures established by the Administrator, any defendant participant may apply for a limitation on its annual payment obligation to the Fund by showing that it qualifies under subparagraph (C). The Administrator shall promptly grant that application if the requirements under subparagraph (C) are satisfied.

(B) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (A) shall have the payment required under subsection (i)(1)(A)(iv) stayed until the Administrator has made a determination with respect to the application of that defendant participant.

(C) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if that defendant participant—

(i) is included in Tiers II, III, IV, V, or VI under section 202; and

(ii) has prior asbestos expenditures less than $200,000,000 and has revenues as determined under section 203 that are less than $10,000,000,000.

(D) LIMITATION.—

(i) IN GENERAL.—A defendant participant that qualifies for a limitation under this paragraph may apply for only 1 of the limits under subclause (I), (II), or (III) of clause (ii). A defendant participant may not change its application once the application has been approved by the Administrator.

(ii) APPLICATION FOR 1 LIMITATION.—Subject to clause (i), a defendant participant may apply for a limit of an amount equal to—

(I) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant;

(II) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant, excluding—

(aa) the amount of any payments by insurance carriers for the benefit of that defendant participant or on behalf of that defendant participant; and

(bb) any reimbursements of the amounts actually paid by that defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(III) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which that defendant participant belongs.

(E) JUDICIAL REVIEW.—A defendant participant is entitled to judicial review under section 303 of a denial of an application under this paragraph. During the pendency of that review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(F) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application under this paragraph is approved by the Administrator, shall not be exempt from the guaranteed payment surcharge established under subsection (l), unless otherwise provided in this Act.

(G) MINIMUM PAYMENT.—Notwithstanding any other provision of this paragraph, a defendant participant that is granted a limitation by the Administrator shall pay not less than 5 percent of the amount the participant is scheduled to pay under section 202.

On page 182, line 15, strike ''(5)'' and insert ''(6)''.

On page 184, line 9, strike ''(6)'' and insert ''(7)''.

SA 2790. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 171, strike all after line 5 until ''(5) Bankruptcy Relief'' and insert the following and renumber accordingly:

(c) LIMITATION.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, any defendant participant may apply for a limitation on its annual payment obligation to the Fund by showing that it qualifies under subparagraph (3), and the Administrator shall promptly grant such application if the standards in subparagraph (3) are satisfied.

(2) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (1) shall have the payment required under subsection (i)(l)(A)(iv) stayed until the Administrator has made a determination with respect to the application of such defendant participant.

(3) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if:

(A) it is included in Tiers II, Ill, IV, V, or VI under section 202; and

(B) its prior asbestos expenditures are less than $200 million and its revenues as defined in this section are less than $10 Billion.

(4) LIMITATION.—Such qualifying defendant participant may apply for the limit set forth in either clause (A), (B) or (C), provided that it may apply only under one such clause and may not change its application once the application has been approved by the Administrator. A defendant participant qualifying under this subparagraph may apply for a limit on its annual payment obligation to the Fund to an amount equal to—

(A) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of such defendant participant's annual prior asbestos expenditures; or

(B) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of such defendant participant's annual prior asbestos expenditures, excluding (I) the amount of any payments by insurance carriers for the benefit of such defendant participant or on behalf of such defendant participant, and (II) any reimbursements of the amounts actually paid by such defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(C) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which such defendant participant belongs.

(5) JUDICIAL REVIEW.—A defendant participant who is aggrieved by the denial by the Administrator of its application under this paragraph is entitled to judicial review under section 303, and during the pendency of such review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(6) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application for a limitation on its annual payment obligation to the Fund under subparagraph (A) is approved by the Administrator, shall not be exempt from the guaranteed payment surcharge established under subsection (1) unless otherwise provided in this Act.

(7) MINIMUM PAYMENT.—Notwithstanding the limitations provided in this subsection, a defendant participant that is granted a limitation by the Administrator shall pay no less than 5 percent of the amount the participant is scheduled to pay under section 202.

(d) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Administrator's determination under this subsection under the procedures prescribed in subsection (i)(10). The Administrator may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (j) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such an adjustment by demonstrating to the satisfaction of the Administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the Administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.-In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected financial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately preceding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101(31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments of extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the Administrator considers relevant.

(C) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the Administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the Administrator determines at the time of the renewed adjustment that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(E) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this sub-paragraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and analyses submitted to the Administrator were made in good faith and are reasonable and attainable.''

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exception 25 ally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

(II) when measured against the likely cost of past and potential future claims in the absence of this Act;

(III) when compared to the median payment rate for all defendant participants in the same tier; or

(IV) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a

payment to a plaintiff by or on behalf of that defendant;

(ii) shall qualify for a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act;

(iii) shall be granted a two-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Administrator shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations; and

(iv) may, subject to the discretion of the Administrator, be exempt from any payment obligation if such defendant participant establishes with the Administrator that—

(I) such participant has satisfied all past claims; and

(II) there is no reasonable likelihood in the absence of this Act of any future claims with costs for which the defendant participant might be responsible.

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 16 years by demonstrating that the adjustment remains justified.

(E) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 10 year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Administrator may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Administrator.

(4) LIMITATION ON ADJUSTMENTS.—The aggregate total of financial hardship adjustments under paragraph (2) and inequity adjustments under paragraph (3) in effect in any given year shall not be limited.

SA 2791. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after "SECTION 1. SHORT TITLE;" in the amendment and insert the following:

This Act may be cited as the "Asbestos and Silica Claims Priorities Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Asbestos is a mineral that was widely used before the mid-1970s for insulation, fireproofing, and other purposes.

(2) Many American workers were exposed to asbestos, especially during the Second World War.

(3) Long-term exposure to asbestos has been associated with mesothelioma and lung cancer, as well as with such non-malignant conditions as asbestosis, pleural plaques, and diffuse pleural thickening.

(4) Although the use of asbestos has dramatically declined since 1980 and workplace exposures have been regulated since 1971 by the Occupational Safety and Health Administration, the diseases caused by asbestos often have long latency periods and past exposures will continue to result in significant claims well into the future.

(5) Asbestos related claims, driven largely by unimpaired claimants, have flooded our courts such that the United States Supreme Court has characterized the situation as "an elephantine mass" that "calls for national legislation" (Ortiz v. Fibreboard Corporation, 119 S. Ct. 2295, 2302 (1999).

(6) The American Bar Association supports enactment of Federal legislation that would allow persons alleging non-malignant asbestos-related disease claims to file a cause of action in Federal or State court only if those persons meet the medical criteria in the "ABA Standard for Non-Malignant Asbestos-Related Disease Claims" and toll all applicable statutes of limitations until such time as the medical criteria in such standard are met.

(7) Reports indicate that up to 90 percent of asbestos claims are filed by individuals who allege that they have been exposed to asbestos, but who suffer no demonstrable asbestos-related impairment. Lawyer-sponsored x-ray screenings of workers at occupational locations are used to amass large numbers of claimants, the vast majority of whom are unimpaired.

(8) The costs of compensating unimpaired claimants and litigating their claims jeopardizes the ability of defendants to compensate people with cancer and other serious diseases, threatens the savings, retirement benefits, and jobs of current and retired employees, and adversely affects the communities in which the defendants operate.

(9) More than 73 companies have declared bankruptcy due to the burden of asbestos litigation. The rate of asbestos-driven bankruptcies is accelerating. Between 2000 and 2004, there were more asbestos-related bankruptcy filings than in either of the prior 2 decades.

(10) Bankruptcies have led plaintiffs and their lawyers to expand their search for solvent peripheral defendants. The number of asbestos defendants now includes over 8,500 companies, affecting many small and medium size companies and industries that span 85 percent of the United States economy.

(11) Efforts to address asbestos litigation may augment silica-related filings.

(12) Silica is a naturally occurring mineral and is the second most common constituent of the earth's crust. Crystalline silica in the form of quartz is present in sand, gravel, soil, and rocks.

(13) Silica-related illness, including silicosis can develop from the inhalation of respirable silica dust. Silicosis was widely recognized as an occupational disease many years ago.

(14) Silica claims, like asbestos claims, often involve individuals with no demonstrable impairment. Claimants frequently are identified through the use of interstate, for-profit, screening companies.

(15) Silica screening processes have been found subject to substantial abuse and potential fraud in Federal silica litigation (In re Silica Prods. Liab. Litig. (MDL No. 1553), 398 F. Supp. 2d 563 (S.D. Tex. 2005)) and it therefore is necessary to address silica legislation to preempt an asbestos-like litigation crisis.

(16) Concerns about statutes of limitations may prompt unimpaired asbestos and silica claimants to bring lawsuits prematurely to protect against losing their ability to assert a claim in the future should they develop an impairing condition.

(17) Sound public policy requires that the claims of persons with no present physical impairment from asbestos or silica exposure, be deferred to give priority to physically impaired claimants, and to safeguard the jobs, benefits, and savings of workers in affected companies.

(18) Claimant consolidations, joinders, and similar procedures used by some courts to deal with the mass of asbestos and silica cases can—

(A) undermine the appropriate functioning of the court system;

(B) deny due process to plaintiffs and defendants; and

(C) further encourage the filing of thousands of cases by exposed persons who are not sick and likely will never develop an impairing condition caused by exposure to asbestos or silica.

(19) Several states have enacted legislation to prioritize asbestos and silica claims that serve as a model for national reform including Texas, Ohio, Florida, and Georgia.

(20) Asbestos litigation, if left unchecked by reasonable congressional intervention, will—

(A) continue to inhibit the national economy and run counter to plans to stimulate economic growth and the creation of jobs;

(B) threaten the savings, retirement benefits, and employment of defendant's current and retired employees;

(C) affect adversely the communities in which these defendants operate; and

(D) impair interstate commerce and national initiatives.

(21) The public interest and the interest of interstate commerce requires deferring the claims of exposed persons who are not sick in order to—

(A) preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related injuries; and

(B) safeguard the jobs, benefits, and savings of American workers and the well-being of the national economy.

(b) PURPOSES.—The purposes of this Act are to—

(1) give priority to current claimants who can demonstrate an asbestos-related or silica-related impairment based on reasonable, objective medical criteria;

(2) toll the running of statutes of limitations for persons who have been exposed to asbestos or to silica, but who have no present asbestos-related or silica-related impairment; and

(3) enhance the ability of the courts to supervise and control asbestos and silica litigation.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) AMA GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT.—The term ''AMA Guides to the Evaluation of Permanent Impairment'' means the most current version of the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required by this Act.

(2) ASBESTOS.—The term ''asbestos'' means—

(A) chrysotile;

(B) amosite;

(C) crocidolite

(D) tremolite asbestos;

(E) anthophyllite asbestos;

(F) actinolite asbestos;

(G) winchite;

(H) richterite;

(I) asbestiform amphibole minerals; and

(J) any of the minerals described in subparagraphs (A) through (I) that have been chemically treated or altered, including all minerals defined as asbestos under section 1910 of title 29, Code of Federal Regulations in effect at the time an asbestos claim is filed.

(3) ASBESTOS CLAIM.—The term ''asbestos claim''—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or related to the alleged health effects associated with the inhalation or ingestion of asbestos, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to a workers' compensation law or a veterans' benefits program.

(4) ASBESTOSIS.—The term ''asbestosis'' means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos.

(5) BOARD-CERTIFIED INTERNIST.—The term ''Board-certified internist'' means a qualified physician—

(A) who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(6) BOARD-CERTIFIED OCCUPATIONAL MEDICINE SPECIALIST.—The term ''Board-certified occupational medicine specialist'' means a physician—

(A) who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(7) BOARD-CERTIFIED PATHOLOGIST.—The term ''Board-certified pathologist'' means a qualified physician—

(A) who holds primary certification in anatomic pathology or combined anatomic or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Internal Medicine;

(B) whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or post mortem specimens; and

(C) whose certification was current at the time of—

(i) any tissue or slide examination; or

(ii) rendition of any report required under this Act.

(8) BOARD-CERTIFIED PULMONOLOGIST.—The term ''Board-certified pulmonologist'' means a qualified physician—

(A) who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine; and

(B) whose certification was current at the time of—

(i) the performance of any examination; and

(ii) rendition of any report required under this Act.

(9) CERTIFIED B-READER.—The term ''Certified B-reader'' means a person—

(A) who has successfully passed the B-reader certification examination for x-ray interpretation sponsored by the National Institute for Occupational Safety and Health; and

(B) whose certification was current at the time of any readings required under this Act.

(10) CHEST X-RAYS.—The term ''chest x-rays'' means radiographic films taken in accordance with all applicable Federal and State standards and in the posterior-anterior view.

(11) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any party asserting an asbestos or silica claim, including a—

(i) plaintiff;

(ii) counterclaimant;

(iii) cross-claimant; or

(iv) third-party plaintiff.

(B) CLAIMS ON BEHALF OF AN ESTATE.—If any claim described in subparagraph (A) is brought through, or on behalf of, an estate, the term claimant includes the executor, surviving spouse, or any other descendant of the decedent.

(C) CLAIMS ON BEHALF OF A MINOR.—If any claim described in subparagraph (A) is brought through, or on behalf of, a minor or incompetent person, the term claimant includes the parent or guardian of such minor.

(12) DLCO.—The term ''DLCO'' means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(13) EXPOSED PERSON.—

(A) IN GENERAL.—The term ''exposed person'' means a person whose claimed exposure to asbestos or silica is the basis for an asbestos or silica claim.

(B) SILICA CLAIMS.—With respect to any claim for exposure to silica, the term ''exposed person'' means a person whose claimed exposure to silica is by means of the alleged inhalation of respirable silica.

(14) FEV–1.—The term ''FEV–1'' means forced expiratory volume in the first second, which is the maximal volume of air expelled in 1 second during performance of simple spirometric tests.

(15) FVC.—The term ''FVC'' means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(16) ILO SCALE.—The term ''ILO scale'' means the system for the classification of chest x-rays set forth in the most current version of the International Labor Office's Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect at the time of the performance of any examination or test on the exposed person required by this Act.

(17) PREDICTED LOWER LIMIT OF NORMAL.—The term ''predicted lower limit of normal'' means the calculated standard convention lying at the fifth percentile, below the upper 95 percent of the reference population, based on age, height, and gender, according to the recommendations of the American Thoracic Society as referenced in the AMA's Guides to the Evaluation of Permanent Impairment.

(18) QUALIFIED PHYSICIAN.—The term ''qualified physician'' means a board-certified internist, occupational medicine specialist, pathologist, or pulmonologist—

(A) who is licensed to practice in any State;

(B) who has personally conducted a physical examination of the exposed person, or in the case of a board-certified pathologist, has examined tissue samples or pathological slides of the exposed person, or if the exposed person is deceased, based upon a detailed review of the medical records and existing tissue samples and pathological slides of the deceased person;

(C) who is treating or has treated the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination or, in the case of a board–certified pathologist, has examined tissue samples or pathological slides of the exposed person at the request of such treating physician; and

(D) whose diagnosing, examining, testing, screening or treating of the exposed person was not, directly or indirectly, premised upon, and did not require, the exposed person or claimant to retain the legal services of any attorney or law firm.

(19) SILICA.—The term ''silica'' a respirable crystalline form of the naturally occurring mineral form of silicon dioxide, including quartz, cristobalite, and tridymite.

(20) SILICA CLAIM.—The term ''silica claim''—

(A) means any claim for damages, losses, indemnification, contribution, or other relief of whatever nature arising out of, based on, or in any way related to the alleged health effects associated with the inhalation of silica, including—

(i) loss of consortium;

(ii) personal injury or death;

(iii) mental or emotional injury;

(iv) risk or fear of disease or other injury;

(v) the costs of medical monitoring or surveillance, to the extent such claims are recognized under State law; or

(vi) any claim made by, or on behalf of, any person exposed to silica dust, or a representative, spouse, parent, child, or other relative of the exposed person; and

(B) does not include a claim for compensatory benefits pursuant to the workers' compensation law or a veterans' benefits program.

(21) SILICOSIS.—The term ''silicosis'' means fibrosis of the lung produced by inhalation of silica, including—

(A) acute silicosis;

(B) accelerated silicosis; and

(C) chronic silicosis.

(22) STATE.—The term ''State''—

(A) means any State of the United States; and

(B) includes—

(i) the District of Columbia;

(ii) Commonwealth of Puerto Rico;

(iii) the Northern Mariana Islands;

(iv) the Virgin Islands;

(v) Guam;

(vi) American Samoa; and

(vii) any other territory or possession of the United States, or any political subdivision of any of the locales described under this paragraph.

(23) SUBSTANTIAL CONTRIBUTING FACTOR.—The term ''substantial contributing factor''—

(A) in the context of an asbestos claim, means that—

(i) a claimant shall identify—

(I) the specific asbestos product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable asbestos fibers in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific asbestos exposure; and

(B) in the context of a silica claim, means that—

(i) a claimant shall identify—

(I) the specific silica product to which the exposed person was exposed;

(II) the location and duration of such exposure; and

(III) the specific circumstances of such exposure;

(ii) such exposure—

(I) was more than incidental contact with the product and location; and

(II) took place on a regular basis over an extended period of time in physical proximity to the exposed person;

(iii) the exposed person inhaled respirable silica particles in sufficient quantities to be capable of causing harm; and

(iv) a qualified physician has determined with a reasonable degree of medical certainty that the impairment of the exposed person would not have occurred but for the specific silica exposure.

(24) TOTAL LUNG CAPACITY.—The term ''total lung capacity'' means the volume of gas contained in the lungs at the end of a maximal inspiration.

(25) VETERANS' BENEFITS PROGRAM.—The term ''veterans' benefits program'' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(26) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) and chapter 81 of title 5, United States Code; and

(C) does not include—

(i) the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer; or

(ii) any claim for exemplary or punitive damages by an employee, estate, heir, representative, or any other person or entity against the employer of an exposed person arising out of, or related to, an asbestos-related injury or silica-related injury.

SEC. 4. ELEMENTS OF PROOF FOR ASBESTOS OR SILICA CLAIMS.

(a) IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM.—

(1) IN GENERAL.—It shall be an essential element to bring or maintain an asbestos or silica claim, that an exposed person suffer a physical impairment, of which asbestos or silica was a substantial contributing factor to such impairment.

(2) EVIDENCE AS TO EACH DEFENDANT.—Any requirement of a prima facie showing under this section shall be made as to each defendant against whom a claimant alleges an asbestos or silica claim.

(b) PRELIMINARY PROCEEDINGS; SERVICE OF PRIMA FACIE EVIDENCE OF IMPAIRMENT.—

(1) FILING OF REPORT.—A claimant in any civil action alleging an asbestos or silica claim shall file, together with the complaint or other initial pleading, a written report and supporting test results constituting prima facie evidence of the exposed person's asbestos-related or silica-related impairment meeting the requirements of this section as to each defendant.

(2) TIMING.—For any asbestos or silica claim pending on the date of enactment of this Act, a claimant shall file the written report and supporting test results described in paragraph (1) not later than 180 days after such date or not later than 60 days prior to the commencement of trial, whichever occurs first.

(3) DEFENDANTS RIGHT TO CHALLENGE.—A defendant shall be afforded a reasonable opportunity to challenge the adequacy of any proffered prima facie evidence of impairment.

(4) DISMISSAL.—A claim shall be dismissed without prejudice upon a finding of failure to make the prima facie showing required under this section.

(c) NEW CLAIM REQUIRED INFORMATION.—

(1) IN GENERAL.—Any asbestos claim or silica claim filed in a Federal or State court, on or after on the date of enactment of this Act shall include a sworn information form containing the following information:

(A) The name, address, date of birth, social security number, and marital status of the claimant.

(B) The name, last address, date of birth, social security number, and marital status of the exposed person.

(C) If the claimant alleges exposure to asbestos or silica through the testimony of another person or other than by direct or bystander exposure to a product or products, the name, address, date of birth, social security number, and marital status, for each person by which claimant alleges exposure (hereafter in this subsection referred to as the ''index person'') and the relationship of the claimant to each such person.

(D) For each alleged exposure of the exposed person and for each index person—

(i) the specific location and manner of each such exposure;

(ii) the beginning and ending dates of each such exposure; and

(iii) the identity of the manufacturer of the specific asbestos or silica to which the exposed person or index person was exposed.

(E) The occupation and name of the employer of the exposed person at the time of each alleged exposure.

(F) If the asbestos claim or silica claim involves more than 1 claimant, the identity of the defendant or defendants against whom each claimant asserts a claim.

(G) The specific disease related to asbestos or silica claimed to exist.

(H) Any—

(i) supporting documentation of the condition claimed to exist; and

(ii) documentation to support the claimant or index person's identification of the asbestos or silica product that such person was exposed to.

(2) INDIVIDUAL REQUIREMENT.—

(A) IN GENERAL.—All asbestos claims and silica claims along with any sworn information required under paragraph (1) shall be individually filed.

(B) CLASS CLAIMS NOT PERMITTED.—No claims on behalf of a group or class of persons shall be permitted.

(d) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR NONMALIGNANT ASBESTOS CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged nonmalignant asbestos–related condition in the absence of a prima facie showing of physical impairment of the exposed person for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis.

(D) A determination by the diagnosing, qualified physician, on the basis of a medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, that the claimant had a permanent respiratory impairment rating of at least Class 2 as defined by, and evaluated under, the AMA's Guides to the Evaluation of Permanent Impairment.

(E) Evidence verifying that the exposed person has an ILO quality 1 chest x-ray (or a

quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale—

(i) bilateral small irregular opacities (s, t, or u) graded 1/0 or higher on the ILO scale;

(ii) bilateral pleural thickening graded b2 or higher on the ILO scale including blunting of the costophrenic angle; or

(iii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(F) A determination by the diagnosing, qualified physician that asbestosis or diffuse pleural thickening is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the claimant has—

(i) either—

(I) forced vital capacity below the predicted lower limit of normal and FEV–1/FVC ratio (using actual values) at or above the predicted lower limit of normal; or

(II) forced vital capacity below the predicted lower limit of normal and total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; and

(ii) diffusing capacity of carbon monoxide below the lower limit of normal or below 80 percent of predicted.

(G) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or silica-related disease does not meet the requirements of this subsection.

(H) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(e) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to an alleged asbestos-related cancer, other than mesothelioma, in the absence of a prima facie showing of a primary cancer for which asbestos exposure is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence—

(i) verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history, including a thorough review of—

(I) the exposed person's past and present medical problems; and

(II) the most probable cause of each such medical problem; or

(ii) if the exposed person is deceased, from a person who is knowledgeable regarding such exposed person's medical and smoking history.

(C) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to asbestos; and

(ii) the date of any such diagnosis of the cancer.

(D) Evidence verifying that the exposed person has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral small irregular opacities (s, t, or u) graded 1/0 or higher on the ILO scale; or

(ii) pathological asbestosis graded 1(B) or higher under the criteria published in the Asbestos-Associated Diseases, Special Issue of the Archives of Pathological and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than asbestos as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with asbestos exposure or asbestos-related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(f) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR ASBESTOS-RELATED MESOTHELIOMA.—

(1) IN GENERAL.—No person shall bring or maintain an asbestos claim related to alleged mesothelioma in the absence of a prima facie showing of an asbestos-related malignant tumor with a primary site of origin in the pleura, the peritoneum, or pericardium.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a report by a qualified Board-certified pathologist certifying the diagnosis of mesothelioma and a report by a qualified physician certifying that the mesothelioma was not more probably the result of causes other than asbestos exposure as revealed by the employment, medical, and smoking history of the exposed person.

(g) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA CLAIMS.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related condition, other than a silica-related cancer, in the absence of a prima facie showing of physical impairment as a result of a medical condition to which exposure to silica was a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including asbestos, silica, and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of such history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/0 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis);

(iii) pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988);

(iv) progressive massive fibrosis radiologically established by large opacities greater than 1 centimeter in diameter; or

(v) acute silicosis.

(D) If the claimant is asserting a claim for silicosis, evidence verifying there has been a sufficient latency period for the applicable type of silicosis.

(E) A determination by the diagnosing, qualified physician, on the basis of a personal medical examination and pulmonary function testing of the exposed person, or if the exposed person is deceased, based upon the medical records of the deceased, that the claimant has, or if deceased, had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment.

(F) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related

disease does not meet the requirements of this subsection.

(G) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(h) PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA-RELATED CANCER.—

(1) IN GENERAL.—No person shall bring or maintain a silica claim related to an alleged silica-related cancer in the absence of a prima facie showing of a primary cancer for which exposure to the defendant's silica is a substantial contributing factor.

(2) PRIMA FACIE SHOWING.—A prima facie showing under paragraph (1) shall be made as to each defendant and include a detailed narrative medical report and diagnosis by a qualified physician that includes:

(A) Evidence verifying that the diagnosing, qualified physician has taken a detailed occupational and exposure history from the exposed person or, if that person is deceased, from a person who is knowledgeable about the exposures that form the basis for the claim, including identification of—

(i) all of the exposed person's places of employment and exposure to airborne contaminants (including silica and other disease-causing dusts, mists, fumes, and airborne contaminants) that can cause pulmonary impairment; and

(ii) the nature, duration, and level of each such exposure.

(B) Evidence verifying that the diagnosing, qualified physician has taken a detailed medical and smoking history from the exposed person (or if the exposed person is deceased, from the person most knowledgeable of that history), including a thorough review of—

(i) the exposed person's past and present medical problems; and

(ii) the most probable cause of each such medical problem.

(C) A determination by the diagnosing, qualified physician that the claimant has—

(i) an ILO quality 1 chest x-ray (or a quality 2 chest x-ray if the exposed person is deceased and a quality 1 chest x-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, bilateral predominantly nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/0 or higher;

(ii) an ILO quality 1 chest X-ray (or a quality 2 chest X-ray if the exposed person is deceased and a quality 1 chest X-ray does not exist) read by a certified B-reader as showing, according to the ILO scale, A, B, or C sized opacities representing complicated silicosis (also known as progressive massive fibrosis); or

(iii) a pathological demonstration of classic silicotic nodules exceeding 1 centimeter in diameter as set forth in 112 Archives of Pathology & Laboratory Medicine 673–720 (1988).

(D) Evidence sufficient to demonstrate—

(i) that at least 10 years have elapsed since the exposed person's first exposure to silica; and

(ii) the date of any such diagnosis of the cancer.

(E) Verification that the diagnosing, qualified physician has concluded that the exposed person's impairment was not more probably the result of causes other than silica exposure as revealed by the employment, medical, and smoking history of the exposed person. Any verification that includes a conclusion which states that the medical findings and impairment are consistent or compatible with silica exposure or silica–related disease does not meet the requirements of this subsection.

(F) Copies of—

(i) the B-reading, pulmonary function tests (including printouts of the flow volume loops, volume time curves, DLCO graphs, and data for all trials, and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards established in this Act);

(ii) lung volume tests;

(iii) reports of x-ray examinations and diagnostic imaging of the chest;

(iv) pathology reports; and

(v) any other testing reviewed by the diagnosing, qualified physician in reaching the physician's conclusions.

(i) COMPLIANCE WITH TECHNICAL STANDARDS.—Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies—

(1) shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment in the AMA's Guides to the Evaluation of Permanent Impairment, the most current version of the Official Statements of the American Thoracic Society regarding lung function testing, including general considerations for lung function testing, standardization of spirometry, standardization of the measurement of lung volumes, standardization of the single-breath determination of carbon monoxide uptake in the lung, and interpretative strategies for lung testing in effect at the time of the performance of any examination or test on the exposed person required by this Act;

(2) may not be based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of any State in which the examination, test, or screening was conducted; and

(3) may not be obtained under the condition that a claimant retains the legal services of an attorney or law firm sponsoring the examination, test, or screening.

SEC. 5. PROCEDURES.

(a) NO PRESUMPTION AT TRIAL.—Evidence relating to the prima facie showings required under section 4 shall not—

(1) create any presumption that a claimant has an asbestos or silica-related injury or impairment; and

(2) be conclusive as to the liability of any defendant.

(b) ADMISSIBILITY OF EVIDENCE.—No evidence shall be offered at a trial, and a jury shall not be informed of—

(1) the granting or denial of a motion to dismiss an asbestos or silica claim under the provisions of this Act; or

(2) the provisions of section 4 with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) DISCOVERY.—Until such time as a trial court enters an order determining that a claimant has established prima facie evidence of impairment, no asbestos or silica claim shall be subject to discovery, except discovery—

(1) related to establishing or challenging such prima facie evidence; or

(2) by order of the trial court upon—

(A) motion of 1 of the parties; and

(B) for good cause shown.

(d) CONSOLIDATION.—

(1) AT TRIAL.—

(A) IN GENERAL.—A court may consolidate for trial any number and type of asbestos or silica claims with the consent of all the parties.

(B) ABSENCE OF CONSENT.—In the absence of any consent under subparagraph (A), a court may consolidate for trial only asbestos claims or silica claims relating to the same exposed person and members of the household of such exposed person.

(2) CLASS ACTIONS.—No class action or any other form of mass aggregation claim filing relating to more than 1 exposed person, except claims relating to the exposed person and members of the household of such exposed person, shall be permitted for asbestos or silica claims.

(3) AT DISCOVERY.—Any decision by a court to consolidate claims under paragraph (1) shall not preclude consolidation of asbestos or silica claim cases by a court order for pretrial or discovery purposes.

(e) FORUM NON CONVENIENS.—

(1) IN GENERAL.—Any asbestos or silica claim filed on or after the date of enactment of this Act, if the court in which such claim is pending, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this Act applies would be more properly heard in a forum outside the State, district, or division in which such claim was filed, the court shall—

(A) decline to exercise jurisdiction under the doctrine of forum non conveniens; and

(B) shall stay or dismiss such claim.

(2) CONSIDERATIONS.—In determining whether to grant a motion to stay or dismiss a claim under paragraph (1), a court shall consider whether—

(A) an alternate forum exists in which such claim or action may be tried;

(B) the alternate forum provides an adequate remedy;

(C) maintenance of such claim in the court of the State in which the claim was filed would work a substantial injustice to the moving party;

(D) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to such claim;

(E) the balance of the private interests of the parties and the public interest of the State in which such claim was filed predominate in favor of such claim being brought in an alternate forum; and

(F) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(3) WAIVER OF STATUTE OF LIMITATIONS DEFENSE.—A trial court may not abate or dismiss a claim under this subsection until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff, the defendant waives the right to assert a statute of limitations defense in all other States, districts, or divisions in which such claim was not barred by limitations at the time such claim was filed in the State where such claim was originally filed as necessary to effect a tolling of the limitations periods in those States —

(A) beginning on the date such claim was originally filed; and

(B) ending on the date—

(i) such claim is dismissed; or

(ii) an abatement period of 1 year ends.

(4) COURT DUTIES.—A court may not abate or dismiss a claim under paragraph (3) until a defendant files with the court, or with the clerk of the court, a written stipulation that, with respect to a new action on such claim commenced by the plaintiff in another State, district, or division, that the claimant and the defendant may—

(A) rely on responses to discovery already provided under the rules of civil procedure of

the State, district, or division in which such claim was originally filed; and

(B) rely on any additional discovery that may be conducted under the rules of civil procedure in another State, district, or division.

(f) VENUE.—

(1) IN GENERAL.—An asbestos or silica claim filed after the date of enactment of this Act may be filed only in the county of the State or the district or division of the United States where—

(A) the claimant resided for a period of at least 180 consecutive days immediately prior to filing suit; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which such claim is based.

(2) IMPROPER VENUE.—With respect to asbestos or silica claims pending as of the date of enactment of this Act, and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, has not commenced with presentation of evidence to the trier of fact as of the date of enactment of this Act, any claim as to which venue would not have been proper if the claim originally had been brought in accordance with paragraph (1) shall, not later than 90 days after the date of enactment of this Act, be transferred to the court of general civil jurisdiction in the county, district, or division of the State in which the action is pending in which either—

(A) the claimant was domiciled at the time the asbestos or silica claim originally was filed; or

(B) the exposed person had the most substantial cumulative exposure to asbestos for an asbestos claim or to silica for a silica claim, and that such exposure was a substantial contributing factor to the asbestos or silica related impairment on which the claim is based.

(3) REMOVAL.—

(A) IN GENERAL.—If a State court refuses or fails to apply the provisions of this Act, any party in a civil action for an asbestos claim may remove such action to a district court of the United States in accordance with chapter 89 of title 28, United States Code.

(B) JURISDICTION OVER REMOVED ACTIONS.—The district courts of the United States shall have jurisdiction of all civil actions removed under this paragraph, without regard to the amount in controversy and without regard to the citizenship or residence of the parties.

(C) REMOVAL BY ANY DEFENDANT.—A civil action may be removed to the district court of the United States under this paragraph by any defendant without the consent of all defendants.

(D) REMAND.—A district court of the United States shall remand any civil action removed solely under this paragraph, unless the court finds that—

(i) the State court failed to comply with procedures prescribed by law; or

(ii) the failure to dismiss by the State court lacked substantial support in the record before the State court.

(E) LIMITATION.—Civil actions in State court subject to this Act may not be removed to any district court of the United States unless such removal is otherwise proper without regard to the provisions of this Act or is removed under this paragraph.

(g) PREEMPTION.—

(1) IN GENERAL.—This Act shall govern all asbestos and silica claims filed in Federal or State courts on or after the effective date of this Act, or which are pending in Federal or State courts on the effective date of this Act and in which the trial, or any new trial or retrial following motion, appeal or otherwise, has not commenced with presentation of evidence to the trier of fact as of the effective date of this Act, except for enforcement of claims for which a final judgment has been duly entered by a court and that is no longer subject to any appeal or judicial review on the effective date of this Act.

(2) GREATER LIMITATIONS BY STATES.—Nothing in this Act shall limit or preempt any State law or precedent having the effect of imposing additional or greater limits or restrictions on the assertion or prosecution of an asbestos or silica claim.

SEC. 6. STATUTE OF LIMITATIONS; 2–DISEASE RULE.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—An asbestos or silica claim not barred in a State as of the date of enactment of this Act, a claimant's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date—

(A) on which an exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment;

(B) on which an exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment; or

(C) of death of the exposed person having an asbestos-related or silica-related impairment.

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred as a matter of applicable State law as of the date of enactment of this Act.

(3) NO EFFECT ON SETTLEMENT AGREEMENTS.—Nothing in this section shall be construed so as to adversely affect, impair, limit, modify, or nullify any settlement agreement with respect to an asbestos or silica claim entered into before the date of enactment of this Act.

(b) 2–DISEASE RULE; DISTINCT CLAIMS.—

(1) IN GENERAL.—An asbestos or silica claim arising out of a non-malignant condition shall be a distinct cause of action, wholly separate from a claim for an asbestos-related or silica-related cancer.

(2) NO DAMAGES FOR FEAR.—No damages shall be awarded for fear or increased risk of future disease in any civil action asserting an asbestos or silica claim.

SEC. 7. EXPERTS.

(a) IN GENERAL.—A person who holds a valid medical license in good standing in a State, but who is not licensed to practice medicine in that State, and who testifies, whether by deposition, affidavit, live, or otherwise, as a medical expert witness on behalf of any party in an asbestos or silica claim is deemed to have a temporary license to practice medicine in the State in which the claim is pending solely for the purpose of providing such testimony and is subject to that extent to the authority of the medical licensing board or agency of that State.

(b) PENALTY FOR FALSE TESTIMONY.—If a physician renders expert medical testimony that is false, intentionally misleading or deceptive, or that intentionally misstates the relevant applicable standard of care, the medical licensing board or agency of the State in which the claim is pending may take such action as is permitted under the laws and regulations of that State governing the conduct of physicians.

(c) RULE OF CONSTRUCTION.—This section shall not be construed to permit an out of State physician to practice medicine in any other State other than as provided in this section.

SEC. 8. SEVERABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) CONSTRUCTION WITH OTHER LAWS.—This Act shall not be construed to—

(1) affect the scope or operation of any workers' compensation law or veterans' benefit program;

(2) affect the exclusive remedy or subrogation provisions of any such law; or

(3) authorize any lawsuit which is barred by any such provision of law.

(b) CONSTITUTIONAL AUTHORITY.—The constitutional authority for this Act is contained in Article I, section 8, clause 3 and Article III, section 1 of the Constitution of the United States.

SEC. 10. EFFECTIVE DATE.

(a) IN GENERAL.—This Act applies to all asbestos or silica claims filed on or after the date of enactment of this Act.

(b) PENDING PROCEEDINGS.—This Act also applies to any pending asbestos or silica claims in which a trial has not commenced as of the date of enactment of this Act.

SA 2792. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 121, lines 25 through page 122, line 1, strike ''substantially equivalent to those of Libby, Montana'' and insert ''greater than the standard non-occupationally exposed population''.

SA 2793. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 37, between lines 22 and 23, insert the following:

(B) EXCEPTION.—The Administrator may by rule adopt a lower percentage limitation for particular classes of cases, if the Administrator finds that—

(i) the percentage limitation otherwise applicable under this subsection would result in unreasonably high compensation to representatives of claimants in such cases; and

(ii) such limitation would not unduly limit the availability of representatives to claimants.

(c) REASONABLE FEE FOR WORK ACTUALLY PERFORMED.—In addition to paragraph (A), a representative of an individual may not receive a fee, unless—

(A) the representative submits to the Administrator appropriately detailed billing documentation for the work actually performed in the course of representation of the claimant; and

(B) the Administrator finds, based on the amount of the award made to a claimant under this Act and on billing documentation submitted by such claimant's representative, that the fee to be awarded for the work actually performed on behalf of the claimant

does not exceed 200 percent of a reasonable hourly fee for such work.

On page 37, line 23, strike ''(3)'' and insert ''(D)''.

SA 2794. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 277, line 6, strike ''$600,000,000'' and insert ''$150,000,000''.

SA 2795. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, line 22, strike ''5 years'' and insert ''2 years, and in no case shall such total borrowing at any 1 time exceed $10,000,000,000.''.

SA 2796. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 69, line 11, strike ''(A) IN GENERAL.—''

On page 69, line 19, strike all through page 70, line 22.

On page 118, line 6, strike all through page 120, line 4.

SA 2797. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, line 16, strike all through page 243, line 22, and insert the following:

(2) FEDERAL SOURCES OF BORROWING.—The Administrator may not borrow from the Federal Financing Bank or any other financing source of the Federal Government.

SA 2798. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, line 22, strike ''monetary''.

On page 316, line 4, strike ''substantial contributing factor'' and insert ''contributing factor, in whole or in part,''.

SA 2799. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 365, between lines 8 and 9, insert the following:

(i) INJUNCTION AFTER CONFIRMATION OF BANKRUPTCY PLAN OF REORGANIZATION.—

(1) IN GENERAL.—Section 524(g)(2)(B)(ii)(IV)(bb) of title 11, United States Code, is amended by inserting after ''plan'' the following: '', or, if such a vote is not obtained with respect to any such class of claimants so established, the plan satisfies the requirements for confirmation of a plan under section 1129(b) that would apply to such class if the class did not accept the plan for purposes of section 1129(a)(8) (whether or not the class has accepted the plan)''.

(2) EFFECTIVE DATE; APPLICATION.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act, and shall apply with respect to cases under title 11 of the United States Code, which were commenced before, on, or after such date.

SA 2800. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 298, strike lines 16 and 17, and insert the following:

''(A) the trust qualifies as a trust under section 201 of that Act; and

''(B) the trust does not file an election under section 410 of that Act.

On page 375, after line 23, insert the following:

SEC. 410. OPT-OUT RIGHTS OF CERTAIN TRUSTS AND EFFECT OF OPT-OUT.

(a) OPT-OUT RIGHTS.—Any trust defined under section 201(8) that has been established or formed under a plan of reorganization under chapter 11 of title 11, United States Code, confirmed by a duly entered order or judgment of a court, which order or judgment is no longer subject to any appeal or judicial review on the date of enactment of this Act, may elect not to be covered by this Act by filing written notice of such election to the Administrator not later than 90 days after the date of enactment of this Act.

(b) EFFECT OF OPT-OUT.—

(1) IN GENERAL.—This Act nor any amendment made by this Act shall apply to—

(A) any trust that makes an election under subsection (a); or

(B) any claim or future demand that has been channeled to that trust.

(2) ASSETS AND OTHER RIGHTS AND CLAIMS.—A trust that makes an election under subsection (a) shall retain all of its assets. The contractual and other rights of a trust making an election under subsection (a) and claims against other persons (whether held directly or indirectly by others for the benefit of the trust), including the rights and claims of the trust against insurers, shall be preserved and not abrogated by this Act.

SA 2801. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 271, line 4, strike ''SCREENING,''.

On page 271, line 7, strike all beginning with ''medical'' through the comma on page 271, line 8.

On page 272, line 10, strike all through page 277, line 6.

On page 277, line 7, strike ''(e)'' and insert ''(c)''.

On page 279, line 7, strike ''(f)'' and insert ''(d)''.

On page 279, lines 9 and 10, strike ''medical screening''.

On page 279, line 13, strike ''(g)'' and insert ''(e)''.

SA 2802. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Fairness in Asbestos Injury Resolution Act of 2006'' or the ''FAIR Act of 2006''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purpose.
Sec. 3. Definitions.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Asbestos Injury Claims Resolution Corporation

Sec. 101. Establishment of Asbestos Injury Claims Resolution Corporation.
Sec. 102. Advisory Committee on Asbestos Disease Compensation.
Sec. 103. Medical Advisory Committee.
Sec. 104. Claimant assistance.
Sec. 105. Program startup.
Sec. 106. Authority of the Chief Executive Officer.
Sec. 107. Establishment of Corporation.
Sec. 108. Board of Directors; officers and employees; conflicts.
Sec. 109. Powers; offices; tax laws; audit; annual report.

Subtitle B—Asbestos Disease Compensation Procedures

Sec. 111. Essential elements of eligible claim.
Sec. 112. General rule concerning no-fault compensation.
Sec. 113. Filing of claims.
Sec. 114. Eligibility determinations and claim awards.
Sec. 115. Medical evidence auditing procedures.

Subtitle C—Medical Criteria

Sec. 121. Medical criteria requirements.

Subtitle D—Awards

Sec. 131. Amount.
Sec. 132. Reimbursable medical monitoring.
Sec. 133. Payment.
Sec. 134. Reduction in benefit payments for collateral sources.
Sec. 135. State lien laws.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

Sec. 201. Definitions.
Sec. 202. Authority and tiers.
Sec. 203. Subtiers.
Sec. 204. Assessment administration.
Sec. 205. Stepdowns and funding holidays.
Sec. 206. Accounting treatment.

Subtitle B—Asbestos Insurers Committee

Sec. 210. Definition.
Sec. 211. Establishment of Asbestos Insurers Committee.
Sec. 212. Duties of Asbestos Insurers Committee.
Sec. 213. Powers of Asbestos Insurers Committee.
Sec. 214. Personnel matters.
Sec. 215. Termination of Asbestos Insurers Committee.
Sec. 216. Expenses and costs of Commission.

Subtitle C—Asbestos Injury Claims Resolution Fund

Sec. 221. Establishment of Asbestos Injury Claims Resolution Fund.
Sec. 222. Management of the Fund.
Sec. 223. Enforcement of payment obligations.
Sec. 224. Interest on underpayment or nonpayment.
Sec. 225. Education, consultation, and monitoring.
Sec. 226. Oversight by the Secretary of the Treasury.
Sec. 227. Administrative funding.

TITLE III—JUDICIAL REVIEW

Sec. 301. Judicial review of procedures.
Sec. 302. Judicial review of award decisions.
Sec. 303. Judicial review of participants' assessments.
Sec. 304. Other judicial challenges.
Sec. 305. Stays, exclusivity, and constitutional review.
Sec. 306. Representations to court.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. False information.
Sec. 402. Effect on bankruptcy laws.
Sec. 403. Effect on other laws and existing claims.
Sec. 404. Effect on insurance and reinsurance contracts.
Sec. 405. Additional funding or return to court.
Sec. 406. Rules of construction relating to liability of the United States Government.
Sec. 407. Violations of environmental health and safety requirements.
Sec. 408. Nondiscrimination of health insurance.
Sec. 409. Corporate responsibility for annual and financial reports.
Sec. 410. Opt-out rights of certain trusts and effect of opt-out.

TITLE V—EXPEDITED CONGRESSIONAL ACTION

Sec. 501. Congressional action regarding modifications of the Fund.
Sec. 502. Congressional approval procedure.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Millions of Americans have been exposed to forms of asbestos that can have devastating health effects.

(2) Various injuries can be caused by exposure to some forms of asbestos, including some forms of cancer.

(3) The injuries caused by asbestos can have latency periods of up to 40 years, and even limited exposure to some forms of asbestos may result in injury in some cases.

(4) Asbestos litigation has had a significant detrimental effect on the country's economy, driving companies into bankruptcy, diverting resources from those who are truly sick, and endangering jobs and pensions.

(5) The scope of the asbestos litigation crisis cuts across every State and virtually every industry.

(6) The United States Supreme Court has recognized that Congress must act to create a more rational asbestos claims system. In 1991, a Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist, found that the ''ultimate solution should be legislation recognizing the national proportions of the problem . . . and creating a national asbestos dispute resolution scheme . . .''. The Court found in 1997 in Amchem Products Inc. v. Windsor, 521 U.S. 591, 595 (1997), that ''[t]he argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.'' In 1999, the Court in Ortiz v. Fibreboard Corp., 527 U.S. 819, 821 (1999), found that the ''elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.'' That finding was again recognized in 2003 by the Court in Norfolk & Western Railway Co. v. Ayers, 123 S. Ct. 1210 (2003).

(7) This crisis, and its significant effect on the health and welfare of the people of the United States, on interstate and foreign commerce, and on the bankruptcy system, compels Congress to exercise its power to regulate interstate commerce and create this legislative solution in the form of a national asbestos injury claims resolution program to supersede all existing methods to compensate those injured by asbestos, except as specified in this Act.

(8) This crisis has also imposed a deleterious burden upon the United States bankruptcy courts, which have assumed a heavy burden of administering complicated and protracted bankruptcies with limited personnel.

(b) PURPOSE.—The purpose of this Act is to—

(1) create a privately funded administrative scheme to provide the necessary resources for a fair and efficient system to resolve asbestos injury claims that will provide compensation for legitimate present and future claimants of asbestos exposure as provided in this Act;

(2) provide compensation to those present and future victims based on the severity of their injuries, while establishing a system flexible enough to accommodate individuals whose conditions worsen;

(3) relieve the Federal and State courts of the burden of the asbestos litigation; and

(4) increase economic stability by resolving the asbestos litigation crisis that has bankrupted companies with asbestos liability, diverted resources from the truly sick, and endangered jobs and pensions.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ASBESTOS.—The term ''asbestos'' includes—

(A) chrysotile;
(B) amosite;
(C) crocidolite;
(D) tremolite asbestos;
(E) winchite asbestos;
(F) richterite asbestos;
(G) anthophyllite asbestos;
(H) actinolite asbestos;
(I) any of the minerals listed under subparagraphs (A) through (H) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and
(J) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(2) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term ''asbestos claim'' means any claim, premised on any theory, allegation, or cause of action for damages or other relief presented in a civil action or bankruptcy proceeding, directly, indirectly, or derivatively arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child, or other relative of any exposed person.

(B) EXCLUSION.—The term does not include claims alleging damage or injury to tangible property, or claims for benefits under a workers' compensation law or veterans' benefits program.

(3) ASBESTOS CLAIMANT.—The term ''asbestos claimant'' means an individual who files a claim under section 113.

(4) CHIEF EXECUTIVE OFFICER.—The term ''Chief Executive Officer'' means the Chief Executive Officer for the Asbestos Injury Claims Resolution Corporation appointed under sections 101(b) and 109(b).

(5) CIVIL ACTION.—The term ''civil action'' means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(6) COLLATERAL SOURCE COMPENSATION.—The term ''collateral source compensation'' means the compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a final judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(7) ELIGIBLE DISEASE OR CONDITION.—The term ''eligible disease or condition'' means, to the extent that the illness meets the medical criteria requirements established under subtitle C of title I, asbestosis, severe asbestosis disease, disabling asbestosis disease, mesothelioma, and lung cancer.

(8) FUND.—The term ''Fund'' means the Asbestos Injury Claims Resolution Fund established under section 221.

(9) INSURANCE RECEIVERSHIP PROCEEDING.—The term ''insurance receivership proceeding'' means any State proceeding with respect to a financially impaired or insolvent insurer or reinsurer including the liquidation, rehabilitation, conservation, supervision, or ancillary receivership of an insurer under State law.

(10) LAW.—The term ''law'' includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.

(11) PARTICIPANT.—

(A) IN GENERAL.—The term ''participant'' means any person subject to the funding requirements of title II, including—

(i) any defendant participant subject to liability for payments under subtitle A of that title;

(ii) any insurer participant subject to a payment under subtitle B of that title; and

(iii) any successor in interest of a participant.

(B) EXCEPTION.—

(i) IN GENERAL.—A defendant participant shall not include any person protected from any asbestos claim by reason of an injunction entered in connection with a plan of reorganization under chapter 11 of title 11, United States Code, that has been confirmed

by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(ii) APPLICABILITY.—Clause (i) shall not apply to a person who may be liable under subtitle A of title II based on prior asbestos expenditures related to asbestos claims that are not covered by an injunction described under clause (i).

(12) PERSON.—The term ''person''—

(A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and

(B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.

(13) STATE.—The term ''State'' means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(14) SUBSTANTIALLY CONTINUES.—The term ''substantially continues'' means that the business operations have not been significantly modified by the change in ownership.

(15) SUCCESSOR IN INTEREST.—The term ''successor in interest'' means any person that in 1 or a series of transactions, acquires all or substantially all of the assets and properties (including, without limitation, under section 363(b) or 1123(b)(4) of title II, United States Code), and substantially continues the business operations, of a participant. The factors to be considered in determining whether a person is a successor in interest include—

(A) retention of the same facilities or location;

(B) retention of the same employees;

(C) maintaining the same job under the same working conditions;

(D) retention of the same supervisory personnel;

(E) continuity of assets;

(F) production of the same product or offer of the same service;

(G) retention of the same name;

(H) maintenance of the same customer base;

(I) identity of stocks, stockholders, and directors between the asset seller and the purchaser; or

(J) whether the successor holds itself out as continuation of previous enterprise, but expressly does not include whether the person actually knew of the liability of the participant under this Act.

(16) VETERANS' BENEFITS PROGRAM.—The term ''veterans' benefits program'' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(17) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) and chapter 81 of title 5, United States Code; and

(C) does not include the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Asbestos Injury Claims Resolution Corporation

SEC. 101. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION CORPORATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—There is established an Asbestos Injury Claims Resolution Corporation (referred to in this Act as the ''Corporation'') to undertake a program on compensation for injuries suffered by exposure to asbestos. The Corporation shall undertake the performance of the duties in this Act.

(2) PURPOSE.—The purpose of the Corporation is to provide timely, fair compensation, in the amounts and under the terms specified in this Act, on a no-fault basis and in a non-adversarial manner, to individuals whose health has been adversely affected by exposure to asbestos. Compensation amounts provided by the Corporation shall be subject to the availability of funds in the Asbestos Injury Claims Resolution Fund.

(3) EXPENSES.—There shall be available from the Asbestos Injury Claims Resolution Fund to the Chief Executive Officer sums reasonably necessary for the administrative and legal expenses of the Corporation, not to exceed $100,000,000 for the first 6 years, $50,000,000 for the following 10 years, and $25,000,000 thereafter.

(b) APPOINTMENT OF THE CHIEF EXECUTIVE OFFICER.—

(1) IN GENERAL.—The Chief Executive Officer shall be appointed by the Board of Directors of the Asbestos Injury Claims Resolution Corporation, to serve for a term of 5 years.

(2) REMOVAL.—The Chief Executive Officer may be removed at any time by the Board of Directors for any reason the Board determines sufficient.

(c) DUTIES OF CHIEF EXECUTIVE OFFICER.—

(1) IN GENERAL.—The Chief Executive Officer shall be responsible for—

(A) processing claims for compensation for asbestos-related injuries and paying compensation to eligible claimants under the criteria and procedures established under title I;

(B) determining, levying, and collecting assessments on participants under title II;

(C) appointing or contracting for the services of such personnel, making such expenditures, and taking any other actions as may be necessary and appropriate to carry out the responsibilities of the Corporation, including entering into cooperative agreements with other Federal agencies or State agencies and entering into contracts with non-governmental entities;

(D) conducting such audits and additional oversight as necessary to assure the integrity of the program;

(E) managing the Asbestos Injury Claims Resolution Fund established under section 221, including—

(i) administering, in a fiduciary capacity, the assets of the Fund for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries;

(ii) defraying the reasonable expenses of administering the Fund;

(iii) investing the assets of the Fund in accordance with section 222(b);

(iv) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets; and

(v) borrowing amounts authorized by section 221(b) on appropriate terms and conditions, including pledging the assets of or payments to the Fund as collateral;

(F) adopting such written procedures as may be necessary and appropriate to implement the provisions of this Act.

(G) making such expenditures as may be necessary and appropriate in the administration of this Act;

(H) excluding evidence and disqualifying or debarring any attorney, physician, provider of medical or diagnostic services, including laboratories and others who provide evidence in support of a claimant's application for compensation where the Chief Executive Officer determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by such individuals or entities; and

(I) having all other powers incidental, necessary, or appropriate to carrying out the functions of the Corporation.

(2) CERTAIN ENFORCEMENTS.—For each infraction relating to paragraph (1)(H), the Chief Executive Officer also refers such matters to the Attorney General who may impose a civil penalty not to exceed $10,000 on any person or entity found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Attorney General shall prescribe appropriate regulations to implement paragraph (1)(H).

(3) SELECTION OF DEPUTY CHIEF EXECUTIVE OFFICERS.—The Chief Executive Officer shall select a Deputy Chief Executive Officer for Claims Administration to carry out the Chief Executive Officer's responsibilities under this title and a Deputy Chief Executive Officer for Fund Management to carry out the Chief Executive Officer's responsibilities under title II of this Act. The Deputy Chief Executive Officers shall report directly to the Chief Executive Officer.

(d) EXPEDITIOUS DETERMINATIONS.—The Chief Executive Officer shall prescribe rules to expedite claims for asbestos claimants with exigent circumstances.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES.—The Chief Executive Officer shall establish audit and personnel review procedures for evaluating the accuracy of eligibility recommendations of agency and contract personnel.

(f) PRIVACY OF RECORDS.—

(1) IN GENERAL.—The Corporation shall adopt written procedures that are at least as protective of the privacy of records under section 522a of title 5, United States Code (commonly referred to as the Privacy Act of 1974), that shall govern the availability of records to claimants, participants, and the public of the Corporation, including the Asbestos Insurers Committee within 180 days after the date of enactment of this Act.

(g) PUBLICATION OF WRITTEN PROCEDURES.—The Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet any written procedures or rules promulgated or adopted under this Act.

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Chief Executive Officer shall establish an Advisory Committee on Asbestos Disease Compensation (hereinafter the ''Advisory Committee'').

(2) COMPOSITION AND APPOINTMENT.—The Advisory Committee shall be composed of 24 members, appointed as follows:

(A) The Majority and Minority Leaders of the Senate, the Speaker of the House, and the Minority Leader of the House shall each appoint 2 members. Of the 2—

(i) 1 shall be selected to represent the interests of claimants; and

(ii) 1 shall be selected to represent the interests of participants.

(B) The Chief Executive Officer shall appoint 16 members, who shall be individuals with qualifications and expertise in occupational or pulmonary medicine, occupational health, workers' compensation programs, financial administration, investment of funds, program auditing, or other relevant fields.

(3) QUALIFICATIONS.—All of the members described in paragraph (2) shall have expertise or experience relevant to the asbestos compensation program, including experience or expertise in diagnosing asbestos-related diseases and conditions, assessing asbestos exposure and health risks, filing asbestos claims, administering a compensation or insurance program, or as actuaries, auditors, or investment managers. None of the members described in paragraph (2)(B) shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

(b) DUTIES.—The Advisory Committee shall advise the Chief Executive Officer on—

(1) claims filing and claims processing procedures;

(2) claimant assistance programs;

(3) audit procedures and programs to ensure the quality and integrity of the compensation program;

(4) the development of a list of industries, occupations and time periods for which there is a presumption of substantial occupational exposure to asbestos;

(5) recommended analyses or research that should be conducted to evaluate past claims and to project future claims under the program;

(6) the annual report required to be submitted to Congress under section 405; and

(7) such other matters related to the implementation of this Act as the Chief Executive Officer considers appropriate.

(c) OPERATION OF THE COMMITTEE.—

(1) Each member of the Advisory Committee shall be appointed for a term of 3 years, except that, of the members first appointed—

(A) 8 shall be appointed for a term of 1 year;

(B) 8 shall be appointed for a term of 2 years; and

(C) 8 shall be appointed for a term of 3 years, as determined by the Chief Executive Officer at the time of appointment.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term shall be appointed only for the remainder of such term.

(3) The Chief Executive Officer shall designate a Chairperson and Vice Chairperson from among members of the Advisory Committee appointed under subsection (a)(2)(B).

(4) The Advisory Committee shall meet at the call of the Chairperson or the majority of its members, and at a minimum shall meet at least 4 times per year during the first 5 years of the asbestos compensation program, and at least 2 times each year thereafter.

(5) The Chief Executive Officer shall provide to the Committee such information as is necessary and appropriate for the Committee to carry out its responsibilities under this section. The Chief Executive Officer may, upon request of the Advisory Committee, secure directly from any Federal, State, or local department or agency such information as may be necessary and appropriate to enable the Advisory Committee to carry out its duties under this section.

(6) The Chief Executive Officer shall provide the Advisory Committee with such administrative support as is reasonably necessary to enable it to perform its functions.

(d) EXPENSES.—Members of the Advisory Committee, other than full-time employees of the United States, while attending meetings of the Advisory Committee or while otherwise serving at the request of the Chief Executive Officer, and while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

SEC. 103. MEDICAL ADVISORY COMMITTEE.

(a) IN GENERAL.—The Chief Executive Officer shall establish a Medical Advisory Committee to provide expert advice regarding medical issues arising under the statute.

(b) QUALIFICATIONS.—None of the members of the Medical Advisory Committee shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

SEC. 104. CLAIMANT ASSISTANCE.

(a) ESTABLISHMENT.—Not later than 180 days after the enactment of this Act, the Chief Executive Officer shall establish a comprehensive asbestos claimant assistance program to—

(1) publicize and provide information to potential claimants about the availability of benefits for eligible claimants under this Act, and the procedures for filing claims and for obtaining assistance in filing claims;

(2) provide assistance to potential claimants in preparing and submitting claims, including assistance in obtaining the documentation necessary to support a claim;

(3) respond to inquiries from claimants and potential claimants;

(4) provide training with respect to the applicable procedures for the preparation and filing of claims to persons who provide assistance or representation to claimants; and

(5) provide for the establishment of a website where claimants may access all relevant forms and information.

(b) CONTRACTS.—The claimant assistance program may be carried out in part through contracts with labor organizations, community-based organizations, and other entities which represent or provide services to potential claimants, except that such organizations may not have a financial interest in the outcome of claims filed with the Office.

(c) LEGAL ASSISTANCE.—

(1) IN GENERAL.—As part of the program established under subsection (a), the Chief Executive Officer shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS.—As part of the program, the Chief Executive Officer shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Chief Executive Officer. The claimants shall not be required to use the attorneys listed on such roster.

(3) NOTICE.—

(A) IN GENERAL.—The Chief Executive Officer shall provide asbestos claimants with notice of, and information relating to—

(i) pro bono services for legal assistance available to those claimants; and

(ii) any limitations on attorneys fees for claims filed under this title.

(B) NOTICE BY ATTORNEYS.—Before a person becomes a client of an attorney with respect to an asbestos claim, that attorney shall provide notice to that person of pro bono services for legal assistance available for that claim.

(d) ATTORNEY'S FEES.—

(1) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with an asbestos claim or the claim of an individual under this Act, more than 5 percent of a final award made (whether by the Chief Executive Officer initially or as a result of administrative or appellate review) under this Act on such claim.

(2) EXCEPTION.—The Chief Executive Officer may by rule adopt a lower percentage limitation for particular classes of cases if the Chief Executive Officer finds that—

(A) the percentage limitation otherwise applicable under this paragraph would result in unreasonably high compensation to claimants' representatives in such cases; and

(B) such limitation would not unduly limit the availability of representatives to claimants.

(3) REASONABLE FEE FOR WORK ACTUALLY AND REASONABLY PERFORMED.—In addition to the provisions specified in paragraphs (1) and (2), a representative of an individual may not receive a fee unless—

(A) the representative submits to the Chief Executive Officer appropriately detailed billing documentation for the work actually and reasonably performed in the course of representation of the claimant; and

(B) the Chief Executive Officer finds that the fee to be awarded is for work actually and reasonably performed on behalf of the claimant and does not exceed 200 percent of a reasonable hourly fee for such work.

(4) PENALTY.—Any representative of an asbestos claimant who violates this subsection shall be fined not more than the greater of—

(A) $5,000; or

(B) twice the amount received by the representative for services rendered in connection with each such violation.

SEC. 105. PROGRAM STARTUP.

(a) INTERIM WRITTEN PROCEDURES.—Not later than 90 days after the date of enactment of this Act, the Chief Executive Officer shall adopt interim written procedures for the processing of claims under this title and the operation of the Fund under title II, including procedures for the expediting of exigent claims.

(b) EXIGENT HEALTH CLAIMS.—

(1) IN GENERAL.—The Chief Executive Officer shall develop procedures to provide for an expedited process to categorize, evaluate, and pay exigent health claims. Such procedures shall include, pending adoption of final written procedures, adoption of interim written procedures as needed for the processing of exigent claims.

(2) ELIGIBLE EXIGENT HEALTH CLAIMS.—A claim shall qualify for treatment as an exigent health claim if the claimant is living and the claimant provides—

(A) documentation that a physician has diagnosed the claimant as having mesothelioma; or

(B) a declaration or affidavit, from a physician who has examined the claimant within 120 days before the date of such declaration or affidavit, that the physician has diagnosed the claimant as being terminally ill from an asbestos-related illness and having a life expectancy of less than 1 year.

(3) SPECIAL EXPEDITED PROCEDURES FOR PENDING MALIGNANT MESOTHELIOMA ASBESTOS CLAIMS.—

(A) IN GENERAL.—An individual who has an asbestos claim pending in any Federal or State court on the enactment date of this Act and who has documentation from a board certified pathologist that the pathologist has diagnosed the claimant with malignant mesothelioma may file a claim for compensation under the special expedited provisions of subparagraph (B).

(B) EXPEDITED CLAIMS.—An exigent claim filed under subparagraph (A) shall be processed for expedited decision if the individual—

(i) provides the documentation required by subparagraph (A);

(ii) attests that he has not received an award from any source for malignant mesothelioma or, if he has, the specifics of that award; and

(iii) attests that he had an asbestos claim for malignant mesothelioma pending in a Federal or State court on the date of enactment of this Act and provides documentation of that pending asbestos claim, including any response to that claim by a defendant and any court orders.

(C) DECISION.—Within 90 days after the receipt of the information required by subparagraphs (A) and (B), the Chief Executive Officer shall determine if that information is sufficient to meet the medical criteria of section 121(d)(10), ''Malignant Level 10'', and shall issue a decision to the claimant. If the information is insufficient, the Chief Executive Officer shall state the reasons with particularity and offer assistance to the claimant of the type provided under section 104, ''Claimant Assistance'', to cure the insufficiency in an expeditious manner.

(D) AVAILABILITY OF PROCEDURE.—The expedited procedures of this paragraph shall be available for malignant mesothelioma claims filed within 1 year of the date of enactment of this Act.

(4) ADDITIONAL EXIGENT HEALTH CLAIMS.—The Chief Executive Officer may, in final written procedures issued under section 101(c), designate additional categories of claims that qualify as exigent health claims under this subsection.

(c) EXTREME FINANCIAL HARDSHIP CLAIMS.—The Chief Executive Officer shall, in final written procedures issued under section 101(c), designate categories of claims to be handled on an expedited basis as a result of extreme financial hardship.

(d) INTERIM CHIEF EXECUTIVE OFFICER.—Until a Chief Executive Officer is appointed by the Board of Directors, the President shall appoint an Interim Chief Executive Officer who shall have all the authority conferred by this Act on the Chief Executive Officer and who shall be deemed to be the Chief Executive Officer for the purposes of this Act. Before final written procedures are promulgated relating to claims processing, the Interim Chief Executive Officer may prioritize claims processing, without regard to the time requirements under subtitle B, based on severity of illness and likelihood that the illness in question was exposed by exposure to asbestos.

(e)TRANSFER OF JURISDICTION OF CLAIMS.—

(1) IN GENERAL.—

(A) TRANSFER OF JURISDICTION.—Notwithstanding any other provision of this Act, exclusive jurisdiction for the resolution of any asbestos claim pending as of the date of enactment of this Act or of any subsequently filed asbestos claim, shall be transferred to the Asbestos Claims Resolution Corporation, other than a claim for which a verdict or final order or judgment has been entered by a court before the date of enactment of this Act. The procedures under section 113 shall be followed in order to effectuate the transfer.

(B) PENDING COURT PROCEEDINGS.—In order to effectuate the transfer of jurisdiction, any Federal or State court with a pending or subsequently filed asbestos claim is required to enter a judgment of dismissal on any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss such action on its own motion.

(2) PURSUAL OF MESOTHELIOMA CLAIMS IN FEDERAL COURT.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, if, not later than 1 year after the date of enactment of this Act, the Chief Executive Officer cannot certify to Congress that the Fund is operational and procedures are in place to review and pay mesothelioma claims at a reasonable rate, each person that has filed a mesothelioma claim stayed under paragraph (1)(A), or with such a claim arising after the date of enactment of this Act, may pursue that claim under the conditions described in paragraph (3) in a Federal district court located within—

(i) the State of residence of the claimant; or

(ii) the State in which the asbestos exposure occurred.

(B) DEFENDANTS NOT FOUND.—If any defendant cannot be found in the State described in clause (i) or (ii) of subparagraph (A), the claim may be pursued only against that defendant in the Federal district court located within any State in which the defendant may be found.

(C) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the asbestos exposure occurred in more than 1 Federal district the trial court shall determine which Federal district is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subparagraph.

(D) CREDIT OF CLAIM AND EFFECT OF OPERATIONAL FUND.—If an asbestos claim is pursued in Federal court in accordance with this paragraph, any recovery by the claimant shall be a collateral source compensation for purposes of section 134. If the Chief Executive Officer subsequently certifies to Congress that the Fund has become operational and the procedures are in place to review and pay asbestos claims at a reasonable rate, any claim in a civil action in Federal court that is not actually on trial before a jury which has been impaneled and presentation of evidence has commenced, but before its deliberation, or before a judge and is at the presentation of evidence, shall be deemed a reinstated claim against the Fund and the civil action before the Federal or State court shall be null and void. If the Chief Executive Officer tenders an award to a claimant, any claim in a civil action in Federal court that has not yet resulted in a final judgment and award for the plaintiff shall be deemed a reinstated claim and the civil action before the Federal court shall be null and void.

(3) LIMITS ON CASES.—In any action permitted under paragraph (2), the following restrictions shall apply:

(A) AWARD VALUES.—Relief awarded in an action permitted under paragraph (2) shall not exceed the amount of compensation authorized to be awarded under this Fund to a claimant under Malignant Level VII.

(B) ATTORNEYS' FEES.—

(i) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with an action permitted under paragraph (2), more than 20 percent of a final award made as a result of such action.

(ii) REASONABLE FEE FOR WORK ACTUALLY PERFORMED.—In addition to the limitation specified in clause (i), a representative of an individual may not receive a fee unless—

(I) the representative submits to the Chief Executive Officer appropriately detailed billing documentation for the work actually and reasonably performed in the course of representation of the claimant; and

(II) the Chief Executive Officer finds that the fee to be awarded is for work actually and reasonably performed on behalf of the claimant and does not exceed 200 percent of a reasonable hourly fee for such work.

(C) PENALTY.—Any representative of an asbestos claimant who violates this paragraph shall be fined not more than the greater of—

(i) $5,000; or

(ii) twice the amount received by the representative for services rendered in connection with each such violation.

(4) OFFSET.—

(A) DEFINITION.—In this paragraph, the term ''asbestos expenditure'' has the same meaning given the term ''prior asbestos expenditure'' in paragraph (7) of section 201, but without regard to the limit on the date of payment expressed in that paragraph.

(B) OFFSET ON OBLIGATION.—Asbestos expenditures incurred by a participant as a result of this subsection shall be offset from the participant's obligations to the Fund and from defendant or insurance participants' total obligations to the Fund.

SEC. 106. AUTHORITY OF THE CHIEF EXECUTIVE OFFICER.

The Chief Executive Officer on any matter within the jurisdiction of the Chief Executive Officer under this Act may subpoena persons to compel testimony, records, and other information relevant to the responsibilities of the Chief Executive Officer under this section. The subpoena may be enforced in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

SEC. 107. ESTABLISHMENT OF CORPORATION.

(a) FEDERAL CHARTER.—There is established a corporation to be known as the Asbestos Injury Claims Resolution Corporation (''Corporation'').

(b) NATURE OF CORPORATION.—The Corporation is a nonprofit corporation and shall have no capital stock. The Corporation is not an agency or establishment of the United States Government.

(c) TERMINATION OF CORPORATION.—The Corporation shall dissolve 40 years after the date of enactment of this Act, unless dissolved sooner by the Board. All remaining funds held by the Corporation shall be distributed to the defendant participants and insurer participants in proportion to the percentage of assessments paid into the Corporation.

SEC. 108. BOARD OF DIRECTORS; OFFICERS AND EMPLOYEES; CONFLICTS.

(a) BOARD OF DIRECTORS.—There shall be in the Corporation a Board of Directors. The Board shall appoint the Chief Executive Officer and formulate the policies of the Corporation.

(b) APPOINTMENT.—The Corporation shall have a Board of Directors (''Board''), consisting of 7 members. The Board shall be appointed as follows:

(1) DESIGNATED MEMBERS.—The Secretary of the Treasury, the Attorney General, and the Secretary of Labor shall serve as members of the Board.

(2) APPOINTED MEMBERS.—The remaining 4 members of the Board shall be appointed by the President. The members of the Board shall not, by reason of such membership, be deemed to be officers or employees of the United States.

(3) INELIGIBILITY.—None of the Directors shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

(c) OPERATION OF THE BOARD.—

(1) CHAIR.—The Board shall be chaired by a member elected by the Board, but the Chairperson may not be a full-time Federal employee.

(2) MEETINGS.—Meetings of the Board may be convened by the Chairperson upon reasonable notice, but the Board shall meet at least once per year.

(3) QUORUM.—A quorum shall consist of all of the Directors or their representatives.

(4) COMPENSATION.—The compensation of each member of the Board shall be paid by the Corporation as current expenses. Each member other than members serving by virtue of their Federal office shall be compensated at the daily equivalent of the highest rate payable under section 5332 of title 1, for each day (including travel time) during which the member is engaged in the actual performance of duties as a member of the Board. Members of the Board shall be reimbursed by the Corporation for actual, reasonable, and necessary expenses (including traveling and subsistence expenses) incurred by them in the performance of the duties vested in the Board by this Act.

(e) OFFICERS AND EMPLOYEES.—

(1) STATUS.—Officers and employees of the Corporation are not employees of the Federal Government as a result of their service with the Corporation.

(2) CHIEF EXECUTIVE OFFICER.—There shall be in the Corporation a Chief Executive Officer who shall be responsible for carrying out the functions of the Corporation as described in section 101(c) and in accordance with policies established by the Board. The Chief Executive Officer shall be appointed by the Board of Directors under section 101(b) and on such additional terms as the Board may determine and may be removed by the Board of Directors in accordance with section 101(b)(2). The Chief Executive Officer shall receive compensation at the rate provided by law for the Vice President of the United States.

(3) APPOINTMENT.—The Chief Executive Officer shall appoint, remove, and fix compensation for all subordinate officers and employees of the Corporation as determined necessary.

(4) COMPENSATION.—No officer or employee of the Corporation, other than the Chief Executive Officer, may be compensated by the Corporation at an annual rate of pay which exceeds the rate of basic pay in effect for level I of the Executive Schedule under section 5312 of title 5, United States Code.

(f) CONFLICTS OF INTEREST.—No part of the Corporation's revenue, income, or property shall inure to the benefit of its directors, officers, and employees, and such revenue, earnings, or other income, or property shall be used for the carrying out of the corporate purposes set forth in this Act. No director, officer, or employee of the corporation shall in any manner directly or indirectly participate in the deliberation upon or the determination of any question affecting his or her personal interests or the interests of any corporation, partnership, or organization in which he or she is directly or indirectly interested.

(g) REGULATIONS.—

(1) AUTHORITY.—The Attorney General, after consultation with the Secretaries of the Treasury and of Labor, shall issue regulations imposing on the Chief Executive Officer, the Deputy Chief Executive Officers, and the Board a fiduciary duty to manage the affairs of the Corporation with prudence in order to provide timely compensation to eligible claimants, giving appropriate priority to those most ill, while also preserving the funds available to the Corporation in order to compensate all eligible claimants.

(2) SUNSET.—Effective 2 years after the enactment of this Act, all authority to issue and revise regulations under this section shall terminate.

(h) PERSONAL LIABILITY.—The Chief Executive Officer, Deputy Chief Executive Officers, and members of the Board shall be exempt from civil liability for any act or omission committed within the scope of their employment with the Corporation, except for acts that constitute gross negligence or intentional wrongdoing.

(i) CORPORATE COMPLIANCE OFFICER.—

(1) IN GENERAL.—The Board of Directors shall establish within the Corporation a Corporate Compliance Office headed by a Chief Compliance Officer selected by the President on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(2) INDEPENDENCE.—Neither the Board nor the Chief Executive Officer shall prevent or prohibit the Chief Compliance Officer from initiating, carrying out, or completing any audit or investigation during the course of any audit or investigation.

(3) STAFF.—The Board shall authorize the Chief Compliance Officer to obtain sufficient staff and other resources to carry out the function of the position.

(4) DUTIES.—It shall be the duty and responsibility of the Chief Compliance Officer to—

(A) provide policy direction for, and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the Corporation;

(B) recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Corporation for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(C) recommend policies for promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Corporation, or the identification and prosecution of participants in such fraud or abuse;

(D) keep the Chief Executive Officer, the Board, and Congress fully and currently informed concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Corporation; and

(E) recommend corrective action concerning such problems, abuses, and deficiencies, and report on the progress made in implementing such corrective action.

(5) CRIMINAL VIOLATIONS.—In carrying out the duties and responsibilities established under this section, the Chief Compliance Officer shall file a criminal complaint with the Attorney General whenever the Chief Compliance Officer has reasonable grounds to believe there has been a violation of Federal criminal law.

SEC. 109. POWERS; OFFICES; TAX LAWS; AUDIT; ANNUAL REPORT.

(a) POWERS.—In furtherance of the purposes of the Corporation, the Corporation may—

(1) adopt bylaws consistent with law;

(2) adopt, alter, use, and destroy a corporate seal;

(3) sue and be sued, complain and defend, in its corporate name and through its own counsel, in courts of competent jurisdiction;

(4) enter into contracts and modify, or consent to the modification of, any contract or agreement to which the Corporation is a party or in which the Corporation has an interest;

(5) make advance, progress, or other payments;

(6) own and dispose of property;

(7) issue written policies and statements; and

(8) exercise any and all powers established under this Act and such incidental powers as are necessary to carry out its powers, duties, and functions under section 101 and other provisions of this Act.

(b) PRINCIPAL AND BRANCH OFFICES.—The Corporation shall maintain its principal office in the metropolitan Washington, DC, area. The Corporation may establish offices in any place or places in which the Corporation may carry on all or any of its operations and business.

(c) TAX LAWS.—The Corporation, including its franchise and income, shall be exempt from the tax laws and from taxation now or hereafter imposed by the United States, or any territory or possession thereof, or by any State, county, municipality, or local taxing authority.

(d) AUDIT.—The programs, activities, receipts, expenditures, and financial transactions of the Corporation shall be subject to audit by an independent certified public accounting firm under generally accepted accounting principles that would apply to a private not-for-profit corporation. The auditing firm shall have access to such books, accounts, financial records, reports, files, and such other papers, things, or property belonging to or in use by the corporation and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. A report on each such audit shall be made by the auditing firm to the Board of Directors, to the Secretary of the Treasury, and to Congress.

(e) ANNUAL REPORT.—Within 6 months after the close of each fiscal year, the Corporation shall submit to the President and to the Committees on the Judiciary of the Senate and the House of Representatives the report on the activities of the Corporation during the prior fiscal year required under section 405 of this Act.

(f) ANNUAL REPORT CERTIFICATION.—Before submission of the annual report required under section 405 of this Act, the Chief Executive Officer and the Deputy Chief Executive Officers, in regard to their particular areas of responsibility, shall certify that—

(1) the signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the Corporation as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the Corporation is made known to such officers by others within the Corporation, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the Corporation's internal controls as of a date within 90 days before the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(5) the signing officers have disclosed to the Comptroller General and to the independent auditing firm—

(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the Corporation's ability to record, process, summarize, and report financial data and have identified any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Corporation's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Subtitle B—Asbestos Disease Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

To be eligible for an award under this Act for an asbestos-related disease or injury, an individual shall—

(1) file a claim in a timely manner in accordance with section 113; and

(2) prove, by a preponderance of the evidence, that the claimant suffers from an eligible disease or condition, as demonstrated by evidence that meets the requirements established under subtitle C.

SEC. 112. GENERAL RULE CONCERNING NO-FAULT COMPENSATION.

An asbestos claimant shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

(1) IN GENERAL.—Any individual who has suffered from a disease or condition that is believed to meet the requirements established under subtitle C (or the personal representative of the estate of that individual, if the individual is deceased or incompetent) may file a claim with the Corporation for an award with respect to such injury.

(2) DEFINITION.—In this Act, the term ''personal representative'' shall have the same meaning as that term is defined in section 104.4 of title 28 of the Code of Federal Regulations, as in effect on December 31, 2004.

(3) LIMITATION.—A claim may not be filed by any person seeking contribution or indemnity.

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, if an individual fails to file a claim with the Corporation under this section within 2 years after the date on which—

(A) the individual first received a medical diagnosis of an eligible disease or condition as provided for under this subtitle and subtitle C;

(B) the individual first discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to an eligible disease or condition; or

(C) the Chief Executive Officer certifies the Fund is operational, any claim relating to that injury, and any other asbestos claim related to that injury, shall be extinguished, and any recovery thereon shall be prohibited.

(2) EXCEPTION.—The statute of limitations in paragraph (1) does not apply to the progression of non-malignant diseases once the initial claim has been filed.

(3) EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—If, on the date of enactment of this Act, an asbestos claimant has any timely filed asbestos claim that is pending—

(i) in a Federal or State court; or

(ii) with a trust established under title 11, United States Code,

such claimant shall file a claim under this section within 2 years after such date of enactment, or any claim relating to that injury, and any other asbestos claim related to that injury shall be extinguished, and recovery there shall be prohibited.

(B) SPECIAL RULE.—For purposes of this paragraph, a claim shall not be treated as pending with a trust established under title 11, United States Code, solely because a claimant whose claim was previously compensated by the trust has or alleges—

(i) a non-contingent right to the payment of future installments of a fixed award; or

(ii) a contingent right to recover some additional amount from the trust on the occurrence of a future event, such as the reevaluation of the trust's funding adequacy or projected claims experience.

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—An asbestos claimant who receives an award under this title for an eligible disease or condition, and who subsequently develops another such injury, shall be eligible for additional awards under this title (subject to appropriate setoffs for such prior recovery of any award under this title and from any other collateral source) and the statute of limitations under paragraph (1) shall not begin to run with respect to such subsequent injury until such claimant obtains a medical diagnosis of such other injury or discovers facts that would have led a reasonable person to obtain such a diagnosis.

(B) SETOFFS.—Any amounts paid or to be paid for a prior award under this Act shall be deducted as a setoff against amounts payable for the second injury claim.

(c) REQUIRED INFORMATION.—A claim filed under subsection (a) shall be in such form, and contain such information in such detail, as the Chief Executive Officer shall by written procedures prescribe. At a minimum, a claim shall include—

(1) the name, social security number, sex, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) a complete employment history sufficient to establish required asbestos exposure, accompanied by Social Security records;

(4) a complete description of the asbestos exposure of the claimant, including, to the extent known, information on the site, or location of exposure, and duration and intensity of exposure;

(5) a description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases or conditions of the claimant, accompanied by a written report by the claimant's physician with medical diagnoses and x-ray films, and other test results necessary to establish eligibility for an award under this Act;

(7) a description of any prior or pending civil action or other claim, including any claim under a workers' compensation law, brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal, or pleural reaction, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise;

(8) for any claimant who has made a claim for asbestos-related injury or any other pulmonary, parenchymal, or pleural reaction under a workers' compensation law, a certification that the claimant has notified the workers' compensation insurer or self-insured employer of the claim made under this Act; and

(9) for any claimant who asserts that he or she is a nonsmoker or an ex-smoker, as defined in section 131, for purposes of an award under Malignant Level VI, evidence to support the assertion of nonsmoking or ex-smoking, including relevant medical records.

(d) DATE OF FILING.—A claim shall be considered to be filed on the date that the claimant mails the claim to the Office, as determined by postmark, or on the date that the claim is received by the Office, whichever is the earliest determinable date.

(e) INCOMPLETE CLAIMS.—If a claim filed under subsection (a) is incomplete, the Chief Executive Officer shall notify the claimant of the information necessary to complete the claim and inform the claimant of such services as may be available through the Claimant Assistance Program established under section 104 to assist the claimant in completing the claim. Any time periods for the processing of the claim shall be suspended until such time as the claimant submits the information necessary to complete the claim. If such information is not received within 1 year after the date of such notification, the claim shall be dismissed.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) IN GENERAL.—

(1) REVIEW OF CLAIMS.—The Chief Executive Officer shall, in accordance with this section, determine whether each claim filed under this Act satisfies the requirements for eligibility for an award under this Act and, if so, the value of the award. In making such determinations, the Chief Executive Officer shall consider the claim presented by the claimant, the factual and medical evidence submitted by the claimant in support of the claim, and the results of such investigation as the Chief Executive Officer may deem necessary to determine whether the claim satisfies the criteria for eligibility established by this Act.

(2) ADDITIONAL EVIDENCE.—The Chief Executive Officer may request the submission of medical evidence in addition to the minimum requirements of section 113(c) if necessary or appropriate to make a determination of eligibility for an award, in which case the cost of obtaining such additional information or testing shall be paid by the Corporation in accordance with CPT codes at medicare rates by region, at the time of provision of services.

(b) PROPOSED DECISIONS.—Not later than 90 days after the filing of a claim, the Chief Executive Officer shall provide to the claimant (and the claimant's representative) a proposed decision accepting or rejecting the claim in whole or in part and specifying the amount of the proposed award, if any. The proposed decision shall be in writing, shall contain findings of fact and conclusions of law, and shall contain an explanation of the procedure for obtaining review of the proposed decision.

(c) REVIEW OF PROPOSED DECISIONS.—

(1) RIGHT TO HEARING.—

(A) IN GENERAL.—Any claimant not satisfied with a proposed decision of the Chief Executive Officer under subsection (b) shall be entitled, on written request made within 90 days after the date of the issuance of the decision, to a hearing on the claim of that claimant before a representative of the Chief Executive Officer. At the hearing, the claimant shall be entitled to present oral evidence and written testimony in further support of that claim.

(B) CONDUCT OF HEARING.—When practicable, the hearing will be set at a time and place convenient for the claimant. In conducting the hearing, the representative of the Chief Executive Officer shall not be

bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of title 5, United States Code, except as provided by this Act, but shall conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive such relevant evidence as the claimant adduces and such other evidence as the representative determines necessary or useful in evaluating the claim.

(2) REVIEW OF WRITTEN RECORD.—In lieu of a hearing under paragraph (1), any claimant not satisfied with a proposed decision of the Chief Executive Officer shall have the option, on written request made within 90 days after the date of the issuance of the decision, of obtaining a review of the written record by a representative of the Chief Executive Officer. If such review is requested, the claimant shall be afforded an opportunity to submit any written evidence or argument which he or she believes relevant.

(d) FINAL DECISIONS.—

(1) IN GENERAL.—If the period of time for requesting review of the proposed decision expires and no request has been filed, or if the claimant waives any objections to the proposed decision, the Chief Executive Officer shall issue a final decision. If such decision materially differs from the proposed decision, the claimant shall be entitled to review of the decision under subsection (c).

(2) TIME AND CONTENT.—If the claimant requests review of all or part of the proposed decision the Chief Executive Officer shall issue a final decision on the claim not later than 180 days after the request for review is received, if the claimant requests a hearing, or not later than 90 days after the request for review is received, if the claimant requests review of the written record. Such decision shall be in writing and contain findings of fact and conclusions of law.

(e) REPRESENTATION.—A claimant may authorize an attorney or other individual to represent him or her in any proceeding under this Act.

SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.

(a) IN GENERAL.—

(1) DEVELOPMENT.—The Chief Executive Officer shall develop methods for auditing and evaluating the medical evidence submitted as part of a claim. The Chief Executive Officer may develop additional methods for auditing and evaluating other types of evidence or information received by the Chief Executive Officer.

(2) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

(A) IN GENERAL.—If the Chief Executive Officer determines that an audit conducted in accordance with the methods developed under paragraph (1) demonstrates that the medical evidence submitted by a specific physician or medical facility is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician or facility shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(B) NOTIFICATION.—Upon a determination by the Chief Executive Officer under subparagraph (A), the Chief Executive Officer shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal such determination under procedures issued by the Chief Executive Officer.

(b) REVIEW OF CERTIFIED B-READERS.—

(1) EVALUATION.—At a minimum, the Chief Executive Officer shall prescribe procedures to randomly assign a statistically significant sample of claims for evaluation by independent certified B-readers of x-rays submitted in support of a claim, the cost of which shall be paid by the Corporation.

(2) DISAGREEMENT.—If an independent certified B-reader assigned under paragraph (1) disagrees with the quality grading or ILO level assigned to an x-ray submitted in support of a claim, the Chief Executive Officer shall require a review of such x-rays by a second independent certified B-reader.

(3) EFFECT ON CLAIM.—If neither certified B-reader under paragraph (2) agrees with the quality grading and the ILO grade level assigned to an x-ray as part of the claim, the Chief Executive Officer shall take into account the findings of the 2 independent B readers in making the determination on such claim.

(4) CERTIFIED B-READERS.—The Chief Executive Officer shall maintain a list of a minimum of 50 certified B-readers eligible to participate in the independent reviews, chosen from all certified B-readers. When an x-ray is sent for independent review, the Chief Executive Officer shall choose the certified B-reader at random from that list.

(c) SMOKING ASSESSMENT.—

(1) IN GENERAL.—

(A) RECORDS AND DOCUMENTS.—To aid in the assessment of the accuracy of claimant representations as to their smoking status for purposes of determining eligibility and amount of award under Malignant Level VI, the Chief Executive Officer shall have the authority, notwithstanding any other provision of law, to obtain relevant records and documents, including—

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

(B) CONSENT.—The claimant shall provide consent for the Chief Executive Officer to obtain such records and documents where required.

(2) REVIEW.—The frequency of review of records and documents submitted under paragraph (1)(A) shall be at the discretion of the Chief Executive Officer, but shall address at least 5 percent of the claimants asserting status as nonsmokers or ex-smokers.

(3) CONSENT.—

(A) IN GENERAL.—The Chief Executive Officer may require the performance of blood tests or any other appropriate medical test, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, the cost of which shall be paid by the Corporation.

(B) SERUM COTININE SCREENING.—The Chief Executive Officer shall require the performance of serum cotinine screening of all claimants who assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, the cost of which shall be paid by the Corporation.

(4) PENALTY FOR FALSE STATEMENTS.—

(A) IN GENERAL.—Any false information submitted under this subsection shall be subject to criminal prosecution or civil penalties as provided under section 1348 of title 18, United States Code (as added by this Act) and section 101(c)(2).

(B) NO COMPENSATION.—Any claimant penalized as described under subparagraph (A) shall not be entitled to compensation under the Fund.

(d) PULMONARY FUNCTION TESTING.—The Chief Executive Officer shall develop auditing procedures for pulmonary function test results submitted as part of a claim, to ensure that tests are conducted in accordance with American Thoracic Society Criteria, as defined under section 121(a)(13).

Subtitle C—Medical Criteria

SEC. 121. MEDICAL CRITERIA REQUIREMENTS.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ASBESTOSIS DETERMINED BY PATHOLOGY.—The term ''asbestosis determined by pathology'' means indications of asbestosis based on the pathological grading system for asbestosis described in the Special Issues of the Archives of Pathology and Laboratory Medicine, ''Asbestos-associated Diseases'', Vol. 106, No. 11, App. 3 (October 8, 1982).

(2) BILATERAL ASBESTOS-RELATED NONMALIGNANT REACTION.—The term ''bilateral asbestos-related nonmalignant reaction'' means a diagnosis of bilateral asbestos-related nonmalignant reaction based on—

(A) an x-ray reading of 1/1 or higher based on the ILO grade scale;

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

(3) BILATERAL PLEURAL REACTION OF B2.—The term ''bilateral pleural reaction of B2'' means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least ¼ of the projection of the lateral chest wall.

(4) CERTIFIED B-READER.—The term ''certified B-reader'' means an individual who is certified by the National Institute of Occupational Safety and Health and whose certification by the National Institute of Occupational Safety and Health is up to date.

(5) DIFFUSE PLEURAL THICKENING.—The term ''diffuse pleural thickening'' means blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening.

(6) FEV1.—The term ''FEV1'' means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.

(7) FVC.—The term ''FVC'' means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.

(8) ILO GRADE.—The term ''ILO grade'' means the radiological ratings for the presence of lung changes as determined from a chest x-ray, all as established from time to time by the International Labor Organization.

(9) LOWER LIMITS OF NORMAL.—The term ''lower limits of normal'' means the fifth percentile of healthy populations as defined in the American Thoracic Society statement on lung function testing (Amer. Rev. Resp. Disease 1991, 144:1202–1218) and any future revision of the same statement.

(10) NONSMOKER.—The term ''nonsmoker'' means a claimant who—

(A) never smoked; or

(B) has smoked fewer than 100 cigarettes or the equivalent amount of other tobacco products during the claimant's lifetime.

(11) PO_2.—The term ''PO_2'' means the partial pressure (tension) of oxygen, which measures the amount of dissolved oxygen in the blood.

(12) PULMONARY FUNCTION TESTING.—The term ''pulmonary function testing'' means spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society and is performed on equipment which is in material compliance with the standards of the American Thoracic Society for technical quality and calibration.

(13) SUBSTANTIAL OCCUPATIONAL EXPOSURE TO ASBESTOS.—

(A) IN GENERAL.—The term ''substantial occupational exposure'' means employment in an industry and an occupation where for a substantial portion of a normal work year for that occupation, the claimant—

(i) handled raw asbestos fibers;

(ii) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed to raw asbestos fibers;

(iii) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to significant amounts of asbestos fibers; or

(iv) worked in close proximity to other workers engaged in the activities described under clause (i), (ii), or (iii), such that the claimant was exposed on a regular basis to significant amounts of asbestos fibers.

(B) REGULAR BASIS.—In this paragraph, the term ''on a regular basis'' means on a frequent or recurring basis.

(14) TLC.—The term ''TLC'' means total lung capacity, which is the total volume of air in the lung after maximal inspiration.

(15) WEIGHTED OCCUPATIONAL EXPOSURE.—

(A) IN GENERAL.—The term ''weighted occupational exposure'' means exposure for a period of years calculated according to the exposure weighting formula under subparagraphs (B) through (E).

(B) MODERATE EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved working in areas immediate to where asbestos-containing products were being installed, repaired, or removed under circumstances that involved regular airborne emissions of significant amounts of asbestos fibers, shall count as 1 year of substantial occupational exposure.

(C) HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved the direct installation, repair, or removal of asbestos-containing products such that the person was exposed on a regular basis to significant amounts of asbestos fibers, shall count as 2 years of substantial occupational exposure.

(D) VERY HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, was in primary asbestos manufacturing, a World War II shipyard, or the asbestos insulation trades, such that the person was exposed on a regular basis to significant amounts of asbestos fibers, shall count as 4 years of substantial occupational exposure.

(E) DATES OF EXPOSURE.—Each year of exposure calculated under subparagraphs (B), (C), and (D) that occurred before 1976 shall be counted at its full value. Each year from 1976 to 1986 shall be counted as ½ of its value. Each year after 1986 shall be counted as 1/10 of its value.

(F) OTHER CLAIMS.—Individuals who do not meet the provisions of subparagraphs (A) through (E) and believe their post-1976 or post-1986 exposures exceeded the Occupational Safety and Health Administration standard may submit evidence, documentation, work history, or other information to substantiate noncompliance with the Occupational Safety and Health Administration standard (such as lack of engineering or work practice controls, or protective equipment) such that exposures would be equivalent to exposures before 1976 or 1986, or to documented exposures in similar jobs or occupations where control measures had not been implemented.

(b) MEDICAL EVIDENCE.—

(1) LATENCY.—Unless otherwise specified, all diagnoses of an asbestos-related disease for a level under this section shall be accompanied by—

(A) a statement by the physician providing the diagnosis that at least 10 years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis; or

(B) a history of the claimant's exposure that is sufficient to establish a 10-year latency period between the date of first exposure to asbestos or asbestos-containing products and the diagnosis.

(2) DIAGNOSTIC GUIDELINES.—All diagnoses of asbestos-related diseases shall be based upon—

(A) for disease Levels I through V, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination of the claimant by the physician providing the diagnosis;

(ii) an evaluation of smoking history and exposure history before making a diagnosis;

(iii) an x-ray reading by a certified B-reader; and

(iv) pulmonary function testing in the case of disease Levels III, IV, and V;

(B) for disease Levels I through V, in the case of a claimant who was deceased at the time the claim was filed, a report from a physician based upon a review of the claimant's medical records which shall include—

(i) pathological evidence of the non-malignant asbestos-related disease; or

(ii) an x-ray reading by a certified B-reader;

(C) for disease Levels VI through VIII, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination by the claimant's physician providing the diagnosis; or

(ii) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(D) for disease Levels VI through VIII, in the case of a claimant who was deceased at the time the claim was filed—

(i) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(ii) a report from a physician based upon a review of the claimant's medical records.

(3) CREDIBILITY OF MEDICAL EVIDENCE.—To ensure the medical evidence provided in support of a claim is credible and consistent with recognized medical standards, a claimant under this title may be required to submit—

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;

(C) laboratory tests;

(D) tissue samples;

(E) results of medical examinations;

(F) reviews of other medical evidence; and

(G) medical evidence that complies with recognized medical standards regarding equipment, testing methods, and procedure to ensure the reliability of such evidence as may be submitted.

(c) EXPOSURE EVIDENCE.—

(1) IN GENERAL.—To qualify for any disease level, the claimant shall demonstrate—

(A) a minimum exposure to asbestos or asbestos-containing products;

(B) the exposure occurred in the United States, its territories or possessions, or while a United States citizen, while an employee of an entity organized under any Federal or State law regardless of location, or while a United States citizen while serving on any United States flagged or owned ship, provided the exposure results from such employment or service; and

(C) any additional asbestos exposure requirement under this section.

(2) GENERAL EXPOSURE REQUIREMENTS.—In order to establish exposure to asbestos, a claimant shall present meaningful and credible evidence—

(A) by an affidavit of the claimant;

(B) by an affidavit of a coworker or family member, if the claimant is deceased and such evidence is found in proceedings under this title to be reasonably reliable;

(C) by invoices, construction, or similar records; or

(D) any other credible evidence.

(d) ASBESTOS DISEASE LEVELS.—

(1) NONMALIGNANT LEVEL I.—To receive Level I compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease; and

(B) evidence of 5 years cumulative occupational exposure to asbestos.

(2) NONMALIGNANT LEVEL II.—To receive Level II compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater, and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or blunting of either costophrenic angle and bilateral pleural plaque;

(B) evidence of TLC less than 80 percent and FVC less than the lower limits of normal, and FEV1/FVC ratio less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question.

(3) NONMALIGNANT LEVEL III.—To receive Level III compensation a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology with a college of American Pathologists National Institution for Occupational Safety and Health level of 3 or 4;

(B) evidence of TLC less than 80 percent, FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(4) NONMALIGNANT LEVEL IV.—To receive Level IV compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant reaction with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology;

(B) evidence of TLC less than 60 percent or FVC less than 60 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos before diagnosis; and

(D) supporting medical documentation—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(5) NONMALIGNANT LEVEL V.—To receive Level V compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and

present in both lower lung zones, or asbestosis determined by pathology;

(B)(i) evidence of TLC less than 50 percent or FVC less than 50 percent, and FEV1/FVC ratio greater than or equal to 65 percent; or

(ii) PO_2 less than 55 mm/Hg, plus a FEV1/FVC ratio not less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation—

(i) establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(6) MALIGNANT LEVEL VI.—To receive Level VI compensation, a claimant shall provide—

(A) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(B)(i) a diagnosis by a board-certified pathologist of asbestosis, based on a chest x-ray of at least 1/0 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones evidence of 10 or more weighted years of substantial occupational exposure to asbestos;

(ii) a diagnosis by a board-certified pathologist of asbestosis, based on a chest x-ray of at least 1/1 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones and evidence of 8 or more weighted years of substantial occupational exposure to asbestos; or

(iii) asbestosis determined by pathology and 10 or more weighted years of substantial occupational exposure to asbestos; and

(C) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the lung cancer in question.

(7) MALIGNANT LEVEL VII.—To receive Level VII compensation, a claimant shall provide—

(A) a diagnosis of malignant mesothelioma disease on the basis of findings by a board certified pathologist; and

(B) credible evidence of identifiable exposure to asbestos resulting from—

(i) occupational exposure to asbestos;

(ii) exposure to asbestos fibers brought into the home of the claimant by a worker occupationally exposed to asbestos; or

(iii) exposure to asbestos fibers resulting from living or working in the proximate vicinity of a factory, shipyard, building demolition site, or other operation that regularly released asbestos fibers into the air due to operations involving asbestos at that site.

(e) SMOKING HISTORY.—In considering a claim with respect to Level VI, the Corporation shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

Subtitle D—Awards

SEC. 131. AMOUNT.

(a) IN GENERAL.—An asbestos claimant who meets the requirements of section 111 shall be entitled to an award in an amount determined by reference to the benefit table and the matrices developed under subsection (b).

(b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section 121 shall be eligible for an award as determined under this subsection. The award for all asbestos claimants with an eligible disease or condition established in accordance with section 121 shall be according to the following schedule:

Level	Scheduled Condition or Disease.	Scheduled Value
I	Asbestosis/Pleural Reaction A.	Medical Monitoring
II	Mixed Disease With Impairment.	$20,000
III	Asbestosis/Pleural Reaction B.	$100,000
IV	Severe Asbestosis.	$400,000
V	Disabling Asbestosis.	$850,000
VI	Lung Cancer With Asbestosis.	mokers, $575,000; ex-smokers, $950,000; nonsmokers, $1,100,000
VII	Mesothelioma	$1,100,000

(2) DEFINITIONS.—In this section—

(A) the term ''nonsmoker'' means a claimant who—

(i) never smoked; or

(ii) has smoked fewer than 100 cigarettes or the equivalent of other tobacco products during the claimant's lifetime; and

(B) the term ''ex-smoker'' means a claimant who has not smoked during any portion of the 12-year period preceding the diagnosis of lung cancer.

(3) COST-OF-LIVING ADJUSTMENT.—

(A) IN GENERAL.—Beginning January 1, 2007, award amounts under paragraph (1) shall be annually increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment, rounded to the nearest $1,000 increment.

(B) CALCULATION OF COST-OF-LIVING ADJUSTMENT.—For the purposes of subparagraph (A), the cost-of-living adjustment for any calendar year shall be the percentage, if any, by which the consumer price index for the succeeding calendar year exceeds the consumer price index for calendar year 2005.

(C) CONSUMER PRICE INDEX.—

(i) IN GENERAL.—For the purposes of subparagraph (B), the consumer price index for any calendar year is the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year.

(ii) DEFINITION.—For purposes of clause (i), the term ''consumer price index'' means the consumer price index published by the Department of Labor. The consumer price index series to be used for award escalations shall include the consumer price index used for all-urban consumers, with an area coverage of the United States city average, for all items, based on the 1982–1984 index based period, as published by the Department of Labor.

SEC. 132. REIMBURSABLE MEDICAL MONITORING.

(a) RECIPIENTS.—Reimbursable Medical Monitoring is only available to persons who have been approved for Level I compensation under section 131.

(b) RELATION TO STATUTE OF LIMITATIONS.—The filing of a claim under this Act that seeks reimbursement for medical monitoring shall not be considered as evidence that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 113(b).

(c) PROVIDER CHARGES.—All medical monitoring costs shall be reimbursed in accordance with CPT codes at medicare rates by region, at the time of the provision of services.

(d) PROCEDURES.—The Chief Executive Officer shall issue written procedures applicable to asbestos claimants under this section.

SEC. 133. PAYMENT.

(a) STRUCTURED PAYMENTS.—

(1) IN GENERAL.—An asbestos claimant who is entitled to an award should receive the amount of the award through structured payments from the Fund, made over a period of 3 years, and in no event more than 4 years after the date of final adjudication of the claim.

(2) PAYMENT PERIOD AND AMOUNT.—There shall be a presumption that any award paid under this subsection shall provide for payment of—

(A) 40 percent of the total amount in year 1;

(B) 30 percent of the total amount in year 2; and

(C) 30 percent of the total amount in year 3.

(3) EXTENSION OF PAYMENT PERIOD.—

(A) IN GENERAL.—The Chief Executive Officer shall develop guidelines to provide for the payment period of an award under subsection (a) to be extended to a 4-year period if such action is warranted in order to preserve the overall solvency of the Fund. Such guidelines shall include reference to the number of claims made to the Fund and the awards made and scheduled to be paid from the Fund as provided under section 405.

(B) LIMITATIONS.—In no event shall less than 50 percent of an award be paid in the first 2 years of the payment period under this subsection.

(4) ACCELERATED PAYMENTS.—The Chief Executive Officer shall develop guidelines to provide for accelerated payments to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Chief Executive Officer receives notice of the eligibility of the claimant. Such payments shall be credited against the first regular payment under the structured payment plan for the claimant.

(5) EXPEDITED PAYMENTS.—The Chief Executive Officer shall develop guidelines to provide for expedited payments to asbestos claimants in cases of exigent circumstances or extreme hardship caused by asbestos-related injury.

(6) ANNUITY.—An asbestos claimant may elect to receive any payments to which that claimant is entitled under this title in the form of an annuity.

(b) LIMITATION ON TRANSFERABILITY.—A claim filed under this Act shall not be assignable or otherwise transferable under this Act.

(c) CREDITORS.—An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

(d) MEDICARE AS SECONDARY PAYER.—No award under this title shall be deemed a payment for purposes of section 1862 of the Social Security Act (42 U.S.C. 1395y).

(e) EXEMPT PROPERTY IN ASBESTOS CLAIMANT'S BANKRUPTCY CASE.—If an asbestos claimant files a petition for relief under section 301 of title 11, United States Code, no award granted under this Act shall be treated as property of the bankruptcy estate of the asbestos claimant in accordance with section 541(b)(6) of title 11, United States Code.

SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLATERAL SOURCES.

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of collateral source compensation.

(b) EXCLUSIONS.—In no case shall statutory benefits under workers' compensation laws, and veterans' benefits programs be deemed as collateral source compensation for purposes of this section.

SEC. 135. STATE LIEN LAWS.

(a) IN GENERAL.—Any award of compensation under this Act shall be deemed a third-

party judgment or settlement for purposes of any Federal or State workers' compensation lien law.

(b) WORKERS' COMPENSATION.—

(1) BENEFITS BEFORE ENACTMENT.—To the extent any workers' compensation insurer, self-insured employer, or Federal workers' compensation Chief Executive Officer elects to assert any State statutory lien rights against any award of compensation under this Act, it may not seek recovery from any awards made to a claimant by the Fund for any workers' compensation benefits paid before the date of enactment of this Act.

(2) BENEFITS ON OR AFTER ENACTMENT.—

(A) IN GENERAL.—Upon acceptance or compromise of a workers' compensation claim first made after the date of enactment of this Act, or for any claim accepted or compromised before the date of enactment of this Act where future workers' compensation payments are due to be paid on or after such date, a workers' compensation insurer or self-insured employer's obligation to make any further payments shall not arise until such amount further due and owing exceeds the total amount of the award paid to the claimant.

(B) ANNUAL AMOUNTS.—In the event the annual workers' compensation benefits further due and owing exceed the annual amount of the award paid to the claimant from the Fund, then the workers' compensation insurer or self-insured employer shall be obligated to pay the claimant the difference between such annual workers' compensation benefit and the annual Fund payment.

(C) OTHER RULES.—No workers' compensation insurer or self-insured employer shall seek recovery from any such award paid to the claimant by the Fund. This subsection explicitly preempts any Federal or State workers' compensation lien law that is inconsistent with this subsection.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) AFFILIATED GROUP.—The term ''affiliated group''—

(A) means a defendant participant that is an ultimate parent and any person whose entire beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and

(B) shall not include any person that is a debtor or any direct or indirect majority-owned subsidiary of a debtor.

(2) CLASS ACTION TRUST.—The term ''class action trust'' means a trust or similar entity established to hold assets for the payment of asbestos claims asserted against a debtor or participating defendant, under a settlement that—

(A) is a settlement of class action claims under rule 23 of the Federal Rules of Civil Procedure; and

(B) has been approved by a final judgment of a United States district court before the date of enactment of this Act.

(3) DEBTOR.—The term ''debtor''—

(A) means—

(i) a person that is subject to a case pending under a chapter of title 11, United States Code, on the date of enactment of this Act or at any time during the 1-year period immediately preceding that date, irrespective of whether the debtor's case under that title has been dismissed; and

(ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(4) INDEMNIFIABLE COST.—The term ''indemnifiable cost'' means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(5) INDEMNITEE.—The term ''indemnitee'' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(6) INDEMNITOR.—The term ''indemnitor'' means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(7) PRIOR ASBESTOS EXPENDITURES.—The term ''prior asbestos expenditures''—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(g);

(C) shall not include any payment made by a person in connection with or as a result of changes in insurance reserves required by contract or any activity or dispute related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad, including settlement, judgment, defense, or indemnity costs associated with these claims.

(8) TRUST.—The term ''trust'' means any trust, as described in sections 524(g)(2)(B)(i) or 524(h) of title 11, United States Code, or established in conjunction with an order issued under section 105 of title 11, United States Code, established or formed under the terms of a chapter 11 plan of reorganization, which in whole or in part provides compensation for asbestos claims.

(9) ULTIMATE PARENT.—The term ''ultimate parent'' means a person—

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person (other than a natural person).

SEC. 202. AUTHORITY AND TIERS.

(a) LIABILITY FOR PAYMENTS TO THE FUND.—

(1) IN GENERAL.—Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE PAYMENT OBLIGATIONS LEVEL.—The total payments required of all defendant participants over the life of the Fund shall not exceed a sum equal to $90,000,000,000 less any bankruptcy trust credits under section 222(d). The Chief Executive Officer shall have the authority to allocate the payments required of the defendant participants among the tiers as provided in this title.

(3) ABILITY TO ENTER REORGANIZATION.—Notwithstanding any other provision of this Act, all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures less than $1,000,000 may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code. Any asbestos claim made in conjunction with a plan of reorganization allowable under the preceding sentence shall be subject to section 403(d) of this Act.

(b) TIER I.—Tier I shall include all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than $1,000,000.

(c) TREATMENT OF TIER I BUSINESS ENTITIES IN BANKRUPTCY.—

(1) DEFINITION.—

(A) IN GENERAL.—In this subsection, the term ''bankrupt business entity'' means a person that is not a natural person that—

(i) filed a petition for relief under chapter 11, of title 11, United States Code, before January 1, 2003;

(ii) has not substantially consummated, as such term is defined under section 1101(2) of title 11, United States Code, a plan of reorganization as of the date of enactment of this Act; and

(iii) the bankruptcy court presiding over the business entity's case determines, after notice and a hearing upon motion filed by the entity within 30 days after the date of enactment of this Act, that asbestos liability was not the sole or precipitating cause of the entity's chapter 11 filing.

(B) MOTION AND RELATED MATTERS.—A motion under subparagraph (A)(iii) shall be supported by—

(i) an affidavit or declaration of the chief executive officer, chief financial officer, or chief legal officer of the business entity; and

(ii) copies of the entity's public statements and securities filings made in connection with the entity's filing for chapter 11 protection.

Notice of such motion shall be as directed by the bankruptcy court, and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity's chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 60 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements, and securities filings, and other

information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review of this determination shall be an expedited appeal and limited to whether the decision was against the weight of the evidence. Any appeal of a determination shall be an expedited review to the United States Circuit Court of Appeals for the circuit in which the bankruptcy is filed.

(2) PROCEEDING WITH REORGANIZATION PLAN.—A bankrupt business entity may proceed with the filing, solicitation, confirmation, and consummation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction described in section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if the bankruptcy court makes a favorable determination under paragraph (1)(B), unless the bankruptcy court's determination is overruled on appeal and all appeals are final. Such a bankrupt business entity may continue to so proceed, if—

(A) on request of a party in interest or on a motion of the court, and after a notice and a hearing, the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that such confirmation is required to avoid the liquidation or the need for further financial reorganization of that entity; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY.—If the bankruptcy court does not make the determination required under paragraph (2), or if an order confirming the plan is not entered within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of this Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS.—

(A) PAYMENTS BY INSURERS.—To the extent that a bankrupt business entity or debtor successfully confirms a plan of reorganization, including a trust, and channeling injunction that involves payments by insurers who are otherwise subject to this Act as described under section 524(g) of title 11, United States Code, an insurer who makes payments to the trust shall obtain a dollar-for-dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

(B) CONTRIBUTIONS TO FUND.—Any cash payments by a bankrupt business entity, if any, to a trust described under section 524(g) of title 11, United States Code, may be counted as a contribution to the Fund.

(d) TIERS II THROUGH VI.—Except as provided in section 204 and subsection (b) of this section, persons or affiliated groups are included in Tier II, III, IV, V, or VI, according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

(1) Tier II: $75,000,000 or greater.

(2) Tier III: $50,000,000 or greater, but less than $75,000,000.

(3) Tier IV: $10,000,000 or greater, but less than $50,000,000.

(4) Tier V: $5,000,000 or greater, but less than $10,000,000.

(5) Tier VI: $1,000,000 or greater, but less than $5,000,000.

(e) TIER PLACEMENT AND COSTS.—

(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(i)(6), the participant or affiliated group shall remain in that tier and subtier throughout the life of the Fund, regardless of subsequent events, including—

(A) the filing of a petition under a chapter of title 11, United States Code;

(B) a discharge of debt in bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group, unless the Administrator finds that the information submitted by the participant or affiliated group to support its inclusion in that tier was inaccurate.

(2) COSTS.—Payments to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of title 11, United States Code, and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and

(C) shall not be impaired or discharged in any current or future case under title 11, United States Code.

(f) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—All of the following shall be superseded in their entireties by this Act:

(A) The treatment of any asbestos claim in any plan of reorganization with respect to any debtor included in Tier I.

(B) Any asbestos claim against any debtor included in Tier I.

(C) Any agreement, understanding, or undertaking by any such debtor or any third party with respect to the treatment of any asbestos claim filed in a debtor's bankruptcy case or with respect to a debtor before the date of enactment of this Act, whenever such debtor's case is either still pending, if such case is pending under a chapter other than chapter 11 of title 11, United States Code, or subject to confirmation or substantial consummation of a plan of reorganization under chapter 11 of title 11, United States Code.

(2) PRIOR AGREEMENTS OF NO EFFECT.—Notwithstanding section 403(c)(3), any plan of reorganization, agreement, understanding, or undertaking by any debtor (including any pre-petition agreement, understanding, or undertaking that requires future performance) or any third party under paragraph (1), and any agreement, understanding, or undertaking entered into in anticipation, contemplation, or furtherance of a plan of reorganization, to the extent it relates to any asbestos claim, shall be of no force or effect, and no person shall have any right or claim with respect to any such agreement, understanding, or undertaking.

SEC. 203. SUBTIERS.

(a) IN GENERAL.—

(1) SUBTIER LIABILITY.—Except as otherwise provided under subsections (b), (d), and (l) of section 204, persons or affiliated groups shall be included within Tiers I through VII and shall pay amounts to the Fund in accordance with this section.

(2) REVENUES.—

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant or affiliated group would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

(B) INSURANCE PREMIUMS.—Any portion of revenues of a defendant participant that is derived from insurance premiums shall not be used to calculate the payment obligation of that defendant participant under this subtitle.

(C) DEBTORS.—Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is included in Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person. If a debtor or affiliated group includes a person in respect of whose liabilities for asbestos claims a class action trust has been established, there shall be excluded from the 2002 revenues of such debtor or affiliated group—

(i) all revenues of the person in respect of whose liabilities for asbestos claims the class action trust was established; and

(ii) all revenues of the debtor and affiliated group attributable to the historical business operations or assets of such person, regardless of whether such business operations or assets were owned or conducted during the year 2002 by such person or by any other person included within such debtor and affiliated group.

(b) TIER I SUBTIERS.—

(1) IN GENERAL.—Each debtor in Tier I shall be included in subtiers and shall pay amounts to the Fund as provided under this section.

(2) SUBTIER 1.—

(A) IN GENERAL.—All persons that are debtors with prior asbestos expenditures of $1,000,000 or greater, shall be included in Subtier 1.

(B) PAYMENT.—

(i) IN GENERAL.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(ii) EXCEPTION TO PAYMENT PERCENTAGE.—Notwithstanding clause (i), a debtor in Subtier 1 shall pay, on an annual basis, $500,000 if—

(I) such debtor, including its direct or indirect majority-owned subsidiaries, has less than $10,000,000 in prior asbestos expenditures;

(II) at least 95 percent of such debtors revenues derive from the provision of engineering and construction services; and

(III) such debtor, including its direct or indirect majority-owned subsidiaries, never manufactured, sold, or distributed asbestos-containing products in the stream of commerce.

(C) OTHER ASSETS.—The Chief Executive Officer, at the sole discretion of the Chief Executive Officer, may allow a Subtier 1 debtor to satisfy its funding obligation under this paragraph with assets other than cash if the Chief Executive Officer determines that requiring an all-cash payment of the debtor's funding obligation would render the debtor's reorganization infeasible.

(D) LIABILITY.—

(i) IN GENERAL.—If a person who is subject to a case pending under a chapter of title 11, United States Code, as defined in section 201(3)(A)(i), does not pay when due any payment obligation for the debtor, the Chief Executive Officer shall have the right to seek payment of all or any portion of the entire

amount due (as well as any other amount for which the debtor may be liable under sections 223 and 224) from any of the direct or indirect majority-owned subsidiaries under section 201(3)(A)(ii).

(ii) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within a debtor under section 201(3)(A) (i) and (ii) with respect to the payment obligations under this Act.

(iii) RIGHT OF CONTRIBUTION.—

(I) IN GENERAL.—Notwithstanding any other provision of this Act, if a direct or indirect majority-owned foreign subsidiary of a debtor participant (with such relationship to the debtor participant as determined on the date of enactment of this Act) is or becomes subject to any foreign insolvency proceedings, and such foreign direct or indirect-majority owned subsidiary is liquidated in connection with such foreign insolvency proceedings (or if the debtor participant's interest in such foreign subsidiary is otherwise canceled or terminated in connection with such foreign insolvency proceedings), the debtor participant shall have a claim against such foreign subsidiary or the estate of such foreign subsidiary in an amount equal to the greater of—

(aa) the estimated amount of all current and future asbestos liabilities against such foreign subsidiary; or

(bb) the foreign subsidiary's allocable share of the debtor participant's funding obligations to the Fund as determined by such foreign subsidiary's allocable share of the debtor participant's 2002 gross revenue.

(II) DETERMINATION OF CLAIM AMOUNT.—The claim amount under subclause (I) (aa) or (bb) shall be determined by a court of competent jurisdiction in the United States.

(III) EFFECT ON PAYMENT OBLIGATION.—The right to, or recovery under, any such claim shall not reduce, limit, delay, or otherwise affect the debtor participant's payment obligations under this Act.

(iv) MAXIMUM ANNUAL PAYMENT OBLIGATION.—Subject to any payments under sections 204(l) and 222(c), and paragraphs (3), (4), and (5) of this subsection, the annual payment obligation by a debtor under subparagraph (B) of this paragraph shall not exceed $80,000,000.

(3) SUBTIER 2.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations, other than class action trusts under paragraph (6), but hold cash or other assets that have been allocated or earmarked for the settlement of asbestos claims shall be included in Subtier 2.

(B) ASSIGNMENT OF ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 2 shall assign all of its unencumbered assets to the Fund.

(4) SUBTIER 3.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors other than those included in Subtier 2, which have no material continuing business operations and no cash or other assets allocated or earmarked for the settlement of any asbestos claim, shall be included in Subtier 3.

(B) ASSIGNMENT OF UNENCUMBERED ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 3 shall contribute an amount equal to 50 percent of its total unencumbered assets.

(5) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, jointly held, in trust or otherwise, with a defendant participant, less—

(A) all allowable administrative expenses;

(B) allowable priority claims under section 507 of title 11, United States Code; and

(C) allowable secured claims.

(6) CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been included in Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims within the meaning of section 403(d)(1), before the date of enactment of this Act) shall be transferred to the Fund not later than 60 days after the date of enactment of this Act.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $27,500,000.

(B) Subtier 2: $24,750,000.

(C) Subtier 3: $22,000,000.

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $16,500,000.

(B) Subtier 2: $13,750,000.

(C) Subtier 3: $11,000,000.

(D) Subtier 4: $8,250,000.

(E) Subtier 5: $5,500,000.

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier IV shall be included in 1 of the 4 subtiers of Tier IV, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $3,850,000.

(B) Subtier 2: $2,475,000.

(C) Subtier 3: $1,650,000.

(D) Subtier 4: $550,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $1,000,000.

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(3) OTHER PAYMENT FOR CERTAIN PERSONS AND AFFILIATED GROUPS.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, and if an adjustment authorized by this subsection does not impair the overall solvency of the Fund, any person or affiliated group within Tier VI whose required subtier payment in any given year would exceed such person's or group's average annual expenditure on settlements, and judgments of asbestos disease-related claims over the 8 years before the date of enactment of this Act shall make the payment required of the immediately lower subtier or, if the person's or group's average annual expenditures on settlements and judgments over the 8 years before the date of enactment of this Act is less than $100,000, shall not be required to make a payment under this Act.

(B) NO FURTHER ADJUSTMENT.—Any person or affiliated group that receives an adjustment under this paragraph shall not be eligible to receive any further adjustment under section 204(d).

(h) TIER VII.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier VII shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VI.

(3) SUBTIER 1.—Each person or affiliated group in Tier VII with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier VII with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier VII with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) IN GENERAL.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(1) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(2) The amount received by the Fund from defendant participants, excluding any amounts rebated to defendant participants under subsections (d) and (m), equals the maximum aggregate payment obligation of section 202(a)(2).

(b) SMALL BUSINESS EXEMPTION.—Notwithstanding any other provision of this subtitle, a person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any payment requirement under this subtitle and shall not be included in the subtier allocations under section 203.

(c) PROCEDURES.—The Chief Executive Officer shall prescribe procedures on how amounts payable under this subtitle are to be paid, including, to the extent the Chief Executive Officer determines appropriate, procedures relating to payment in installments.

(d) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Chief Executive Officer, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Chief Executive Officer may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Chief Executive Officer's determination under this subsection under the procedures prescribed in subsection (i)(10). The Chief Executive Officer may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (j) after payment of the otherwise applicable payment obligation, at the discretion of the Chief Executive Officer.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant may apply for an adjustment based on financial hardship at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such adjustment by demonstrating that the amount of its payment obligation under the statutory allocation would constitute a severe financial hardship.

(B) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), a financial hardship adjustment under this subsection shall have a term of 3 years.

(C) RENEWAL.—After an initial hardship adjustment is granted under this paragraph, a defendant participant may renew its hardship adjustment by demonstrating that it remains justified.

(D) REINSTATEMENT.—Following the expiration of the hardship adjustment period provided for under this section and during the funding period prescribed under subsection (a), the Chief Executive Officer shall annually determine whether there has been a material change in the financial condition of the defendant participant such that the Chief Executive Officer may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Chief Executive Officer any part or all of the defendant participant's payment obligation under the statutory allocation that was not paid during the hardship adjustment term.

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

(II) when compared to the median payment rate for all defendant participants in the same tier; or

(III) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant;

(ii) shall qualify for a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act; and

(iii) shall be granted a two-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Chief Executive Officer shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations.

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant hardship and inequity adjustment account established under subsection (j), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 3 years by demonstrating that the adjustment remains justified.

(E) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Chief Executive Officer shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Chief Executive Officer may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 3-year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Chief Executive Officer may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Chief Executive Officer.

(4) LIMITATION ON PAYMENTS BY DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Under expedited procedures established by the Chief Executive Officer, any defendant participant may apply for a limitation on its annual payment obligation to the Fund by showing that it qualifies under subparagraph (C). The Chief Executive Officer shall promptly grant that application if the requirements under subparagraph (C) are satisfied.

(B) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (A) shall have the payment required under subsection (i)(1)(A)(iv) stayed until the Chief Executive Officer has made a determination with respect to the application of that defendant participant.

(C) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if that defendant participant—

(i) is included in Tiers II, III, IV, V, or VI under section 202; and

(ii) has prior asbestos expenditures less than $200,000,000 or has revenues as determined under section 203 that are less than $15,000,000,000.

(D) LIMITATION.—

(i) IN GENERAL.—A defendant participant that qualifies for a limitation under this paragraph may apply for only 1 of the limits under subclause (I), (II), or (III) of clause (ii). A defendant participant may not change its application once the application has been approved by the Chief Executive Officer.

(ii) APPLICATION FOR 1 LIMITATION.—Subject to clause (i), a defendant participant may apply for a limit of an amount equal to—

(I) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant;

(II) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of the annual prior asbestos expenditures of that defendant participant, excluding—

(aa) the amount of any payments by insurance carriers for the benefit of that defendant participant or on behalf of that defendant participant; and

(bb) any reimbursements of the amounts actually paid by that defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(III) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which that defendant participant belongs.

(E) JUDICIAL REVIEW.—A defendant participant is entitled to judicial review under section 303 of a denial of an application under this paragraph. During the pendency of that review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(F) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application under this paragraph is approved by the Chief Executive Officer, shall not be exempt from the guaranteed payment surcharge established under subsection (l), unless otherwise provided in this Act.

(G) MINIMUM PAYMENT.—Notwithstanding any other provision of this paragraph, a defendant participant that is granted a limitation by the Chief Executive Officer shall pay not less than 10 percent of the amount the participant is scheduled to pay under section 202.

(5) LIMITATION ON ADJUSTMENTS.—The aggregate total of financial hardship adjustments under paragraph (2) and inequity adjustments under paragraph (3) in effect in any given year shall not exceed $300,000,000, except to the extent that—

(A) additional monies are available for such adjustments as a result of carryover of prior years' funds under subsection (j)(3) or as a result of monies being made available in that year under subsection (k)(1)(A); or

(B) the Chief Executive Officer determines that the $300,000,000 is insufficient and additional adjustments as provided under paragraph (5) are needed to address situations in which a defendant participant would otherwise be rendered insolvent by its payment obligations without such adjustment.

(6) BANKRUPTCY RELIEF.—

(A) IN GENERAL.—Any defendant participant may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such adjustment by demonstrating, to a reasonable degree of certainty, evidence that the amount of its payment obligation would render the defendant participant insolvent, as defined under section 101 of title 11, United States Code, and unable to pay its debts as they become due.

(B) INFORMATION REQUIRED.—Any defendant participant seeking an adjustment or renewal of an adjustment under this paragraph shall provide the Chief Executive Officer with the information required under section 521(1) of title 11 of the United States Code.

(C) LIMITATION.—Any adjustment granted by the Chief Executive Officer under subparagraph (A) shall be limited to the extent reasonably necessary to prevent insolvency of a defendant participant.

(D) TERM.—To the extent the Chief Executive Officer grants any relief under this paragraph, such adjustments shall have a term of 1 year. An adjustment may be renewed or modified on an annual basis upon the defendant participant demonstrating that the adjustment or modification remains justified under this paragraph.

(E) REINSTATEMENT.—During the funding period prescribed under subparagraph (A), the Chief Executive Officer shall annually determine whether there has been a material change in the financial condition of any defendant participant granted an adjustment under this paragraph such that the Chief Executive Officer may, consistent with the policies and legislative intent underlying this Act, reinstate under terms and conditions established by the Chief Executive Officer any part or all of the defendant participant's payment obligation under the statutory allocation that was not paid during the adjustment term.

(7) ADVISORY PANELS.—

(A) APPOINTMENT.—The Chief Executive Officer shall appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Chief Executive Officer in carrying out this subsection.

(B) MEMBERSHIP.—The membership of the panels appointed under subparagraph (A) may overlap.

(C) COORDINATION.—The panels appointed under subparagraph (A) shall coordinate their deliberations and advice.

(e) LIMITATION ON LIABILITY.—The liability of each defendant participant to pay to the Fund shall be limited to the payment obligations under this Act, and, except as provided in subsection (f) and section 203(b)(2)(D), no defendant participant shall have any liability for the payment obligations of any other defendant participant.

(f) CONSOLIDATION OF PAYMENTS.—

(1) IN GENERAL.—For purposes of determining the payment levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submissions to be made under paragraphs (1) and (3) of subsection (i), to report on a consolidated basis all of the information necessary to determine the payment level under this subtitle and pay to the Fund on a consolidated basis.

(2) ELECTION.—If an affiliated group elects consolidation as provided in this subsection—

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including with respect to the assessment of a single annual payment under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit each submission to be made under subsection (i) on behalf of the entire affiliated group and shall be solely liable, as between the Chief Executive Officer and the affiliated group only, for the payment of the annual amount due from the affiliated group under this subtitle, except that, if the ultimate parent does not pay when due any payment obligation for the affiliated group, the Chief Executive Officer shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the affiliated group may be liable under sections 223 and 224) from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (i) and shall certify compliance with this subsection and the Chief Executive Officer's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(3) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within an affiliated group with respect to the payment obligations under this Act.

(g) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES.—

(1) IN GENERAL.—For purposes of determining a defendant participant's prior asbestos expenditures, the Chief Executive Officer shall prescribe such rules as may be necessary or appropriate to assure that payments by indemnitors before December 31, 2002, shall be counted as part of the indemnitor's prior asbestos expenditures, rather than the indemnitee's prior asbestos expenditures, in accordance with this subsection.

(2) INDEMNIFIABLE COSTS.—If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

(3) INSURANCE PAYMENTS.—When computing the prior asbestos expenditures with respect to an asbestos claim, any amount paid or reimbursed by insurance shall be solely for the account of the indemnitor, even if the indemnitor would have no direct right to the benefit of the insurance, if—

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee; and

(B) the indemnitor has either, with respect to such asbestos claim or any similar asbestos claim, paid or reimbursed to its indemnitee any indemnifiable cost or paid to any third party on behalf of or for the benefit of the indemnitee any indemnifiable cost.

(4) TREATMENT OF CERTAIN EXPENDITURES.—Notwithstanding any other provision of this Act, where—

(A) an indemnitor entered into a stock purchase agreement in 1988 that involved the sale of the stock of businesses that produced friction and other products; and

(B) the stock purchase agreement provided that the indemnitor indemnified the indemnitee and its affiliates for losses arising from various matters, including asbestos claims—

(i) asserted before the date of the agreement; and

(ii) filed after the date of the agreement and prior to the 10-year anniversary of the stock sale,

then the prior asbestos expenditures arising from the asbestos claims described in clauses (i) and (ii) shall not be for the account of either the indemnitor or indemnitee.

(h) MINIMUM ANNUAL PAYMENTS.—

(1) IN GENERAL.—The aggregate annual payments of defendant participants to the

Fund shall be at least $3,000,000,000 for each calendar year in the first 30 years of the Fund, or until such shorter time as the condition set forth in subsection (a)(2) is attained.

(2) GUARANTEED PAYMENT ACCOUNT.—To the extent payments in accordance with sections 202 and 203 (as modified by subsections (b), (d), (f), (g), and (m) of this section) fail in any year to raise at least $3,000,000,000, after applicable reductions or adjustments have been taken according to subsections (d) and (m), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(3) GUARANTEED PAYMENT SURCHARGE.—To the extent the procedure set forth in paragraph (2) is insufficient to satisfy the required minimum aggregate annual payment, after applicable reductions or adjustments have been taken according to subsections (d) and (m), the Chief Executive Officer shall unless the Chief Executive Officer implements a funding holiday under section 205(b), assess a guaranteed payment surcharge under subsection (l).

(i) PROCEDURES FOR MAKING PAYMENTS.—

(1) INITIAL YEAR: TIERS II–VI.—

(A) IN GENERAL.—Not later than 90 days after enactment of this Act, each defendant participant that is included in Tiers II, III, IV, V, or VI shall file with the Chief Executive Officer—

(i) a statement of whether the defendant participant irrevocably elects to report on a consolidated basis under subsection (f);

(ii) a good-faith estimate of its prior asbestos expenditures;

(iii) a statement of its 2002 revenues, determined in accordance with section 203(a)(2);

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier; and

(v) a signature page personally verifying the truth of the statements and estimates described under this subparagraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(B) RELIEF.—

(i) IN GENERAL.—The Chief Executive Officer shall establish procedures to grant a defendant participant relief from its initial payment obligation if the participant shows that—

(I) the participant is likely to qualify for a financial hardship adjustment; and

(II) failure to provide interim relief would cause severe irreparable harm.

(ii) JUDICIAL RELIEF.—The Chief Executive Officer's refusal to grant relief under clause (i) is subject to immediate judicial review under section 303.

(2) INITIAL YEAR: TIER I.—Not later than 60 days after enactment of this Act, each debtor shall file with the Chief Executive Officer—

(A) a statement identifying all bankruptcy cases associated with the debtor;

(B) a statement whether its prior asbestos expenditures exceed $1,000,000;

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;

(D) in the case of debtors falling within Subtier 1 of Tier I—

(i) a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2);

(ii) for those debtors subject to the payment requirement of section 203(b)(2)(B)(ii), a statement whether its prior asbestos expenditures do not exceed $10,000,000, and a description of its business operations sufficient to show the requirements of that section are met; and

(iii) a payment under section 203(b)(2)(B);

(E) in the case of debtors falling within Subtier 2 of Tier I, an assignment of its assets under section 203(b)(3)(B); and

(F) in the case of debtors falling within Subtier 3 of Tier I, a payment under section 203(b)(4)(B), and a statement of how such payment was calculated; and

(G) a signature page personally verifying the truth of the statements and estimates described under this paragraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(3) INITIAL YEAR: TIER VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Chief Executive Officer—

(A) a good-faith estimate of all payments of the type described in section 203(h)(1) (as modified by section 203(h)(6));

(B) a statement of revenues calculated in accordance with sections 203(a)(2) and 203(h); and

(C) payment in the amount specified in section 203(h).

(4) NOTICE TO PARTICIPANTS.—Not later than 240 days after enactment of this Act, the Chief Executive Officer shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Chief Executive Officer in accordance with this Act, for paying under this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information; and

(ii) that includes a list of all defendant participants notified by the Chief Executive Officer under subparagraph (A), and provides for 30 days for the submission by the public of comments or information regarding the completeness and accuracy of the list of identified defendant participants.

(5) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Chief Executive Officer with an address to send any notice from the Chief Executive Officer in accordance with this Act and all the information required by the Chief Executive Officer in accordance with this subsection no later than the earlier of—

(i) 30 days after the receipt of direct notice; or

(ii) 30 days after the publication in a newspaper with a circulation of at least 500,000 and on the Internet.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Chief Executive Officer's audit authority under section 221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INDIVIDUAL.—Not later than 60 days after receiving a response under paragraph (5), the Chief Executive Officer shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Chief Executive Officer and identified to the defendant participant.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to defendant participants, the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice listing the defendant participants that have been sent such notification, and the initial determination identifying the tier and subtier assignment and annual payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Chief Executive Officer.

(C) PAYMENTS.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Chief Executive Officer the amount required by the notice, after deducting any previous payment made by the participant under this subsection. If the amount that the defendant participant is required to pay is less than any previous payment made by the participant under this subsection, the Chief Executive Officer shall credit any excess payment against the future payment obligations of that defendant participant. The pendency of a petition for rehearing under paragraph (10) shall not stay the obligation of the participant to make the payment specified in the Chief Executive Officer's notice.

(7) EXEMPTIONS FOR INFORMATION REQUIRED.—

(A) PRIOR ASBESTOS EXPENDITURES.—In lieu of submitting information related to prior asbestos expenditures as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Tier II.

(B) REVENUES.—In lieu of submitting information related to revenues as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Subtier 1 of the defendant participant's applicable tier.

(8) NEW INFORMATION.—

(A) EXISTING PARTICIPANT.—The Chief Executive Officer shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Chief Executive Officer, at any time, receives information that an additional person may qualify as a defendant participant, the Chief Executive Officer shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Chief Executive Officer with respect to such person.

(9) SUBPOENAS.—The Chief Executive Officer may request the Attorney General to

subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) REHEARING.—A defendant participant has a right to obtain rehearing of the Chief Executive Officer's determination under this subsection of the applicable tier or subtier, of the Chief Executive Officer's determination under subsection (d) of a financial hardship or inequity adjustment, and of the Chief Executive Officer's determination under subsection (m) of a distributor's adjustment, if the request for rehearing is filed within 30 days after the defendant participant's receipt of notice from the Chief Executive Officer of the determination. A defendant participant may not file an action under section 303 unless the defendant participant requests a rehearing under this paragraph. The Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice of any change in a defendant participant's tier or subtier assignment or payment obligation as a result of a rehearing.

(j) DEFENDANT HARDSHIP AND INEQUITY ADJUSTMENT ACCOUNT.—

(1) IN GENERAL.—To the extent the total payments by defendant participants in any given year exceed the minimum aggregate annual payments required under subsection (h), excess monies up to a maximum of $300,000,000 in any such year shall be placed in a defendant hardship and inequity adjustment account established within the Fund by the Chief Executive Officer.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant hardship and inequity adjustment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to make up for any relief granted to a defendant participant for severe financial hardship or demonstrated inequity under subsection (d) or to reimburse any defendant participant granted such relief after its payment of the amount otherwise due; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(3) CARRYOVER OF UNUSED FUNDS.—To the extent the Chief Executive Officer does not, in any given year, use all of the funds allocated to the account under paragraph (1) for adjustments granted under subsection (d), remaining funds in the account shall be carried forward for use by the Chief Executive Officer for adjustments in subsequent years.

(k) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (h) and (j), if there are excess monies paid by defendant participants in any given year, including any bankruptcy trust credits that may be due under section 222(d), such monies—

(A) at the discretion of the Chief Executive Officer, may be used to provide additional adjustments under subsection (d), up to a maximum aggregate of $50,000,000 in such year; and

(B) to the extent not used under subparagraph (A), shall be placed in a defendant guaranteed payment account established within the Fund by the Chief Executive Officer.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant guaranteed payment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to ensure the minimum aggregate annual payment required under subsection (h), after applicable reductions or adjustments have been taken according to subsections (d) and (m) is reached each year; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(l) GUARANTEED PAYMENT SURCHARGE.—

(1) IN GENERAL.—To the extent there are insufficient monies in the defendant guaranteed payment account established in subsection (k) to attain the minimum aggregate annual payment required under subsection (h) in any given year, the Chief Executive Officer shall, unless the Chief Executive Officer implements a funding holiday under section 205(b), impose on each defendant participant a surcharge as necessary to raise the balance required to attain the minimum aggregate annual payment required under subsection (h) as provided in this subsection. Any such surcharge shall be imposed on a pro rata basis, in accordance with each defendant participant's relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), (g), and (m) of this section).

(2) LIMITATION.—

(A) IN GENERAL.—In no case shall the Chief Executive Officer impose a surcharge under this subsection on any defendant participant included in Subtier 3 of Tiers V or VI as described under section 203.

(B) REALLOCATION.—Any amount not imposed under subparagraph (A) shall be reallocated on a pro-rata basis, in accordance with each defendant participant's (other than a defendant participant described under subparagraph (A)) relative annual liability under sections 202 and 203 (as modified by subsections (b), (d), (f), and (g) of this section).

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a guaranteed payment surcharge under this subsection, the Chief Executive Officer shall certify that he or she has used all reasonable efforts to collect mandatory payments for all defendant participants, including by using the authority in subsection (i)(9) of this section and section 223.

(B) NOTICE AND COMMENT.—Before making a final certification under subparagraph (C), the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice of a proposed certification and provide in such notice for a public comment period of 30 days.

(C) FINAL CERTIFICATION.—

(i) IN GENERAL.—The Chief Executive Officer shall publish a notice of the final certification in a newspaper with a circulation of at least 500,000 and on the Internet after consideration of all comments submitted under subparagraph (B).

(ii) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under clause (i), the Chief Executive Officer shall provide each defendant participant with written notice of that defendant participant's payment, including the amount of any surcharge.

(m) ADJUSTMENTS FOR DISTRIBUTORS.—

(1) DEFINITION.—In this subsection, the term ''distributor'' means a person—

(A) whose prior asbestos expenditures arise exclusively from the sale of products manufactured by others;

(B) who did not prior to December 31, 2002, sell raw asbestos or a product containing more than 95 percent asbestos by weight;

(C) whose prior asbestos expenditures did not arise out of—

(i) the manufacture, installation, repair, reconditioning, maintaining, servicing, constructing, or remanufacturing of any product;

(ii) the control of the design, specification, or manufacture of any product; or

(iii) the sale or resale of any product under, as part of, or under the auspices of, its own brand, trademark, or service mark; and

(D) who is not subject to assignment under section 202 to Tier I, II, III or VII.

(2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

(A) IN GENERAL.—Notwithstanding section 202, the Chief Executive Officer shall assign a distributor to a Tier for purposes of this title under the procedures set forth in this paragraph.

(B) DESIGNATION.—After a final determination by the Chief Executive Officer under section 204(i), any person who is, or any affiliated group in which every member is, a distributor may apply to the Chief Executive Officer for adjustment of its Tier assignment under this subsection. Such application shall be prepared in accordance with such procedures as the Chief Executive Officer shall promulgate by rule. Once the Chief Executive Officer designates a person or affiliated group as a distributor under this subsection, such designation and the adjustment of tier assignment under this subsection are final.

(C) PAYMENTS.—Any person or affiliated group that seeks adjustment of its Tier assignment under this subsection shall pay all amounts required of it under this title until a final determination by the Chief Executive Officer is made under this subsection. Such payments may not be stayed pending any appeal. The Chief Executive Officer shall grant any person or affiliated group a refund or credit of any payments made if such adjustment results in a lower payment obligation.

(D) ADJUSTMENT.—Subject to paragraph (3), any person or affiliated group that the Chief Executive Officer has designated as a distributor under this subsection shall be given an adjustment of Tier assignment as follows:

(i) A distributor that but for this subsection would be assigned to Tier IV shall be deemed assigned to Tier V.

(ii) A distributor that but for this subsection would be assigned to Tier V shall be deemed assigned to Tier VI.

(iii) A distributor that but for this subsection would be assigned to Tier VI shall be deemed assigned to no Tier and shall have no obligation to make any payment to the Fund under this Act.

(E) EXCLUSIVE TO INEQUITY ADJUSTMENT.—Any person or affiliated group designated by the Chief Executive Officer as a distributor under this subsection shall not be eligible for an inequity adjustment under subsection 204(d).

(3) LIMITATION ON ADJUSTMENTS.—The aggregate total of distributor adjustments under this subsection in effect in any given year shall not exceed $50,000,000. If the aggregate total of distributors adjustments under this subsection would otherwise exceed $50,000,000, then each distributor's adjustment shall be reduced pro rata until the aggregate of all adjustments equals $50,000,000.

(4) REHEARING.—A defendant participant has a right to obtain a rehearing of the Chief Executive Officer's determination on an adjustment under this subsection under the procedures prescribed in subsection (i)(10).

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(h) shall be reduced by 10 percent of the initial minimum aggregate funding obligation at the end of the tenth, fifteenth, twentieth, and twenty-fifth years after the date of enactment of this Act. The reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant

participants in Tier 1, Subtiers 2 and 3, and class action trusts.

(2) LIMITATION.—The Chief Executive Officer shall suspend, cancel, reduce, or delay any reduction under paragraph (1) if at any time the Chief Executive Officer finds, in accordance with subsection (c), that such action is necessary and appropriate to ensure that the assets of the Fund and expected future payments remain sufficient to satisfy the Fund's anticipated obligations.

(b) FUNDING HOLIDAYS.—

(1) IN GENERAL.—If the Chief Executive Officer determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments, taking into consideration any reductions under subsection (a), are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Chief Executive Officer shall reduce or waive all or any part of the payments required from defendant participants for that year.

(2) ANNUAL REVIEW.—The Chief Executive Officer shall undertake the review required by this subsection and make the necessary determination under paragraph (1) every year.

(3) LIMITATIONS ON FUNDING HOLIDAYS.—Any reduction or waiver of the defendant participants' funding obligations shall—

(A) be made only to the extent the Chief Executive Officer determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(B) be applied on an equal pro rata basis to the funding obligations of all defendant participants, except with respect to defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(4) NEW INFORMATION.—If at any time the Chief Executive Officer determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Chief Executive Officer shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(c) CERTIFICATION.—

(1) IN GENERAL.—Before suspending, canceling, reducing, or delaying any reduction under subsection (a) or granting or revoking a reduction or waiver under subsection (b), the Chief Executive Officer shall certify that the requirements of this section are satisfied.

(2) NOTICE AND COMMENT.—Before making a final certification under this subsection, the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a proposed certification and a statement of the basis therefor and provide in such notice for a public comment period of 30 days.

(3) FINAL CERTIFICATION.—

(A) IN GENERAL.—The Chief Executive Officer shall publish a notice of the final certification in a newspaper with a circulation of at least 500,000 and on the Internet after consideration of all comments submitted under paragraph (2).

(B) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under subparagraph (A), the Chief Executive Officer shall provide each defendant participant with written notice of that defendant's funding obligation for that year.

SEC. 206. ACCOUNTING TREATMENT.

Defendant participants payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each defendant participant. This section shall in no way reduce the amount of monetary payments to the Fund by defendant participants as required under section 202(a)(2).

Subtitle B—Asbestos Insurers Committee

SEC. 210. DEFINITION.

In this subtitle, the term ''captive insurance company'' means a company—

(1) whose entire beneficial interest is owned on the date of enactment of this Act, directly or indirectly, by a defendant participant or by the ultimate parent or the affiliated group of a defendant participant;

(2) whose primary commercial business during the period from calendar years 1940 through 1986 was to provide insurance to its ultimate parent or affiliated group, or any portion of the affiliated group or a combination thereof; and

(3) that was incorporated or operating no later than December 31, 2003.

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMITTEE.

(a) ESTABLISHMENT.—There is established the Asbestos Insurers Committee (referred to in this subtitle as the ''Committee'') to carry out the duties described in section 212.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Committee shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—

(A) EXPERTISE.—Members of the Committee shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST.—

(i) IN GENERAL.—No member of the Committee appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No member of the Committee shall be a shareholder of any insurer participant. No member of the Committee shall be a former officer or director, or a former employee or former shareholder of any insurer participant who was such an employee, shareholder, officer, or director at any time during the 2-year period ending on the date of the appointment, unless that is fully disclosed before consideration in the Senate of the nomination for appointment to the Committee.

(ii) DEFINITION.—In clause (i), the term ''shareholder'' shall not include a broadly based mutual fund that includes the stocks of insurer participants as a portion of its overall holdings.

(C) FEDERAL EMPLOYMENT.—A member of the Committee may not be an officer or employee of the Federal Government, except by reason of membership on the Committee.

(3) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Committee.

(4) VACANCIES.—Any vacancy in the Committee shall be filled in the same manner as the original appointment.

(5) CHAIRMAN.—The President shall select a Chairman from among the members of the Committee.

(c) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Committee have been appointed, the Committee shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—The Committee shall meet at the call of the Chairman, as necessary to accomplish the duties under section 212.

(3) QUORUM.—No business may be conducted or hearings held without the participation of a majority of the members of the Committee.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMITTEE.

(a) DETERMINATION OF INSURER PAYMENT OBLIGATIONS.—

(1) IN GENERAL.—

(A) DEFINITIONS.—For the purposes of this Act, the terms ''insurer'' and ''insurer participant'' shall, unless stated otherwise, include direct insurers and reinsurers, as well as any run-off entity established, in whole or in part, to review and pay asbestos claims.

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—The Committee shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Committee shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology may include 1 or more allocation formulas to be applied to all insurer participants or groups of similarly situated participants. The Committee's rule shall include a methodology for adjusting payments by insurer participants to make up, during the first 5 years of the life of the Fund and any subsequent years as provided in section 405(e) for any reduction in an insurer participant's annual allocated amount caused by the granting of a financial hardship or exceptional circumstance adjustment under this section, and any amount by which aggregate insurer payments fall below the level required under paragraph (3)(C) by reason of the failure or refusal of any insurer participant to make a required payment, or for any other reason that causes such payments to fall below the level required under paragraph (3)(C). The Committee shall conduct a thorough study (within the time limitations under this subparagraph) of the accuracy of the reserve allocation of each insurer participant, and may request information from the Securities and Exchange Committee or any State regulatory agency. Under this procedure, not later than 120 days after the initial meeting of the Committee, the Committee shall commence a rulemaking proceeding under section 213(a) to propose and adopt a methodology for allocating payments among insurer participants. In proposing an allocation methodology, the Committee may consult with such actuaries and other experts as it deems appropriate. After hearings and public comment on the proposed allocation methodology, the Committee shall as promptly as possible promulgate a final rule establishing such methodology. After promulgation of the final rule, the Committee shall determine the individual payment of each insurer participant under the procedures set forth in subsection (b).

(C) SCOPE.—Every insurer, reinsurer, and runoff entity with asbestos-related obligations in the United States shall be subject to the Committee's and Chief Executive Officer's authority under this Act, including allocation determinations, and shall be required to fulfill its payment obligation without regard as to whether it is licensed in the United States. Every insurer participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Committee's and Chief Executive Officer's authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Chief Executive Officer. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(D) ISSUERS OF FINITE RISK POLICIES.—

(i) IN GENERAL.—The issuer of any policy of retrospective reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a risk or loss transfer to insure for asbestos losses and other losses (both known and unknown), including those policies commonly referred to as ''finite risk'', ''aggregate stop loss'', ''aggregate excess of loss'', or ''loss portfolio transfer'' policies, shall be obligated to make payments required under this Act directly to the Fund on behalf of the insurer participant who is the beneficiary of such policy, subject to the underlying retention and the limits of liability applicable to such policy.

(ii) PAYMENTS.—Payments to the Fund required under this Act shall be treated as loss payments for asbestos bodily injury (as if such payments were incurred as liabilities imposed in the tort system) and shall not be subject to exclusion under policies described under clause (i) as a liability with respect to tax or assessment. Within 90 days after the scheduled date to make an annual payment to the Fund, the insurer participant shall, at its discretion, direct the reinsurer issuing such policy to pay all or a portion of the annual payment directly to the Fund up to the full applicable limits of liability under the policy. The reinsurer issuing such policy shall be obligated to make such payments directly to the Fund and shall be subject to the enforcement provisions under section 223. The insurer participant shall remain obligated to make payment to the Fund of that portion of the annual payment not directed to the issuer of such reinsurance policy.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000, less any bankruptcy trust credits under section 222(d).

(B) ACCOUNTING STANDARDS.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Committee shall use accounting standards required for United States licensed direct insurers.

(C) CAPTIVE INSURANCE COMPANIES.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, has liability, directly or indirectly, for any asbestos claim of a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) SEVERAL LIABILITY.—Unless otherwise provided under this Act, each insurer participant's obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability, and the future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) PAYMENT OF CRITERIA.—

(A) INCLUSION IN INSURER PARTICIPANT CATEGORY.—

(i) IN GENERAL.—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(ii) INAPPLICABILITY OF SECTION 202.—Since insurers may be subject in certain jurisdictions to direct action suits, and it is not the intent of this Act to impose upon an insurer, due to its operation as an insurer, payment obligations to the Fund in situations where the insurer is the subject of a direct action, no insurer subject to mandatory payments under this section shall also be liable for payments to the Fund as a defendant participant under section 202.

(B) INSURER PARTICIPANT ALLOCATION METHODOLOGY.—

(i) IN GENERAL.—The Committee shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers' compensation), such factors as—

(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities under applicable insurance policies; and

(V) any other factor the Committee may determine is relevant and appropriate.

(ii) DETERMINATION OF RESERVES.—The Committee may establish procedures and standards for determination of the asbestos reserves of insurer participants. The reserves of a United States licensed reinsurer that is wholly owned by, or under common control of, a United States licensed direct insurer shall be included as part of the direct insurer's reserves when the reinsurer's financial results are included as part of the direct insurer's United States operations, as reflected in footnote 33 of its filings with the National Association of Insurance Commissioners or in published financial statements prepared in accordance with generally accepted accounting principles.

(C) PAYMENT SCHEDULE.—The aggregate annual amount of payments by insurer participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, $2,700,000,000 annually.

(ii) For years 3 through 5, $5,075,000,000 annually.

(iii) For years 6 through 27, $1,147,000,000 annually.

(iv) For year 28, $166,000,000.

(D) CERTAIN RUNOFF ENTITIES.—A runoff entity shall include any direct insurer or reinsurer whose asbestos liability reserves have been transferred, directly or indirectly, to the runoff entity and on whose behalf the runoff entity handles or adjusts and, where appropriate, pays asbestos claims.

(E) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—

(i) IN GENERAL.—Under the procedures established in subsection (b), an insurer participant may seek adjustment of the amount of its payments based on exceptional circumstances or severe financial hardship.

(ii) FINANCIAL ADJUSTMENTS.—An insurer participant may qualify for an adjustment based on severe financial hardship by demonstrating that payment of the amounts required by the Committee's methodology would jeopardize the solvency of such participant.

(iii) EXCEPTIONAL CIRCUMSTANCE ADJUSTMENT.—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Committee's allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

(II) an offset credit as described in subparagraphs (A) and (C) of subsection (b)(4); or

(III) other exceptional circumstances.

The Committee may determine whether to grant an adjustment and the size of any such adjustment, but except as provided under paragraph (1)(B), subsection (f)(3), and section 405(e), any such adjustment shall not affect the aggregate payment obligations of insurer participants specified in paragraph (2)(A) and subparagraph (C) of this paragraph.

(iv) TIME PERIOD OF ADJUSTMENT.—Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Chief Executive Officer that it remains justified.

(F) FUNDING HOLIDAYS.—

(i) IN GENERAL.—If the Chief Executive Officer determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Chief Executive Officer shall reduce or waive all or any part of the payments required from insurer participants for that year.

(ii) ANNUAL REVIEW.—The Chief Executive Officer shall undertake the review required by this subsection and make the necessary determination under clause (i) every year.

(iii) LIMITATIONS OF FUNDING HOLIDAYS.—Any reduction or waiver of the insurer participants' funding obligations shall—

(I) be made only to the extent the Chief Executive Officer determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(II) be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(iv) NEW INFORMATION.—If at any time the Chief Executive Officer determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Chief Executive Officer shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(b) PROCEDURE FOR NOTIFYING INSURER PARTICIPANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Committee shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund under the allocation methodology; and

(B) publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice—

(i) requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information; and

(ii) that includes a list of all insurer participants notified by the Committee under subparagraph (A), and provides for 30 days

for the submission of comments or information regarding the completeness and accuracy of the list of identified insurer participants.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Committee with all the information requested in the notice under a schedule or by a date established by the Committee.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INSURERS.—Not later than 120 days after receipt of the information required by paragraph (2), the Committee shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Committee's request for information. An insurer participant's payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to insurer participants, the Committee shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice listing the insurer participants that have been sent such notification, and the initial determination on the payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Committee.

(4) COMMITTEE REVIEW, REVISION, AND FINALIZATION OF INITIAL PAYMENT DETERMINATIONS.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Committee, an insurer participant may provide the Committee with additional information to support adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Committee, the Committee receives information that an additional person may qualify as an insurer participant, the Committee shall require such person to submit information necessary to determine whether payments from that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Committee shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Committee may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Committee for purposes of determining participant payments.

(B) SUBPOENAS.—The Committee may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) ESCROW PAYMENTS.—Without regard to an insurer participant's payment obligation under this section, any escrow or similar account established before the date of enactment of this Act by an insurer participant in connection with an asbestos trust fund that has not been judicially confirmed by final order by the date of enactment of this Act shall be the property of the insurer participant and returned to that insurer participant.

(7) NOTICE TO INSURER PARTICIPANTS OF FINAL PAYMENT DETERMINATIONS.—Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Committee shall send each insurer participant a notice of final determination.

(c) INSURER PARTICIPANTS VOLUNTARY ALLOCATION AGREEMENT.—

(1) IN GENERAL.—Not later than 30 days after the Committee proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, reinsurer participants licensed or domiciled in the United States, or other reinsurer participants, may submit an allocation agreement, approved by all of the participants in the applicable group, to the Committee.

(2) ALLOCATION AGREEMENT.—To the extent the participants in any such applicable group voluntarily agree upon an allocation arrangement, any such allocation agreement shall only govern the allocation of payments within that group and shall not determine the aggregate amount due from that group.

(3) CERTIFICATION.—The Committee shall determine whether an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle and, if so, shall certify the agreement as establishing the allocation methodology governing the individual payment obligations of the participants who are parties to the agreement. The authority of the Committee under this subtitle shall, with respect to participants who are parties to a certified allocation agreement, terminate on the day after the Committee certifies such agreement. Under subsection (f), the Chief Executive Officer shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMITTEE REPORT.—

(1) RECIPIENTS.—Until the work of the Committee has been completed and the Committee terminated, the Committee shall submit an annual report, containing the information described under paragraph (2), to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Chief Executive Officer.

(2) CONTENTS.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

(e) INTERIM PAYMENTS.—

(1) AMOUNT OF INTERIM PAYMENT.—Within 90 days after the date of enactment of this Act, insurer participants shall make an aggregate payment to the Fund not to exceed 50 percent of the aggregate funding obligation specified under subsection (a)(3)(C) for year 1.

(2) RESERVE INFORMATION.—Within 30 days after the date of enactment of this Act, each insurer participant shall submit to the Chief Executive Officer a certified statement of its net held reserves for asbestos liabilities as of December 31, 2004.

(3) ALLOCATION OF INTERIM PAYMENT.—The Chief Executive Officer shall allocate the interim payment among the individual insurer participants on an equitable basis using the net held asbestos reserve information provided by insurer participants under subsection (a)(3)(B). Within 60 days after the date of enactment of this Act, the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet the name of each insurer participant, and the amount of the insurer participant's allocated share of the interim payment. The use of net held asbestos reserves as the basis to determine an interim allocation shall not be binding on the Chief Executive Officer in the determination of an appropriate final allocation methodology under this section. All payments required under this paragraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Committee. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Chief Executive Officer. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established under subsection (a)(3)(E).

(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Chief Executive Officer to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) TRANSFER OF AUTHORITY FROM THE COMMITTEE TO THE CHIEF EXECUTIVE OFFICER.—

(1) IN GENERAL.—Upon termination of the Committee under section 215, the Chief Executive Officer shall assume all the responsibilities and authority of the Committee, except that the Chief Executive Officer shall not have the power to modify the allocation methodology established by the Committee or by certified agreement or to promulgate a rule establishing any such methodology.

(2) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—Upon termination of the Committee under section 215, the Chief Executive Officer shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating that it remains justified. Upon the grant of any adjustment, the Chief Executive Officer

shall increase the payments, consistent with subsection (a)(1)(B), required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant's required payment shall be in proportion to such participant's share of the aggregate payment obligation of all insurer participants.

(3) CREDITS FOR SHORTFALL ASSESSMENTS.—If insurer participants are required during the first 5 years of the life of the Fund to make up any shortfall in required insurer payments under subsection (a)(1)(B), then, beginning in year 6, the Chief Executive Officer shall grant each insurer participant a credit against its annual required payments during the applicable years that in the aggregate equal the amount of shortfall assessments paid by such insurer participant during the first 5 years of the life of the Fund. The credit shall be prorated over the same number of years as the number of years during which the insurer participant paid a shortfall assessment. Insurer participants which did not pay all required payments to the Fund during the first 5 years of the life of the Fund shall not be eligible for a credit. The Chief Executive Officer shall not grant a credit for shortfall assessments imposed under section 405(e).

(4) FINANCIAL SECURITY REQUIREMENTS.—Whenever an insurer participant's A.M. Best's claims payment rating or Standard and Poor's financial strength rating falls below A−, and until such time as either the insurer participant's A.M. Best's Rating or Standard and Poor's rating is equal to or greater than A−, the Chief Executive Officer shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Chief Executive Officer; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best's claims payment rating or Standard & Poor's financial strength rating of at least A+.

(g) ACCOUNTING TREATMENT.—Insurer participants' payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each insurer participant. This subsection shall in no way reduce the amount of monetary payments to the Fund by insurer participants as required under subsection (a).

(h) JUDICIAL REVIEW.—The Committee's rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMITTEE.

(a) RULEMAKING.—The Committee shall promulgate such rules and regulations as necessary to implement its authority under this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) HEARINGS.—The Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Committee considers advisable to carry out this Act. The Committee shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Committee's adoption of a final regulation.

(c) INFORMATION FROM FEDERAL AND STATE AGENCIES.—The Committee may secure directly from any Federal or State department or agency such information as the Committee considers necessary to carry out this Act. Upon request of the Chairman of the Committee, the head of such department or agency shall furnish such information to the Committee.

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

(e) GIFTS.—The Committee may not accept, use, or dispose of gifts or donations of services or property.

(f) EXPERT ADVICE.—In carrying out its responsibilities, the Committee may enter into such contracts and agreements as the Committee determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Committee shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Committee.

(b) TRAVEL EXPENSES.—The members of the Committee 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 Committee.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Committee may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Committee to perform its duties. The employment of an executive director shall be subject to confirmation by the Committee.

(2) COMPENSATION.—The Chairman of the Committee may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Committee without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Committee may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMITTEE.

The Committee shall terminate 90 days after the last date on which the Committee makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Committee is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMITTEE.

All expenses of the Committee shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT.—There is established in the Office of Asbestos Disease Compensation the Asbestos Injury Claims Resolution Fund, which shall be available to pay—

(1) claims for awards for an eligible disease or condition determined under title I;

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b);

(4) the remaining obligations to the asbestos trust of a debtor and the class action trust under section 405(f)(8); and

(5) administrative expenses to carry out the provisions of this Act.

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The Chief Executive Officer is authorized to borrow from time to time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Chief Executive Officer may authorize borrowing in such form, over such term, with such necessary disclosure to its lenders as will most efficiently enhance the Fund's liquidity.

(2) FEDERAL FINANCING BANK.—In addition to the general authority in paragraph (1), the Chief Executive Officer may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285), as needed for performance of the Chief Executive Officer's duties under this Act for the first 5 years.

(3) BORROWING CAPACITY.—The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations of the Fund at the time of borrowing, can be repaid in full (with interest) in a timely fashion from—

(A) the available assets of the Fund as of the time of borrowing; and

(B) all amounts expected to be paid by participants during the subsequent 10 years.

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Chief Executive Officer under this subsection shall be repaid in full by the Fund contributors and is limited solely to amounts available, present or future, in the Fund.

(c) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY CLAIMANTS.—

(1) IN GENERAL.—Within the Fund, the Chief Executive Officer shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IX.

(B) A Lung Cancer Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level VIII.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level V.

(D) A Moderate Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IV.

(2) ALLOCATION.—The Chief Executive Officer shall allocate to each of the 4 accounts established under paragraph (1) a portion of payments made to the Fund adequate to compensate all anticipated claimants for each account. Within 60 days after the date of enactment of this Act, and periodically during the life of the Fund, the Chief Executive Officer shall determine an appropriate

amount to allocate to each account after consulting appropriate epidemiological and statistical studies.

(d) AUDIT AUTHORITY.—

(1) IN GENERAL.—For the purpose of ascertaining the correctness of any information provided or payments made to the Fund, or determining whether a person who has not made a payment to the Fund was required to do so, or determining the liability of any person for a payment to the Fund, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of this title, the Chief Executive Officer is authorized—

(A) to examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(B) to summon the person liable for a payment under this title, or officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable or any other person the Chief Executive Officer may determine proper, to appear before the Chief Executive Officer at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(C) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(2) FALSE, FRAUDULENT, OR FICTITIOUS STATEMENTS OR PRACTICES.—If the Chief Executive Officer determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Chief Executive Officer or to the Asbestos Insurers Committee or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Chief Executive Officer may impose a civil penalty not to exceed $10,000 on any person found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Chief Executive Officer shall promulgate appropriate regulations to implement this paragraph.

(e) IDENTITY OF CERTAIN DEFENDANT PARTICIPANTS; TRANSPARENCY.—

(1) SUBMISSION OF INFORMATION.—Not later than 60 days after the date of enactment of this Act, any person who, acting in good faith, has knowledge that such person or such person's affiliated group has prior asbestos expenditures of $1,000,000 or greater, shall submit to the Chief Executive Officer—

(A) either the name of such person, or such person's ultimate parent; and

(B) the likely tier to which such person or affiliated group may be assigned under this Act.

(2) PUBLICATION.—Not later than 20 days after the end of the 60-day period referred to in paragraph (1), the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a list of submissions required by this subsection, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person who, acting in good faith, has knowledge that any other person has prior asbestos expenditures of $1,000,000 or greater may submit to the Chief Executive Officer information on the identity of that person and the person's prior asbestos expenditures.

(f) NO PRIVATE RIGHT OF ACTION.—Except as provided in sections 203(b)(2)(D)(ii) and 204(f)(3), there shall be no private right of action under any Federal or State law against any participant based on a claim of compliance or noncompliance with this Act or the involvement of any participant in the enactment of this Act.

SEC. 222. MANAGEMENT OF THE FUND.

(a) IN GENERAL.—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries and to otherwise defray the reasonable expenses of administering the Fund.

(b) INVESTMENTS.—

(1) IN GENERAL.—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(2) STRATEGY.—The Chief Executive Officer shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Chief Executive Officer shall consider, to the extent relevant to an investment decision or action—

(A) the size of the Fund;

(B) the nature and estimated duration of the Fund;

(C) the liquidity and distribution requirements of the Fund;

(D) general economic conditions at the time of the investment;

(E) the possible effect of inflation or deflation on Fund assets;

(F) the role that each investment or course of action plays with respect to the overall assets of the Fund;

(G) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and

(H) the needs of asbestos claimants for current and future distributions authorized under this Act.

(c) BANKRUPTCY TRUST GUARANTEE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, the Chief Executive Officer shall have the authority to impose a pro rata surcharge on all participants under this subsection to ensure the liquidity of the Fund, if—

(A) the declared assets from 1 or more bankruptcy trusts established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, are not available to the Fund because a final judgment that has been entered by a court and is no longer subject to any appeal or review has enjoined the transfer of assets required under section 524(j)(2) of title 11, United States Code (as amended by section 402(f) of this Act); and

(B) borrowing is insufficient to assure the Fund's ability to meet its obligations under this Act such that the required borrowed amount is likely to increase the risk of termination of this Act under section 405 based on reasonable claims projections.

(2) ALLOCATION.—Any surcharge imposed under this subsection shall be imposed over a period of 5 years on a pro rata basis upon all participants, in accordance with the relative aggregate funding obligations under sections 202(a)(2) and 212(a)(2)(A).

(3) CERTIFICATION.—

(A) IN GENERAL.—Before imposing a surcharge under this subsection, the Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a notice and provide in such notice for a public comment period of 30 days.

(B) CONTENTS OF NOTICE.—The notice required under subparagraph (A) shall include—

(i) information explaining the circumstances that make a surcharge necessary and a certification that the requirements under paragraph (1) are met;

(ii) the amount of the declared assets from any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, that was not made, or is no longer, available to the Fund;

(iii) the total aggregate amount of the necessary surcharge; and

(iv) the surcharge amount for each tier and subtier of defendant participants and for each insurer participant.

(C) FINAL NOTICE.—The Chief Executive Officer shall publish in a newspaper with a circulation of at least 500,000 and on the Internet a final notice and provide each participant with written notice of that participant's schedule of payments under this subsection. In no event shall any required surcharge under this subsection be due before 60 days after the Chief Executive Officer publishes the final notice in a newspaper with a circulation of at least 500,000 and on the Internet and provides each participant with written notice of its schedule of payments.

(4) MAXIMUM AMOUNT.—In no event shall the total aggregate surcharge imposed by the Chief Executive Officer exceed the lesser of—

(A) the total aggregate amount of the declared assets of the trusts established under a plan of reorganization confirmed and substantially consummated prior to July 31, 2004, that are no longer available to the Fund; or

(B) $4,000,000,000.

(5) DECLARED ASSETS.—

(A) IN GENERAL.—In this subsection, the term ''declared assets'' means—

(i) the amount of assets transferred by any trust established under a plan of reorganization confirmed and substantially consummated on or before July 31, 2004, to the Fund that is required to be returned to that trust under the final judgment described in paragraph (1)(A); or

(ii) if no assets were transferred by the trust to the Fund, the amount of assets the Chief Executive Officer determines would have been available for transfer to the Fund from that trust under section 402(f).

(B) DETERMINATION.—In making a determination under subparagraph (A)(ii), the Chief Executive Officer may rely on any information reasonably available, and may request, and use subpoena authority of the Chief Executive Officer if necessary to obtain, relevant information from any such trust or its trustees.

(d) BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Chief Executive Officer shall provide a credit toward the aggregate payment obligations under sections 202(a)(2) and 212(a)(2)(A) for assets received by the Fund from any bankruptcy trust established under a plan of reorganization confirmed and substantially consummated after July 31, 2004.

(2) ALLOCATION OF CREDITS.—The Chief Executive Officer shall allocate, for each such bankruptcy trust, the credits for such assets between the defendant and insurer aggregate payment obligations as follows:

(A) DEFENDANT PARTICIPANTS.—The aggregate amount that all persons other than insurers contributing to the bankruptcy trust would have been required to pay as Tier I defendants under section 203(b) if the plan of reorganization under which the bankruptcy trust was established had not been confirmed and substantially consummated and the proceeding under chapter 11 of title 11, United States Code, that resulted in the establishment of the bankruptcy trust had remained pending as of the date of enactment of this Act.

(B) INSURER PARTICIPANTS.—The aggregate amount of all credits to which insurers are entitled to under section 202(c)(4)(A) of the Act.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Chief Executive Officer, after demand and a 30-day opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code. The United States Bankruptcy Court shall have jurisdiction over any issue or controversy regarding lien priority and lien perfection arising in a bankruptcy case due to a lien imposed under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there has been a refusal or failure to pay any liability imposed under this Act, the Chief Executive Officer may bring a civil action in any appropriate United States District Court, or any other appropriate lawsuit or proceeding outside of the United States—

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest to the payment of such liability; or

(C) for temporary, preliminary, or permanent relief.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Chief Executive Officer may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney's fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (c), the Chief Executive Officer may seek to recover amounts in satisfaction of a payment not timely paid by an insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Chief Executive Officer shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Chief Executive Officer may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.

(3) RECOVERABILITY OF CONTRIBUTION.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Chief Executive Officer is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) NO CREDIT OR OFFSET.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) COOPERATION.—Insureds and cedents shall cooperate with the Chief Executive Officer's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Chief Executive Officer in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Chief Executive Officer shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) BAR ON UNITED STATES BUSINESS.—If any direct insurer or reinsurer refuses to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Chief Executive Officer shall issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. If any direct insurer or reinsurer refuses to furnish any information requested by the Chief Executive Officer, the Chief Executive Officer may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred from obtaining any such license until payment of all contributions required as of the date of license application.

(f) CREDIT FOR REINSURANCE.—If the Chief Executive Officer determines that an insurer participant that is a reinsurer is in default in paying any required contribution or otherwise not in compliance with this Act, the Chief Executive Officer may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer after the date of the Chief Executive Officer's determination of default. Any State law governing credit for reinsurance to the contrary is preempted.

(g) DEFENSE LIMITATION.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Chief Executive Officer or the Asbestos Insurers Committee regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(i)(10), or in a judicial review proceeding under section 303.

(h) DEPOSIT OF FUNDS.—

(1) IN GENERAL.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.

(2) NO EFFECT ON OTHER LIABILITIES.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking ''or'' at the end;

(2) in paragraph (5), by striking ''prohibition.'' and inserting ''prohibition; or''; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

''(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(j) PROPOSED TRANSACTIONS.—

(1) NOTICE OF PROPOSED TRANSACTION.—Any participant that has taken any action to effectuate a proposed transaction or a proposed series of transactions under which a significant portion of such participant's assets, properties or business will, if consummated as proposed, be, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Chief Executive Officer of such proposed transaction (or proposed series of transactions). Upon the request of such participant, and for so long as the participant shall not publicly disclose the transaction or series of transactions and the Chief Executive Officer shall not commence any action under paragraph (6), the Chief Executive Officer shall treat any such notice as confidential commercial information under section 552 of title 5, United States Code.

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days before the date of consummation of the proposed transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Chief Executive Officer a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Chief Executive Officer shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Chief Executive Officer shall not consider any notice given under paragraph (1) as given until such time as the Chief Executive Officer receives

substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Chief Executive Officer shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Chief Executive Officer to determine whether—

(i) the person or persons to whom the assets, properties or business are being transferred in the proposed transaction (or proposed series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or

(ii) the proposed transaction (or proposed series of transactions) would, if consummated, be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person will or has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it will or has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term ''significant portion of the assets, properties or business of a participant'' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) CONSUMMATION OF TRANSACTION.—Any proposed transaction (or proposed series of transactions) with respect to which a participant is required to provide notice under paragraph (1) may not be consummated until at least 30 days after delivery to the Chief Executive Officer of such notice, unless the Chief Executive Officer shall earlier terminate the notice period. The Chief Executive Officer shall endeavor whenever possible to terminate a notice period at the earliest practicable time.

(6) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Chief Executive Officer or any participant believes that a participant proposes to engage or has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status or potential status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Chief Executive Officer or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property, or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Chief Executive Officer or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person will or has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Chief Executive Officer or a participant wishes to challenge a statement made by a participant that a person will not or has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person will or has become a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(7) RULES AND REGULATIONS.—The Chief Executive Officer may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing, and content of notices.

SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.

If any amount of payment obligation under this title is not paid on or before the last date prescribed for payment, the liable party shall pay interest on such amount at the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code of 1986, plus 5 percentage points, for the period from such last date to the date paid.

SEC. 225. EDUCATION, CONSULTATION, AND MONITORING.

(a) IN GENERAL.—The Chief Executive Officer shall establish a program for the education, consultation, and medical monitoring of persons with exposure to asbestos. The program shall be funded by the Fund.

(b) OUTREACH AND EDUCATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Chief Executive Officer shall establish an outreach and education program, including a website designed to provide information about asbestos-related medical conditions to members of populations at risk of developing such conditions.

(2) INFORMATION.—The information provided under paragraph (1) shall include information about—

(A) the signs and symptoms of asbestos-related medical conditions;

(B) the value of appropriate medical screening programs; and

(C) actions that the individuals can take to reduce their future health risks related to asbestos exposure.

(c) MEDICAL MONITORING PROGRAM AND PROTOCOLS.—

(1) IN GENERAL.—The Chief Executive Officer shall establish procedures for a medical monitoring program for persons exposed to asbestos who have been approved for level I compensation under section 131.

(2) PROCEDURES.—The procedures for medical monitoring shall include—

(A) specific medical tests to be provided to eligible individuals and the periodicity of those tests, which shall initially be provided every 3 years and include—

(i) administration of a health evaluation and work history questionnaire;

(ii) physical examinations, including blood pressure measurement, chest examination, and examination for clubbing;

(iii) AP and lateral chest x-ray; and

(iv) spirometry performed according to ATS standards;

(B) qualifications of medical providers who are to provide the tests required under subparagraph (A); and

(C) administrative provisions for reimbursement from the Fund of the costs of monitoring eligible claimants, including the costs associated with the visits of the claimants to physicians in connection with medical monitoring, and with the costs of performing and analyzing the tests.

(3) PREFERENCES.—

(A) IN GENERAL.—In administering the monitoring program under this subsection, preference shall be given to medical and program providers with—

(i) a demonstrated capacity for identifying, contacting, and evaluating populations of workers or others previously exposed to asbestos; and

(ii) experience in establishing networks of medical providers to conduct medical screening and medical monitoring examinations.

(B) PROVISION OF LISTS.—Claimants that are eligible to participate in the medical monitoring program shall be provided with a list of approved providers in their geographic area at the time such claimants become eligible to receive medical monitoring.

(d) CONTRACTS.—The Chief Executive Officer may enter into contracts with qualified program providers that would permit the program providers to undertake medical monitoring programs by means of subcontracts with a network of medical providers, or other health providers.

(e) REVIEW.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Chief Executive Officer shall review, and if necessary update, the protocols and procedures established under this section.

SEC. 226. OVERSIGHT BY THE SECRETARY OF THE TREASURY.

The Secretary of the Treasury shall have authority to serve as the Federal Government's safety and soundness regulator for the Corporation, and may promulgate such regulations and exercise such authority as necessary to ensure the fiscal safety and soundness of the Corporation.

SEC. 227. ADMINISTRATIVE FUNDING.

The Corporation and Asbestos Insurers Committee shall each establish a budget for

each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 6 months before the commencement of the fiscal year to which the budget pertains. The budgets shall be subject to approval by the Secretary of the Treasury.

TITLE III—JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF PROCEDURES.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction over any action to review written procedures issued by the Chief Executive Officer or by the Asbestos Insurers Committee or under this Act.

(b) REVIEW.—Any party adversely affected or aggrieved by any provision of the written procedures issued by the Chief Executive Officer or by the Asbestos Insurers Committee or under this Act shall file a petition for review not later than 60 days after the date of issuance of such procedures.

(c) STANDARD OF REVIEW.—The court shall uphold the provision of the written procedures being challenged unless the court determines that issuance of such procedure is arbitrary and capricious or contrary to law.

(d) EXPEDITED TREATMENT.—The United States Court of Appeals for the Federal Circuit shall provide expedited treatment for actions filed under this section.

SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.

(a) IN GENERAL.—Any claimant adversely affected or aggrieved by a final decision of the Chief Executive Officer awarding or denying compensation under title I may petition for judicial review of such decision. Any petition for review under this section shall be filed within 90 days of the issuance of a final decision of the Chief Executive Officer.

(b) EXCLUSIVE JURISDICTION.—A petition for review may only be filed in the United States Court of Appeals for the Federal Circuit.

(c) STANDARD OF REVIEW.—The court shall uphold the decision of the Chief Executive Officer unless the court determines, upon review of the record as a whole, that the decision is not supported by substantial evidence, is contrary to law, or is not in accordance with procedure required by law.

(d) EXPEDITED PROCEDURES.—The United States Court of Appeals shall provide for expedited procedures for reviews under this section.

SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESSMENTS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction over any action to review a final determination by the Chief Executive Officer or the Asbestos Insurers Committee regarding the liability of any person to make a payment to the Fund, including a notice of applicable subtier assignment under section 204(i), a notice of financial hardship or inequity determination under section 204(d), and a notice of insurer participant obligation under section 212(b).

(b) PERIOD FOR FILING ACTION.—A petition for review under subsection (a) shall be filed not later than 60 days after a final determination by the Chief Executive Officer or the Asbestos Insurers Committee giving rise to the action. Any defendant participant who receives a notice of its applicable subtier under section 204(i) or a notice of financial hardship or inequity determination under section 204(d) shall commence any action within 30 days after a decision on rehearing under section 204(i)(10), and any insurer participant who receives a notice of a payment obligation under section 212(b) shall commence any action within 30 days after receiving such notice. The court shall give such action expedited consideration.

SEC. 304. OTHER JUDICIAL CHALLENGES.

(a) EXCLUSIVE JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action for declaratory or injunctive relief challenging any provision of this Act. An action under this section shall be filed not later than 60 days after the date of enactment of this Act or 60 days after the final action by the Chief Executive Officer or the Asbestos Insurers Committee giving rise to the action, whichever is later.

(b) DIRECT APPEAL.—A final decision in the action shall be reviewable on appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 30 days, and the filing of a jurisdictional statement within 60 days, of the entry of the final decision.

(c) EXPEDITED PROCEDURES.—It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL REVIEW.

(a) NO STAYS.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(b) EXCLUSIVITY OF REVIEW.—An action of the Chief Executive Officer or the Asbestos Insurers Committee for which review could have been obtained under section 301, 302, or 303 shall not be subject to judicial review in any other proceeding.

(c) CONSTITUTIONAL REVIEW.—

(1) IN GENERAL.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality of any provision or application of this Act. The following rules shall apply:

(A) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(B) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, after the entry of the final decision.

(C) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(2) REPAYMENT TO ASBESTOS TRUST AND CLASS ACTION TRUST.—If the transfer of the assets of any asbestos trust of a debtor or any class action trust (or this Act as a whole) is held to be unconstitutional or otherwise unlawful, the Fund shall transfer the remaining balance of such assets (determined under section 405(f)(1)(A)(iii)) back to the appropriate asbestos trust or class action trust within 90 days after final judicial action on the legal challenge, including the exhaustion of all appeals.

SEC. 306. REPRESENTATIONS TO COURT.

(a) REPRESENTATIONS TO THE REVIEWING JUDICIAL BODY.—By presenting a request for judicial review under this title, a participant in the Fund, or a person acting on behalf of a participant in the Fund, certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support; and

(4) the denials of factual contentions are warranted on the evidence.

(b) SANCTIONS.—

(1) IN GENERAL.—If, after notice and a reasonable opportunity to respond, the reviewing judicial body determines that subsection (a) has been violated, the reviewing judicial body may, subject to the provisions of this subsection, impose an appropriate sanction upon the requesting participant, or parties that have violated subsection (a) or are responsible for the violation.

(2) SHOW CAUSE ORDER.—The reviewing judicial body may enter an order describing the specific conduct that appears to violate subsection (a) and directing a party to show cause why it has not violated subsection (a) with respect thereto.

(3) SANCTIONS.—

(A) IN GENERAL.—A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to subparagraph (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty of up to $500,000, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable expenses incurred as a direct result of the violation.

(B) MONETARY SANCTIONS.—Monetary sanctions may not be awarded unless the reviewing judicial body issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is to be sanctioned.

(4) ORDER.—When imposing sanctions, the reviewing judicial body shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

(a) CRIMINAL LIABILITY.—

(1) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1351. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund

"(a) FRAUD RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud the Office of Asbestos Disease Compensation or the Asbestos Insurers Committee under title II of the Fairness in Asbestos Injury Resolution Act of 2006 shall be fined under this title or imprisoned not more than 20 years, or both.

"(b) FALSE STATEMENT RELATING TO ASBESTOS INJURY CLAIMS RESOLUTION FUND.—

"(1) IN GENERAL.—It shall be unlawful for any person, in any matter involving the Office of Asbestos Disease Compensation or the Asbestos Insurers Committee, to knowingly and willfully—

"(A) falsify, conceal, or cover up by any trick, scheme, or device a material fact;

"(B) make any materially false, fictitious, or fraudulent statement or representation; or

"(C) make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the award

of a claim or the determination of a participant's payment obligation under title I or II of the Fairness in Asbestos Injury Resolution Act of 2006.

''(2) PENALTY.—A person who violates this subsection shall be fined under this title or imprisoned not more than 10 years, or both.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1348. Fraud and false statements in connection with participation in Asbestos Injury Claims Resolution Fund.''.

(b) FURTHER LIABILITY.—

(1) DEFINITION.—In this section, the term ''knowingly'' means that a person, with respect to information—

(A) has actual knowledge of the information;

(B) acts in deliberate ignorance of the truth or falsity of the information; or

(C) acts in reckless disregard of the truth or falsity of the information.

(2) LIABILITY.—Any defendant participant or insurer participant that knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Corporation shall be liable under the standards of section 3729 of title 31, United States Code.

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) NO AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2006, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).''.

(b) ASSUMPTION OF EXECUTORY CONTRACT.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.''.

(c) ALLOWED ADMINISTRATIVE EXPENSES.—Section 503 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) Claims or expenses of the United States, the Attorney General, or the Chief Executive Officer (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

''(2) For purposes of paragraph (1), the term 'asbestos payment obligation' means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2006.''.

(d) NO DISCHARGE.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) of the debtor's payment obligations assessed against the participant under title II of that Act.''.

(e) PAYMENT.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) PARTICIPANT DEBTORS.—

''(1) IN GENERAL.—Paragraphs (2) and (3) shall apply to a debtor who—

''(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2006); and

''(B) is subject to a case under this title that is pending—

''(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(ii) at any time during the 1-year period preceding the date of enactment of that Act.

''(2) TIER I DEBTORS.—A debtor that has been assigned to Tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2006, shall make payments in accordance with sections 202 and 203 of that Act.

''(3) TREATMENT OF PAYMENT OBLIGATIONS.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2006 shall—

''(A) constitute costs and expenses of administration of a case under section 503 of this title;

''(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

''(C) not be stayed;

''(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

''(E) not be impaired or discharged in any current or future case under this title.''.

(f) TREATMENT OF TRUSTS.—Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(j) ASBESTOS TRUSTS.—

''(1) IN GENERAL.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as established under the Fairness in Asbestos Injury Resolution Act of 2006—

''(A) the trust qualifies as a trust under section 201 of that Act; and

''(B) the trust does not file an election under section 410 of that Act.

''(2) TRANSFER OF TRUST ASSETS.—

''(A) IN GENERAL.—

''(i) Except as provided under subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) shall be transferred to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Chief Executive Officer of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(ii) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

''(B) AUTHORITY TO REFUSE ASSETS.—The Chief Executive Officer of the Fund may refuse to accept any asset that the Chief Executive Officer determines may create liability for the Fund in excess of the value of the asset.

''(C) ALLOCATION OF TRUST ASSETS.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Chief Executive Officer, or by clear and convincing evidence in a proceeding brought before the United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

''(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2006 shall not be construed to require the Chief Executive Officer of the Fund to sell assets transferred to the Fund under subparagraph (A).

''(E) LIQUIDATED CLAIMS.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

''(3) INJUNCTION.—

''(A) IN GENERAL.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2006, and an interlocutory order denying such relief shall not be subject to immediate appeal under section 1291(a) of title 28.

''(B) AVAILABILITY OF FUND ASSETS.—Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and such transfer shall no longer be subject to any appeal or review—

''(i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation; or

''(ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

''(4) JURISDICTION.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective application to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Chief Executive Officer of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 304 of the Fairness in Asbestos Injury Resolution Act of 2006. Notwithstanding any other provision of this paragraph, for purposes of implementing the sunset provisions of section 402(f) of such Act which apply to asbestos trusts and the class action trust, the bankruptcy court or United States district court having jurisdiction over any such trust as of the date of enactment of such Act shall retain such jurisdiction.''.

(g) NO AVOIDANCE OF TRANSFER.—Section 546 of title 11, United States Code, is amended by adding at the end the following:

''(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.''.

(h) CONFIRMATION OF PLAN.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.''.

(i) EFFECT ON INSURANCE RECEIVERSHIP PROCEEDINGS.—

(1) LIEN.—In an insurance receivership proceeding involving a direct insurer, reinsurer or runoff participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership and the perfected claims of the secured creditors. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) PAYMENT OF ASSESSMENT.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by a direct insurer, reinsurer or runoff participant in an insurance receivership proceeding be approved by a court, receiver or other person. Payments of assessments by any direct insurer or reinsurer participant under this Act shall not be subject to the avoidance powers of a receiver or a court in or relating to an insurance receivership proceeding.

(j) STANDING IN BANKRUPTCY PROCEEDINGS.—The Chief Executive Officer shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Chief Executive Officer to return property seized to satisfy obligations to the Fund.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON NON-ASBESTOS CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any personal injury claim attributable to exposure to airborne minerals, dusts, or fibers other than asbestos as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any award under this Act; or

(II)(aa) the exposed person suffers or has suffered a functional impairment that was caused by exposure to 1 or more airborne minerals, dusts, or fibers other than asbestos;

(bb) asbestos exposure was not a significant contributing factor to such functional impairment; and

(cc) the functional impairment is materially different than that for which the exposed person (or another claiming on behalf of or through the exposed person) has obtained or is eligible to obtain an award under this Act; and

(ii) satisfies the requirements of paragraph (2).

(B) PREEMPTION.—Claims attributable to exposure to airborne minerals, dusts, or fibers other than asbestos that fail to meet the requirements of subparagraph (a) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—In any claim to which paragraph (1) applies, the initial pleading (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 30 days after such date), shall plead with particularity the elements of subparagraph (A)(i) (I) or (II) of paragraph (1) and shall be accompanied by the information described in subparagraphs (A) through (D) of this paragraph if the claim pleads the elements of subparagraph (A)(i)(II) of paragraph (1) and by the information described in subparagraphs (B) through (D) of this paragraph if the claim pleads the elements of subparagraph (A)(i)(I) of paragraph (1)—

(A) admissible evidence, including at a minimum, a certified B-reader's report, the underlying x-ray film, and such other evidence sufficient to establish a prima facie showing that the claim may be maintained and is not preempted under paragraph (1);

(B) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(C) the history of the exposed person's exposure, if any, to asbestos; and

(D) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3), any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim that requires future performance by any party, insurer of such party, settlement Chief Executive Officer, or escrow agent shall be superseded in its entirety by this Act.

(2) NO FORCE OR EFFECT.—Except as provided under paragraph (3), any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any such agreement, understanding, or undertaking.

(3) EXCEPTION.—

(A) IN GENERAL.—Except as provided in section 202(f), nothing in this Act shall abrogate a binding and legally enforceable written settlement agreement between any defendant participant or its insurer and a specific named plaintiff with respect to the settlement of an asbestos claim of the plaintiff if—

(i) before the date of enactment of this Act, the settlement agreement was executed directly by the settling defendant or the settling insurer and the individual plaintiff, or on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by an authorized legal representative;

(ii) the settlement agreement contains an express obligation by the settling defendant or settling insurer to make a future direct monetary payment or payments in a fixed amount or amounts to the individual plaintiff; and

(iii) within 30 days after the date of enactment of this Act, or such shorter time period specified in the settlement agreement, all conditions to payment under the settlement agreement have been fulfilled, including any required court approval of the settlement, so that the only remaining performance due under the settlement agreement is the payment or payments by the settling defendant or the settling insurer.

(B) BANKRUPTCY-RELATED AGREEMENTS.—The exception set forth in this paragraph shall not apply to any bankruptcy-related agreement.

(C) COLLATERAL SOURCE.—Any settlement payment under this section is a collateral source if the plaintiff seeks recovery from the Fund.

(D) ABROGATION.—Nothing in subparagraph (A) shall abrogate a settlement agreement otherwise satisfying the requirements of that subparagraph if such settlement agreement expressly anticipates the enactment of this Act and provides for the effects of this Act.

(d) EXCLUSIVE REMEDY.—The remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(e) BAR ON ASBESTOS CLAIMS.—

(1) IN GENERAL.—No asbestos claim (including any claim described in paragraph (2)) may be pursued, and no pending asbestos claim may be maintained, in any Federal or State court, except for enforcement of claims for which an unappealable verdict or final order or final judgment has been entered by a court before the date of enactment of this Act.

(2) CERTAIN SPECIFIED CLAIMS.—

(A) IN GENERAL.—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judgment only against insurers or in bankruptcy;

(ii) relating to the defense, investigation, handling, litigation, settlement, or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission, or failure to detect, disclose, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort, or otherwise; or

(iv) by any third party, and premised on any theory, allegation, or cause of action, for reimbursement of healthcare costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) EXCEPTIONS.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or

(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) PREEMPTION.—Any action asserting an asbestos claim (including a claim described in paragraph (2)) in any Federal or State court is preempted by this Act, except for any action for which an unappealable verdict or final order or final judgment has been entered by a court before the date of enactment of this Act.

(4) DISMISSAL.—No judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(5) REMOVAL.—

(A) IN GENERAL.—If an action in any State court under paragraph (3) is preempted, barred, or otherwise precluded under this Act, and not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

(B) TIME LIMITS.—For actions originally filed after the date of enactment of this Act, the notice of removal shall be filed within the time limits specified in section 1441(b) of title 28, United States Code.

(C) PROCEDURES.—The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except—

(i) as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act; and

(ii) orders to remand removed actions shall be immediately appealable.

(D) JURISDICTION.—The jurisdiction of the district court shall be limited to—

(i) determining whether removal was proper; and

(ii) determining, based on the evidentiary record, whether the claim presented is preempted, barred, or otherwise precluded under this Act.

(6) CREDITS.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim, including a claim described under paragraph (2), for which, as of the date of enactment of this Act, there had been no verdict or final order or final judgment entered by a court, is not subject to the exclusive remedy or preemption provisions of this section, then any participant required to satisfy a final judgment executed with respect to any such claim may elect to receive a credit against any assessment owed to the Fund equal to the amount of the payment made with respect to such executed judgment. The Chief Executive Officer shall require participants seeking credit under this section to demonstrate that the participant timely pursued all available remedies, including remedies available under this section to obtain dismissal of the claim, and that the participant notified the Chief Executive Officer at least 20 days before the expiration of any period within which to appeal the denial of a motion to dismiss based on this section. The Chief Executive Officer may require such participant to furnish such further information as is necessary and appropriate to establish eligibility for and the amount of the credits. The Chief Executive Officer may intervene in any action in which a credit may be due under this section.

SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CONTRACTS.

(a) EROSION OF INSURANCE COVERAGE LIMITS.—

(1) DEFINITIONS.—In this section, the following definitions shall apply:

(A) DEEMED EROSION AMOUNT.—The term ''deemed erosion amount'' means the amount of erosion deemed to occur at enactment under paragraph (2).

(B) EARNED EROSION AMOUNT.—The term ''earned erosion amount'' means, in the event of any early sunset under section 405(f), the percentage, as set forth in the following schedule, depending on the year in which the defendant participants' funding obligations end, of those amounts which, at the time of the early sunset, a defendant participant has paid to the fund and remains obligated to pay into the fund.

Year After Enactment In Which Defendant Participant's Funding Obligation Ends:	Applicable Percentage:
10	70.78
11	68.75
12	67.06
13	65.63
14	64.40
15	63.33
16	62.40
17	61.58
18	60.39
19	59.33
20	58.38
21	57.51
22	56.36
23	55.31
24	56.71
25	58.11
26	59.51

(C) REMAINING AGGREGATE PRODUCTS LIMITS.—The term ''remaining aggregate products limits'' means aggregate limits that apply to insurance coverage granted under the ''products hazard'', ''completed operations hazard'', or ''Products—Completed Operations Liability'' in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and

(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

(D) SCHEDULED PAYMENT AMOUNTS.—The term ''scheduled payment amounts'' means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

(2) QUANTUM AND TIMING OF EROSION.—

(A) EROSION UPON ENACTMENT.—The collective payment obligations to the Fund of the insurer and reinsurer participants as assessed by the Chief Executive Officer shall be deemed as of the date of enactment of this Act to erode remaining aggregate products limits available to a defendant participant only in an amount of 59.64 percent of each defendant participant's scheduled payment amount.

(B) NO ASSERTION OF CLAIM.—No insurer or reinsurer may assert any claim against a defendant participant or captive insurer for insurance, reinsurance, payment of a deductible, or retrospective premium adjustment arising out of that insurer's or reinsurer's payments to the Fund or the erosion deemed to occur under this section.

(C) POLICIES WITHOUT CERTAIN LIMITS OR WITH EXCLUSION.—Except as provided under subparagraph (E), nothing in this section shall require or permit the erosion of any insurance policy or limit that does not contain an aggregate products limit, or that contains an asbestos exclusion.

(D) TREATMENT OF CONSOLIDATION ELECTION.—If an affiliated group elects consolidation as provided in section 204(f), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed 59.64 percent of the scheduled payment amount of the single payment obligation for the entire affiliated group. The total erosion of limits for any individual defendant participant in the affiliated group shall not exceed its individual share of 59.64 percent of the affiliated group's scheduled payment amount, as measured by the individual defendant participant's percentage share of the affiliated group's prior asbestos expenditures.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, nothing in this Act shall be deemed to erode remaining aggregate products limits of a defendant participant that can demonstrate by a preponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the

defendant participant (a ''premises defendant''). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant's products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—

(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants' policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant's right to seek coverage for asbestos claims under an insurer participant's policies, any remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).

(4) PAYMENTS BY DEFENDANT PARTICIPANT.—Payments made by a defendant participant shall be deemed to erode, exhaust, or otherwise satisfy applicable self-insured retentions, deductibles, retrospectively rated premiums, and limits issued by nonparticipating insolvent or captive insurance companies. Reduction of remaining aggregate limits under this subsection shall not limit the right of a defendant participant to collect from any insurer not a participant.

(5) EFFECT ON OTHER INSURANCE CLAIMS.—Other than as specified in this subsection, this Act does not alter, change, modify, or affect insurance for claims other than asbestos claims.

(b) DISPUTE RESOLUTION PROCEDURE.—

(1) ARBITRATION.—The parties to a dispute regarding the erosion of insurance coverage limits under this section may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract.

(2) TITLE 9, UNITED STATES CODE.—Arbitration of such disputes, awards by arbitrators, and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the erosion principles provided for under this section shall be binding on the arbitrator, unless the parties agree to the contrary.

(3) FINAL AND BINDING AWARD.—An award by an arbitrator shall be final and binding between the parties to the arbitration, but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a policy which is the subject matter of an award is subsequently determined to be eroded in a manner different from the manner determined by the arbitration in a judgment rendered by a court of competent jurisdiction from which no appeal can or has been taken, such arbitration award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such modification shall govern the rights and obligations between such parties after the date of such modification.

(c) EFFECT ON NONPARTICIPANTS.—

(1) IN GENERAL.—No insurance company or reinsurance company that is not a participant, other than a captive insurer, shall be entitled to claim that payments to the Fund erode, exhaust, or otherwise limit the nonparticipant's insurance or reinsurance obligations.

(2) OTHER CLAIMS.—Nothing in this Act shall preclude a participant from pursuing any claim for insurance or reinsurance from any person that is not a participant other than a captive insurer.

(d) FINITE RISK POLICIES NOT AFFECTED.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, this Act shall not alter, affect or impair any rights or obligations of—

(A) any party to an insurance contract that expressly provides coverage for governmental charges or assessments imposed to replace insurance or reinsurance liabilities in effect on the date of enactment of this Act; or

(B) subject to paragraph (2), any person with respect to any insurance or reinsurance purchased by a participant after December 31, 1996, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as ''finite risk'' policies.

(2) LIMITATION.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides coverage for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims.

(e) EFFECT ON CERTAIN INSURANCE AND REINSURANCE CLAIMS.—

(1) NO COVERAGE FOR FUND ASSESSMENTS.—No participant or captive insurer may pursue an insurance or reinsurance claim against another participant or captive insurer for payments to the Fund required under this Act, except under a contract specifically providing insurance or reinsurance for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims or, where applicable, under finite risk policies under subsection (d).

(2) CERTAIN INSURANCE ASSIGNMENTS VOIDED.—Any assignment of any rights to insurance coverage for asbestos claims to any person who has asserted an asbestos claim before the effective date, or to any trust, person, or other entity not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims which were asserted before the effective date, or by any Tier I defendant participant shall be null and void. This subsection shall not void or affect in any way any assignments of rights to insurance coverage other than to asbestos claimants or to trusts, persons, or other entities not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims, or by Tier I defendant participants.

(3) INSURANCE CLAIMS PRESERVED.—Notwithstanding any other provision of this Act, this Act shall not alter, affect, or impair any rights or obligations of any person with respect to any insurance or reinsurance for amounts that any person pays, has paid, or becomes legally obligated to pay in respect of asbestos or other claims, except to the extent that—

(A) such person pays or becomes legally obligated to pay claims that are superseded by section 403;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by paragraph (1) or (2) of subsection (e); or

(C) the limits of insurance otherwise available to such participant in respect of asbestos claims are deemed to be eroded under subsection (a).

SEC. 405. ADDITIONAL FUNDING OR RETURN TO COURT.

(a) VERIFICATION OF UNANTICIPATED CLAIMS.—

(1) IN GENERAL.—If the number of claims that qualify for compensation under a claim level exceed 115 percent of the number of claims expected to qualify for compensation under that claim level or designation in the 2004 Congressional Budget Office estimate of asbestos-injury claims, or the Fund otherwise is projected to be unable to pay all qualified claims in any year in the future, the Chief Executive Officer shall conduct a review of a statistically significant sample of claims qualifying for compensation under the appropriate claim level or designation.

(2) DETERMINATIONS.—

(A) IN GENERAL.—The Chief Executive Officer's review shall examine the best available medical evidence in order to determine which one of the following is true:

(i) Without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation suffer from an injury or disease that was caused by occupational exposure to asbestos.

(ii) A significant number of claimants who qualified for compensation under the claim level or designation do not suffer from an injury or disease that was caused by occupational exposure to asbestos.

(B) FUTURE CLAIMS.—If the Chief Executive Officer projects that the Fund will be unable to pay all qualified claims in any year in the future, the Chief Executive Officer shall also determine whether the Fund lacks the resources to pay all qualified claimants over the life of the Fund.

(C) FINAL DETERMINATION.—The final determination of the Chief Executive Officer under this paragraph shall be made in accordance with notice and comment under subchapter II of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedure Act).

(b) JUDICIAL REVIEW OF CHIEF EXECUTIVE OFFICER VERIFICATION OF CLAIMS.—The Chief Executive Officer's determination that either subparagraph (A) or (B) in paragraph (2) of subsection (a) is true shall be subject to judicial review in the United States Court of Appeals for the District of Columbia Circuit. Review may be sought by any interested party. The review shall be conducted in accordance with the standards and procedures of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedure Act), except that all findings based on medical science shall be reviewed de novo.

(c) ADDITIONAL TRUST-FUND ASSESSMENTS OR RETURN TO COURT.—

(1) ADDITIONAL ASSESSMENTS AGAINST DEFENDANT PARTICIPANTS.—

(A) DEFINITION.—In this paragraph the term ''nonbankruptcy defendant participant'' means a defendant participant that has not entered into a final confirmed plan

of reorganization under section 524(g) of title 11, United States Code.

(B) ADDITIONAL ASSESSMENTS.—

(i) IN GENERAL.—The Chief Executive Officer shall make a recommendation under clause (ii), if the United States Court of Appeals finds as a result of its review under subsection (b) that—

(I) without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation under review suffer from an injury or disease that is caused by occupational exposure to asbestos; or

(II) the Fund lacks the resources necessary to pay all qualified claimants at the present time, and the Chief Executive Officer projects that the Fund will remain unable to pay all qualified claimants over the life of the Fund.

(ii) RECOMMENDATIONS.—If the United States Court of Appeals makes a finding under subclause (I) or (II) of clause (i), the Chief Executive Officer shall recommend to Congress that it enact—

(I) additional assessments against all nonbankruptcy defendant participants, in accordance with each nonbankruptcy defendant participant's relative prior assessments (taking into account hardship and inequity reductions), in an amount necessary to allow the Fund to compensate all qualified claimants; or

(II) an expansion of the Fund's borrowing authority, by an amount necessary to allow the Fund to compensate all qualified claimants.

(2) EXPEDITED CONGRESSIONAL ACTION ON LIMITED ADDITIONAL ASSESSMENTS OR BORROWING.—Either of the following shall constitute a modification of the Fund that shall be submitted by the Chief Executive Officer to Congress in the appropriate form for expedited action under title V:

(A) A recommendation of additional assessments that does not exceed a defendant participant's original assessment obligation by more than 10 percent, if no additional assessment has been imposed by Congress within the previous 5 years.

(B) A recommendation to expand borrowing authority by no more than $5,000,000,000.

(3) RETURN TO COURT.—

(A) IN GENERAL.—If Congress declines to enact within 1 year after the date of the recommendation made by the Chief Executive Officer under paragraph (1)(B), and the Chief Executive Officer again determines that the Fund lacks the resources necessary to pay all qualified claimants at the present time, and the Chief Executive Officer continues to project that the Fund will remain unable to pay all qualified claimants over the life of the Fund, any individual who qualifies for compensation under the Fund may file a civil action in United States District Court against any defendant participant to obtain relief for injuries suffered as a result of exposure to asbestos.

(B) EXCLUSIVE REMEDY AND LIMITATIONS.—

(i) IN GENERAL.—As of the effective date of a return to court authorized by this paragraph, an action under this paragraph shall be the exclusive remedy for any asbestos claim that might otherwise exist under Federal, State, or other law, regardless of whether such claim arose before or after the effective date of this Act or of the return to court, except that claims against the Fund that have qualified for compensation and remain eligible for compensation under subparagraph (F) may be paid by the Fund. The applicable statute of limitations for a claim brought under this paragraph is 2 years after the asbestos injury or disease was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis, except that claimants who filed a claim against the Fund under this Act before the return to court shall have 2 years after the date of the return to court to file an action under this paragraph, whichever is longer.

(ii) LIMITATION.—An individual who has received or is entitled to receive an award from the Fund may not bring an action under this paragraph, except—

(I) an individual who received an award for a nonmalignant disease (Levels I through V) from the Fund may assert a claim for a malignant disease under this paragraph, unless the malignancy was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant claim was settled; and

(II) an individual who received an award for a nonmalignant or malignant disease (except mesothelioma) (Levels I through VI) from the Fund may assert a claim for mesothelioma under this paragraph, unless the mesothelioma was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant or other malignant claim was settled.

(C) LIMITS ON ATTORNEYS' FEES.—

(i) IN GENERAL.—In any action permitted under subparagraph (B), notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with an action permitted under subparagraph (A), more than 20 percent of a final award made as a result of such action.

(ii) REASONABLE FEE FOR WORK ACTUALLY AND REASONABLY PERFORMED.—In addition to the limitation specified in clause (i), a representative of an individual may not receive a fee unless—

(I) the representative submits to the court appropriately detailed billing documentation for the work actually performed in the course of representation of the individual; and

(II) the court finds that the fee to be awarded is for work actually and reasonably performed on behalf of the claimant does not exceed 200 percent of a reasonable hourly fee for such work.

(D) CONTINUED FUNDING.—If asbestos claims are returned to court under subparagraph (A), participants shall remain required to make payments as provided under subtitles A and B of title II. The Fund shall pay all claims under Levels VI, and VII, that were found to qualify for compensation before the date of a return to court under subparagraph (A). If the full amount of payments required under title II is not necessary for the Fund to pay claims that remain entitled to compensation, pay the Fund's debt, and support the Fund's continued operation as needed to pay such claims and debt, the Chief Executive Officer may reduce such payments. Any such reductions shall be allocated among participants in the same proportion as the liability under subtitles A and B of title II.

(d) CORRECTION OF INAPPROPRIATE CLAIMS CRITERIA.—If the United States Court of Appeals finds as a result of its review under subsection (b) that a significant number the claimants who qualified for compensation under the claim level under review do not suffer from an injury or disease that was caused by occupational exposure to asbestos, the Chief Executive Officer shall correct the compensation criteria in order to exclude from eligibility for compensation all such claims.

(e) JUDICIAL REVIEW OF CHIEF EXECUTIVE OFFICER CORRECTIONS.—The Chief Executive Officer's correction of compensation criteria under subsection (d) shall become effective upon the conclusion of final, unappealable judicial review in the United States Court of Appeals for the District of Columbia Circuit. Review may be sought by any interested party. The review shall be conducted under the standards and procedures of chapter 5 of title 5, United States Code, except that all findings based on medical science shall be reviewed de novo, and the Chief Executive Officer's corrections shall be reviewed to determine that the corrections are reasonably tailored to achieve the result required by this section. The Court may order such relief as is necessary to achieve the results required by this section.

(f) TEMPORARY STAY OF UNANTICIPATED CLAIMS.—The Chief Executive Officer shall stay payment of claims for a claim level that results in or is subject to review under subsection (a) pending such review and the collection of additional assessments or the correction of compensation criteria.

(g) REPORT.—The Chief Executive Officer shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the operation of the Asbestos Injury Claims Resolution Fund within 6 months after the close of each fiscal year.

(h) CONTENTS OF REPORT.—The annual report submitted under this subsection shall include an analysis of—

(1) the claims experience of the program during the most recent fiscal year, including—

(A) the number of claims made to the Corporation and a description of the types of medical diagnoses and asbestos exposures underlying those claims;

(B) the number of claims denied by the Corporation and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and a general description of the reasons for their denial;

(C) a summary of the eligibility determinations made by the Corporation under section 114;

(D) a summary of the awards made from the Fund, including the amount of the awards; and

(E) for each eligible condition, a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which such claimants are entitled according to section 131;

(2) the administrative performance of the program, including—

(A) the performance of the program in meeting the time limits prescribed by law and an analysis of the reasons for any systemic delays;

(B) any backlogs of claims that may exist and an explanation of the reasons for such backlogs;

(C) the costs to the Fund of administering the program; and

(D) any other significant factors bearing on the efficiency of the program;

(3) the financial condition of the Fund, including—

(A) statements of the Fund's revenues, expenses, assets, and liabilities;

(B) the identity of all participants, the funding allocations of each participant, and the total amounts of all payments to the Fund;

(C) a list of all financial hardship or inequity adjustments applied for during the fiscal year, and the adjustments that were made during the fiscal year;

(D) a statement of the investments of the Fund; and

(E) a statement of the borrowings of the Fund; and

(4) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(i) INJUNCTION AFTER CONFIRMATION OF BANKRUPTCY PLAN OF REORGANIZATION.—

(1) IN GENERAL.—Section 524(g)(2)(B)(ii)(IV)(bb) of title 11, United States Code, is amended by inserting after ''plan'' the following: '', or, if such a vote is not obtained with respect to any such class of claimants so established, the plan satisfies the requirements for confirmation of a plan under section 1129(b) that would apply to such class if the class did not accept the plan for purposes of section 1129(a)(8) (whether or not the class has accepted the plan)''.

(2) EFFECTIVE DATE; APPLICATION.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act, and shall apply with respect to cases under title 11 of the United States Code, which were commenced before, on, or after such date.

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as creating a cause of action against the United States Government, any entity established under this Act, or any officer or employee of the United States Government or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act shall be construed to—

(1) create any obligation of funding from the United States Government including the coverage of any costs associated with borrowing authorized under section 221(b)(2); or

(2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate.

SEC. 407. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Chief Executive Officer receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal, and distribution in commerce of asbestos-containing products, the Chief Executive Officer shall refer the matter in writing within 30 days after receiving that information to the Chief Executive Officer of the Environmental Protection Agency and the United States attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) ASBESTOS AS AIR POLLUTANT.—If the Chief Executive Officer receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Chief Executive Officer shall refer the matter in writing within 30 days after receiving that information to the Chief Executive Officer of the Environmental Protection Agency and the United States attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Chief Executive Officer receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Chief Executive Officer shall refer the matter in writing within 30 days after receiving that information and refer the matter to the Secretary of Labor or the appropriate State agency with authority to enforce occupational safety and health standards, for investigation for possible civil or criminal penalties under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

SEC. 408. NONDISCRIMINATION OF HEALTH INSURANCE.

(a) DENIAL, TERMINATION, OR ALTERATION OF HEALTH COVERAGE.—No health insurer offering a health plan may deny or terminate coverage, or in any way alter the terms of coverage, of any claimant or the beneficiary of a claimant, on account of the participation of the claimant or beneficiary in a medical monitoring program under this Act, or as a result of any information discovered as a result of such medical monitoring.

(b) DEFINITIONS.—In this section:

(1) HEALTH INSURER.—The term ''health insurer'' means—

(A) an insurance company, healthcare service contractor, fraternal benefit organization, insurance agent, third-party Chief Executive Officer, insurance support organization, or other person subject to regulation under the laws related to health insurance of any State;

(B) a managed care organization; or

(C) an employee welfare benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) HEALTH PLAN.—The term ''health plan'' means—

(A) a group health plan (as such term is defined in section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167)), and a multiple employer welfare arrangement (as defined in section 3(4) of such Act) that provides health insurance coverage; or

(B) any contractual arrangement for the provision of a payment for healthcare, including any health insurance arrangement or any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organizing subscriber contract.

(c) CONFORMING AMENDMENTS.—

(1) ERISA.—Section 702(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)), is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(2) PUBLIC SERVICE HEALTH ACT.—Section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)) is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(3) INTERNAL REVENUE CODE OF 1986.—Section 9802(a)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

SEC. 409. CORPORATE RESPONSIBILITY FOR ANNUAL AND FINANCIAL REPORTS.

(a) IN GENERAL.—Each periodic report, including the annual report of the Chief Executive Officer filed by the Chief Executive Officer in connection with this Act, shall be accompanied by a written statement by the Chief Executive Officer and Chief Financial Officer (or equivalent thereof) of the Corporation.

(b) CONTENTS.—The statement required under subsection (a) shall certify that the periodic report containing the financial statements fully complies with the requirements of this Act and that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

(c) CRIMINAL PENALTIES.—Whoever—

(1) certifies any statement as set forth under subsections (a) and (b), knowing that the periodic report accompanying the statement does not comport with all the requirements set forth under this section, shall be fined not more than $1,000,000 or imprisoned not more than 10 years, or both; or

(2) willfully certifies any statement as set forth under subsections (a) and (b), knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section, shall be fined not more than $5,000,000, or imprisoned not more than 20 years, or both.

SEC. 410. OPT-OUT RIGHTS OF CERTAIN TRUSTS AND EFFECT OF OPT-OUT.

(a) OPT-OUT RIGHTS.—Any trust defined under section 201(8) that has been established or formed under a plan of reorganization under chapter 11 of title 11, United States Code, confirmed by a duly entered order or judgment of a court, which order or judgment is no longer subject to any appeal or judicial review on the date of enactment of this Act, may elect not to be covered by this Act by filing written notice of such election to the Chief Executive Officer not later than 90 days after the date of enactment of this Act.

(b) EFFECT OF OPT-OUT.—

(1) IN GENERAL.—This Act nor any amendment made by this Act shall apply to—

(A) any trust that makes an election under subsection (a); or

(B) any claim or future demand that has been channeled to that trust.

(2) ASSETS AND OTHER RIGHTS AND CLAIMS.—A trust that makes an election under subsection (a) shall retain all of its assets. The contractual and other rights of a trust making an election under subsection (a) and claims against other persons (whether held directly or indirectly by others for the benefit of the trust), including the rights and claims of the trust against insurers, shall be preserved and not abrogated by this Act.

TITLE V—EXPEDITED CONGRESSIONAL ACTION

SEC. 501. CONGRESSIONAL ACTION REGARDING MODIFICATIONS OF THE FUND.

(a) IN GENERAL.—A modification of the Fund that is subject to action under the procedures of this title shall be submitted by the Chief Executive Officer to the chairman and ranking member of the Committees on the Judiciary of the United States Senate and the House of Representatives. The modification shall take effect only if Congress enacts a joint resolution of approval, described under section 602, regarding the modification. A modification that does not take effect as a result of Congress's failure to approve a joint resolution, or Congress's failure to override the President's veto of a joint resolution, may not be resubmitted to Congress in the same form.

(b) END-OF-SESSION SUBMISSIONS.—

(1) IN GENERAL.—In addition to the opportunity for approval otherwise provided under this title, in the case of a modification that was submitted to Congress—

(A) in the case of the Senate, 60 session days; or

(B) in the case of the House of Representatives, 60 legislative days;

before the date the Congress adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 602 shall apply to such modification in the succeeding session of Congress.

(2) TREATMENT.—In applying section 602 for purposes of such additional review, a modification described under paragraph (1) shall be treated as though such modification were submitted to Congress—

(A) in the case of the Senate, the 15th session day; or

(B) in the case of the House of Representatives, on the 15th legislative day, after the succeeding session of Congress first convenes.

SEC. 502. CONGRESSIONAL APPROVAL PROCEDURE.

(a) JOINT RESOLUTION.—For purposes of this section, the term ''joint resolution'' means only a joint resolution introduced in the period beginning on the date on which the modification was submitted by the Chief Executive Officer to Congress (i.e., to the chairmen and ranking members of the Committees on the Judiciary of the Senate and the House of Representatives) and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: ''The Fairness in Asbestos Injury Resolution Act of 2006 is modified as follows: _____ ''. (The blank spaces being filled in with the Chief Executive Officer's proposed change to the Fund that requires congressional approval.)

(b) REFERRAL.—A joint resolution described in subsection (a) shall be referred to the Committees on the Judiciary of the Senate and House of Representatives.

(c) SENATE REPORT OR DISCHARGE.—In the Senate, if a joint resolution described in subsection (a) (or an identical joint resolution) has not been reported by the Judiciary Committee at the end of 20 calendar days after the committee received the resolution, the committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 5 Members of the Senate, and such joint resolution shall be placed on the calendar.

(d) PROCEDURES.—(1) In the Senate, when the Judiciary Committee has reported, or when the committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

(4) Appeals from the decisions of the chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(e) CONSIDERATION AFTER EXPIRATION OF TIME.—In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a modification of the Fund after the expiration of the 60 session days beginning with the submission of the modification by the Chief Executive Officer to Congress.

(f) PREVIOUS ACTION.—If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

(1) The joint resolution of the other House shall not be referred to a committee.

(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution, the procedure in that House shall be the same as if no joint resolution had been received from the other House, except the vote on final passage shall be on the joint resolution of the other House.

(g) RULEMAKING.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supercedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SA 2803. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''Fairness in Asbestos Injury Resolution Act of 2006'' or the ''FAIR Act of 2006''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Millions of Americans have been exposed to forms of asbestos that can have devastating health effects.

(2) Various injuries can be caused by exposure to some forms of asbestos, including pleural disease and some forms of cancer.

(3) The injuries caused by asbestos can have latency periods of up to 40 years, and even limited exposure to some forms of asbestos may result in injury in some cases.

(4) Asbestos litigation has had a significant detrimental effect on the country's economy, driving companies into bankruptcy, diverting resources from those who are truly sick, and endangering jobs and pensions.

(5) The scope of the asbestos litigation crisis cuts across every State and virtually every industry.

(6) The United States Supreme Court has recognized that Congress must act to create a more rational asbestos claims system. In 1991, a Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist, found that the ''ultimate solution should be legislation recognizing the national proportions of the problem . . . and creating a national asbestos dispute resolution scheme . . .''. The Court found in 1997 in Amchem Products Inc. v. Windsor, 521 U.S. 591, 595 (1997), that ''[t]he argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.'' In 1999, the Court in Ortiz v. Fibreboard Corp., 527 U.S. 819, 821 (1999), found that the ''elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.'' That finding was again recognized in 2003 by the Court in Norfolk & Western Railway Co. v. Ayers, 123 S. Ct. 1210 (2003).

(7) This crisis, and its significant effect on the health and welfare of the people of the United States, on interstate and foreign commerce, and on the bankruptcy system, compels Congress to exercise its power to regulate interstate commerce and create this legislative solution in the form of a national asbestos injury claims resolution program to supersede all existing methods to compensate those injured by asbestos, except as specified in this Act.

(8) This crisis has also imposed a deleterious burden upon the United States bankruptcy courts, which have assumed a heavy burden of administering complicated and protracted bankruptcies with limited personnel.

(9) This crisis has devastated many communities across the country, but hardest hit has been Libby, Montana, where tremolite asbestos, one of the most deadly forms of asbestos, was contained in the vermiculite ore mined from the area and despite ongoing cleanup by the Environmental Protection Agency, many still suffer from the deadly dust.

(10) The asbestos found in Libby, Montana, tremolite asbestos, has demonstrated an unusually high level of toxicity, as compared to chrysotile asbestos. Diseases contracted from this tremolite asbestos are unique and highly progressive. These diseases typically manifest in a characteristic pleural disease pattern, and often result in severe impairment or death without radiographic interstitial disease or typical chrysotile markers of radiographic severity. According to the Agency for Toxic Substances and Disease Registry previous studies by the National Institutes of Occupational Safety and Health document significantly increased rates of pulmonary abnormalities and disease (asbestosis and lung cancer) among former workers.

(11) Environmental Protection Agency supported studies have determined that the raw vermiculite ore mined and milled in Libby, Montana contained 21 to 26 percent asbestos, by weight. The milled ore, resulting from the processing in Libby, which was shipped out of Libby contained markedly reduced percentages of asbestos. A 1982 Environmental Protection Agency-supported study concluded that ore shipped out of Libby contained 0.3 to 7 percent asbestos, by weight.

(12) In Libby, Montana, exposure pathways are and were not limited to the workplace, rather, for decades there has been an unprecedented 24 hour per day contamination of the community's homes, playgrounds, gardens, and community air, such that the entire

community of Libby, Montana, has been designated a Superfund site and is listed on the Environmental Protection Agency's National Priorities List.

(13) These multiple exposure pathways have caused severe asbestos disease and death not only in former workers at the mine and milling facilities, but also in the workers' spouses and children, and in community members who had no direct contact with the mine. According to the Environmental Protection Agency, some potentially important alternative pathways for past asbestos exposure include elevated concentrations of asbestos in ambient air and recreational exposures from children playing in piles of vermiculite. Furthermore, the Environmental Protection Agency has determined that current potential pathways of exposure include vermiculite placed in walls and attics as thermal insulation, vermiculite or ore used as road bed material, ore used as ornamental landscaping, and vermiculite or concentrated ore used as a soil and garden amendment or aggregate in driveways.

(14) The Environmental Protection Agency also concluded, ''Asbestos contamination exists in a number of potential source materials at multiple locations in and around the residential and commercial area of Libby. . . While data are not yet sufficient to perform reliable human-health risk evaluations for all sources and all types of disturbance, it is apparent that releases of fiber concentrations higher than Occupational Safety and Health Administration standards may occur in some cases . . . and that screening-level estimates of lifetime excess cancer risk can exceed the upper-bound risk range of 1E–04 usually used by the Environmental Protection Agency for residents under a variety of exposure scenarios. The occurrence of non-occupational asbestos-related disease that has been observed among Libby residents is extremely unusual, and has not been associated with asbestos mines elsewhere, suggesting either very high and prolonged environmental exposures and/or increased toxicity of this form of amphibole asbestos.''.

(15) According to a November 2003 article from the Journal Environmental Health Perspectives titled, Radiographic Abnormalities and Exposure to Asbestos-Contaminated Vermiculite in the Community of Libby, Montana, USA, Libby residents who have evidence of ''no apparent exposure'', i.e., did not work with asbestos, were not a family member of a former worker, etc., had a greater rate of pleural abnormalities (6.7 percent) than did those in control groups or general populations found in other studies from other states (which ranged from 0.2 percent to 4.6 percent). ''Given the ubiquitous nature of vermiculite contamination in Libby, along with historical evidence of elevated asbestos concentrations in the air, it would be difficult to find participants who could be characterized as unexposed.''.

(16) Nothing in this Act is intended to increase the Federal deficit or impose any burden on the taxpayer. The Office of Asbestos Disease Compensation established under this Act shall be privately funded by annual payments from defendant participants that have been subject to asbestos liability and their insurers. Section 406(b) of this Act expressly provides that nothing in this Act shall be construed to create any obligation of funding from the United States or to require the United States to satisfy any claims if the amounts in the Fund are inadequate. Any borrowing by the Fund is limited to monies expected to be paid into the Fund, and the Administrator shall have no fiscal authority beyond the amount of private money coming into the Fund. This Act provides the Administrator with broad enforcement authority to pursue debts to the Fund owed by defendant participants or insurer participants and their successors in interest.

(b) PURPOSE.—The purpose of this Act is to—

(1) create a privately funded, publicly administered fund to provide the necessary resources for a fair and efficient system to resolve asbestos injury claims that will provide compensation for legitimate present and future claimants of asbestos exposure as provided in this Act;

(2) provide compensation to those present and future victims based on the severity of their injuries, while establishing a system flexible enough to accommodate individuals whose conditions worsen;

(3) relieve the Federal and State courts of the burden of the asbestos litigation; and

(4) increase economic stability by resolving the asbestos litigation crisis that has bankrupted companies with asbestos liability, diverted resources from the truly sick, and endangered jobs and pensions.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Office of Asbestos Disease Compensation appointed under section 101(b).

(2) ASBESTOS.—The term ''asbestos'' includes—

(A) chrysotile;

(B) amosite;

(C) crocidolite;

(D) tremolite asbestos;

(E) winchite asbestos;

(F) richterite asbestos;

(G) anthophyllite asbestos;

(H) actinolite asbestos;

(I) asbestiform amphibole minerals;

(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and

(K) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term ''asbestos claim'' means any claim, premised on any theory, allegation, or cause of action for damages or other relief presented in a civil action or bankruptcy proceeding, directly, indirectly, or derivatively arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child, or other relative of any exposed person.

(B) EXCLUSION.—The term does not include—

(i) claims alleging damage or injury to tangible property;

(ii) claims for benefits under a workers' compensation law or veterans' benefits program;

(iii) claims arising under any governmental or private health, welfare, disability, death or compensation policy, program or plan;

(iv) claims arising under any employment contract or collective bargaining agreement;

(v) claims arising out of medical malpractice; or

(vi) any claim arising under—

(I) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(II) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(III) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.);

(IV) the Equal Pay Act of 1963 (29 U.S.C. 206);

(V) the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.);

(VI) section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983); or

(VII) the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(4) ASBESTOS CLAIMANT.—The term ''asbestos claimant'' means an individual who files a claim under section 113.

(5) CIVIL ACTION.—The term ''civil action'' means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(6) COLLATERAL SOURCE COMPENSATION.—The term ''collateral source compensation'' means the compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a final judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(7) ELIGIBLE DISEASE OR CONDITION.—The term ''eligible disease or condition'' means the extent that an illness meets the medical criteria requirements established under subtitle C of title I.

(8) EMPLOYERS' LIABILITY ACT.—The term ''Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employer's Liability Act'' shall, for all purposes of this Act, include the Act of June 5, 1920 (46 U.S.C. App. 688), commonly known as the Jones Act, and the related phrase ''operations as a common carrier by railroad'' shall include operations as an employer of seamen.

(9) FUND.—The term ''Fund'' means the Asbestos Injury Claims Resolution Fund established under section 221.

(10) INSURANCE RECEIVERSHIP PROCEEDING.—The term ''insurance receivership proceeding'' means any State proceeding with respect to a financially impaired or insolvent insurer or reinsurer including the liquidation, rehabilitation, conservation, supervision, or ancillary receivership of an insurer under State law.

(11) LAW.—The term ''law'' includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.

(12) PARTICIPANT.—

(A) IN GENERAL.—The term ''participant'' means any person subject to the funding requirements of title II, including—

(i) any defendant participant subject to liability for payments under subtitle A of that title;

(ii) any insurer participant subject to a payment under subtitle B of that title; and

(iii) any successor in interest of a participant.

(B) EXCEPTION.—

(i) IN GENERAL.—A defendant participant shall not include any person protected from any asbestos claim by reason of an injunction entered in connection with a plan of reorganization under chapter 11 of title 11, United States Code, that has been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(ii) APPLICABILITY.—Clause (i) shall not apply to a person who may be liable under subtitle A of title II based on prior asbestos expenditures related to asbestos claims that are not covered by an injunction described under clause (i).

(13) PERSON.—The term ''person''—

(A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and

(B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.

(14) STATE.—The term ''State'' means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(15) SUBSTANTIALLY CONTINUES.—The term ''substantially continues'' means that the business operations have not been significantly modified by the change in ownership.

(16) SUCCESSOR IN INTEREST.—The term ''successor in interest'' means any person that, in 1 or a series of transactions, acquires all or substantially all of the assets and properties (including, without limitation, under section 363(b) or 1123(b)(4) of title 11, United States Code), and substantially continues the business operations, of a participant. The factors to be considered in determining whether a person is a successor in interest include—

(A) retention of the same facilities or location;

(B) retention of the same employees;

(C) maintaining the same job under the same working conditions;

(D) retention of the same supervisory personnel;

(E) continuity of assets;

(F) production of the same product or offer of the same service;

(G) retention of the same name;

(H) maintenance of the same customer base;

(I) identity of stocks, stockholders, and directors between the asset seller and the purchaser; or

(J) whether the successor holds itself out as continuation of previous enterprise, but expressly does not include whether the person actually knew of the liability of the participant under this Act.

(17) VETERANS' BENEFITS PROGRAM.—The term ''veterans' benefits program'' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(18) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) and chapter 81 of title 5, United States Code; and

(C) does not include the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages recovered by any employee in a liability action against an employer.

(19) CLASS ACTION TRUST.—The term ''class action trust'' means a trust or similar entity established to hold assets for the payment of asbestos claims asserted against a debtor or participating defendant, under a settlement that—

(A) is a settlement of class action claims under rule 23 of the Federal Rules of Civil Procedure; and

(B) has been approved by a final judgment of a United States district court before the date of enactment of this Act.

(20) DEBTOR.—The term ''debtor''—

(A) means—

(i) a person that is subject to a case pending under a chapter of title 11, United States Code, on the date of enactment of this Act or at any time during the 1-year period immediately preceding that date, irrespective of whether the debtor's case under that title has been dismissed; and

(ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(21) TRUST.—The term ''trust'' means any trust, as described in sections 524(g)(2)(B)(i) or 524(h) of title 11, United States Code, or established in conjunction with an order issued under section 105 of title 11, United States Code, established or formed under the terms of a chapter 11 plan of reorganization, which in whole or in part provides compensation for asbestos claims.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DISEASE COMPENSATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—There is established within the Department of Labor the Office of Asbestos Disease Compensation (hereinafter referred to in this Act as the ''Office''), which shall be headed by an Administrator.

(2) PURPOSE.—The purpose of the Office is to provide timely, fair compensation, in the amounts and under the terms specified in this Act, on a no-fault basis and in a non-adversarial manner, to individuals whose health has been adversely affected by exposure to asbestos.

(3) TERMINATION OF THE OFFICE.—The Office of Asbestos Disease Compensation shall terminate effective not later than 12 months following certification by the Administrator that the Fund has neither paid a claim in the previous 12 months nor has debt obligations remaining to pay.

(4) EXPENSES.—There shall be available from the Fund to the Administrator such sums as are necessary for any and all expenses associated with the Office of Asbestos Disease Compensation and necessary to carry out the purposes of this Act. Expenses covered should include—

(A) management of the Fund;

(B) personnel salaries and expenses, including retirement and similar benefits;

(C) the sums necessary for conducting the studies required under this Act;

(D) all administrative and legal expenses; and

(E) any other sum that could be attributable to the Fund.

(b) APPOINTMENT OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator of the Office of Asbestos Disease Compensation shall be appointed by the President. The Administrator shall serve for a term of 10 years.

(2) REPORTING.—The Administrator shall report directly to the Assistant Secretary of Labor for the Employment Standards Administration.

(c) DUTIES OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator shall be responsible for—

(A) processing claims for compensation for asbestos-related injuries and paying compensation to eligible claimants under the criteria and procedures established under title I;

(B) determining, levying, and collecting assessments on participants under title II;

(C) appointing or contracting for the services of such personnel, making such expenditures, and taking any other actions as may be necessary and appropriate to carry out the responsibilities of the Office, including entering into cooperative agreements with other Federal agencies or State agencies and entering into contracts with nongovernmental entities;

(D) conducting such audits and additional oversight as necessary to assure the integrity of the program;

(E) managing the Asbestos Injury Claims Resolution Fund established under section 221, including—

(i) administering, in a fiduciary capacity, the assets of the Fund for the primary purpose of providing benefits to asbestos claimants and their beneficiaries;

(ii) defraying the reasonable expenses of administering the Fund;

(iii) investing the assets of the Fund in accordance with section 222(b);

(iv) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets; and

(v) borrowing amounts authorized by section 221(b) on appropriate terms and conditions, including pledging the assets of or payments to the Fund as collateral;

(F) promulgating such rules, regulations, and procedures as may be necessary and appropriate to implement the provisions of this Act;

(G) making such expenditures as may be necessary and appropriate in the administration of this Act;

(H) excluding evidence and disqualifying or debarring any attorney, physician, provider of medical or diagnostic services, including laboratories and others who provide evidence in support of a claimant's application for compensation where the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by such individuals or entities; and

(I) having all other powers incidental, necessary, or appropriate to carrying out the functions of the Office.

(2) CERTAIN ENFORCEMENTS.—For each infraction relating to paragraph (1)(H), the Administrator also may impose a civil penalty not to exceed $10,000 on any person or entity found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall prescribe appropriate regulations to implement paragraph (1)(H).

(3) SELECTION OF DEPUTY ADMINISTRATORS.—The Administrator shall select a Deputy Administrator for Claims Administration to carry out the Administrator's responsibilities under this title and a Deputy Administrator for Fund Management to carry out the Administrator's responsibilities

under title II of this Act. The Deputy Administrators shall report directly to the Administrator and shall be in the Senior Executive Service.

(d) EXPEDITIOUS DETERMINATIONS.—The Administrator shall prescribe rules to expedite claims for asbestos claimants with terminal circumstances in order to expedite the payment of such claims as soon as possible after startup of the Fund. The Administrator shall contract out the processing of such claims.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES.—The Administrator shall establish audit and personnel review procedures for evaluating the accuracy of eligibility recommendations of agency and contract personnel.

(f) APPLICATION OF FOIA.—

(1) IN GENERAL.—Section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) shall apply to the Office of Asbestos Disease Compensation and the Asbestos Insurers Commission.

(2) CONFIDENTIALITY OF FINANCIAL RECORDS.—

(A) IN GENERAL.—Any person may label any record submitted under this section as a confidential commercial or financial record for the purpose of requesting exemption from disclosure under section 552(b)(4) of title 5, United States Code.

(B) DUTIES OF ADMINISTRATOR AND CHAIRMAN OF THE ASBESTOS INSURERS COMMISSION.—The Administrator and Chairman of the Asbestos Insurers Commission—

(i) shall adopt procedures for—

(I) handling submitted records marked confidential; and

(II) protecting from disclosure records they determine to be confidential commercial or financial information exempt under section 552(b)(4) of title 5, United States Code; and

(ii) may establish a pre-submission determination process to protect from disclosure records on reserves and asbestos-related liabilities submitted by any defendant participant that is exempt under section 552(b)(4) of title 5, United States Code.

(C) REVIEW OF COMPLAINTS.—Nothing in this section shall supersede or preempt the de novo review of complaints filed under section 552(b)(4) of title 5, United States Code.

(3) CONFIDENTIALITY OF MEDICAL RECORDS.—Any claimant may designate any record submitted under this section as a confidential personnel or medical file for purposes of section 552 of title 5, United States Code. The Administrator and the Chairman of the Asbestos Insurers Commission shall adopt procedures for designating such records as confidential.

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Administrator shall establish an Advisory Committee on Asbestos Disease Compensation (hereinafter the ''Advisory Committee'').

(2) COMPOSITION AND APPOINTMENT.—The Advisory Committee shall be composed of 20 members, appointed by the President.

(3) QUALIFICATIONS.—All of the members described in paragraph (2) shall have expertise or experience relevant to the asbestos compensation program, including experience or expertise in diagnosing asbestos-related diseases and conditions, assessing asbestos exposure and health risks, filing asbestos claims, administering a compensation or insurance program, or as actuaries, auditors, or investment managers. None of the members described in paragraph (2)(B) shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

(b) DUTIES.—The Advisory Committee shall advise the Administrator on—

(1) claims filing and claims processing procedures;

(2) claimant assistance programs;

(3) audit procedures and programs to ensure the quality and integrity of the compensation program;

(4) the development of a list of industries, occupations and time periods for which there is a presumption of substantial occupational exposure to asbestos;

(5) recommended analyses or research that should be conducted to evaluate past claims and to project future claims under the program;

(6) the annual report required to be submitted to Congress under section 405; and

(7) such other matters related to the implementation of this Act as the Administrator considers appropriate.

(c) OPERATION OF THE COMMITTEE.—

(1) Each member of the Advisory Committee shall be appointed for a term of 10 years.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term shall be appointed only for the remainder of such term.

(3) The Administrator shall designate a Chairperson and Vice Chairperson from among members of the Advisory Committee appointed under subsection (a)(2)(B).

(4) The Advisory Committee shall meet at the call of the Chairperson or the majority of its members, and at a minimum shall meet at least 4 times per year during the first 5 years of the asbestos compensation program, and at least 2 times per year thereafter.

(5) The Administrator shall provide to the Committee such information as is necessary and appropriate for the Committee to carry out its responsibilities under this section. The Administrator may, upon request of the Advisory Committee, secure directly from any Federal, State, or local department or agency such information as may be necessary and appropriate to enable the Advisory Committee to carry out its duties under this section. Upon request of the Administrator, the head of such department or agency shall furnish such information to the Advisory Committee.

(6) The Administrator shall provide the Advisory Committee with such administrative support as is reasonably necessary to enable it to perform its functions.

(d) EXPENSES.—Members of the Advisory Committee, other than full-time employees of the United States, while attending meetings of the Advisory Committee or while otherwise serving at the request of the Administrator, and while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

SEC. 103. MEDICAL ADVISORY COMMITTEE.

(a) IN GENERAL.—The Administrator shall establish a Medical Advisory Committee to provide expert advice regarding medical issues arising under the statute.

(b) QUALIFICATIONS.—None of the members of the Medical Advisory Committee shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

SEC. 104. CLAIMANT ASSISTANCE.

(a) ESTABLISHMENT.—Not later than 120 days after the enactment of this Act, the Administrator shall establish a comprehensive asbestos claimant assistance program to—

(1) publicize and provide information to potential claimants about the availability of benefits for eligible claimants under this Act, and the procedures for filing claims and for obtaining assistance in filing claims;

(2) provide assistance to potential claimants in preparing and submitting claims, including assistance in obtaining the documentation necessary to support a claim and any other appropriate paralegal assistance;

(3) respond to inquiries from claimants and potential claimants;

(4) provide training with respect to the applicable procedures for the preparation and filing of claims to persons who provide assistance or representation to claimants; and

(5) provide for the establishment of a website where claimants may access all relevant forms and information.

(b) RESOURCE CENTERS.—The claimant assistance program shall provide for the establishment of resource centers in areas where there are determined to be large concentrations of potential claimants. These centers shall be located, to the extent feasible, in facilities of the Department of Labor or other Federal agencies.

(c) CONTRACTS.—The claimant assistance program may be carried out in part through contracts with labor organizations, community-based organizations, and other entities which represent or provide services to potential claimants, except that such organizations may not have a financial interest in the outcome of claims filed with the Office.

(d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—As part of the program established under subsection (a), the Administrator shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS.—As part of the program, the Administrator shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Administrator. The claimants shall not be required to use the attorneys listed on such roster.

(3) NOTICE.—

(A) NOTICE BY ADMINISTRATOR.—The Administrator shall provide asbestos claimants with notice of, and information relating to—

(i) pro bono services for legal assistance available to those claimants; and

(ii) any limitations on attorneys fees for claims filed under this title.

(B) NOTICE BY ATTORNEYS.—Before a person becomes a client of an attorney with respect to an asbestos claim, that attorney shall provide notice to that person of pro bono services for legal assistance available for that claim.

(e) ATTORNEY'S FEES.—

(1) LIMITATION.—

(A) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under the Fund, more than a reasonable attorney's fee.

(ii) CALCULATION OF REASONABLE FEE.—Any fee obtained under clause (i) shall be calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended on the claim of the individual.

(iii) REQUIREMENTS FOR COMPENSATION.—A representative of an individual shall not be eligible to receive a fee under clause (i), unless—

(I) such representative submits to the Administrator detailed contemporaneous billing records for any work actually performed in the course of representation of an individual; and

(II) the Administrator finds, based on billing records submitted by the representative

under subclause (I), that the work for which compensation is sought was reasonably performed, and that the requested hourly fee is reasonable.

(2) PENALTY.—Any representative of an asbestos claimant who violates this subsection shall be fined not more than the greater of—

(A) $5,000; or

(B) twice the amount received by the representative for services rendered in connection with each such violation.

SEC. 105. PHYSICIANS PANELS.

(a) APPOINTMENT.—The Administrator shall, in accordance with section 3109 of title 5, United States Code, appoint physicians with experience and competency in diagnosing asbestos-related diseases to be available to serve on Physicians Panels, as necessary to carry out this Act.

(b) FORMATION OF PANELS.—

(1) IN GENERAL.—The Administrator shall periodically determine—

(A) the number of Physicians Panels necessary for the efficient conduct of the medical review process under section 121;

(B) the number of Physicians Panels necessary for the efficient conduct of the exceptional medical claims process under section 121; and

(C) the particular expertise necessary for each panel.

(2) EXPERTISE.—Each Physicians Panel shall be composed of members having the particular expertise determined necessary by the Administrator, randomly selected from among the physicians appointed under subsection (a) having such expertise.

(3) PANEL MEMBERS.—Except as provided under subparagraph (B), each Physicians Panel shall consist of 3 physicians, 2 of whom shall be designated to participate in each case submitted to the Physicians Panel, and the third of whom shall be consulted in the event of disagreement.

(c) QUALIFICATIONS.—To be eligible to serve on a Physicians Panel under subsection (a), a person shall be—

(1) a physician licensed in any State;

(2) board-certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology; and

(3) an individual who, for each of the 5 years before and during his or her appointment to a Physicians Panel, has earned not more than 15 percent of his or her income as an employee of a participating defendant or insurer or a law firm representing any party in asbestos litigation or as a consultant or expert witness in matters related to asbestos litigation.

(d) DUTIES.—Members of a Physicians Panel shall—

(1) make such medical determinations as are required to be made by Physicians Panels under section 121; and

(2) perform such other functions as required under this Act.

(e) COMPENSATION.—Notwithstanding any limitation otherwise established under section 3109 of title 5, United States Code, the Administrator shall be authorized to pay members of a Physician Panel such compensation as is reasonably necessary to obtain their services.

(f) FEDERAL ADVISORY COMMITTEE ACT.—A Physicians Panel established under this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).

SEC. 106. PROGRAM STARTUP.

(a) IMMEDIATE STARTUP.—

(1) IN GENERAL.—Subject to section 101(d), the Administrator may—

(A) start receiving, reviewing, and deciding claims immediately upon the date of enactment of this Act; and

(B) reimburse the Department of Labor from the Fund for any expense incurred—

(i) before that date of enactment in preparation for carrying out any of the responsibilities of the Administrator under this Act; and

(ii) during the 60-day period following that date of enactment to carry out such responsibilities.

(2) INTERIM REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate interim regulations and procedures for the processing of claims under this title and the operation of the Fund under title II, including procedures for the expediting of terminal health claims, and processing of claims through the claims facility.

(b) INTERIM PERSONNEL AND CONTRACTING.—The Secretary of Labor and the Assistant Secretary of Labor for the Employment Standards Administration shall make available to the Administrator on a temporary basis such personnel and other resources as may be necessary to facilitate the expeditious startup of the program. The Administrator may in addition contract with individuals or entities having relevant experience to assist in the expeditious startup of the program including entering into contracts on an expedited or sole source basis during the startup period for the purpose of processing claims or providing financial analysis or assistance. Such relevant experience shall include, but not be limited to, experience with the review of workers' compensation, occupational disease, or similar claims and with financial matters relevant to the operation of the program.

(c) TERMINAL HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures, as provided in section 106(f), to provide for an expedited process to categorize, evaluate, and pay terminal health claims. Such procedures, as provided in section 106(f), shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of terminal health claims.

(2) ELIGIBLE TERMINAL HEALTH CLAIMS.—A claim shall qualify for treatment as a terminal health claim if—

(A) the claimant is living and provides a diagnosis of mesothelioma meeting the requirements of section 121(d)(9);

(B) the claimant is living and provides a credible declaration or affidavit, from a diagnosing physician who has examined the claimant within 120 days before the date of such declaration or affidavit, that the physician has diagnosed the claimant as being terminally ill from an asbestos-related illness and having a life expectancy of less than 1 year due to such asbestos-related illness; or

(C) the claimant is the spouse or child of an eligible terminal health claimant who—

(i) was living when the claim was filed with the Fund, or if before the implementation of interim regulations for the filing of claims with the Fund, on the date of enactment of this Act;

(ii) has since died from a malignant disease or condition; and

(iii) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(3) ADDITIONAL TERMINAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as terminal health claims under this subsection except that exceptional medical claims may not proceed.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of terminal health claims prior to the Fund being certified as operational, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, shall process and pay claims in accordnace with section 106(f)(2). The processing and payment of claims shall be subject to regulations promulgated under this Act.

(5) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with a claims facility for the processing of claims (except for exceptional medical claims) in accordance with this title.

(d) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health claims. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(e) INTERIM ADMINISTRATOR.—Until an Administrator is appointed and confirmed under section 101(b), the responsibilities of the Administrator under this Act shall be performed by the Assistant Secretary of Labor for the Employment Standards Administration, who shall have all the authority conferred by this Act on the Administrator and who shall be deemed to be the Administrator for purposes of this Act. Before final regulations being promulgated relating to claims processing, the Interim Administrator may prioritize claims processing, without regard to the time requirements prescribed in subtitle B of this title, based on severity of illness and likelihood that exposure to asbestos was a substantial contributing factor for the illness in question.

(f) STAY OF CLAIMS.—

(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending on the date of enactment of this Act is stayed.

(2) TERMINAL HEALTH CLAIMS.—

(A) PROCEDURES FOR SETTLEMENT OF TERMINAL HEALTH CLAIMS.—

(i) IN GENERAL.—Any person that has filed a terminal health claim, as provided under subsection (c)(2), seeking a judgment or order for monetary damages in any Federal or State court before the date of the enactment of this Act, shall seek a settlement in accordance with this paragraph. Any person with a terminal health claim, as provided under subsection (c)(2), that arises after such date of enactment shall seek a settlement in accordance with this paragraph.

(ii) FILING.—

(I) IN GENERAL.—At any time before the Fund or claims facility is certified as operational and paying terminal health claims at a reasonable rate, any person with a terminal health claim as described under clause (i) shall file a notice of their intent to seek a settlement or shall file their exigent health claim with the Administrator or claims facility. Filing of an exigent health claim with the Administrator or claims facility may serve as notice of intent to seek a settlement.

(II) EXCEPTION.—Any person who seeks compensation for an exigent health claim from a trust in accordance with section 402(f) shall not be eligible to seek a settlement or settlement offer under this paragraph.

(iii) TERMINAL HEALTH CLAIM INFORMATION.—To file a terminal health claim, each individual shall provide all of the following information:

(I) The amount received or entitled to be received as a result of all collateral source compensation under section 134, and copies of all settlement agreements and related documents sufficient to show the accuracy of that amount.

(II) A description of any claims for compensation for an asbestos related injury or disease filed by the claimant with any trust

or class action trust, and the status or disposition or any such claims.

(III) All information that the claimant would be required to provide to the Administrator in support of a claim under sections 113(c) and 121.

(IV) A certification by the claimant that the information provided is true and complete. The certification provided under this subclause shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator or claims facility in support of a claim.

(V) For terminal health claims arising after the date of enactment of this Act, the claimant shall identify each defendant that would be an appropriate defendant in a civil action seeking damages for the asbestos claim of the claimant. Identification of all potential participants shall be made in good faith by the claimant.

(iv) TIMING.—A claimant who has filed a notice of their intent to seek a settlement under clause (ii) shall within 60 days after filing notice provide to the Administrator or claims facility the information required under clause (iii). If a claimant has filed an exigent health claim under clause (ii) the Administrator shall provide all affected defendants the information required under clause (iii).

(v) WEBSITE.—

(I) POSTING.—The Administrator or claims facility shall post the information described in subclause (II) to a secure website, accessible on a passcode-protected basis to participants.

(II) REQUIRED INFORMATION.—The website established under subclause (I) shall contain a listing of—

(aa) each claimant that has filed a notice of intent to seek a settlement or claim under this clause;

(bb) the name of such claimant; and

(cc) if applicable—

(AA) the name of the court where such claim was filed;

(BB) the case or docket number of such claim; and

(CC) the date such claim was filed.

(III) PROHIBITIONS.—The website established under subclause (I) shall not contain specific health or medical information or social security numbers.

(IV) PARTICIPANT ACCESS.—A participant's access to the website established under subclause (I) shall be limited on a need to know basis, and participants shall not disclose or sell data, or retain data for purposes other than paying an asbestos claim.

(V) VIOLATIONS.—Any person or other entity that violates any provision of this clause, including by breaching any data posted on the website, shall be subject to an injunction, or civil penalties, or both.

(vi) ADMINISTRATOR OR CLAIMS FACILITY CERTIFICATION OF SETTLEMENT.—

(I) DETERMINATION.—Within 60 days after the information under clause (iii) is provided, the Administrator or claims facility shall determine whether or not the claim meets the requirements of a terminal health claim.

(II) REQUIREMENTS MET.—If the Administrator or claims facility determines that the claim meets the requirements of a terminal health claim, the Administrator or claims facility shall immediately—

(aa) issue and serve on all parties a certification of eligibility of such claim;

(bb) determine the value of such claim under the Fund by subtracting from the amount in section 131 the total amount of collateral source compensation received by the claimant; and

(cc) pay the award of compensation to the claimant under clause (xiii).

(III) REQUIREMENTS NOT MET.—If the requirements under clause (iii) are not met, the claimant shall have 30 days to perfect the claim. If the claimant fails to perfect the claim within that 30-day period or the Administrator or claims facility determines that the claim does not meet the requirements of a terminal health claim, the claim shall not be eligible to proceed under this paragraph. A claimant may appeal any decision issued by a claims facility with the Administrator in accordance with section 114.

(vii) FAILURE TO CERTIFY.—If the Administrator or claims facility is unable to process the claim and does not make a determination regarding the certification of the claim as required under clause (vi), the Administrator or claims facility shall within 10 days after the end of the 60-day period referred to under clause (vi)(I) provide notice of the failure to act to the claimant and the defendants in the pending Federal or State court action or the defendants identified under clause (iii)(IV). If the Administrator or claims facility fails to provide such notice within 10 days, the claimant may elect to provide the notice to the affected defendants to prompt a settlement offer. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(viii) FAILURE TO PAY.—If the Administrator or claims facility does not pay the award as required under clause (xiii), the Administrator shall refer the certified claim within 10 days as a certified terminal health claim to the defendants in the pending Federal and State court action or to the potential defendants identified under clause (iii)(IV) for terminal claims arising after the date of enactment of this Act. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(ix) SETTLEMENT OFFER.—Any participant or participants may, within 30 days after receipt of such notice as provided under clause (vii) or (viii), file and serve on all parties and the Administrator a good faith settlement offer in an aggregate amount not to exceed the total amount to which the claimant would receive under section 131. If the aggregate amount offered by all participants exceeds the award determined by the Administrator, all offers shall be deemed reduced pro-rata until the aggregate amount equals the award amount. An acceptance of such settlement offer for claims pending before the date of enactment of this Act shall be subject to approval by the trial judge or authorized magistrate in the court where the claim is pending. The court shall approve any such accepted offer within 20 days after a request, unless there is evidence of bad faith or fraud. No court approval is necessary if the terminal health claim was certified by the Administrator or claims facility under clause (vi).

(x) ACCEPTANCE OR REJECTION.—Within 20 days after receipt of the settlement offer, or the amended settlement offer, the claimant shall either accept or reject such offer in writing. If the amount of the settlement offer made by the Administrator, claims facility, or participants equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xi) OPPORTUNITY TO CURE.—If the settlement offer is rejected for being less than what the claimant would receive under the Fund, the participants shall have 10 business days to make an amended offer. If the amended offer equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement offer in writing.

(xii) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

(aa) an initial payment of 50 percent shall be made within 30 days after the date the settlement is accepted and the second and final payment shall be made 6 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participant, the payments may be extended 50 percent in 6 months and 50 percent 11 months after the date the settlement offer is accepted.

(II) OTHER TERMINAL CLAIMANTS.—For other terminal claimants, as defined under section 106(c)(2)(B) and (C)—

(aa) the initial payment of 50 percent shall be made within 6 months after the date the settlement is accepted and the second and final payment shall be made 12 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participants, the payments may be extended 50 percent within 1 year after the date the settlement offer is accepted and 50 percent in 2 years after date the settlement offer is accepted.

(III) RELEASE.—Once a claimant has received final payment of the accepted settlement offer, and penalty payment if applicable, the claimant shall release any outstanding asbestos claims.

(xiii) RECOVERY OF COSTS.—

(I) IN GENERAL.—Any participant whose settlement offer is accepted may recover the cost of such settlement by deducting from the participant's next and subsequent contributions to the Fund the full amount of the payment made by such participant to the terminal health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that the participant's offer is not in good faith. Any such payment shall be considered a payment to the Fund for purposes of section 404(e)(1) and in response to the payment obligations imposed on participants in title II.

(II) REIMBURSEMENT.—Notwithstanding subclause (I), if the deductions from the participant's next and subsequent contributions to the Fund do not fully recover the cost of such payments on or before its third annual contribution to the Fund, the Fund shall reimburse such participant for such remaining cost not later than 6 months after the date of the third scheduled Fund contribution.

(4) RESERVATION OF RIGHTS.—Participation in the offer and settlement process under this subsection shall not affect or prejudice any rights or defenses a party might have in any litigation.

SEC. 107. AUTHORITY OF THE ADMINISTRATOR.

The Administrator, on any matter within the jurisdiction of the Administrator under this Act, may—

(1) issue subpoenas for and compel the attendance of witnesses within a radius of 200 miles;

(2) administer oaths;

(3) examine witnesses;

(4) require the production of books, papers, documents, and other evidence; and

(5) request assistance from other Federal agencies with the performance of the duties of the Administrator under this Act.

Subtitle B—Asbestos Disease Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

To be eligible for an award under this Act for an asbestos-related disease or injury, an individual shall—

(1) file a claim in a timely manner in accordance with sections 106(f)(2) and 113; and

(2) prove, by a preponderance of the evidence, that the claimant suffers from an eligible disease or condition, as demonstrated by evidence that meets the requirements established under subtitle C.

SEC. 112. GENERAL RULE CONCERNING NO-FAULT COMPENSATION.

An asbestos claimant shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

(1) IN GENERAL.—Any individual who has suffered from a disease or condition that is believed to meet the requirements established under subtitle C (or the personal representative of the individual, if the individual is deceased or incompetent) may file a claim with the Office for an award with respect to such injury.

(2) DEFINITION.—In this Act, the term ''personal representative'' shall have the same meaning as that term is defined in section 104.4 of title 28 of the Code of Federal Regulations, as in effect on December 31, 2004.

(3) LIMITATION.—A claim may not be filed by any person seeking contribution or indemnity.

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—A claimant who receives an award for an eligible disease or condition shall not be precluded from submitting claims for and receiving additional awards under this title for any higher disease level for which the claimant becomes eligible, subject to appropriate setoffs as provided under section 134.

(B) LIBBY, MONTANA CLAIMS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), if a Libby, Montana claimant worsens in condition, as measured by pulmonary function tests, such that a claimant qualifies for a higher nonmalignant level, the claimant shall be eligible for an additional award, at the appropriate level, offset by any award previously paid under this Act, such that a claimant would qualify for Level IV if the claimant satisfies section 121(f)(8), and would qualify for Level V if the claimant provides—

(I) a diagnosis of bilateral asbestos related nonmalignant disease;

(II) evidence of TLC or FVC less than 60 percent; and

(III) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(ii) SUBSEQUENT MALIGNANT DISEASE.—If a Libby, Montana, claimant develops malignant disease, such that the claimant qualifies for Level VI, VII, VIII, or IX, subparagraph (A) shall apply.

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—If a claim is not filed with the Office within the limitations period specified in this subsection for that category of claim, such claim shall be extinguished, and any recovery thereon shall be prohibited.

(2) INITIAL CLAIMS.—An initial claim for an award under this Act shall be filed within 2 years after the date on which the claimant first received a medical diagnosis and medical test results sufficient to satisfy the criteria for the disease level for which the claimant is seeking compensation.

(3) CLAIMS FOR ADDITIONAL AWARDS.—

(A) NON-MALIGNANT DISEASES.—If a claimant has previously filed a timely initial claim for compensation for any non-malignant disease level, there shall be no limitations period applicable to the filing of claims by the claimant for additional awards for higher disease levels based on the progression of the non-malignant disease.

(B) MALIGNANT DISEASES.—Regardless of whether the claimant has previously filed a claim for compensation for any other disease level, a claim for compensation for a malignant disease level shall be filed within 2 years after the claimant first obtained a medical diagnosis and medical test results sufficient to satisfy the criteria for the malignant disease level for which the claimant is seeking compensation.

(4) EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—If, on the date of enactment of this Act, an asbestos claimant has any timely filed asbestos claim that is preempted under section 403(e), such claimant shall file a claim under this section within 2 years after such date of enactment, or any claim relating to that injury, and any other asbestos claim related to that injury shall be extinguished, and recovery on any such claim shall be prohibited.

(B) SPECIAL RULE.—For purposes of this paragraph, a claim shall not be treated as pending with a trust established under title 11, United States Code, solely because a claimant whose claim was previously compensated by the trust has or alleges—

(i) a non-contingent right to the payment of future installments of a fixed award; or

(ii) a contingent right to recover some additional amount from the trust on the occurrence of a future event, such as the reevaluation of the trust's funding adequacy or projected claims experience.

(c) REQUIRED INFORMATION.—A claim filed under subsection (a) shall be in such form, and contain such information in such detail, as the Administrator shall by regulation prescribe. At a minimum, a claim shall include—

(1) the name, social security number, gender, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) an employment history sufficient to establish required asbestos exposure, accompanied by social security or other payment records or a signed release permitting access to such records;

(4) a description of the asbestos exposure of the claimant, including, to the extent known, information on the site, or location of exposure, and duration and intensity of exposure;

(5) a description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases or conditions of the claimant, accompanied by a written report by the claimant's physician with medical diagnoses and x-ray films, and other test results necessary to establish eligibility for an award under this Act;

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal, or pleural injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise; and

(8) for any claimant who asserts that he or she is a nonsmoker or an ex-smoker, as defined in section 131, for purposes of an award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, evidence to support the assertion of nonsmoking or ex-smoking, including relevant medical records.

(d) DATE OF FILING.—A claim shall be considered to be filed on the date that the claimant mails the claim to the Office, as determined by postmark, or on the date that the claim is received by the Office, whichever is the earliest determinable date.

(e) INCOMPLETE CLAIMS.—If a claim filed under subsection (a) is incomplete, the Administrator shall notify the claimant of the information necessary to complete the claim and inform the claimant of such services as may be available through the Claimant Assistance Program established under section 104 to assist the claimant in completing the claim. Any time periods for the processing of the claim shall be suspended until such time as the claimant submits the information necessary to complete the claim. If such information is not received within 1 year after the date of such notification, the claim shall be dismissed.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) IN GENERAL.—

(1) REVIEW OF CLAIMS.—The Administrator shall, in accordance with this section, determine whether each claim filed under the Fund or claims facility satisfies the requirements for eligibility for an award under this Act and, if so, the value of the award. In making such determinations, the Administrator shall consider the claim presented by the claimant, the factual and medical evidence submitted by the claimant in support of the claim, the medical determinations of any Physicians Panel to which a claim is referred under section 121, and the results of such investigation as the Administrator may deem necessary to determine whether the claim satisfies the criteria for eligibility established by this Act.

(2) ADDITIONAL EVIDENCE.—The Administrator may request the submission of medical evidence in addition to the minimum requirements of section 113(c) if necessary or appropriate to make a determination of eligibility for an award, in which case the cost of obtaining such additional information or testing shall be borne by the Office.

(b) PROPOSED DECISIONS.—Not later than 90 days after the filing of a claim, the Administrator shall provide to the claimant (and the claimant's representative) a proposed decision accepting or rejecting the claim in whole or in part and specifying the amount of the proposed award, if any. The proposed decision shall be in writing, shall contain findings of fact and conclusions of law, and shall contain an explanation of the procedure for obtaining review of the proposed decision.

(d) REVIEW OF PROPOSED DECISIONS.—

(1) RIGHT TO HEARING.—

(A) IN GENERAL.—Any claimant not satisfied with a proposed decision of the Administrator under subsection (b) shall be entitled, on written request made within 90 days after the date of the issuance of the decision, to a hearing on the claim of that claimant before a representative of the Administrator. At the hearing, the claimant shall be entitled to present oral evidence and written testimony in further support of that claim.

(B) CONDUCT OF HEARING.—When practicable, the hearing will be set at a time and place convenient for the claimant. In conducting the hearing, the representative of the Administrator shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of title 5, United States Code, except as provided by this Act, but shall conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive

such relevant evidence as the claimant adduces and such other evidence as the representative determines necessary or useful in evaluating the claim.

(C) REQUEST FOR SUBPOENAS.—

(i) IN GENERAL.—A claimant may request a subpoena but the decision to grant or deny such a request is within the discretion of the representative of the Administrator. The representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers, or other relevant documents. Subpoenas are issued for documents only if such documents are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(ii) REQUEST.—A claimant may request a subpoena only as part of the hearing process. To request a subpoena, the requester shall—

(I) submit the request in writing and send it to the representative as early as possible, but no later than 30 days after the date of the original hearing request; and

(II) explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(iii) FEES AND MILEAGE.—Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. Such fees and mileage shall be paid from the Fund.

(2) REVIEW OF WRITTEN RECORD.—In lieu of a hearing under paragraph (1), any claimant not satisfied with a proposed decision of the Administrator shall have the option, on written request made within 90 days after the date of the issuance of the decision, of obtaining a review of the written record by a representative of the Administrator. If such review is requested, the claimant shall be afforded an opportunity to submit any written evidence or argument which the claimant believes relevant.

(e) FINAL DECISIONS.—

(1) IN GENERAL.—If the period of time for requesting review of the proposed decision expires and no request has been filed, or if the claimant waives any objections to the proposed decision, the Administrator shall issue a final decision. If such decision materially differs from the proposed decision, the claimant shall be entitled to review of the decision under subsection (d).

(2) TIME AND CONTENT.—If the claimant requests review of all or part of the proposed decision the Administrator shall issue a final decision on the claim not later than 180 days after the request for review is received, if the claimant requests a hearing, or not later than 90 days after the request for review is received, if the claimant requests review of the written record. Such decision shall be in writing and contain findings of fact and conclusions of law.

(f) REPRESENTATION.—A claimant may authorize an attorney or other individual to represent him or her in any proceeding under this Act.

SEC. 115. AUDITING PROCEDURES.

(a) IN GENERAL.—

(1) DEVELOPMENT.—The Administrator shall develop methods for auditing and evaluating the medical and exposure evidence submitted as part of the claims process. The Administrator may develop additional methods for auditing and evaluating other types of evidence or information received by the Administrator.

(2) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

(A) IN GENERAL.—If the Administrator determines that an audit conducted in accordance with the methods developed under paragraph (1) demonstrates that the medical evidence submitted by a specific physician, medical facility or attorney or law firm is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician, facility or attorney or law firm shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(B) NOTIFICATION.—Upon a determination by the Administrator under subparagraph (A), the Administrator shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal such determination under procedures issued by the Administrator.

(b) REVIEW OF CERTIFIED B-READERS.—

(1) IN GENERAL.—The Administrator shall prescribe procedures to randomly evaluate the x-rays submitted in support of a statistically significant number of claims by independent certified B-readers, the cost of which shall be paid by the Fund.

(2) DISAGREEMENT.—If an independent certified B-reader assigned under paragraph (1) disagrees with the quality grading or ILO level assigned to an x-ray submitted in support of a claim, the Administrator shall require a review of such x-rays by a second independent certified B-reader.

(3) EFFECT ON CLAIM.—If neither certified B-reader under paragraph (2) agrees with the quality grading and the ILO grade level assigned to an x-ray as part of the claim, the Administrator shall take into account the findings of the 2 independent B readers in making the determination on such claim.

(4) CERTIFIED B-READERS.—The Administrator shall maintain a list of a minimum of 50 certified B-readers eligible to participate in the independent reviews, chosen from all certified B-readers. When an x-ray is sent for independent review, the Administrator shall choose the certified B-reader at random from that list.

(c) SMOKING ASSESSMENT.—

(1) IN GENERAL.—

(A) RECORDS AND DOCUMENTS.—To aid in the assessment of the accuracy of claimant representations as to their smoking status for purposes of determining eligibility and amount of award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, and exceptional medical claims, the Administrator shall have the authority to obtain relevant records and documents, including—

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

(B) CONSENT.—The claimant shall provide consent for the Administrator to obtain such records and documents where required.

(2) REVIEW.—The frequency of review of records and documents submitted under paragraph (1)(A) shall be at the discretion of the Administrator, but shall address at least 5 percent of the claimants asserting status as nonsmokers or ex-smokers.

(3) CONSENT.—

(A) IN GENERAL.—The Administrator may require the performance of blood tests or any other appropriate medical test, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(B) SERUM COTININE SCREENING.—The Administrator shall require the performance of serum cotinine screening on all claimants who assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(4) PENALTY FOR FALSE STATEMENTS.—Any false information submitted under this subsection shall be subject to criminal prosecution or civil penalties as provided under section 1348 of title 18, United States Code (as added by this Act) and section 101(c)(2).

(d) PULMONARY FUNCTION TESTING.—The Administrator shall develop auditing procedures for pulmonary function test results submitted as part of a claim, to ensure that such tests are conducted in accordance with American Thoracic Society Criteria, as defined under section 121(a)(13).

Subtitle C—Medical Criteria

SEC. 121. MEDICAL CRITERIA REQUIREMENTS.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ASBESTOSIS DETERMINED BY PATHOLOGY.—The term ''asbestosis determined by pathology'' means indications of asbestosis based on the pathological grading system for asbestosis described in the Special Issues of the Archives of Pathology and Laboratory Medicine, ''Asbestos-associated Diseases'', Vol. 106, No. 11, App. 3 (October 8, 1982).

(2) BILATERAL ASBESTOS-RELATED NONMALIGNANT DISEASE.—The term ''bilateral asbestos-related nonmalignant disease'' means a diagnosis of bilateral asbestos-related nonmalignant disease based on—

(A) an x-ray reading of 1/0 or higher based on the ILO grade scale;

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

(3) BILATERAL PLEURAL DISEASE OF B2.—The term ''bilateral pleural disease of B2'' means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least ¼ of the projection of the lateral chest wall.

(4) CERTIFIED B-READER.—The term ''certified B-reader'' means an individual who is certified by the National Institute of Occupational Safety and Health and whose certification by the National Institute of Occupational Safety and Health is up to date.

(5) DIFFUSE PLEURAL THICKENING.—The term ''diffuse pleural thickening'' means blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening.

(7) FEV1.—The term ''FEV1'' means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.

(8) FVC.—The term ''FVC'' means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.

(9) ILO GRADE.—The term ''ILO grade'' means the radiological ratings for the presence of lung changes as determined from a chest x-ray, all as established from time to time by the International Labor Organization.

(10) LOWER LIMITS OF NORMAL.—The term ''lower limits of normal'' means the fifth percentile of healthy populations as defined in the American Thoracic Society statement on lung function testing (Amer. Rev. Resp. Disease 1991, 144:1202–1218) and any future revision of the same statement.

(11) NONSMOKER.—The term ''nonsmoker'' means a claimant who—

(A) never smoked; or

(B) has smoked fewer than 100 cigarettes or the equivalent amount of other tobacco products during the claimant's lifetime.

(12) PO_2.—The term ''PO_2'' means the partial pressure (tension) of oxygen, which measures the amount of dissolved oxygen in the blood.

(13) PULMONARY FUNCTION TESTING.—The term ''pulmonary function testing'' means spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society and is performed on equipment which is in material compliance with the standards of the American Thoracic Society for technical quality and calibration.

(14) SUBSTANTIAL OCCUPATIONAL EXPOSURE TO ASBESTOS.—

(A) IN GENERAL.—The term ''substantial occupational exposure'' means employment in an industry and an occupation where for a substantial portion of a normal work year for that occupation, the claimant—

(i) handled raw asbestos fibers;

(ii) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed to raw asbestos fibers;

(iii) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to a significant amount of asbestos fibers; or

(iv) worked in close proximity to other workers engaged in the activities described under clause (i), (ii), or (iii), such that the claimant was exposed on a regular basis to a significant amount of asbestos fibers.

(B) REGULAR BASIS.—In this paragraph, the term ''on a regular basis'' means on a frequent or recurring basis.

(15) TLC.—The term ''TLC'' means total lung capacity, which is the total volume of air in the lung after maximal inspiration.

(16) WEIGHTED OCCUPATIONAL EXPOSURE.—

(A) IN GENERAL.—The term ''weighted occupational exposure'' means exposure for a period of years calculated according to the exposure weighting formula under subparagraphs (B) through (E).

(B) MODERATE EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved working in areas immediate to where asbestos-containing products were being installed, repaired, or removed under circumstances that involved regular airborne emissions of asbestos fibers, shall count as 1 year of substantial occupational exposure.

(C) HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved the direct installation, repair, or removal of asbestos-containing products such that the person was exposed on a regular basis to a significant amount of asbestos fibers, shall count as 2 years of substantial occupational exposure.

(D) VERY HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, was in primary asbestos manufacturing, a World War II shipyard, or the asbestos insulation trades, such that the person was exposed on a regular basis to a significant amount of asbestos fibers, shall count as 4 years of substantial occupational exposure.

(E) DATES OF EXPOSURE.—Each year of exposure calculated under subparagraphs (B), (C), and (D) that occurred before 1976 shall be counted at its full value. Each year from 1976 to 1986 shall be counted as ½ of its value. Each year after 1986 shall be counted as 1/10 of its value.

(F) OTHER CLAIMS.—Individuals who do not meet the provisions of subparagraphs (A) through (E) and believe their post-1976 or post-1986 exposures exceeded the Occupational Safety and Health Administration standard may submit evidence, documentation, work history, or other information to substantiate noncompliance with the Occupational Safety and Health Administration standard (such as lack of engineering or work practice controls, or protective equipment) such that exposures would be equivalent to exposures before 1976 or 1986, or to documented exposures in similar jobs or occupations where control measures had not been implemented. Claims under this subparagraph shall be evaluated on an individual basis by a Physicians Panel.

(b) MEDICAL EVIDENCE.—

(1) LATENCY.—Unless otherwise specified, all diagnoses of an asbestos-related disease for a level under this section shall be accompanied by—

(A) a statement by the physician providing the diagnosis that at least 10 years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis; or

(B) a history of the claimant's exposure that is sufficient to establish a 10-year latency period between the date of first exposure to asbestos or asbestos-containing products and the diagnosis.

(2) DIAGNOSTIC GUIDELINES.—All diagnoses of asbestos-related diseases shall be based upon—

(A) for disease Levels I through V, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination of the claimant by the physician providing the diagnosis;

(ii) an evaluation of smoking history and exposure history before making a diagnosis;

(iii) an x-ray reading by a certified B-reader; and

(iv) pulmonary function testing in the case of disease Levels III, IV, and V;

(B) for disease Levels I through V, in the case of a claimant who was deceased at the time the claim was filed, a report from a physician based upon a review of the claimant's medical records which shall include—

(i) pathological evidence of the nonmalignant asbestos-related disease; or

(ii) an x-ray reading by a certified B-reader;

(C) for disease Levels VI through IX, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination by the claimant's physician providing the diagnosis; or

(ii) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(D) for disease Levels VI through IX, in the case of a claimant who was deceased at the time the claim was filed—

(i) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(ii) a report from a physician based upon a review of the claimant's medical records.

(3) CREDIBILITY OF MEDICAL EVIDENCE.—To ensure the medical evidence provided in support of a claim is credible and consistent with recognized medical standards, a claimant under this title may be required to submit—

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;

(C) laboratory tests;

(D) tissue samples;

(E) results of medical examinations;

(F) reviews of other medical evidence; and

(G) medical evidence that complies with recognized medical standards regarding equipment, testing methods, and procedure to ensure the reliability of such evidence as may be submitted.

(c) EXPOSURE EVIDENCE.—

(1) IN GENERAL.—To qualify for any disease level, the claimant shall demonstrate—

(A) a minimum exposure to asbestos or asbestos-containing products;

(B) the exposure occurred in the United States, its territories or possessions, or while a United States citizen, while an employee of an entity organized under any Federal or State law regardless of location, or while a United States citizen while serving on any United States flagged or owned ship, provided the exposure results from such employment or service; and

(C) any additional asbestos exposure requirement under this section.

(2) PROOF OF EXPOSURE.—

(A) AFFIDAVITS.—Exposure to asbestos sufficient to satisfy the exposure requirements for any disease level may be established by a detailed and specific affidavit that—

(i) is filed by—

(I) the claimant; or

(II) if the claimant is deceased, a coworker or a family member of the claimant; and

(ii) is found in proceedings under this title to be—

(I) reasonably reliable, attesting to the claimant's exposure; and

(II) credible and not contradicted by other evidence.

(B) OTHER PROOF.—Exposure to asbestos may alternatively be established by invoices, construction or other similar records, or any other reasonably reliable and credible evidence.

(C) ADDITIONAL EVIDENCE.—The Administrator may require submission of other or additional evidence of exposure, if available, for a particular claim when determined necessary, as part of the minimum information required under section 113(c).

(3) TAKE-HOME EXPOSURE.—

(A) IN GENERAL.—A claimant may alternatively satisfy the medical criteria requirements of this section where a claim is filed by a person who alleges their exposure to asbestos was the result of living with a person who, if the claim had been filed by that person, would have met the exposure criteria for the given disease level, and the claimant lived with such person for the time period necessary to satisfy the exposure requirement, for the claimed disease level.

(B) REVIEW.—Except for claims for disease Level IX (mesothelioma), all claims alleging take-home exposure shall be submitted as an exceptional medical claim under section 121(g) for review by a Physicians Panel.

(4) WAIVER FOR WORKERS AND RESIDENTS OF LIBBY, MONTANA.—Because of the unique nature of the asbestos exposure related to the vermiculite mining and milling operations in Libby, Montana, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked at the vermiculite mining and milling facility in Libby, Montana, or lived or worked within a 20-mile radius of Libby, Montana, for at least 12 consecutive months before December 31, 2004. Claimants under this section shall provide such supporting documentation as the Administrator shall require.

(6) PENALTY FOR FALSE STATEMENT.—Any false information submitted under this subsection shall be subject to section 1348 of title 18, United States Code (as added by this Act).

(d) ASBESTOS DISEASE LEVELS.—

(1) NONMALIGNANT LEVEL I.—To receive Level I compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease; and

(B) evidence of 5 years cumulative occupational exposure to asbestos.

(2) NONMALIGNANT LEVEL II.—To receive Level II compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater, and showing small irregular opacities of shape or size, either ss, st, or tt, and

present in both lower lung zones, or asbestosis determined by pathology, or blunting of either costophrenic angle and bilateral pleural plaque;

(B) evidence of TLC less than 80 percent or FVC less than the lower limits of normal, and FEV1/FVC ratio less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as the cause of the pulmonary condition in question.

(3) NONMALIGNANT LEVEL III.—To receive Level III compensation a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/0 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology;

(B) evidence of TLC less than 80 percent; FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(4) NONMALIGNANT LEVEL IV.—To receive Level IV compensation a claimant shall provide—

(B) evidence of TLC less than 60 percent or FVC less than 60 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos before diagnosis; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, of that pulmonary condition.

(5) NONMALIGNANT LEVEL V.—To receive Level V compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology;

(B)(i) evidence of TLC less than 50 percent or FVC less than 50 percent, and FEV1/FVC ratio greater than or equal to 65 percent; or

(iii) PO_2 less than 55 mm/Hg, plus a FEV1/FVC ratio not less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, of that pulmonary condition.

(8) MALIGNANT LEVEL VIII.—

(A) IN GENERAL.—To receive Level VIII compensation, a claimant shall provide a diagnosis—

(i) of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii)(I) of—

(aa) asbestosis based on a chest x-ray of at least 1/0 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones; and

(bb) 10 or more weighted years of substantial occupational exposure to asbestos;

(II) of—

(aa) asbestosis based on a chest x-ray of at least 1/1 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones; and

(bb) 8 or more weighted years of substantial occupational exposure to asbestos;

(III) asbestosis determined by pathology and 10 or more weighted years of substantial occupational exposure to asbestos; and

(iii) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as the cause of the lung cancer in question; and 10 or more weighted years of substantial occupational exposure to asbestos.

(9) MALIGNANT LEVEL IX.—To receive Level IX compensation, a claimant shall provide—

(A) a diagnosis of malignant mesothelioma disease on the basis of findings by a board certified pathologist; and

(B) credible evidence of identifiable exposure to asbestos resulting from—

(i) occupational exposure to asbestos;

(ii) exposure to asbestos fibers brought into the home of the claimant by a worker occupationally exposed to asbestos; or

(iii) exposure to asbestos fibers resulting from living or working in the proximate vicinity of a factory, shipyard, building demolition site, or other operation that regularly released asbestos fibers into the air due to operations involving asbestos at that site.

(g) EXCEPTIONAL MEDICAL CLAIMS.—

(1) IN GENERAL.—A claimant who does not meet the medical criteria requirements under this section may apply for designation of the claim as an exceptional medical claim.

(2) APPLICATION.—When submitting an application for review of an exceptional medical claim, the claimant shall—

(A) state that the claim does not meet the medical criteria requirements under this section; or

(B) seek designation as an exceptional medical claim within 60 days after a determination that the claim is ineligible solely for failure to meet the medical criteria requirements under subsection (d).

(3) REPORT OF PHYSICIAN.—

(A) IN GENERAL.—Any claimant applying for designation of a claim as an exceptional medical claim shall support an application filed under paragraph (1) with a report from a physician meeting the requirements of this section.

(B) CONTENTS.—A report filed under subparagraph (A) shall include—

(i) a complete review of the claimant's medical history and current condition;

(ii) such additional material by way of analysis and documentation as shall be prescribed by rule of the Administrator; and

(iii) a detailed explanation as to why the claim meets the requirements of paragraph (4)(B).

(4) REVIEW.—

(A) IN GENERAL.—The Administrator shall refer all applications and supporting documentation submitted under paragraph (2) to a Physicians Panel for review for eligibility as an exceptional medical claim.

(B) STANDARD.—A claim shall be designated as an exceptional medical claim if the claimant, for reasons beyond the control of the claimant, cannot satisfy the requirements under this section, but is able, through comparably reliable evidence that meets the standards under this section, to show that the claimant has an asbestos-related condition that is substantially comparable to that of a medical condition that would satisfy the requirements of a category under this section.

(C) ADDITIONAL INFORMATION.—A Physicians Panel may request additional reasonable testing to support the claimant's application.

(E) MESOTHELIOMA CASES.—

(i) IN GENERAL.—The Physicans Panel shall grant priority status to—

(I) all Level IX claims with other identifiable asbestos exposure as provided under paragraph (9)(B)(iv); and

(II) all Level IX claims that are filed as exceptional medical claims.

(ii) PHYSICIAN PANEL.—If the Physicians Panel issues a certificate of medical eligibility, the claimant shall be deemed to qualify for Level IX compensation. If the Physicians Panel rejects the claim, and the Administrator deems it rejected, the claimant may immediately seek judicial review under section 302.

(5) APPROVAL.—

(A) IN GENERAL.—If the Physicians Panel determines that the medical evidence is sufficient to show a comparable asbestos-related condition, it shall issue a certificate of medical eligibility designating the category of asbestos-related injury under this section for which the claimant shall be eligible to seek compensation.

(B) REFERRAL.—Upon the issuance of a certificate under subparagraph (A), the Physicians Panel shall submit the claim to the Administrator, who shall give due consideration to the recommendation of the Physicians Panel in determining whether the claimant meets the requirements for compensation under this Act.

(6) RESUBMISSION.—Any claimant whose application for designation as an exceptional medical claim is rejected may resubmit an application if new evidence becomes available. The application shall identify any prior applications and state the new evidence that forms the basis of the resubmission.

(7) RULES.—The Administrator shall promulgate rules governing the procedures for seeking designation of a claim as an exceptional medical claim.

(8) LIBBY, MONTANA.—

(A) IN GENERAL.—A Libby, Montana, claimant may elect to have the claimant's claims designated as exceptional medical claims and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by a Libby, Montana claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in Libby, Montana, including the nature of the pleural disease related to asbestos exposure in Libby, Montana.

(B) CLAIMS.—For all claims for Levels II through IV filed by Libby, Montana claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to a Libby, Montana claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award

determined in accordance with section 114, the Libby, Montana claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by Libby, Montana claimants, the Libby, Montana claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

(C) EVALUATION OF CLAIMS.—For purposes of evaluating exceptional medical claims from Libby, Montana, a claimant shall be deemed to have a comparable asbestos-related condition to an asbestos disease category Level IV, and shall be deemed to qualify for compensation at Level IV, if the claimant provides—

(i) a diagnosis of bilateral asbestos related nonmalignant disease;

(ii) evidence of TLC or FVC less than 80 percent; and

(iii) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(9) STUDY OF VERMICULITE PROCESSING FACILITIES.—

(A) IN GENERAL.—As part of the ongoing National Asbestos Exposure Review (in this section referred to as ''NAER'') being conducted by the Agency for Toxic Substances and Disease Registry (in this section referred to as ''ATSDR'') of facilities that received vermiculite ore from Libby, Montana, the ATSDR shall conduct a study of all Phase 1 sites where—

(i) the Environmental Protection Agency has mandated further action at the site on the basis of current contamination; or

(ii) the site was an exfoliation facility that processed roughly 100,000 tons or more of vermiculite from the Libby mine.

(B) STUDY BY ATSDR.—The study by the ATSDR shall evaluate the facilities identified under subparagraph (A) and compare—

(i) the levels of asbestos emissions from such facilities;

(ii) the resulting asbestos contamination in areas surrounding such facilities;

(iii) the levels of exposure to residents living in the vicinity of such facilities;

(iv) the risks of asbestos-related disease to the residents living in the vicinity of such facilities; and

(v) the risk of asbestos-related mortality to residents living in the vicinity of such facilities,

to the emissions, contamination, exposures, and risks resulting from the mining of vermiculite ore in Libby, Montana.

(C) RESULTS OF STUDY.—The results of the study required under this paragraph shall be transmitted to the Administrator.

Subtitle D—Awards

SEC. 131. AMOUNT.

(a) IN GENERAL.—An asbestos claimant who meets the requirements of section 111 shall be entitled to an award in an amount determined by reference to the benefit table and the matrices developed under subsection (b).

(b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section 121 shall be eligible for an award as determined under this subsection. The award for all asbestos claimants with an eligible disease or condition established in accordance with section 121 shall be according to the following schedule:

Level	Scheduled Condition or Disease.	Scheduled Value
I	Asbestosis/Pleural Disease A.	Medical Monitoring
II	Mixed Disease With Impairment.	$25,000
III	Asbestosis/Pleural Disease B.	$100,000
IV	Severe Asbestosis.	$400,000
V	Disabling Asbestosis.	$850,000
VIII	Lung Cancer With Asbestosis.	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
IX	Mesothelioma	$1,100,000

(2) DEFINITIONS.—In this section—

(A) the term ''nonsmoker'' means a claimant who—

(i) never smoked; or

(ii) has smoked fewer than 100 cigarettes or the equivalent of other tobacco products during the claimant's lifetime; and

(B) the term ''ex-smoker'' means a claimant who has not smoked during any portion of the 12-year period preceding the diagnosis of lung cancer.

(3) LEVEL IX ADJUSTMENTS.—

(A) IN GENERAL.—The Administrator may increase awards for Level IX claimants who have dependent children so long as the increase under this paragraph is cost neutral. Such increased awards shall be paid for by decreasing awards for claimants other than Level IX, so long as no award levels are decreased more than 10 percent.

(B) IMPLEMENTATION.—Before making adjustments under this paragraph, the Administrator shall publish in the Federal Register notice of, and a plan for, making such adjustments.

(4) SPECIAL ADJUSTMENT FOR FELA CASES.—

(A) IN GENERAL.—A claimant who would be eligible to bring a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, but for section 403 of this Act, shall be eligible for a special adjustment under this paragraph.

(B) REGULATIONS.—

(i) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate regulations relating to special adjustments under this paragraph.

(ii) JOINT PROPOSAL.—Not later than 45 days after the date of enactment of this Act, representatives of railroad management and representatives of railroad labor shall submit to the Administrator a joint proposal for regulations describing the eligibility for and amount of special adjustments under this paragraph. If a joint proposal is submitted, the Administrator shall promulgate regulations that reflect the joint proposal.

(iii) ABSENCE OF JOINT PROPOSAL.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the benefits prescribed in subparagraph (E) shall be the benefits available to claimants, and the Administrator shall promulgate regulations containing such benefits.

(iv) REVIEW.—The parties participating in the arbitration may file in the United States District Court for the District of Columbia a petition for review of the Administrator's order. The court shall have jurisdiction to affirm the order of the Administrator, or to set it aside, in whole or in part, or it may remand the proceedings to the Administrator for such further action as it may direct. On such review, the findings and order of the Administrator shall be conclusive on the parties, except that the order of the Administrator may be set aside, in whole or in parts or remanded to the Administrator, for failure of the Administrator to comply with the requirements of this section, for failure of the order to conform, or confine itself, to matters within the scope of the Administrator's jurisdiction, or for fraud or corruption.

(C) ELIGIBILITY.—An individual eligible to file a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be eligible for a special adjustment under this paragraph if such individual meets the criteria set forth in subparagraph (F).

(D) AMOUNT.—

(i) IN GENERAL.—The amount of the special adjustment shall be based on the type and severity of asbestos disease, and shall be 110 percent of the average amount an injured individual with a disease caused by asbestos, as described in section 121(d) of this Act, would have received, during the 5-year period before the enactment of this Act, adjusted for inflation. This adjustment shall be in addition to any other award for which the claimant is eligible under this Act. The amount of the special adjustment shall be reduced by an amount reasonably calculated to take into account all expenses of litigation normally borne by plaintiffs, including attorney's fees.

(ii) LIMITATION.—The amount under clause (i) may not exceed the amount the claimant is eligible to receive before applying the special adjustment under that clause.

(E) ARBITRATED BENEFITS.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the Administrator shall appoint an arbitrator to determine the benefits under subparagraph (D). The Administrator shall appoint an arbitrator who shall be acceptable to both railroad management and railroad labor. Railroad management and railroad labor shall each designate their representatives to participate in the arbitration. The arbitrator shall submit the benefits levels to the Administrator not later than 30 days after appointment and such benefits levels shall be based on information provided by rail labor and rail management. The information submitted to the arbitrator by railroad management and railroad labor shall be considered confidential and shall be disclosed to the other party upon execution of an appropriate confidentiality agreement. Unless the submitting party provides written consent, neither the arbitrator nor either party to the arbitration shall divulge to any third party any information or data, in any form, submitted to the arbitrator under this section. Nor shall either party use such information or data for any purpose other than participation in the arbitration proceeding, and each party shall return to the other any information it has received from the other party as soon the arbitration is concluded. Information submitted to the arbitrator may not be admitted into evidence, nor discovered, in any civil litigation in Federal or State court. The nature of the information submitted to the arbitrator shall be within the sole discretion of the submitting party, and the arbitrator may not require a party to submit any particular information, including information subject to a prior confidentiality agreement.

(F) DEMONSTRATION OF ELIGIBILITY.—

(i) IN GENERAL.—A claimant under this paragraph shall be required to demonstrate—

(I) employment of the claimant in the railroad industry;

(II) exposure of the claimant to asbestos as part of that employment; and

(III) the nature and severity of the asbestos-related injury.

(ii) MEDICAL CRITERIA.—In order to be eligible for a special adjustment a claimant shall meet the criteria set forth in section 121 that

would qualify a claimant for a payment under Level II or greater.

(5) MEDICAL MONITORING.—An asbestos claimant with asymptomatic exposure, based on the criteria under section 121(d)(1), shall only be eligible for medical monitoring reimbursement as provided under section 132.

(6) COST-OF-LIVING ADJUSTMENT.—

(A) IN GENERAL.—Beginning January 1, 2007, award amounts under paragraph (1) shall be annually increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment, rounded to the nearest $1,000 increment.

(B) CALCULATION OF COST-OF-LIVING ADJUSTMENT.—For the purposes of subparagraph (A), the cost-of-living adjustment for any calendar year shall be the percentage, if any, by which the consumer price index for the succeeding calendar year exceeds the consumer price index for calendar year 2005.

(C) CONSUMER PRICE INDEX.—

(i) IN GENERAL.—For the purposes of subparagraph (B), the consumer price index for any calendar year is the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year.

(ii) DEFINITION.—For purposes of clause (i), the term ''consumer price index'' means the consumer price index published by the Department of Labor. The consumer price index series to be used for award escalations shall include the consumer price index used for all-urban consumers, with an area coverage of the United States city average, for all items, based on the 1982–1984 index based period, as published by the Department of Labor.

SEC. 132. MEDICAL MONITORING.

(a) RELATION TO STATUTE OF LIMITATIONS.—The filing of a claim under this Act that seeks reimbursement for medical monitoring shall not be considered as evidence that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 113(b).

(b) COSTS.—Reimbursable medical monitoring costs shall include the costs of a claimant not covered by health insurance for an examination by the claimant's physician, x-ray tests, and pulmonary function tests every 3 years.

(c) REGULATIONS.—The Administrator shall promulgate regulations that establish—

(1) the reasonable costs for medical monitoring that is reimbursable; and

(2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENT.

(a) STRUCTURED PAYMENTS.—

(1) IN GENERAL.—An asbestos claimant who is entitled to an award should receive the amount of the award through structured payments from the Fund, made over a period of 3 years, and in no event more than 4 years after the date of final adjudication of the claim.

(2) PAYMENT PERIOD AND AMOUNT.—There shall be a presumption that any award paid under this subsection shall provide for payment of—

(A) 40 percent of the total amount in year 1;

(B) 30 percent of the total amount in year 2; and

(C) 30 percent of the total amount in year 3.

(3) EXTENSION OF PAYMENT PERIOD.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for the payment period of an award under subsection (a) to be extended to a 4-year period if such action is warranted in order to preserve the overall solvency of the Fund. Such guidelines shall include reference to the number of claims made to the Fund and the awards made and scheduled to be paid from the Fund as provided under section 405.

(B) LIMITATIONS.—In no event shall less than 50 percent of an award be paid in the first 2 years of the payment period under this subsection.

(4) LUMP-SUM PAYMENTS.—

(A) In general.—The Administrator shall develop guidelines to provide for 1 lump-sum payment to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Administrator receives notice of the eligibility of the claimant.

(B) TIMING OF PAYMENTS.—Lump-sum payments shall be made within the shorter of—

(i) not later than 30 days after the date the claim is approved by the Administrator; or

(ii) not later than 6 months after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 11 months after the date the claim is filed.

(5) EXPEDITED PAYMENTS.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of terminal health claims as described under section 106(c)(2)(B) and (C).

(B) TIMING OF PAYMENTS.—Total payments shall be made within the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 1 year after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 1 year after the date the claim is approved by the Administrator; or

(ii) not later than 2 years after the date the claim is filed.

(D) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health risks. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(6) ANNUITY.—An asbestos claimant may elect to receive any payments to which that claimant is entitled under this title in the form of an annuity.

(b) LIMITATION ON TRANSFERABILITY.—A claim filed under this Act shall not be assignable or otherwise transferable under this Act.

(c) CREDITORS.—An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

(d) MEDICARE AS SECONDARY PAYER.—No award under this title shall be deemed a payment for purposes of section 1862 of the Social Security Act (42 U.S.C. 1395y).

(e) EXEMPT PROPERTY IN ASBESTOS CLAIMANT'S BANKRUPTCY CASE.—If an asbestos claimant files a petition for relief under section 301 of title 11, United States Code, no award granted under this Act shall be treated as property of the bankruptcy estate of the asbestos claimant in accordance with section 541(b)(6) of title 11, United States Code.

(f) EFFECT OF PAYMENT.—The payment of an asbestos claim under this section shall be in full satisfaction of such claim and shall be deemed to operate as a release to such claim. No claimant with an asbestos claim that will be paid under this section may proceed in the tort system with respect to such claim.

SEC. 134. SETOFFS FOR COLLATERAL SOURCE COMPENSATION AND PRIOR AWARDS.

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of any collateral source compensation and by any amounts paid or to be paid to the claimant for a prior award under this Act.

(b) EXCLUSIONS.—

(1) COLLATERAL SOURCE COMPENSATION.—In no case shall special adjustments made under section 131(b)(3), occupational or total disability benefits under the Railroad Retirement Act (45 U.S.C. 201 et seq.), sickness benefits under the Railroad Unemployment Insurance Act (45 U.S.C 351 et seq.), and veterans' benefits programs be deemed as collateral source compensation for purposes of this section.

(2) PRIOR AWARD PAYMENTS.—Any amounts paid or to be paid for a prior claim for a nonmalignant disease (Levels I through V) filed against the Fund shall not be deducted as a setoff against amounts payable for the second injury claims for a malignant disease (Levels VI through IX), unless the malignancy was diagnosed before the date on which the nonmalignancy claim was compensated.

SEC. 135. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT OF AWARDS.

(a) IN GENERAL.—The payment of an award under section 106 or 133 shall not be considered a form of compensation or reimbursement for a loss for purposes of imposing liability on any asbestos claimant receiving such payment to repay any—

(1) life or health insurance carrier for insurance payments; or

(2) person or governmental entity on account of health care or disability payments.

(b) NO EFFECT ON CLAIMS.—

(1) IN GENERAL.—The payment of an award to an asbestos claimant under section 106 or 133 shall not affect any claim of an asbestos claimant against—

(A) a life or health insurance carrier with respect to insurance; or

(B) against any person or governmental entity with respect to healthcare or disability.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the pursuit of a claim that is preempted under section 403.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) AFFILIATED GROUP.—The term ''affiliated group''—

(A) means a defendant participant that is an ultimate parent and any person whose entire beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and

(B) shall not include any person that is a debtor or any direct or indirect majority-owned subsidiary of a debtor.

(2) INDEMNIFIABLE COST.—The term ''indemnifiable cost'' means a cost, expense,

debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(3) INDEMNITEE.—The term ''indemnitee'' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(4) INDEMNITOR.—The term ''indemnitor'' means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(5) PRIOR ASBESTOS EXPENDITURES.—The term ''prior asbestos expenditures''—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(h);

(C) shall not include any payment made by a person in connection with or as a result of changes in insurance reserves required by contract or any activity or dispute related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad, including settlement, judgment, defense, or indemnity costs associated with these claims.

(6) ULTIMATE PARENT.—The term ''ultimate parent'' means a person—

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person (other than a natural person).

(7) ASBESTOS PREMISES CLAIM.—The term ''asbestos premises claim''—

(A) means an asbestos claim against a current or former premises owner or landowner, or person controlling or possessing premises or land, alleging injury or death caused by exposure to asbestos on such premises or land or by exposure to asbestos carried off such premises or land on the clothing or belongings of another person; and

(B) includes any such asbestos claim against a current or former employer alleging injury or death caused by exposure to asbestos on premises or land owned, controlled or possessed by the employer, if such claim is not a claim for benefits under a workers' compensation law or veterans' benefits program.

(8) ASBESTOS PREMISES DEFENDANT PARTICIPANT.—The term ''asbestos premises defendant participant'' means any defendant participant for which 95 percent or more of its prior asbestos expenditures relate to asbestos premises claims against that defendant participant.

SEC. 202. AUTHORITY AND TIERS.

(a) LIABILITY FOR PAYMENTS TO THE FUND.—

(1) IN GENERAL.—Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE PAYMENT OBLIGATIONS LEVEL.—The total payments required of all defendant participants over the life of the Fund shall not exceed a sum equal to $90,000,000,000 less any bankruptcy trust credits under section 222(d). The Administrator shall have the authority to allocate the payments required of the defendant participants among the tiers as provided in this title.

(3) ABILITY TO ENTER REORGANIZATION.—Notwithstanding any other provision of this Act, all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures less than $1,000,000 may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code. Any asbestos claim made in conjunction with a plan of reorganization allowable under the preceding sentence shall be subject to section 403(d) of this Act.

(b) TIER I.—Tier I shall include all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than $1,000,000.

(c) TREATMENT OF TIER I BUSINESS ENTITIES IN BANKRUPTCY.—

(1) DEFINITION.—

(A) IN GENERAL.—In this subsection, the term ''bankrupt business entity'' means a person that is not a natural person that—

(i) filed a petition for relief under chapter 11, of title 11, United States Code, before January 1, 2003;

(ii) has not substantially consummated, as such term is defined under section 1101(2) of title 11, United States Code, a plan of reorganization as of the date of enactment of this Act; and

(iii) the bankruptcy court presiding over the business entity's case determines, after notice and a hearing upon motion filed by the entity within 30 days after the date of enactment of this Act, that asbestos liability was not the sole or precipitating cause of the entity's chapter 11 filing.

(B) MOTION AND RELATED MATTERS.—A motion under subparagraph (A)(iii) shall be supported by—

(i) an affidavit or declaration of the chief executive officer, chief financial officer, or chief legal officer of the business entity; and

(ii) copies of the entity's public statements and securities filings made in connection with the entity's filing for chapter 11 protection.

Notice of such motion shall be as directed by the bankruptcy court, and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity's chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 30 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements, and securities filings, and other information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review of this determination shall be an expedited appeal and limited to whether the decision was against the weight of the evidence. Any appeal of a determination shall be an expedited review to the United States Circuit Court of Appeals for the circuit in which the bankruptcy is filed.

(2) PROCEEDING WITH REORGANIZATION PLAN.—A bankrupt business entity may proceed with the filing, solicitation, confirmation, and consummation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction described in section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if the bankruptcy court makes a favorable determination under paragraph (1)(B), unless the bankruptcy court's determination is overruled on appeal and all appeals are final. Such a bankrupt business entity may continue to so proceed, if—

(A) on request of a party in interest or on a motion of the court, and after a notice and a hearing, the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that such confirmation is required to avoid the liquidation or the need for further financial reorganization of that entity; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY.—If the bankruptcy court does not make the determination required under paragraph (2), or if an order confirming the plan is not entered within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of this Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS.—

(A) PAYMENTS BY INSURERS.—To the extent that a bankrupt business entity or debtor successfully confirms a plan of reorganization, including a trust, and channeling injunction that involves payments by insurers who are otherwise subject to this Act as described under section 524(g) of title 11, United States Code, an insurer who makes payments to the trust shall obtain a dollar-for-dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

(B) CONTRIBUTIONS TO FUND.—Any cash payments by a bankrupt business entity, if any, to a trust described under section 524(g) of title 11, United States Code, may be counted as a contribution to the Fund.

(d) TIERS II THROUGH VI.—Except as provided in section 204 and subsection (b) of this section, persons or affiliated groups are included in Tier II, III, IV, V, or VI, according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

(1) Tier II: $75,000,000 or greater.

(2) Tier III: $50,000,000 or greater, but less than $75,000,000.

(3) Tier IV: $10,000,000 or greater, but less than $50,000,000.

(4) Tier V: $5,000,000 or greater, but less than $10,000,000.

(5) Tier VI: $1,000,000 or greater, but less than $5,000,000.

(6) ASBESTOS PREMISES DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Asbestos premises defendant participants that would be included in Tier II, III, IV or V according to their

prior asbestos expenditures shall, after 5 years of the Fund being operational, instead be assigned to the immediately lower tier, such that—

(i) an asbestos premises defendant participant that would be assigned to Tier II shall instead be assigned to Tier III;

(ii) an asbestos premises defendant participant that would be assigned to Tier III shall instead be assigned to Tier IV;

(iii) an asbestos premises defendant participant that would be assigned to Tier IV shall instead be assigned to Tier V; and

(iv) an asbestos premises defendant participant that would be assigned to Tier V shall instead be assigned to Tier VI.

(B) RETURN TO ORIGINAL TIER.—The Administrator may return asbestos premises defendant participants to their original tier, on a yearly basis, if the Administrator determines that the additional revenues that would be collected are needed to preserve the solvency of the Fund.

(e) TIER PLACEMENT AND COSTS.—

(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(j)(6), the participant or affiliated group shall remain in that tier and subtier throughout the life of the Fund, regardless of subsequent events, including—

(A) the filing of a petition under a chapter of title 11, United States Code;

(B) a discharge of debt in bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group, unless the Administrator finds that the information submitted by the participant or affiliated group to support its inclusion in that tier was inaccurate.

(2) COSTS.—Payments to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of title 11, United States Code, and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and

(C) shall not be impaired or discharged in any current or future case under title 11, United States Code.

(f) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—All of the following shall be superseded in their entireties by this Act:

(A) The treatment of any asbestos claim in any plan of reorganization with respect to any debtor included in Tier I.

(B) Any asbestos claim against any debtor included in Tier I.

(C) Any agreement, understanding, or undertaking by any such debtor or any third party with respect to the treatment of any asbestos claim filed in a debtor's bankruptcy case or with respect to a debtor before the date of enactment of this Act, whenever such debtor's case is either still pending, if such case is pending under a chapter other than chapter 11 of title 11, United States Code, or subject to confirmation or substantial consummation of a plan of reorganization under chapter 11 of title 11, United States Code.

(2) PRIOR AGREEMENTS OF NO EFFECT.—Notwithstanding section 403(c)(3), any plan of reorganization, agreement, understanding, or undertaking by any debtor (including any pre-petition agreement, understanding, or undertaking that requires future performance) or any third party under paragraph (1), and any agreement, understanding, or undertaking entered into in anticipation, contemplation, or furtherance of a plan of reorganization, to the extent it relates to any asbestos claim, shall be of no force or effect, and no person shall have any right or claim with respect to any such agreement, understanding, or undertaking.

SEC. 203. SUBTIERS.

(a) IN GENERAL.—

(1) SUBTIER LIABILITY.—Except as otherwise provided under subsections (b), (d), and (l) of section 204, persons or affiliated groups shall be included within Tiers I through VII and shall pay amounts to the Fund in accordance with this section.

(2) REVENUES.—

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant or affiliated group would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

(B) INSURANCE PREMIUMS.—Any portion of revenues of a defendant participant that is derived from insurance premiums shall not be used to calculate the payment obligation of that defendant participant under this subtitle.

(C) DEBTORS.—Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is included in Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person. If a debtor or affiliated group includes a person in respect of whose liabilities for asbestos claims a class action trust has been established, there shall be excluded from the 2002 revenues of such debtor or affiliated group—

(i) all revenues of the person in respect of whose liabilities for asbestos claims the class action trust was established; and

(ii) all revenues of the debtor and affiliated group attributable to the historical business operations or assets of such person, regardless of whether such business operations or assets were owned or conducted during the year 2002 by such person or by any other person included within such debtor and affiliated group.

(b) TIER I SUBTIERS.—

(1) IN GENERAL.—Each debtor in Tier I shall be included in subtiers and shall pay amounts to the Fund as provided under this section.

(2) SUBTIER 1.—

(A) IN GENERAL.—All persons that are debtors with prior asbestos expenditures of $1,000,000 or greater, shall be included in Subtier 1.

(B) PAYMENT.—

(i) IN GENERAL.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(ii) EXCEPTION TO PAYMENT PERCENTAGE.—Notwithstanding clause (i), a debtor in Subtier 1 shall pay, on an annual basis, $500,000 if—

(I) such debtor, including its direct or indirect majority-owned subsidiaries, has less than $10,000,000 in prior asbestos expenditures;

(II) at least 95 percent of such debtors revenues derive from the provision of engineering and construction services; and

(III) such debtor, including its direct or indirect majority-owned subsidiaries, never manufactured, sold, or distributed asbestos-containing products in the stream of commerce.

(C) OTHER ASSETS.—The Administrator, at the sole discretion of the Administrator, may allow a Subtier 1 debtor to satisfy its funding obligation under this paragraph with assets other than cash if the Administrator determines that requiring an all-cash payment of the debtor's funding obligation would render the debtor's reorganization infeasible.

(D) LIABILITY.—

(i) IN GENERAL.—If a person who is subject to a case pending under a chapter of title 11, United States Code, as defined in section 201(3)(A)(i), does not pay when due any payment obligation for the debtor, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the debtor may be liable under sections 223 and 224) from any of the direct or indirect majority-owned subsidiaries under section 201(3)(A)(ii).

(ii) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within a debtor under section 201(3)(A) (i) and (ii) with respect to the payment obligations under this Act.

(iii) RIGHT OF CONTRIBUTION.—

(I) IN GENERAL.—Notwithstanding any other provision of this Act, if a direct or indirect majority-owned foreign subsidiary of a debtor participant (with such relationship to the debtor participant as determined on the date of enactment of this Act) is or becomes subject to any foreign insolvency proceedings, and such foreign direct or indirect-majority owned subsidiary is liquidated in connection with such foreign insolvency proceedings (or if the debtor participant's interest in such foreign subsidiary is otherwise canceled or terminated in connection with such foreign insolvency proceedings), the debtor participant shall have a claim against such foreign subsidiary or the estate of such foreign subsidiary in an amount equal to the greater of—

(aa) the estimated amount of all current and future asbestos liabilities against such foreign subsidiary; or

(bb) the foreign subsidiary's allocable share of the debtor participant's funding obligations to the Fund as determined by such foreign subsidiary's allocable share of the debtor participant's 2002 gross revenue.

(II) DETERMINATION OF CLAIM AMOUNT.—The claim amount under subclause (I) (aa) or (bb) shall be determined by a court of competent jurisdiction in the United States.

(III) EFFECT ON PAYMENT OBLIGATION.—The right to, or recovery under, any such claim shall not reduce, limit, delay, or otherwise affect the debtor participant's payment obligations under this Act.

(iv) MAXIMUM ANNUAL PAYMENT OBLIGATION.—Subject to any payments under paragraphs (3), (4), and (5) of this subsection, the annual payment obligation by a debtor under subparagraph (B) of this paragraph shall not exceed $80,000,000.

(3) SUBTIER 2.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations, other than class action trusts under paragraph (6), but hold cash or other assets that have been allocated or earmarked for the settlement of asbestos claims shall be included in Subtier 2.

(B) ASSIGNMENT OF ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 2 shall assign all of its unencumbered assets to the Fund.

(4) SUBTIER 3.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors other than those included in Subtier 2, which have no material continuing business operations and no cash or other assets allocated or earmarked for the settlement of any asbestos claim, shall be included in Subtier 3.

(B) ASSIGNMENT OF UNENCUMBERED ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 3 shall contribute an amount equal to 50 percent of its total unencumbered assets.

(5) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, jointly held, in trust or otherwise, with a defendant participant, less—

(A) all allowable administrative expenses;

(B) allowable priority claims under section 507 of title 11, United States Code; and

(C) allowable secured claims.

(6) CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been included in Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims within the meaning of section 403(d)(1), before the date of enactment of this Act) shall be transferred to the Fund not later than 60 days after the date of enactment of this Act.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $27,500,000.

(B) Subtier 2: $24,750,000.

(C) Subtier 3: $22,000,000.

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $16,500,000.

(B) Subtier 2: $13,750,000.

(C) Subtier 3: $11,000,000.

(D) Subtier 4: $8,250,000.

(E) Subtier 5: $5,500,000.

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier IV shall be included in 1 of the 4 subtiers of Tier IV, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $3,850,000.

(B) Subtier 2: $2,475,000.

(C) Subtier 3: $1,650,000.

(D) Subtier 4: $550,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $1,000,000.

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(3) OTHER PAYMENT FOR CERTAIN PERSONS AND AFFILIATED GROUPS.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, and if an adjustment authorized by this subsection does not impair the overall solvency of the Fund, any person or affiliated group within Tier VI whose required subtier payment in any given year would exceed such person's or group's average annual expenditure on settlements, and judgments of asbestos disease-related claims over the 8 years before the date of enactment of this Act shall make the payment required of the immediately lower subtier or, if the person's or group's average annual expenditures on settlements and judgments over the 8 years before the date of enactment of this Act is less than $100,000, shall not be required to make a payment under this Act.

(B) NO FURTHER ADJUSTMENT.—Any person or affiliated group that receives an adjustment under this paragraph shall not be eligible to receive any further adjustment under section 204(e).

(h) TIER VII.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims, and such settlement, judgment, defense, or indemnity costs constitute 75 percent or more of the total prior asbestos expenditures by the person or affiliated group.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier VII shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VI.

(3) SUBTIER 1.—Each person or affiliated group in Tier VII with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier VII with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier VII with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) IN GENERAL.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(1) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(2) The amount received by the Fund from defendant participants, excluding any amounts rebated to defendant participants under subsections (e) and (n), equals the maximum aggregate payment obligation of section 202(a)(2).

(b) SMALL BUSINESS EXEMPTION.—Notwithstanding any other provision of this subtitle, a person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any payment requirement under this subtitle and shall not be included in the subtier allocations under section 203.

(c) LIMITATION.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, any defendant participant may apply for a limitation on its annual payment obligation to

the Fund by showing that it qualifies under subparagraph (3), and the Administrator shall promptly grant such application if the standards in subparagraph (3) are satisfied.

(2) STAY OF PAYMENT.—A defendant participant who applies for a limitation on its annual payment obligation to the Fund under subparagraph (1) shall have the payment required under subsection (i)(1)(A)(iv) stayed until the Administrator has made a determination with respect to the application of such defendant participant.

(3) APPLICATION FOR LIMITATION.—A defendant participant may apply under subparagraph (A) for a limit on its annual payment obligation to the Fund if:

(A) it is included in Tiers II, III, IV, V, or VI under section 202; and

(B) its prior asbestos expenditures are less than $200 million and its revenues as defined in this section are less than $10 Billion.

(4) LIMITATION.—Such qualifying defendant participant may apply for the limit set forth in either clause (A), (B) or (C), provided that it may apply only under one such clause and may not change its application once the application has been approved by the Administrator. A defendant participant qualifying under this subparagraph may apply for a limit on its annual payment obligation to the Fund to an amount equal to—

(A) 125 percent of the arithmetical average for fiscal years 1998 through 2002 of such defendant participant's annual prior asbestos expenditures; or

(B) 150 percent of the arithmetical average for fiscal years 1998 through 2002 of such defendant participant's annual prior asbestos expenditures, excluding (I) the amount of any payments by insurance carriers for the benefit of such defendant participant or on behalf of such defendant participant, and (II) any reimbursements of the amounts actually paid by such defendant participant with respect to prior asbestos expenditures for fiscal years 1998 through 2002, regardless of when such reimbursements were actually paid; or

(C) 1.67024 percent of the revenues for the most recent fiscal year ending on or prior to December 31, 2002, of the affiliated group to which such defendant participant belongs.

(5) JUDICIAL REVIEW. A defendant participant who is aggrieved by the denial by the Administrator or its application under this paragraph is entitled to judicial review under section 303, and during the pendency of such review, section 223(a) shall not apply to that defendant participant. Without regard to section 305(a), the reviewing court may, in its discretion, provide such interlocutory relief to the defendant participant as may be just.

(6) APPLICABILITY OF THE GUARANTEE SURCHARGE.—A defendant participant whose application for a limitation on its annual payment obligation to the Fund under subparagraph (A) is approved by the Administrator, shall not be exempt from the guaranteed payment surcharge established under subsection (1) unless otherwise provided in this Act.

(7) MINIMUM PAYMENT.—Notwithstanding the limitations provided in this subsection, a defendant participant that is granted a limitation by the Administrator shall pay no less than 5 percent of the amount the participant is scheduled to pay under section 202.

(d) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Administrator's determination under this subsection under the procedures prescribed in subsection (i)(10). The Administrator may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (j) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Funds remains outstanding any may qualify for such an adjustment by demonstrating to the satisfaction of the Administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the Administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.—In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected financial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately proceeding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101(31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments or extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the Administrator considers relevant.

(C) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the Administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the Administrator determines at the time of the renewed adjustment that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(E) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this sub-paragraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

(II) when measured against the likely cost of past and potential future claims in the absence of this Act;

(III) when compared to the median payment rate for all defendant participants in the same tier; or

(IV) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant;

(ii) shall be granted a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act;

(iii) shall be granted a two-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Administrator shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations; and

(iv) may, subject to the discretion of the Administrator, be exempt from any payment obligation if such defendant participant establishes with the Administrator that—

(I) such participant has satisfied all past claims; and

(II) there is no reasonable likelihood in the absence of this Act of any future claims with costs for which the defendant participant might be responsible.

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant inequity adjustment account established under subsection (k), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 3 years by demonstrating that the adjustment remains justified.

(E) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 3-year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Administrator may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Administrator.

(4) LIMITATION ON ADJUSTMENTS.—The aggregate total of financial hardship adjustments under paragraph (2) and inequity adjustments under paragraph (3) in effect in any given year shall not be limited.

(6) RULEMAKING AND ADVISORY PANELS.—

(A) APPOINTMENT.—The Administrator may appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

(B) MEMBERSHIP.—The membership of the panels appointed under subparagraph (A) may overlap.

(C) COORDINATION.—The panels appointed under subparagraph (A) shall coordinate their deliberations and advice. The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable.

(f) LIMITATION ON LIABILITY.—The liability of each defendant participant to pay to the Fund shall be limited to the payment obligations under this Act, and, except as provided in subsection (f) and section 203(b)(2)(D), no defendant participant shall have any liability for the payment obligations of any other defendant participant.

(g) CONSOLIDATION OF PAYMENTS.—

(1) IN GENERAL.—For purposes of determining the payment levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submissions to be made under paragraphs (1) and (3) of subsection (j), to report on a consolidated basis all of the information necessary to determine the payment level under this subtitle and pay to the Fund on a consolidated basis.

(2) ELECTION.—If an affiliated group elects consolidation as provided in this subsection—

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including with respect to the assessment of a single annual payment under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit each submission to be made under subsection (i) on behalf of the entire affiliated group and shall be solely liable, as between the Administrator and the affiliated group only, for the payment of the annual amount due from the affiliated group under this subtitle, except that, if the ultimate parent does not pay when due any payment obligation for the affiliated group, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the affiliated group may be liable under sections 223 and 224) from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (j) and shall certify compliance with this subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(3) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within an affiliated group with respect to the payment obligations under this Act.

(h) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES.—

(1) IN GENERAL.—For purposes of determining a defendant participant's prior asbestos expenditures, the Administrator shall prescribe such rules as may be necessary or appropriate to assure that payments by indemnitors before December 31, 2002, shall be counted as part of the indemnitor's prior asbestos expenditures, rather than the indemnitee's prior asbestos expenditures, in accordance with this subsection.

(2) INDEMNIFIABLE COSTS.—If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

(3) INSURANCE PAYMENTS.—When computing the prior asbestos expenditures with respect to an asbestos claim, any amount paid or reimbursed by insurance shall be solely for the account of the indemnitor, even if the indemnitor would have no direct right to the benefit of the insurance, if—

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee; and

(B) the indemnitor has either, with respect to such asbestos claim or any similar asbestos claim, paid or reimbursed to its indemnitee any indemnifiable cost or paid to any third party on behalf of or for the benefit of the indemnitee any indemnifiable cost.

(4) TREATMENT OF CERTAIN EXPENDITURES.—Notwithstanding any other provision of this Act, where—

(A) an indemnitor entered into a stock purchase agreement in 1988 that involved the sale of the stock of businesses that produced friction and other products; and

(B) the stock purchase agreement provided that the indemnitor indemnified the indemnitee and its affiliates for losses arising from various matters, including asbestos claims—

(i) asserted before the date of the agreement; and

(ii) filed after the date of the agreement and prior to the 10-year anniversary of the stock sale,

then the prior asbestos expenditures arising from the asbestos claims described in clauses (i) and (ii) shall not be for the account of either the indemnitor or indemnitee.

(i) MINIMUM ANNUAL PAYMENTS.—

(1) IN GENERAL.—The aggregate annual payments of defendant participants to the Fund shall be at least $3,000,000,000 for each calendar year in the first 30 years of the Fund, or until such shorter time as the condition set forth in subsection (a)(2) is attained.

(2) GUARANTEED PAYMENT ACCOUNT.—To the extent payments in accordance with sections 202 and 203 (as modified by subsections (b), (e), (g), (h), and (n) of this section) fail in any year to raise at least $3,000,000,000, after applicable reductions or adjustments have been taken according to subsections (e) and (n), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(j) PROCEDURES FOR MAKING PAYMENTS.—

(1) INITIAL YEAR: TIERS II–VI.—

(A) IN GENERAL.—Not later than 90 days after enactment of this Act, each defendant participant that is included in Tiers II, III, IV, V, or VI shall file with the Administrator—

(i) a statement of whether the defendant participant irrevocably elects to report on a consolidated basis under subsection (g);

(ii) a good-faith estimate of its prior asbestos expenditures;

(iii) a statement of its 2002 revenues, determined in accordance with section 203(a)(2);

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier; and

(v) a signature page personally verifying the truth of the statements and estimates described under this subparagraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(B) RELIEF.—

(i) IN GENERAL.—The Administrator shall establish procedures to grant a defendant

participant relief from its initial payment obligation if the participant shows that—

(I) the participant is likely to qualify for a financial hardship adjustment; and

(II) failure to provide interim relief would cause severe irreparable harm.

(ii) JUDICIAL RELIEF.—The Administrator's refusal to grant relief under clause (i) is subject to immediate judicial review under section 303.

(2) INITIAL YEAR: TIER I.—Not later than 60 days after enactment of this Act, each debtor shall file with the Administrator—

(A) a statement identifying the bankruptcy case(s) associated with the debtor;

(B) a statement whether its prior asbestos expenditures exceed $1,000,000;

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;

(D) in the case of debtors falling within Subtier 1 of Tier I—

(i) a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2);

(ii) for those debtors subject to the payment requirement of section 203(b)(2)(B)(ii), a statement whether its prior asbestos expenditures do not exceed $10,000,000, and a description of its business operations sufficient to show the requirements of that section are met; and

(iii) a payment under section 203(b)(2)(B);

(E) in the case of debtors falling within Subtier 2 of Tier I, an assignment of its assets under section 203(b)(3)(B);

(F) in the case of debtors falling within Subtier 3 of Tier I, a payment under section 203(b)(4)(B), and a statement of how such payment was calculated; and

(G) a signature page personally verifying the truth of the statements and estimates described under this paragraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(3) INITIAL YEAR: TIER VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Administrator—

(A) a good-faith estimate of all payments of the type described in section 203(h)(1) (as modified by section 203(h)(6));

(B) a statement of revenues calculated in accordance with sections 203(a)(2) and 203(h); and

(C) payment in the amount specified in section 203(h).

(4) NOTICE TO PARTICIPANTS.—Not later than 240 days after enactment of this Act, the Administrator shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in the Federal Register a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Administrator in accordance with this Act, for paying under this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information; and

(ii) that includes a list of all defendant participants notified by the Administrator under subparagraph (A), and provides for 30 days for the submission by the public of comments or information regarding the completeness and accuracy of the list of identified defendant participants.

(5) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Administrator with an address to send any notice from the Administrator in accordance with this Act and all the information required by the Administrator in accordance with this subsection no later than the earlier of—

(i) 30 days after the receipt of direct notice; or

(ii) 30 days after the publication of notice in the Federal Register.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Administrator's audit authority under section 221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INDIVIDUAL.—Not later than 60 days after receiving a response under paragraph (5), the Administrator shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Administrator and identified to the defendant participant.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to defendant participants, the Administrator shall publish in the Federal Register a notice listing the defendant participants that have been sent such notification, and the initial determination identifying the tier and subtier assignment and annual payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Administrator.

(C) PAYMENTS.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Administrator the amount required by the notice, after deducting any previous payment made by the participant under this subsection. If the amount that the defendant participant is required to pay is less than any previous payment made by the participant under this subsection, the Administrator shall credit any excess payment against the future payment obligations of that defendant participant. The pendency of a petition for rehearing under paragraph (10) shall not stay the obligation of the participant to make the payment specified in the Administrator's notice.

(7) EXEMPTIONS FOR INFORMATION REQUIRED.—

(A) PRIOR ASBESTOS EXPENDITURES.—In lieu of submitting information related to prior asbestos expenditures as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Tier II.

(B) REVENUES.—In lieu of submitting information related to revenues as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Subtier 1 of the defendant participant's applicable tier.

(8) NEW INFORMATION.—

(A) EXISTING PARTICIPANT.—The Administrator shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Administrator, at any time, receives information that an additional person may qualify as a defendant participant, the Administrator shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Administrator with respect to such person.

(9) SUBPOENAS.—The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) REHEARING.—A defendant participant has a right to obtain rehearing of the Administrator's determination under this subsection of the applicable tier or subtier of the Administrator's determination under subsection (e) of a financial hardship or inequity adjustment, and of the Administrator's determination under subsection (n) of a distributor's adjustment, if the request for rehearing is filed within 30 days after the defendant participant's receipt of notice from the Administrator of the determination. A defendant participant may not file an action under section 303 unless the defendant participant requests a rehearing under this paragraph. The Administrator shall publish a notice in the Federal Register of any change in a defendant participant's tier or subtier assignment or payment obligation as a result of a rehearing.

(k) DEFENDANT INEQUITY ADJUSTMENT ACCOUNT.—

(1) IN GENERAL.—To the extent the total payments by defendant participants in any given year exceed the minimum aggregate annual payments required under subsection (i), excess monies up to a maximum of $300,000,000 in any such year shall be placed in a defendant inequity adjustment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant inequity adjustment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to make up for any relief granted to a defendant participant for demonstrated inequity under subsection (d) or to reimburse any defendant participant granted such relief after its payment of the amount otherwise due; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(3) CARRYOVER OF UNUSED FUNDS.—To the extent the Administrator does not, in any given year, use all of the funds allocated to the account under paragraph (1) for adjustments granted under subsection (e), remaining funds in the account shall be carried forward for use by the Administrator for adjustments in subsequent years.

(l) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (i) and (k), if there are excess monies paid by defendant participants in any given year, including any bankruptcy trust credits that may be due under section 222(d), such monies—

(A) at the discretion of the Administrator, may be used to provide additional adjustments under subsection (e), up to a maximum aggregate of $50,000,000 in such year; and

(B) to the extent not used under subparagraph (A), shall be placed in a defendant guaranteed payment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant guaranteed payment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to ensure the minimum aggregate annual payment required under subsection (i), after applicable reductions or adjustments have been taken according to subsections (e) and (m) is reached each year; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(n) ADJUSTMENTS FOR DISTRIBUTORS.—

(1) DEFINITION.—In this subsection, the term ''distributor'' means a person—

(A) whose prior asbestos expenditures arise exclusively from the sale of products manufactured by others;

(B) who did not prior to December 31, 2002, sell raw asbestos or a product containing more than 95 percent asbestos by weight;

(C) whose prior asbestos expenditures did not arise out of—

(i) the manufacture, installation, repair, reconditioning, maintaining, servicing, constructing, or remanufacturing of any product;

(ii) the control of the design, specification, or manufacture of any product; or

(iii) the sale or resale of any product under, as part of, or under the auspices of, its own brand, trademark, or service mark; and

(D) who is not subject to assignment under section 202 to Tier I, II, III or VII.

(2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

(A) IN GENERAL.—Notwithstanding section 202, the Administrator shall assign a distributor to a Tier for purposes of this title under the procedures set forth in this paragraph.

(B) DESIGNATION.—After a final determination by the Administrator under section 204(j), any person who is, or any affiliated group in which every member is, a distributor may apply to the Administrator for adjustment of its Tier assignment under this subsection. Such application shall be prepared in accordance with such procedures as the Administrator shall promulgate by rule. Once the Administrator designates a person or affiliated group as a distributor under this subsection, such designation and the adjustment of tier assignment under this subsection are final.

(C) PAYMENTS.—Any person or affiliated group that seeks adjustment of its Tier assignment under this subsection shall pay all amounts required of it under this title until a final determination by the Administrator is made under this subsection. Such payments may not be stayed pending any appeal. The Administrator shall grant any person or affiliated group a refund or credit of any payments made if such adjustment results in a lower payment obligation.

(D) ADJUSTMENT.—Subject to paragraph (3), any person or affiliated group that the Administrator has designated as a distributor under this subsection shall be given an adjustment of Tier assignment as follows:

(i) A distributor that but for this subsection would be assigned to Tier IV shall be deemed assigned to Tier V.

(ii) A distributor that but for this subsection would be assigned to Tier V shall be deemed assigned to Tier VI.

(iii) A distributor that but for this subsection would be assigned to Tier VI shall be deemed assigned to no Tier and shall have no obligation to make any payment to the Fund under this Act.

(E) EXCLUSIVE TO INEQUITY ADJUSTMENT.—Any person or affiliated group designated by the Administrator as a distributor under this subsection shall not be eligible for an inequity adjustment under subsection 204(e).

(3) LIMITATION ON ADJUSTMENTS.—The aggregate total of distributor adjustments under this subsection in effect in any given year shall not exceed $50,000,000. If the aggregate total of distributors adjustments under this subsection would otherwise exceed $50,000,000, then each distributor's adjustment shall be reduced pro rata until the aggregate of all adjustments equals $50,000,000.

(4) REHEARING.—A defendant participant has a right to obtain a rehearing of the Administrator's determination on an adjustment under this subsection under the procedures prescribed in subsection (j)(10).

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(i) shall be reduced by 10 percent of the initial minimum aggregate funding obligation at the end of the tenth, fifteenth, twentieth, and twenty-fifth years after the date of enactment of this Act. Except as otherwise provided in this paragraph, the reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants.

The reductions under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reduction provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.

(2) LIMITATION.—The Administrator shall suspend, cancel, reduce, or delay any reduction under paragraph (1) if at any time the Administrator finds, in accordance with subsection (c), that such action is necessary and appropriate to ensure that the assets of the Fund and expected future payments remain sufficient to satisfy the Fund's anticipated obligations.

(b) FUNDING HOLIDAYS.—

(1) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments, taking into consideration any reductions under subsection (a), are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from defendant participants for that year.

(2) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under paragraph (1) every year.

(3) LIMITATIONS ON FUNDING HOLIDAYS.—Any reduction or waiver of the defendant participants' funding obligations shall—

(A) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(B) be applied on an equal pro rata basis to the funding obligations of all defendant participants, except as otherwise provided under this paragraph. The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions or waivers under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.

(4) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(c) CERTIFICATION.—

(1) IN GENERAL.—Before suspending, canceling, reducing, or delaying any reduction under subsection (a) or granting or revoking a reduction or waiver under subsection (b), the Administrator shall certify that the requirements of this section are satisfied.

(2) NOTICE AND COMMENT.—Before making a final certification under this subsection, the Administrator shall publish a notice in the Federal Register of a proposed certification and a statement of the basis therefor and provide in such notice for a public comment period of 30 days.

(3) FINAL CERTIFICATION.—

(A) IN GENERAL.—The Administrator shall publish a notice of the final certification in

the Federal Register after consideration of all comments submitted under paragraph (2).

(B) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under subparagraph (A), the Administrator shall provide each defendant participant with written notice of that defendant's funding obligation for that year.

SEC. 206. ACCOUNTING TREATMENT.

Defendant participants payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each defendant participant. This section shall in no way reduce the amount of monetary payments to the Fund by defendant participants as required under section 202(a)(2).

Subtitle B—Asbestos Insurers Commission

SEC. 210. DEFINITION.

In this subtitle, the term ''captive insurance company'' means a company—

(1) whose entire beneficial interest is owned on the date of enactment of this Act, directly or indirectly, by a defendant participant or by the ultimate parent or the affiliated group of a defendant participant;

(2) whose primary commercial business during the period from calendar years 1940 through 1986 was to provide insurance to its ultimate parent or affiliated group, or any portion of the affiliated group or a combination thereof; and

(3) that was incorporated or operating no later than December 31, 2003.

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) ESTABLISHMENT.—There is established the Asbestos Insurers Commission (referred to in this subtitle as the ''Commission'') to carry out the duties described in section 212.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—

(A) EXPERTISE.—Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST.—

(i) IN GENERAL.—No member of the Commission appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No member of the Commission shall be a shareholder of any insurer participant. No member of the Commission shall be a former officer or director, or a former employee or former shareholder of any insurer participant who was such an employee, shareholder, officer, or director at any time during the 2-year period ending on the date of the appointment, unless that is fully disclosed before consideration in the Senate of the nomination for appointment to the Commission.

(ii) DEFINITION.—In clause (i), the term ''shareholder'' shall not include a broadly based mutual fund that includes the stocks of insurer participants as a portion of its overall holdings.

(C) FEDERAL EMPLOYMENT.—A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

(3) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Commission.

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) CHAIRMAN.—The President shall select a Chairman from among the members of the Commission.

(c) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—The Commission shall meet at the call of the Chairman, as necessary to accomplish the duties under section 212.

(3) QUORUM.—No business may be conducted or hearings held without the participation of a majority of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) DETERMINATION OF INSURER PAYMENT OBLIGATIONS.—

(1) IN GENERAL.—

(A) DEFINITIONS.—For the purposes of this Act, the terms ''insurer'' and ''insurer participant'' shall, unless stated otherwise, include direct insurers and reinsurers, as well as any run-off entity established, in whole or in part, to review and pay asbestos claims.

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—The Commission shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Commission shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology may include 1 or more allocation formulas to be applied to all insurer participants or groups of similarly situated participants. The Commission's rule shall include a methodology for adjusting payments by insurer participants to make up, during the first 5 years of the life of the Fund and any subsequent years as provided in section 405(f) for any reduction in an insurer participant's annual allocated amount caused by the granting of a financial hardship or exceptional circumstance adjustment under this section, and any amount by which aggregate insurer payments fall below the level required under paragraph (3)(C) by reason of the failure or refusal of any insurer participant to make a required payment, or for any other reason that causes such payments to fall below the level required under paragraph (3)(C). The Commission shall conduct a thorough study (within the time limitations under this subparagraph) of the accuracy of the reserve allocation of each insurer participant, and may request information from the Securities and Exchange Commission or any State regulatory agency. Under this procedure, not later than 120 days after the initial meeting of the Commission, the Commission shall commence a rulemaking proceeding under section 213(a) to propose and adopt a methodology for allocating payments among insurer participants. In proposing an allocation methodology, the Commission may consult with such actuaries and other experts as it deems appropriate. After hearings and public comment on the proposed allocation methodology, the Commission shall as promptly as possible promulgate a final rule establishing such methodology. After promulgation of the final rule, the Commission shall determine the individual payment of each insurer participant under the procedures set forth in subsection (b).

(C) SCOPE.—Every insurer, reinsurer, and runoff entity with asbestos-related obligations in the United States shall be subject to the Commission's and Administrator's authority under this Act, including allocation determinations, and shall be required to fulfill its payment obligation without regard as to whether it is licensed in the United States. Every insurer participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Commission's and Administrator's authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Administrator. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(D) ISSUERS OF FINITE RISK POLICIES.—

(i) IN GENERAL.—The issuer of any policy of retrospective reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a risk or loss transfer to insure for asbestos losses and other losses (both known and unknown), including those policies commonly referred to as ''finite risk'', ''aggregate stop loss'', ''aggregate excess of loss'', or ''loss portfolio transfer'' policies, shall be obligated to make payments required under this Act directly to the Fund on behalf of the insurer participant who is the beneficiary of such policy, subject to the underlying retention and the limits of liability applicable to such policy.

(ii) PAYMENTS.—Payments to the Fund required under this Act shall be treated as loss payments for asbestos bodily injury (as if such payments were incurred as liabilities imposed in the tort system) and shall not be subject to exclusion under policies described under clause (i) as a liability with respect to tax or assessment. Within 90 days after the scheduled date to make an annual payment to the Fund, the insurer participant shall, at its discretion, direct the reinsurer issuing such policy to pay all or a portion of the annual payment directly to the Fund up to the full applicable limits of liability under the policy. The reinsurer issuing such policy shall be obligated to make such payments directly to the Fund and shall be subject to the enforcement provisions under section 223. The insurer participant shall remain obligated to make payment to the Fund of that portion of the annual payment not directed to the issuer of such reinsurance policy.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000, less any bankruptcy trust credits under section 222(d).

(B) ACCOUNTING STANDARDS.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Commission shall use accounting standards required for United States licensed direct insurers.

(C) CAPTIVE INSURANCE COMPANIES.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, insures the asbestos liability, directly or indirectly, of (and that arises out of the manufacture, sale, distribution or installation of materials or products by, or other conduct of) a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) SEVERAL LIABILITY.—Unless otherwise provided under this Act, each insurer participant's obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability, and the future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) PAYMENT OF CRITERIA.—

(A) INCLUSION IN INSURER PARTICIPANT CATEGORY.—

(i) IN GENERAL.—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(ii) INAPPLICABILITY OF SECTION 202.—Since insurers may be subject in certain jurisdictions to direct action suits, and it is not the intent of this Act to impose upon an insurer, due to its operation as an insurer, payment obligations to the Fund in situations where the insurer is the subject of a direct action, no insurer subject to mandatory payments under this section shall also be liable for payments to the Fund as a defendant participant under section 202.

(B) INSURER PARTICIPANT ALLOCATION METHODOLOGY.—

(i) IN GENERAL.—The Commission shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers' compensation), such factors as—

(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities under applicable insurance policies; and

(V) any other factor the Commission may determine is relevant and appropriate.

(ii) DETERMINATION OF RESERVES.—The Commission may establish procedures and standards for determination of the asbestos reserves of insurer participants. The reserves of a United States licensed reinsurer that is wholly owned by, or under common control of, a United States licensed direct insurer shall be included as part of the direct insurer's reserves when the reinsurer's financial results are included as part of the direct insurer's United States operations, as reflected in footnote 33 of its filings with the National Association of Insurance Commissioners or in published financial statements prepared in accordance with generally accepted accounting principles.

(C) PAYMENT SCHEDULE.—The aggregate annual amount of payments by insurer participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, $2,700,000,000 annually.

(ii) For years 3 through 5, $5,075,000,000 annually.

(iii) For years 6 through 27, $1,147,000,000 annually.

(iv) For year 28, $166,000,000.

(D) CERTAIN RUNOFF ENTITIES.—A runoff entity shall include any direct insurer or reinsurer whose asbestos liability reserves have been transferred, directly or indirectly, to the runoff entity and on whose behalf the runoff entity handles or adjusts and, where appropriate, pays asbestos claims.

(E) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—

(i) IN GENERAL.—Under the procedures established in subsection (b), an insurer participant may seek adjustment of the amount of its payments based on exceptional circumstances or severe financial hardship.

(ii) FINANCIAL ADJUSTMENTS.—An insurer participant may qualify for an adjustment based on severe financial hardship by demonstrating that payment of the amounts required by the Commission's methodology would jeopardize the solvency of such participant.

(iii) EXCEPTIONAL CIRCUMSTANCE ADJUSTMENT.—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Commission's allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

(II) an offset credit as described in subparagraphs (A) and (C) of subsection (b)(4); or

(III) other exceptional circumstances.

The Commission may determine whether to grant an adjustment and the size of any such adjustment, but except as provided under paragraph (1)(B), subsection (f)(3), and section 405(f), any such adjustment shall not affect the aggregate payment obligations of insurer participants specified in paragraph (2)(A) and subparagraph (C) of this paragraph.

(iv) TIME PERIOD OF ADJUSTMENT.—Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Administrator that it remains justified.

(F) FUNDING HOLIDAYS.—

(i) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from insurer participants for that year.

(ii) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under clause (i) every year.

(iii) LIMITATIONS OF FUNDING HOLIDAYS.—Any reduction or waiver of the insurer participants' funding obligations shall—

(I) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(II) be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(iv) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(b) PROCEDURE FOR NOTIFYING INSURER PARTICIPANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund under the allocation methodology; and

(B) publish in the Federal Register a notice—

(i) requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information; and

(ii) that includes a list of all insurer participants notified by the Commission under subparagraph (A), and provides for 30 days for the submission of comments or information regarding the completeness and accuracy of the list of identified insurer participants.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice under a schedule or by a date established by the Commission.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INSURERS.—Not later than 120 days after receipt of the information required by paragraph (2), the Commission shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information. An insurer participant's payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to insurer participants, the Commission shall publish in the Federal Register a notice listing the insurer participants that have been sent such notification, and the initial determination on the payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Commission.

(4) COMMISSION REVIEW, REVISION, AND FINALIZATION OF INITIAL PAYMENT DETERMINATIONS.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Commission, the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether payments from

that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Commission shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Commission may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Commission for purposes of determining participant payments.

(B) SUBPOENAS.—The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) ESCROW PAYMENTS.—Without regard to an insurer participant's payment obligation under this section, any escrow or similar account established before the date of enactment of this Act by an insurer participant in connection with an asbestos trust fund that has not been judicially confirmed by final order by the date of enactment of this Act shall be the property of the insurer participant and returned to that insurer participant.

(7) NOTICE TO INSURER PARTICIPANTS OF FINAL PAYMENT DETERMINATIONS.—Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(c) INSURER PARTICIPANTS VOLUNTARY ALLOCATION AGREEMENT.—

(1) IN GENERAL.—Not later than 30 days after the Commission proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, reinsurer participants licensed or domiciled in the United States, or other reinsurer participants, may submit an allocation agreement, approved by all of the participants in the applicable group, to the Commission.

(2) ALLOCATION AGREEMENT.—To the extent the participants in any such applicable group voluntarily agree upon an allocation arrangement, any such allocation agreement shall only govern the allocation of payments within that group and shall not determine the aggregate amount due from that group.

(3) CERTIFICATION.—The Commission shall determine whether an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle and, if so, shall certify the agreement as establishing the allocation methodology governing the individual payment obligations of the participants who are parties to the agreement. The authority of the Commission under this subtitle shall, with respect to participants who are parties to a certified allocation agreement, terminate on the day after the Commission certifies such agreement. Under subsection (f), the Administrator shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMISSION REPORT.—

(1) RECIPIENTS.—Until the work of the Commission has been completed and the Commission terminated, the Commission shall submit an annual report, containing the information described under paragraph (2), to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Administrator.

(2) CONTENTS.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

(e) INTERIM PAYMENTS.—

(1) AMOUNT OF INTERIM PAYMENT.—Within 90 days after the date of enactment of this Act, insurer participants shall make an aggregate payment to the Fund not to exceed 50 percent of the aggregate funding obligation specified under subsection (a)(3)(C) for year 1.

(2) RESERVE INFORMATION.—Within 30 days after the date of enactment of this Act, each insurer participant shall submit to the Administrator a certified statement of its net held reserves for asbestos liabilities as of December 31, 2004.

(3) ALLOCATION OF INTERIM PAYMENT.—The Administrator shall allocate the interim payment among the individual insurer participants on an equitable basis using the net held asbestos reserve information provided by insurer participants under subsection (a)(3)(B). Within 60 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register the name of each insurer participant, and the amount of the insurer participant's allocated share of the interim payment. The use of net held asbestos reserves as the basis to determine an interim allocation shall not be binding on the Administrator in the determination of an appropriate final allocation methodology under this section. All payments required under this paragraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Commission. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Administrator. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established under subsection (a)(3)(E).

(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) TRANSFER OF AUTHORITY FROM THE COMMISSION TO THE ADMINISTRATOR.—

(1) IN GENERAL.—Upon termination of the Commission under section 215, the Administrator shall assume all the responsibilities and authority of the Commission, except that the Administrator shall not have the power to modify the allocation methodology established by the Commission or by certified agreement or to promulgate a rule establishing any such methodology.

(2) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—Upon termination of the Commission under section 215, the Administrator shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating that it remains justified. Upon the grant of any adjustment, the Administrator shall increase the payments, consistent with subsection (a)(1)(B), required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant's required payment shall be in proportion to such participant's share of the aggregate payment obligation of all insurer participants.

(3) CREDITS FOR SHORTFALL ASSESSMENTS.—If insurer participants are required during the first 5 years of the life of the Fund to make up any shortfall in required insurer payments under subsection (a)(1)(B), then, beginning in year 6, the Administrator shall grant each insurer participant a credit against its annual required payments during the applicable years that in the aggregate equal the amount of shortfall assessments paid by such insurer participant during the first 5 years of the life of the Fund. The credit shall be prorated over the same number of years as the number of years during which the insurer participant paid a shortfall assessment. Insurer participants which did not pay all required payments to the Fund during the first 5 years of the life of the Fund shall not be eligible for a credit. The Administrator shall not grant a credit for shortfall assessments imposed under section 405(f).

(4) FINANCIAL SECURITY REQUIREMENTS.—Whenever an insurer participant's A.M. Best's claims payment rating or Standard and Poor's financial strength rating falls below A−, and until such time as either the insurer participant's A.M. Best's Rating or Standard and Poor's rating is equal to or greater than A−, the Administrator shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Administrator; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best's claims payment rating or Standard & Poor's financial strength rating of at least A+.

(g) ACCOUNTING TREATMENT.—Insurer participants' payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each insurer participant. This subsection shall in no way reduce the amount of monetary payments to the Fund by insurer participants as required under subsection (a).

(h) JUDICIAL REVIEW.—The Commission's rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) RULEMAKING.—The Commission shall promulgate such rules and regulations as necessary to implement its authority under this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) HEARINGS.—The Commission may hold such 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 Act. The Commission shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Commission's adoption of a final regulation.

(c) INFORMATION FROM FEDERAL AND STATE AGENCIES.—The Commission may secure directly from any Federal or State department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(d) 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.

(e) GIFTS.—The Commission may not accept, use, or dispose of gifts or donations of services or property.

(f) EXPERT ADVICE.—In carrying out its responsibilities, the Commission may enter into such contracts and agreements as the Commission determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

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

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 90 days after the last date on which the Commission makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Commission is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMISSION.

All expenses of the Commission shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT.—There is established in the Office of Asbestos Disease Compensation the Asbestos Injury Claims Resolution Fund, which shall be available to pay—

(1) claims for awards for an eligible disease or condition determined under title I;

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b);

(4) the remaining obligations to the asbestos trust of a debtor and the class action trust under section 405(g)(8); and

(5) administrative expenses to carry out the provisions of this Act.

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The Administrator is authorized to borrow from time to time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Administrator may authorize borrowing in such form, over such term, with such necessary disclosure to its lenders as will most efficiently enhance the Fund's liquidity.

(3) BORROWING CAPACITY.—The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations of the Fund at the time of borrowing, can be repaid in full (with interest) in a timely fashion from—

(A) the available assets of the Fund as of the time of borrowing; and

(B) all amounts expected to be paid by participants during the subsequent 2 years.

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection shall be repaid in full by the Fund contributors and is limited solely to amounts available, present or future, in the Fund.

(c) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY CLAIMANTS.—

(1) IN GENERAL.—Within the Fund, the Administrator shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IX.

(B) A Lung Cancer Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level VIII.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level V.

(D) A Moderate Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IV.

(2) ALLOCATION.—The Administrator shall allocate to each of the 4 accounts established under paragraph (1) a portion of payments made to the Fund adequate to compensate all anticipated claimants for each account. Within 60 days after the date of enactment of this Act, and periodically during the life of the Fund, the Administrator shall determine an appropriate amount to allocate to each account after consulting appropriate epidemiological and statistical studies.

(d) AUDIT AUTHORITY.—

(1) IN GENERAL.—For the purpose of ascertaining the correctness of any information provided or payments made to the Fund, or determining whether a person who has not made a payment to the Fund was required to do so, or determining the liability of any person for a payment to the Fund, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of this title, the Administrator is authorized—

(A) to examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(B) to summon the person liable for a payment under this title, or officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable or any other person the Administrator may deem proper, to appear before the Administrator at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(C) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(2) FALSE, FRAUDULENT, OR FICTITIOUS STATEMENTS OR PRACTICES.—If the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Administrator or to the Asbestos Insurers Commission or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Administrator may impose a civil penalty not to exceed $10,000 on any person found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall promulgate appropriate regulations to implement this paragraph.

(e) IDENTITY OF CERTAIN DEFENDANT PARTICIPANTS; TRANSPARENCY.—

(1) SUBMISSION OF INFORMATION.—Not later than 60 days after the date of enactment of this Act, any person who, acting in good faith, has knowledge that such person or such person's affiliated group has prior asbestos expenditures of $1,000,000 or greater, shall submit to the Administrator—

(A) either the name of such person, or such person's ultimate parent; and

(B) the likely tier to which such person or affiliated group may be assigned under this Act.

(2) PUBLICATION.—Not later than 20 days after the end of the 60-day period referred to in paragraph (1), the Administrator or Interim Administrator, if the Administrator is not yet appointed, shall publish in the Federal Register a list of submissions required by this subsection, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person who, acting in good faith, has knowledge that any other person has prior asbestos expenditures of $1,000,000 or greater may submit to the Administrator or Interim Administrator information on the identity of that person and the person's prior asbestos expenditures.

(f) NO PRIVATE RIGHT OF ACTION.—Except as provided in sections 203(b)(2)(D)(ii) and 204(g)(3), there shall be no private right of action under any Federal or State law against any participant based on a claim of compliance or noncompliance with this Act or the involvement of any participant in the enactment of this Act.

SEC. 222. MANAGEMENT OF THE FUND.

(a) IN GENERAL.—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries and to otherwise defray the reasonable expenses of administering the Fund.

(b) INVESTMENTS.—

(1) IN GENERAL.—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(2) STRATEGY.—The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action—

(A) the size of the Fund;

(B) the nature and estimated duration of the Fund;

(C) the liquidity and distribution requirements of the Fund;

(D) general economic conditions at the time of the investment;

(E) the possible effect of inflation or deflation on Fund assets;

(F) the role that each investment or course of action plays with respect to the overall assets of the Fund;

(G) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and

(H) the needs of asbestos claimants for current and future distributions authorized under this Act.

(d) BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Administrator shall provide a credit toward the aggregate payment obligations under sections 202(a)(2) and 212(a)(2)(A) for assets received by the Fund from any bankruptcy trust established under a plan of reorganization confirmed and substantially consummated after July 31, 2004.

(2) ALLOCATION OF CREDITS.—The Administrator shall allocate, for each such bankruptcy trust, the credits for such assets between the defendant and insurer aggregate payment obligations as follows:

(A) DEFENDANT PARTICIPANTS.—The aggregate amount that all persons other than insurers contributing to the bankruptcy trust would have been required to pay as Tier I defendants under section 203(b) if the plan of reorganization under which the bankruptcy trust was established had not been confirmed and substantially consummated and the proceeding under chapter 11 of title 11, United States Code, that resulted in the establishment of the bankruptcy trust had remained pending as of the date of enactment of this Act.

(B) INSURER PARTICIPANTS.—The aggregate amount of all credits to which insurers are entitled to under section 202(c)(4)(A) of the Act.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Administrator, after demand and a 30-day opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code. The United States Bankruptcy Court shall have jurisdiction over any issue or controversy regarding lien priority and lien perfection arising in a bankruptcy case due to a lien imposed under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there has been a refusal or failure to pay any liability imposed under this Act, including a refusal or failure to provide the information required under section 204 needed to determine liability, the Administrator may bring a civil action in any appropriate United States District Court, or any other appropriate lawsuit or proceeding outside of the United States—

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest to the payment of such liability;

(C) for temporary, preliminary, or permanent relief; or

(D) to enforce a subpoena issued under section 204(i)(9) to compel the production of documents necessary to determine liability.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Administrator may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney's fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (c), the Administrator may seek to recover amounts in satisfaction of a payment not timely paid by an insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Administrator shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Administrator may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.

(3) RECOVERABILITY OF CONTRIBUTION.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Administrator is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) NO CREDIT OR OFFSET.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) COOPERATION.—Insureds and cedents shall cooperate with the Administrator's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Administrator in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Administrator shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) BAR ON UNITED STATES BUSINESS.—If any direct insurer or reinsurer refuses to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator shall issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. If any direct insurer or reinsurer refuses to furnish any information requested by the Administrator, the Administrator may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred from obtaining any such license until payment of all contributions required as of the date of license application.

(f) CREDIT FOR REINSURANCE.—If the Administrator determines that an insurer participant that is a reinsurer is in default in paying any required contribution or otherwise not in compliance with this Act, the Administrator may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer after the date of the Administrator's determination of default. Any State law governing credit for reinsurance to the contrary is preempted.

(g) DEFENSE LIMITATION.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Administrator or the Asbestos Insurers Commission regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(j)(10), or in a judicial review proceeding under section 303.

(h) DEPOSIT OF FUNDS.—

(1) IN GENERAL.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.

(2) NO EFFECT ON OTHER LIABILITIES.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking ''or'' at the end;

(2) in paragraph (5), by striking ''prohibition.'' and inserting ''prohibition; or''; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

''(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(j) PROPOSED TRANSACTIONS.—

(1) NOTICE OF PROPOSED TRANSACTION.—Any participant that has taken any action to effectuate a proposed transaction or a proposed series of transactions under which a significant portion of such participant's assets, properties or business will, if consummated as proposed, be, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such proposed transaction (or proposed series of transactions). Upon the request of such participant, and for so long as the participant shall not publicly disclose the transaction or series of transactions and the Administrator shall not commence any action under paragraph (6), the Administrator shall treat any such notice as confidential commercial information under section 552 of title 5, United States Code.

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days before the date of consummation of the proposed transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business are being transferred in the proposed transaction (or proposed series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or

(ii) the proposed transaction (or proposed series of transactions) would, if consummated, be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person will or has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it will or has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term ''significant portion of the assets, properties or business of a participant'' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(g)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) CONSUMMATION OF TRANSACTION.—Any proposed transaction (or proposed series of transactions) with respect to which a participant is required to provide notice under paragraph (1) may not be consummated until at least 30 days after delivery to the Administrator of such notice, unless the Administrator shall earlier terminate the notice period. The Administrator shall endeavor whenever possible to terminate a notice period at the earliest practicable time.

(6) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant proposes to engage or has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status or potential status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person will or has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person will not or has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person will or has become a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(7) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing and content of notices.

SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.

If any amount of payment obligation under this title is not paid on or before the last date prescribed for payment, the liable party shall pay interest on such amount at the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code of 1986, plus 5 percentage points, for the period from such last date to the date paid.

SEC. 225. EDUCATION, CONSULTATION, SCREENING, AND MONITORING.

(a) IN GENERAL.—The Administrator shall establish a program for the education, consultation, medical screening, and medical monitoring of persons with exposure to asbestos. The program shall be funded by the Fund.

(b) OUTREACH AND EDUCATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall establish an outreach and education program, including a website designed to provide information about asbestos-related medical conditions to members of populations at risk of developing such conditions.

(2) INFORMATION.—The information provided under paragraph (1) shall include information about—

(A) the signs and symptoms of asbestos-related medical conditions;

(B) the value of appropriate medical screening programs; and

(C) actions that the individuals can take to reduce their future health risks related to asbestos exposure.

(3) CONTRACTS.—Preference in any contract under this subsection shall be given to providers that are existing nonprofit organizations with a history and experience of providing occupational health outreach and educational programs for individuals exposed to asbestos.

(c) MEDICAL SCREENING PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—Not sooner than 18 months or later than 24 months after the Administrator certifies that the

Fund is fully operational and processing claims at a reasonable rate, the Administrator shall adopt guidelines establishing a medical screening program for individuals at high risk of asbestos-related disease resulting from an asbestos-related disease. In promulgating such guidelines, the Administrator shall consider the views of the Advisory Committee on Asbestos Disease Compensation, the Medical Advisory Committee, and the public.

(2) ELIGIBILITY CRITERIA.—

(A) IN GENERAL.—The guidelines promulgated under this subsection shall establish criteria for participation in the medical screening program.

(B) CONSIDERATIONS.—In promulgating eligibility criteria the Administrator shall take into consideration all factors relevant to the individual's effective cumulative exposure to asbestos, including—

(i) any industry in which the individual worked;

(ii) the individual's occupation and work setting;

(iii) the historical period in which exposure took place;

(iv) the duration of the exposure;

(v) the intensity and duration of non-occupational exposures;

(vi) the intensity and duration of exposure to risk levels of naturally occurring asbestos as defined by the Environmental Protection Agency; and

(vii) any other factors that the Administrator determines relevant.

(3) PROTOCOLS.—The guidelines developed under this subsection shall establish protocols for medical screening, which shall include—

(A) administration of a health evaluation and work history questionnaire;

(B) an evaluation of smoking history;

(C) a physical examination by a qualified physician with a doctor-patient relationship with the individual;

(D) a chest x-ray read by a certified B-reader as defined under section 121(a)(4); and

(E) pulmonary function testing as defined under section 121(a)(13).

(4) FREQUENCY.—The Administrator shall establish the frequency with which medical screening shall be provided or be made available to eligible individuals, which shall be not less than every 5 years.

(5) PROVISION OF SERVICES.—The Administrator shall provide medical screening to eligible individuals directly or by contract with another agency of the Federal Government, with State or local governments, or with private providers of medical services. The Administrator shall establish strict qualifications for the providers of such services, and shall periodically audit the providers of services under this subsection, to ensure their integrity, high degree of competence, and compliance with all applicable technical and professional standards. No provider of medical screening services may have earned more than 15 percent of their income from the provision of services of any kind in connection with asbestos litigation in any of the 3 years preceding the date of enactment of this Act. All contracts with providers of medical screening services under this subsection shall contain provisions for reimbursement of screening services at a reasonable rate and termination of such contracts for cause if the Administrator determines that the service provider fails to meet the qualifications established under this subsection.

(6) LIMITATION OF COMPENSATION FOR SERVICES.—The compensation required to be paid to a provider of medical screening services for such services furnished to an eligible individual shall be limited to the amount that would be reimbursed at the time of the furnishing of such services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for similar services if such services are covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(7) FUNDING; PERIODIC REVIEW.—

(A) FUNDING.—The Administrator shall make such funds available from the Fund to implement this section, with a minimum of $5,000,000 but not more than $10,000,000 each year in each of the 5 years following the effective date of the medical screening program. Notwithstanding the preceding sentence, the Administrator shall suspend the operation of the program or reduce its funding level if necessary to preserve the solvency of the Fund.

(B) REVIEW.—The Administrator may reduce the amount of funding below $5,000,000 each year if the program is fully implemented. The Administrator's first annual report under section 405 following the close of the 4th year of operation of the medical screening program shall include an analysis of the usage of the program, its cost and effectiveness, its medical value, and the need to continue that program for an additional 5-year period. The Administrator shall also recommend to Congress any improvements that may be required to make the program more effective, efficient, and economical, and shall recommend a funding level for the program for the 5 years following the period of initial funding referred to under subparagraph (A).

(d) LIMITATION.—In no event shall the total amount allocated to the medical screening program established under this subsection over the lifetime of the Fund exceed $100,000,000.

(e) MEDICAL MONITORING PROGRAM AND PROTOCOLS.—

(1) IN GENERAL.—The Administrator shall establish procedures for a medical monitoring program for persons exposed to asbestos who have been approved for level I compensation under section 131.

(2) PROCEDURES.—The procedures for medical monitoring shall include—

(A) specific medical tests to be provided to eligible individuals and the periodicity of those tests, which shall initially be provided every 3 years and include—

(i) administration of a health evaluation and work history questionnaire;

(ii) physical examinations, including blood pressure measurement, chest examination, and examination for clubbing;

(iii) AP and lateral chest x-ray; and

(iv) spirometry performed according to ATS standards;

(B) qualifications of medical providers who are to provide the tests required under subparagraph (A); and

(C) administrative provisions for reimbursement from the Fund of the costs of monitoring eligible claimants, including the costs associated with the visits of the claimants to physicians in connection with medical monitoring, and with the costs of performing and analyzing the tests.

(f) CONTRACTS.—The Administrator may enter into contracts with qualified program providers that would permit the program providers to undertake large-scale medical screening and medical monitoring programs by means of subcontracts with a network of medical providers, or other health providers.

(g) REVIEW.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Administrator shall review, and if necessary update, the protocols and procedures established under this section.

SEC. 226. NATIONAL MESOTHELIOMA RESEARCH AND TREATMENT PROGRAM.

(a) IN GENERAL.—There is established the National Mesothelioma Research and Treatment Program (referred to in this section as the ''Program'') to investigate and advance the detection, prevention, treatment, and cure of malignant mesothelioma.

(b) MESOTHELIOMA CENTERS.—

(1) IN GENERAL.—The Administrator shall make available $1,500,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015, for the establishment of each of 10 mesothelioma disease research and treatment centers.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, in consultation with the Medical Advisory Committee, shall conduct a competitive peer review process to select sites for the centers described in paragraph (1). The Director shall ensure that sites selected under this paragraph are—

(A) geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

(B) closely associated with Department of Veterans Affairs medical centers, in order to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

(C) engaged in exemplary laboratory and clinical mesothelioma research, including clinical trials, to provide mechanisms for effective therapeutic treatments, as well as detection and prevention, particularly in areas of palliation of disease symptoms and pain management;

(D) participants in the National Mesothelioma Registry and Tissue Bank under subsection (c) and the annual International Mesothelioma Symposium under subsection (d)(2)(E);

(E) with respect to research and treatment efforts, coordinated with other centers and institutions involved in exemplary mesothelioma research and treatment;

(F) able to facilitate transportation and lodging for mesothelioma patients, so as to enable patients to participate in the newest developing treatment protocols, and to enable the centers to recruit patients in numbers sufficient to conduct necessary clinical trials; and

(G) nonprofit hospitals, universities, or medical or research institutions incorporated or organized in the United States.

(c) MESOTHELIOMA REGISTRY AND TISSUE BANK.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, maintenance, and operation of a National Mesothelioma Registry to collect data regarding symptoms, pathology, evaluation, treatment, outcomes, and quality of life and a Tissue Bank to include the pre- and post-treatment blood (serum and blood cells) specimens as well as tissue specimens from biopsies and surgery. Not less than $500,000 of the amount made available under the preceding sentence in each fiscal year shall be allocated for the collection and maintenance of tissue specimens.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, with the advice and consent of the Medical Advisory Committee, shall conduct a competitive peer review process to select a site to administer the Registry and Tissue Bank described in paragraph (1). The Director shall ensure that the site selected under this paragraph—

(A) is available to all mesothelioma patients and qualifying physicians throughout the United States;

(B) is subject to all applicable medical and patient privacy laws and regulations;

(C) is carrying out activities to ensure that data is accessible via the Internet; and

(D) provides data and tissue samples to qualifying researchers and physicians who apply for such data in order to further the understanding, prevention, screening, diagnosis, or treatment of malignant mesothelioma.

(d) CENTER FOR MESOTHELIOMA EDUCATION.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, with the advice and consent of the Medical Advisory Committee, of a Center for Mesothelioma Education (referred to in this section as the ''Center'') to—

(A) promote mesothelioma awareness and education;

(B) assist mesothelioma patients and their family members in obtaining necessary information; and

(C) work with the centers established under subsection (b) in advancing mesothelioma research.

(2) ACTIVITIES.—The Center shall—

(A) educate the public about the new initiatives contained in this section through a National Mesothelioma Awareness Campaign;

(B) develop and maintain a Mesothelioma Educational Resource Center (referred to in this section as the ''MERCI''), that is accessible via the Internet, to provide mesothelioma patients, family members, and front-line physicians with comprehensive, current information on mesothelioma and its treatment, as well as on the existence of, and general claim procedures for the Asbestos Injury Claims Resolution Fund;

(C) through the MERCI and otherwise, educate mesothelioma patients, family members, and front-line physicians about, and encourage such individuals to participate in, the centers established under subsection (b), the Registry and the Tissue Bank;

(D) complement the research efforts of the centers established under subsection (b) by awarding competitive, peer-reviewed grants for the training of clinical specialist fellows in mesothelioma, and for highly innovative, experimental or pre-clinical research; and

(E) conduct an annual International Mesothelioma Symposium.

(3) REQUIREMENTS.—The Center shall—

(A) be a nonprofit corporation under section 501(c)(3) of the Internal Revenue Code of 1986;

(B) be a separate entity from and not an affiliate of any hospital, university, or medical or research institution; and

(C) demonstrate a history of program spending that is devoted specifically to the mission of extending the survival of current and future mesothelioma patients, including a history of soliciting, peer reviewing through a competitive process, and funding research grant applications relating to the detection, prevention, treatment, and cure of mesothelioma.

(4) CONTRACTS FOR OVERSIGHT.—The Director of the National Institutes of Health may enter into contracts with the Center for the selection and oversight of the centers established under subsection (b), or selection of the director of the Registry and the Tissue Bank under subsection (c) and oversight of the Registry and the Tissue Bank.

(e) REPORT AND RECOMMENDATIONS.—Not later than September 30, 2015, The Director of the National Institutes of Health shall, after opportunity for public comment and review, publish and provide to Congress a report and recommendations on the results achieved and information gained through the Program, including—

(1) information on the status of mesothelioma as a national health issue, including—

(A) annual United States incidence and death rate information and whether such rates are increasing or decreasing;

(B) the average prognosis; and

(C) the effectiveness of treatments and means of prevention;

(2) promising advances in mesothelioma treatment and research which could be further developed if the Program is reauthorized; and

(3) a summary of advances in mesothelioma treatment made in the 10-year period prior to the report and whether those advances would justify continuation of the Program and whether it should be reauthorized for an additional 10 years.

(f) SEVERABILITY.—If any provision of this Act, or amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act (including this section), the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g) REGULATIONS.—The Director of the National Institutes of Health shall promulgate regulations to provide for the implementation of this section.

TITLE III—JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review rules or regulations promulgated by the Administrator or the Asbestos Insurers Commission under this Act.

(b) PERIOD FOR FILING PETITION.—A petition for review under this section shall be filed not later than 60 days after the date notice of such promulgation appears in the Federal Register.

(c) EXPEDITED PROCEDURES.—The United States Court of Appeals for the District of Columbia shall provide for expedited procedures for reviews under this section.

SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.

(a) IN GENERAL.—Any claimant adversely affected or aggrieved by a final decision of the Administrator awarding or denying compensation under title I may petition for judicial review of such decision. Any petition for review under this section shall be filed within 90 days of the issuance of a final decision of the Administrator.

(b) EXCLUSIVE JURISDICTION.—A petition for review may only be filed in the United States Court of Appeals for the circuit in which the claimant resides at the time of the issuance of the final order.

(c) STANDARD OF REVIEW.—The court shall uphold the decision of the Administrator unless the court determines, upon review of the record as a whole, that the decision is not supported by substantial evidence, is contrary to law, or is not in accordance with procedure required by law.

(d) EXPEDITED PROCEDURES.—The United States Court of Appeals shall provide for expedited procedures for reviews under this section.

SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESSMENTS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the liability of any person to make a payment to the Fund, including a notice of applicable subtier assignment under section 204(j), a notice of financial hardship or inequity determination under section 204(e), a notice of a distributor's adjustment under section 204(n), and a notice of insurer participant obligation under section 212(b).

(b) PERIOD FOR FILING ACTION.—A petition for review under subsection (a) shall be filed not later than 60 days after a final determination by the Administrator or the Commission giving rise to the action. Any defendant participant who receives a notice of its applicable subtier under section 204(j), a notice of financial hardship or inequity determination under section 204(e), or a notice of a distributor's adjustment under section 204(n), shall commence any action within 30 days after a decision on rehearing under section 204(j)(10), and any insurer participant who receives a notice of a payment obligation under section 212(b) shall commence any action within 30 days after receiving such notice. The court shall give such action expedited consideration.

SEC. 304. OTHER JUDICIAL CHALLENGES.

(a) EXCLUSIVE JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action for declaratory or injunctive relief challenging any provision of this Act. An action under this section shall be filed not later than 60 days after the date of enactment of this Act or 60 days after the final action by the Administrator or the Commission giving rise to the action, whichever is later.

(b) DIRECT APPEAL.—A final decision in the action shall be reviewable on appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 30 days, and the filing of a jurisdictional statement within 60 days, of the entry of the final decision.

(c) EXPEDITED PROCEDURES.—It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL REVIEW.

(a) NO STAYS.—

(1) PAYMENTS.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(2) LEGAL CHALLENGES.—No court may issue a stay or injunction pending final judicial action, including the exhaustion of all appeals, on a legal challenge to this Act or any portion of this Act.

(b) EXCLUSIVITY OF REVIEW.—An action of the Administrator or the Asbestos Insurers Commission for which review could have been obtained under section 301, 302, or 303 shall not be subject to judicial review in any other proceeding.

(c) CONSTITUTIONAL REVIEW.—

(1) IN GENERAL.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality of any provision or application of this Act. The following rules shall apply:

(A) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(B) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a

jurisdictional statement within 30 days, after the entry of the final decision.

(C) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(2) REPAYMENT TO ASBESTOS TRUST AND CLASS ACTION TRUST.—If the transfer of the assets of any asbestos trust of a debtor or any class action trust (or this Act as a whole) is held to be unconstitutional or otherwise unlawful, the Fund shall transfer the remaining balance of such assets (determined under section 405(f)(1)(A)(iii)) back to the appropriate asbestos trust or class action trust within 90 days after final judicial action on the legal challenge, including the exhaustion of all appeals.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) NO AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2006, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).''.

(b) ASSUMPTION OF EXECUTORY CONTRACT.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.''.

(c) ALLOWED ADMINISTRATIVE EXPENSES.—Section 503 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

''(2) For purposes of paragraph (1), the term 'asbestos payment obligation' means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2006.''.

(d) NO DISCHARGE.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) of the debtor's payment obligations assessed against the participant under title II of that Act.''.

(e) PAYMENT.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) PARTICIPANT DEBTORS.—

''(1) IN GENERAL.—Paragraphs (2) and (3) shall apply to a debtor who—

''(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2006); and

''(B) is subject to a case under this title that is pending—

''(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(ii) at any time during the 1-year period preceding the date of enactment of that Act.

''(2) TIER I DEBTORS.—A debtor that has been assigned to Tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2006, shall make payments in accordance with sections 202 and 203 of that Act.

''(3) TREATMENT OF PAYMENT OBLIGATIONS.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2006 shall—

''(A) constitute costs and expenses of administration of a case under section 503 of this title;

''(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

''(C) not be stayed;

''(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

''(E) not be impaired or discharged in any current or future case under this title.''.

(f) TREATMENT OF TRUSTS.—Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(j) ASBESTOS TRUSTS.—

''(1) IN GENERAL.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as established under the Fairness in Asbestos Injury Resolution Act of 2006 if the trust qualifies as a 'trust' under section 201 of that Act.

''(2) TRANSFER OF TRUST ASSETS.—

''(A) IN GENERAL.—

''(i) Except as provided under clause (ii) of this subparagraph and subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) shall be transferred to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(ii) Notwithstanding clause (i), and except as provided under subparagraphs (B), (C), and (E), any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), other than a trust established under a reorganization plan subject to section 202(c) of that Act, shall transfer the assets in such trust to the Fund as follows:

''(I) In the case of a trust established on or before December 31, 2005, such trust shall transfer 90 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) In the case of a trust established after December 31, 2005, such trust shall transfer 88 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(iii) Not later than 90 days after the date on which the Administrator of the Office of Asbestos Disease Compensation (referred to in this section as the 'Administrator') certifies in accordance with section 106(f)(3)(E)(ii) of the Fairness in Asbestos Injury Resolution Act of 2006 that the Fund is fully operational and paying all valid asbestos claims at a reasonable rate, any trust transferring assets under clause (ii) shall transfer all remaining assets in such trust to the Fund. The transfer required by this clause shall not include any trust assets needed to pay—

''(I) previously incurred expenses; or

''(II) claims determined to be eligible for compensation under clause (vi).

''(iv) Except as provided under subparagraph (B), the Administrator of the Fund shall accept any assets transferred under clauses (ii) or (iii) and utilize them for any purposes for the Fund under section 221 of the Fairness in Asbestos Injury Resolution Act of 2006, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(v) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

''(vi) Any trust transferring assets under clause (ii) shall be subject to the following requirements:

''(I) The trust may continue to process asbestos claims, make eligibility determinations, and pay claims in a manner consistent with this clause if a claimant—

''(aa) has a pending asbestos claim as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(bb) provides to the trust a copy of a binding election submitted to Administrator waiving the right to secure compensation under section 106(f)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, unless the claimant is permitted under section 106(f)(2)(B) of such Act to seek a judgment or order for monetary damages from a Federal or State court;

''(cc) meets the requirements for compensation under the distribution plan for the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(dd) for any non-malignant condition satisfies the medical criteria under the distribution plan for the trust that is most nearly equivalent to the medical criteria described in section 121(d)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, except that, notwithstanding any provision of the distribution plan of the trust to the contrary, the trust shall not accept the results of a DLCO test (as such test is defined in section 121(a) of the Fairness in Asbestos Injury Resolution Act of 2006) for the purpose of demonstrating respiratory impairment; and

''(ee) for any of the cancers listed in section 121(d)(6) of the Fairness in Asbestos Injury Resolution Act of 2006 does not seek, and the trust does not pay, any compensation until such time as the Institute of Medicine finds that there is a causal relationship between asbestos exposure and such cancer, in which case such claims may be paid if such claims otherwise qualify for compensation under the distribution plan of the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) The trust shall not accept medical evidence from any physician, medical facility, or laboratory whose evidence would be not be accepted as evidence—

''(aa) under the Manville Trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(bb) by the Administrator under section 115(a)(2) of such Act.

''(III) The trust shall not amend its scheduled payment amount or payment percentage as in effect on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(IV) The trust shall not amend its eligibility criteria after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, except to conform any criteria in any category under the distribution plan of the trust with related criteria in a related category under section 121 of the Fairness in Asbestos Injury Resolution Act of 2006.

''(V) The trust shall notify the Administrator of the Fund of any claim determined to be eligible for compensation after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and the amount of any such compensation awarded to the claimant of such claim. The notification required by this subclause shall be made in such form as the Administrator shall require, and not later than 15 days after the date the determination is made.

''(VI) The trust shall not pay any claim without a certification by a claimant, subject to the penalties described in the Fairness in Asbestos Injury Resolution Act of 2006, stating the amount of collateral source compensation that such claimant has received, or is entitled to receive, under section 134 of the Fairness in Asbestos Injury Resolution Act of 2006. In the event that collateral source compensation exceeds the amount that a claimant would be paid in the category under that Act that is most nearly similar to the claimant's claim under the distribution plan of the trust, the aggregate value of the awards received by the claimant shall be reduced pro rata so that the claimant's total compensation does not exceed what would be paid for such a condition under the Fairness in Asbestos Injury Resolution Act of 2006, excluding any adjustments under section 131(b)(3) and (4) of that Act.

''(VII) Upon finding that the trust has breached any condition or conditions of this clause, the Administrator shall require the immediate payment of remaining trust assets into the Fund in accordance with section 402(f) of the Fairness in Asbestos Injury Resolution Act of 2006. The Administrator shall be entitled to an injunction against further payments of nonliquidated claims from the assets of the trust during the pendency of any dispute regarding the findings of noncompliance by the Administrator. The court in which any action to enforce the obligations of the trust is pending shall afford the action expedited consideration.

''(B) AUTHORITY TO REFUSE ASSETS.—The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

''(C) ALLOCATION OF TRUST ASSETS.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Administrator, or by clear and convincing evidence in a proceeding brought before the United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

''(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2006 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

''(E) LIQUIDATED CLAIMS.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

''(3) INJUNCTION.—

''(A) IN GENERAL.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2006, and an interlocutory order denying such relief shall not be subject to immediate appeal under section 1291(a) of title 28.

''(B) AVAILABILITY OF FUND ASSETS.—Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and such transfer shall no longer be subject to any appeal or review—

''(i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation; or

''(ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

''(4) JURISDICTION.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective application to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Administrator of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 304 of the Fairness in Asbestos Injury Resolution Act of 2006.

(g) NO AVOIDANCE OF TRANSFER.—Section 546 of title 11, United States Code, is amended by adding at the end the following:

''(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.''.

(h) CONFIRMATION OF PLAN.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.''.

(i) EFFECT ON INSURANCE RECEIVERSHIP PROCEEDINGS.—

(1) LIEN.—In an insurance receivership proceeding involving a direct insurer, reinsurer or runoff participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership and the perfected claims of the secured creditors. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) PAYMENT OF ASSESSMENT.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by a direct insurer, reinsurer or runoff participant in an insurance receivership proceeding be approved by a court, receiver or other person. Payments of assessments by any direct insurer or reinsurer participant under this Act shall not be subject to the avoidance powers of a receiver or a court in or relating to an insurance receivership proceeding.

(j) STANDING IN BANKRUPTCY PROCEEDINGS.—The Administrator shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Administrator to return property seized to satisfy obligations to the Fund.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any personal injury claim attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is

not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered a functional impairment that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such functional impairment; and

(ii) satisfies the requirements of paragraph (2).

(B) PREEMPTION.—Claims attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—

(A) IN GENERAL.—In any claim to which paragraph (1) applies, the initial pleading (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial, shall plead with particularity the elements of subparagraph (A)(i)(I) or (II) and shall be accompanied by the information described under subparagraph (B)(i) through (iv).

(B) PLEADINGS.—If the claim pleads the elements of paragraph (1)(A)(i)(II) and by the information described under clauses (i) through (iv) of this subparagraph if the claim pleads the elements of paragraph (1)(A)(i)(I)—

(i) admissible evidence, including at a minimum, a B-reader's report, the underlying x-ray film and such other evidence showing that the claim may be maintained and is not preempted under paragraph (1);

(ii) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(iii) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(iv) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3) and section 106(f), any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim, including a claim described under subsection (e)(2), that requires future performance by any party, insurer of such party, settlement administrator, or escrow agent shall be superseded in its entirety by this Act.

(2) NO FORCE OR EFFECT.—Except as provided under paragraph (3), any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any such agreement, understanding, or undertaking.

(3) EXCEPTION.—

(A) IN GENERAL.—Except as provided in section 202(f), nothing in this Act shall abrogate a binding and legally enforceable written settlement agreement between any defendant participant or its insurer and a specific named plaintiff with respect to the settlement of an asbestos claim of the plaintiff if—

(i) before the date of enactment of this Act, the settlement agreement was executed by—

(I) the authorized legal representative acting on behalf of the settling defendant or insurer, the settling defendant or the settling insurer; and

(II)(aa) the specific individual plaintiff, or the individual's immediate relatives; or

(bb) an authorized legal representative acting on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by that authorized legal representative;

(ii) the settlement agreement contains an express obligation by the settling defendant or settling insurer to make a future direct monetary payment or payments in a fixed amount or amounts to the individual plaintiff; and

(iii) within 30 days after the date of enactment of this Act, or such shorter time period specified in the settlement agreement, the plaintiff has fulfilled all conditions to payment under the settlement agreement.

(B) BANKRUPTCY-RELATED AGREEMENTS.—The exception set forth in this paragraph shall not apply to any bankruptcy-related agreement.

(C) COLLATERAL SOURCE.—Any settlement payment under this section is a collateral source if the plaintiff seeks recovery from the Fund.

(D) ABROGATION.—Nothing in subparagraph (A) shall abrogate a settlement agreement otherwise satisfying the requirements of that subparagraph if such settlement agreement expressly anticipates the enactment of this Act and provides for the effects of this Act.

(E) HEALTH CARE INSURANCE OR EXPENSES SETTLEMENTS.—Nothing in this Act shall abrogate or terminate an otherwise fully enforceable settlement agreement which was executed before the date of enactment of this Act directly by the settling defendant or the settling insurer and a specific named plaintiff to pay the health care insurance or health care expenses of the plaintiff.

(d) EXCLUSIVE REMEDY.—

(1) IN GENERAL.—Except as provided under section 524(j)(3) of title 11, United States Code, as amended by this Act, the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(e) BAR ON ASBESTOS CLAIMS.—

(1) IN GENERAL.—No asbestos claim (including any claim described in paragraph (2)) may be pursued, and no pending asbestos claim may be maintained, in any Federal or State court, except as provided under section 524(j)(3) of title 11, United States Code, as amended by this Act.

(2) CERTAIN SPECIFIED CLAIMS.—

(A) IN GENERAL.—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judgment only against insurers or in bankruptcy;

(ii) relating to the defense, investigation, handling, litigation, settlement, or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission, or failure to detect, disclose, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort, or otherwise; or

(iv) by any third party, and premised on any theory, allegation, or cause of action, for reimbursement of healthcare costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) EXCEPTIONS.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or

(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) PREEMPTION.—Any action asserting an asbestos claim (including a claim described in paragraph (2)) in any Federal or State court is preempted by this Act.

(4) DISMISSAL.—No judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(5) REMOVAL.—

(A) IN GENERAL.—If an action in any State court under paragraph (3) is preempted, barred, or otherwise precluded under this Act, and not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

(B) TIME LIMITS.—For actions originally filed after the date of enactment of this Act, the notice of removal shall be filed within the time limits specified in section 1441(b) of title 28, United States Code.

(C) PROCEDURES.—The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act.

(D) REVIEW OF REMAND ORDERS.—

(i) IN GENERAL.—Section 1447 of title 28, United States Code, shall apply to any removal of a case under this section, except that notwithstanding subsection (d) of that section, a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand an action to the State court from which it was removed if application is made to the court of appeals not less than 30 days after entry of the order.

(ii) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under clause (i), the court shall complete all action on such appeal, including rendering judgment, not later than 180 days after the date on which such appeal was filed, unless an extension is granted under clause (iii).

(iii) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 180-day period described in clause (ii) if—

(I) all parties to the proceeding agree to such extension, for any period of time; or

(II) such extension is for good cause shown and in the interests of justice, for a period not to exceed 30 days.

(iv) DENIAL OF APPEAL.—If a final judgment on the appeal under clause (i) is not issued before the end of the period described in clause (ii), including any extension under clause (iii), the appeal shall be denied.

(E) JURISDICTION.—The jurisdiction of the district court shall be limited to—

(i) determining whether removal was proper; and

(ii) determining, based on the evidentiary record, whether the claim presented is preempted, barred, or otherwise precluded under this Act.

(6) CREDITS.—

(A) IN GENERAL.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim is not barred under this subsection and is not subject to the exclusive remedy or preemption provisions of this section, then any participant required to satisfy a final judgment executed with respect to any such claim may elect to receive a credit against any assessment owed to the Fund equal to the amount of the payment made with respect to such executed judgment.

(B) REQUIREMENTS.—The Administrator shall require participants seeking credit under this paragraph to demonstrate that the participant—

(i) timely pursued all available remedies, including remedies available under this paragraph to obtain dismissal of the claim; and

(ii) notified the Administrator at least 20 days before the expiration of any period within which to appeal the denial of a motion to dismiss based on this section.

(C) INFORMATION.—The Administrator may require a participant seeking credit under this paragraph to furnish such further information as is necessary and appropriate to establish eligibility for, and the amount of, the credit.

(D) INTERVENTION.—The Administrator may intervene in any action in which a credit may be due under this paragraph.

SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CONTRACTS.

(a) EROSION OF INSURANCE COVERAGE LIMITS.—

(1) DEFINITIONS.—In this section, the following definitions shall apply:

(A) DEEMED EROSION AMOUNT.—The term ''deemed erosion amount'' means the amount of erosion deemed to occur at enactment under paragraph (2).

(C) EARNED EROSION AMOUNT.—The term ''earned erosion amount'' means the percentage, as set forth in the following schedule, depending on the year in which the defendant participants' funding obligations end, of those amounts which, at the time of the early sunset, a defendant participant has paid to the fund and remains obligated to pay into the fund.

Year After Enactment In Which Defendant Participant's Funding Obligation Ends:	Applicable Percentage:
2	67.06
3	86.72
4	96.55
5	102.45
6	90.12
7	81.32
8	74.71
9	69.58
10	65.47
11	62.11
12	59.31
13	56.94
14	54.90
15	53.14
16	51.60
17	50.24
18	49.03
19	47.95
20	46.98
21	46.10
22	45.30
23	44.57
24	43.90
25	43.28
26	42.71
27	42.18
28	40.82
29	39.42

(D) REMAINING AGGREGATE PRODUCTS LIMITS.—The term ''remaining aggregate products limits'' means aggregate limits that apply to insurance coverage granted under the ''products hazard'', ''completed operations hazard'', or ''Products—Completed Operations Liability'' in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and

(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

(E) SCHEDULED PAYMENT AMOUNTS.—The term ''scheduled payment amounts'' means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

(F) UNEARNED EROSION AMOUNT.—The term ''unearned erosion amount'' means the difference between the deemed erosion amount and the earned erosion amount.

(2) QUANTUM AND TIMING OF EROSION.—

(A) EROSION UPON ENACTMENT.—The collective payment obligations to the Fund of the insurer and reinsurer participants as assessed by the Administrator shall be deemed as of the date of enactment of this Act to erode remaining aggregate products limits available to a defendant participant only in an amount of 38.1 percent of each defendant participant's scheduled payment amount.

(B) NO ASSERTION OF CLAIM.—No insurer or reinsurer may assert any claim against a defendant participant or captive insurer for insurance, reinsurance, payment of a deductible, or retrospective premium adjustment arising out of that insurer's or reinsurer's payments to the Fund or the erosion deemed to occur under this section.

(C) POLICIES WITHOUT CERTAIN LIMITS OR WITH EXCLUSION.—Except as provided under subparagraph (E), nothing in this section shall require or permit the erosion of any insurance policy or limit that does not contain an aggregate products limit, or that contains an asbestos exclusion.

(D) TREATMENT OF CONSOLIDATION ELECTION.—If an affiliated group elects consolidation as provided in section 204(g), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed 38.1 percent of the scheduled payment amount of the single payment obligation for the entire affiliated group. The total erosion of limits for any individual defendant participant in the affiliated group shall not exceed its individual share of 38.1 percent of the affiliated group's scheduled payment amount, as measured by the individual defendant participant's percentage share of the affiliated group's prior asbestos expenditures.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, nothing in this Act shall be deemed to erode remaining aggregate products limits of a defendant participant that can demonstrate by a preponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the defendant participant (a ''premises defendant''). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant's products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—

(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants' policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant's right to seek coverage for asbestos claims under an insurer participant's policies, any remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).

(5) PAYMENTS BY DEFENDANT PARTICIPANT.—Payments made by a defendant participant shall be deemed to erode, exhaust, or otherwise satisfy applicable self-insured retentions, deductibles, retrospectively rated premiums, and limits issued by nonparticipating insolvent or captive insurance companies. Reduction of remaining aggregate limits under this subsection shall not limit the right of a defendant participant to collect from any insurer not a participant.

(6) EFFECT ON OTHER INSURANCE CLAIMS.—Other than as specified in this subsection, this Act does not alter, change, modify, or affect insurance for claims other than asbestos claims.

(b) DISPUTE RESOLUTION PROCEDURE.—

(1) ARBITRATION.—The parties to a dispute regarding the erosion of insurance coverage limits under this section may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except

for any grounds that exist at law or in equity for revocation of a contract.

(2) TITLE 9, UNITED STATES CODE.—Arbitration of such disputes, awards by arbitrators, and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the erosion principles provided for under this section shall be binding on the arbitrator, unless the parties agree to the contrary.

(3) FINAL AND BINDING AWARD.—An award by an arbitrator shall be final and binding between the parties to the arbitration, but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a policy which is the subject matter of an award is subsequently determined to be eroded in a manner different from the manner determined by the arbitration in a judgment rendered by a court of competent jurisdiction from which no appeal can or has been taken, such arbitration award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such modification shall govern the rights and obligations between such parties after the date of such modification.

(c) EFFECT ON NONPARTICIPANTS.—

(1) IN GENERAL.—No insurance company or reinsurance company that is not a participant, other than a captive insurer, shall be entitled to claim that payments to the Fund erode, exhaust, or otherwise limit the nonparticipant's insurance or reinsurance obligations.

(2) OTHER CLAIMS.—Nothing in this Act shall preclude a participant from pursuing any claim for insurance or reinsurance from any person that is not a participant other than a captive insurer.

(d) FINITE RISK POLICIES NOT AFFECTED.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, except subject to section 212(a)(1)(D), this Act shall not alter, affect or impair any rights or obligations of—

(A) any party to an insurance contract that expressly provides coverage for governmental charges or assessments imposed to replace insurance or reinsurance liabilities in effect on the date of enactment of this Act; or

(B) subject to paragraph (2), any person with respect to any insurance purchased by a participant after December 31, 1990, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as ''finite risk'' policies.

(2) LIMITATION.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides coverage for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims.

(e) EFFECT ON CERTAIN INSURANCE AND REINSURANCE CLAIMS.—

(1) NO COVERAGE FOR FUND ASSESSMENTS.—Subject to section 212(a)(1)(D), no participant or captive insurer may pursue an insurance or reinsurance claim against another participant or captive insurer for payments to the Fund required under this Act, except under a written agreement specifically providing insurance, reinsurance, or other reimbursement for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims or, where applicable, under finite risk policies under subsection (d).

(2) CERTAIN INSURANCE ASSIGNMENTS VOIDED.—Any assignment of any rights to insurance coverage for asbestos claims to any person who has asserted an asbestos claim before the date of enactment of this Act, or to any trust, person, or other entity not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims which were asserted before such date of enactment, or by any Tier I defendant participant shall be null and void. This subsection shall not void or affect in any way any assignments of rights to insurance coverage other than to asbestos claimants or to trusts, persons, or other entities not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims, or by Tier I defendant participants.

(3) INSURANCE CLAIMS PRESERVED.—Notwithstanding any other provision of this Act, this Act shall not alter, affect, or impair any rights or obligations of any person with respect to any insurance or reinsurance for amounts that any person pays, has paid, or becomes legally obligated to pay in respect of asbestos or other claims except to the extent that—

(A) such claims are preempted, barred, or superseded by section 403;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by paragraph (1) or (2) of subsection (e); or

(C) the limits of insurance otherwise available to such participant in respect of asbestos claims are deemed to be eroded under subsection (a).

SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR.

(a) IN GENERAL.—The Administrator shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the operation of the Asbestos Injury Claims Resolution Fund within 6 months after the close of each fiscal year.

(b) CONTENTS OF REPORT.—The annual report submitted under this subsection shall include an analysis of—

(1) the claims experience of the program during the most recent fiscal year, including—

(A) the number of claims made to the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims;

(B) the number of claims denied by the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and a general description of the reasons for their denial;

(C) a summary of the eligibility determinations made by the Office under section 114;

(D) a summary of the awards made from the Fund, including the amount of the awards; and

(E) for each disease level, a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which such claimants are entitled according to section 131;

(2) the administrative performance of the program, including—

(A) the performance of the program in meeting the time limits prescribed by law and an analysis of the reasons for any systemic delays;

(B) any backlogs of claims that may exist and an explanation of the reasons for such backlogs;

(C) the costs to the Fund of administering the program; and

(D) any other significant factors bearing on the efficiency of the program;

(3) the financial condition of the Fund, including—

(A) statements of the Fund's revenues, expenses, assets, and liabilities;

(B) the identity of all participants, the funding allocations of each participant, and the total amounts of all payments to the Fund;

(C) a list of all financial hardship or inequity adjustments applied for during the fiscal year, and the adjustments that were made during the fiscal year;

(D) a statement of the investments of the Fund; and

(E) a statement of the borrowings of the Fund;

(4) the financial prospects of the Fund, including—

(A) an estimate of the number and types of claims, the amount of awards, and the participant payment obligations for the next fiscal year;

(B) an analysis of the financial condition of the Fund, including an estimation of the Fund's ability to pay claims for the subsequent 5 years in full and over the predicted lifetime of the program as and when required, an evaluation of the Fund's ability to retire its existing debt and assume additional debt, and an evaluation of the Fund's ability to satisfy other obligations under the program; and

(C) a report on any changes in projections made in earlier annual reports or sunset analyses regarding the Fund's ability to meet its financial obligations;

(5) a summary of any legal actions brought or penalties imposed under section 223, any referrals made to law enforcement authorities under section 408 (a) and (b), and any contributions to the Fund collected under section 408(e);

(6) any recommendations from the Advisory Committee on Asbestos Disease Compensation and the Medical Advisory Committee of the Fund to improve the diagnostic, exposure, and medical criteria so as to pay those claimants who suffer from diseases or conditions for which exposure to asbestos was a substantial contributing factor;

(7) a summary of the results of audits conducted under section 115; and

(8) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(c) CERTIFICATION.—The Administrator shall certify in the annual report required under subsection (a) whether, in the best judgment of the Administrator, the Fund will have sufficient resources for the fiscal year in which the report is issued to make all required payments—

(1) with respect to all claims determined eligible for compensation that have been filed and that the Administrator projects will be filed with the Office for the fiscal year; and

(2) to satisfy the Fund's debt repayment obligation, administrative costs, and other financial obligations.

(d) CLAIMS ANALYSIS AND VERIFICATION OF UNANTICIPATED CLAIMS.—

(1) IN GENERAL.—If the Administrator concludes, on the basis of the annual report submitted under this section, that—

(A) the average number of claims that qualify for compensation under a claim level or designation exceeds 125 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims qualifying for compensation under the appropriate claim level or designation; or

(B) the average number of claims that qualify for compensation under a claim level or designation is less than 75 percent of the

number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims deemed ineligible for compensation under the appropriate claim level or designation.

(2) DETERMINATIONS.—The Administrator shall examine the best available medical evidence and any recommendation made under subsection (b)(5) in order to determine which 1 or more of the following is true:

(A) Without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(B) A significant number of claimants who qualified for compensation under the claim level or designation do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(C) A significant number of claimants who were denied compensation under the claim level of designation did suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(D) The Congressional Budget Office projections underestimated or overestimated the actual number of persons who suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(3) RECOMMENDATIONS CONCERNING CLAIMS CRITERIA.—If the Administrator determines that a significant number of the claimants who qualified for compensation under the claim level under review do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor, or that a significant number of the claimants who were denied compensation under the claim level under review suffered from an injury or disease for which exposure to asbestos was a substantial contributing factor, the Administrator shall recommend to Congress, under subsection (f), changes to the compensation criteria in order to ensure that the Fund provides compensation for injury or disease for which exposure to asbestos was a substantial contributing factor, but does not provide compensation to claimants who do not suffer from an injury or disease for which asbestos exposure was a substantial contributing factor.

(e) RECOMMENDATIONS OF ADMINISTRATOR AND ADVISORY COMMITTEE.—

(1) REFERRAL.—If the Administrator recommends changes to this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 (in this subsection referred to as the ''Advisory Committee'').

(2) ADVISORY COMMITTEE RECOMMENDATIONS.—The Advisory Committee shall hold expedited public hearings on the alternatives and recommendations of the Administrator and make its own recommendations for reform of the program under titles I and II.

(3) TRANSMITTAL TO CONGRESS.—Not later than 90 days after receiving the recommendations of the Administrator, the Advisory Committee shall transmit the recommendations of the Administrator and the recommendations of the Advisory Committee to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(f) SHORTFALL ANALYSIS.—

(1) IN GENERAL.—

(A) ANALYSIS.—If the Administrator concludes, at any time, that the Fund may not be able to pay claims as such claims become due at any time within the next 5 years and to satisfy its other obligations, the Administrator shall prepare an analysis of the reasons for the situation, an estimation of when the Fund will no longer be able to pay claims as such claims become due, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report may include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund. The Administrator shall submit such analysis to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. Any recommendations made by the Administrator for changes to the program shall, in addition, be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 for review.

(B) RANGE OF ALTERNATIVES.—The range of alternatives under subparagraph (A) may include—

(ii) reform of the program set forth in titles I and II of this Act (including changes in the diagnostic, exposure, or medical criteria, changes in the enforcement or application of those criteria, enhancement of enforcement authority, changes in the timing of payments, changes in contributions by defendant participants, insurer participants (or both such participants), or changes in award values); or

(iii) any measure that the Administrator considers appropriate.

(2) CONSIDERATIONS.—In formulating recommendations, the Administrator shall take into account the reasons for any shortfall, actual or projected, which may include—

(A) financial factors, including return on investments, borrowing capacity, interest rates, ability to collect contributions, and other relevant factors;

(B) the operation of the Fund generally, including administration of the claims processing, the ability of the Administrator to collect contributions from participants, potential problems of fraud, the adequacy of the criteria to rule out idiopathic mesothelioma, and inadequate flexibility to extend the timing of payments;

(C) the appropriateness of the diagnostic, exposure, and medical criteria, including the adequacy of the criteria to rule out idiopathic mesothelioma;

(D) the actual incidence of asbestos-related diseases, including mesothelioma, based on epidemiological studies and other relevant data;

(E) compensation of diseases with alternative causes; and

(F) other factors that the Administrator considers relevant.

(4) RESOLVED CLAIMS.—For purposes of this section, a claim shall be deemed resolved when the Administrator has determined the amount of the award due the claimant, and either the claimant has waived judicial review or the time for judicial review has expired.

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as creating a cause of action against the United States Government, any entity established under this Act, or any officer or employee of the United States Government or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act shall be construed to—

(1) create any obligation of funding from the United States Government, including any borrowing authorized under section 221(b)(2); or

(2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate.

SEC. 407. RULES OF CONSTRUCTION.

(a) LIBBY, MONTANA CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of Libby, Montana. The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(b) HEALTHCARE FROM PROVIDER OF CHOICE.—Nothing in this Act shall be construed to preclude any eligible claimant from receiving healthcare from the provider of their choice.

SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal, and distribution in commerce of asbestos-containing products, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) ASBESTOS AS AIR POLLUTANT.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator shall refer the matter in writing within 30 days after receiving that information and refer the matter to the Secretary of Labor or the appropriate State agency with authority to enforce occupational safety and health standards, for investigation for possible civil or criminal penalties under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.

(a) DENIAL, TERMINATION, OR ALTERATION OF HEALTH COVERAGE.—No health insurer offering a health plan may deny or terminate coverage, or in any way alter the terms of coverage, of any claimant or the beneficiary of a claimant, on account of the participation of the claimant or beneficiary in a medical monitoring program under this Act, or

as a result of any information discovered as a result of such medical monitoring.

(b) DEFINITIONS.—In this section:

(1) HEALTH INSURER.—The term ''health insurer'' means—

(A) an insurance company, healthcare service contractor, fraternal benefit organization, insurance agent, third-party administrator, insurance support organization, or other person subject to regulation under the laws related to health insurance of any State;

(B) a managed care organization; or

(C) an employee welfare benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) HEALTH PLAN.—The term ''health plan'' means—

(A) a group health plan (as such term is defined in section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167)), and a multiple employer welfare arrangement (as defined in section 3(4) of such Act) that provides health insurance coverage; or

(B) any contractual arrangement for the provision of a payment for healthcare, including any health insurance arrangement or any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organizing subscriber contract.

(c) CONFORMING AMENDMENTS.—

(1) ERISA.—Section 702(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)), is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

SA 2804. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 132, between lines 7 and 8, insert the following:

(c) REIMBURSEMENT FOR REASONABLE MEDICAL EXPENSES.—In addition to the award under subsection (b), an asbestos claimant with a claim for malignant Level IX shall receive reimbursement for reasonable medical expenses recommended by a qualified physician. The Administrator shall promulgate regulations governing the reimbursement of medical expenses under this subsection.

SA 2805. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. SUBSTANTIAL WEIGHTED EXPOSURE FOR EXPOSURE OCCURRING AFTER 1975.

Notwithstanding section 121(a)(16)(E), for purposes of the calculations to be made under subparagraphs (B), (C), and (D) of paragraph (16) of section 121, each year of asbestos exposure that occurred after 1975 shall be counted as ½ of its full value.

SA 2806. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. EXPOSURE PRESUMPTIONS.

Notwithstanding any other provision of this Act, any asbestos exposure that is a contributing factor in causing an asbestos-related disease, condition, or illness shall meet the exposure requirements for this Act.

SA 2807. Mr. REID submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. CONTINUANCE OF MESOTHELIOMA AND TERMINAL HEALTH CLAIMS.

(a) IN GENERAL.—Notwithstanding section 106(f)(2) or any other provision of this Act, each person who has filed a mesothelioma or terminal health claim before the date of enactment of this Act may continue their mesothelioma or terminal health claim in the court where the case was pending on the date of enactment of this Act. For mesothelioma or terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is not stayed and such claimants may continue their mesothelioma or terminal health claims where the case is filed.

SA 2808. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 41, between lines 7 and 8, insert the following:

(e) VETERANS AND DEFENSE EMPLOYEE HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures to provide for an expedited process to categorize, evaluate, and pay veterans and defense employee health claims. Such procedures shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of veterans and defense employee health claims.

(2) ELIGIBLE VETERANS HEALTH CLAIMS.—

(A) IN GENERAL.—A claim shall qualify for treatment as a veterans and defense employee health claim if the claimant—

(i) is living;

(ii) provides a diagnosis of an asbestos-related disease or condition meeting the requirements of section 121;

(iii) contracted such asbestos-related disease or condition during the claimant's service—

(I) in the Armed Forces of the United States;

(II) as an employee of the Department of Defense; or

(III) as an employee performing official duties relating to national defense matters; and

(iv) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(B) DEFINITION.—In this paragraph, the term ''employee'' has the same meaning as in section 2105 of title 5, United States Code.

(3) ADDITIONAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as veterans and defense employee health claims under this subsection.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of veterans and defense employee health claim, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, may enter into settlements with claimants. The processing and payment of any such claims shall be subject to regulations promulgated under this Act.

(5) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with a claims facility for the processing of claims (except for exceptional medical claims) in accordance with this title.

(6) RULES OF CONSTRUCTION.—

(A) NO RIGHT UNDER VETERANS' BENEFIT PROGRAM.—Nothing in this subsection shall be construed to provide any claimant with any claim, right, or cause of action for benefits under a veterans' benefit program.

(B) COLLATERAL SOURCE COMPENSATION.—In no case shall amounts or benefits received by a claimant under this subsection be deemed as collateral source compensation under this Act.

On page 41, line 8, strike ''(e)'' and insert ''(f)''.

On page 52, line 12, strike ''(f)'' and insert ''(g)''.

On page 318, line 5, strike ''(f)'' and insert ''(g)''.

On page 321, line 14, strike ''(f)'' and insert ''(g)''.

On page 322, line 24, strike ''(f)'' and insert ''(g)''.

On page 325, line 18, strike ''(f)'' and insert ''(g)''.

SA 2809. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 41, between lines 7 and 8, insert the following:

(e) VETERANS AND DEFENSE EMPLOYEE HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures to provide for an expedited process to categorize, evaluate, and pay veterans and defense employee health claims. Such procedures shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of veterans and defense employee health claims.

(2) ELIGIBLE VETERANS HEALTH CLAIMS.—

(A) IN GENERAL.—A claim shall qualify for treatment as a veterans and defense employee health claim if the claimant—

(i) is living;

(ii) provides a diagnosis of an asbestos-related disease or condition meeting the requirements of section 121;

(iii) contracted such asbestos-related disease or condition during the claimant's service—

(I) in the Armed Forces of the United States;

(II) as an employee of the Department of Defense; or

(III) as an employee performing official duties relating to national defense matters; and

(iv) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(B) DEFINITION.—In this paragraph, the term ''employee'' has the same meaning as in section 2105 of title 5, United States Code.

(3) ADDITIONAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as veterans and defense employee health claims under this subsection.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of veterans and defense employee health claim, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, may enter into settlements with claimants. The processing and payment of any such claims shall be subject to regulations promulgated under this Act.

(5) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with a claims facility for the processing of claims (except for exceptional medical claims) in accordance with this title.

(6) RULES OF CONSTRUCTION.—

(A) NO RIGHT UNDER VETERANS' BENEFIT PROGRAM.—Nothing in this subsection shall be construed to provide any claimant with any claim, right, or cause of action for benefits under a veterans' benefit program.

(B) COLLATERAL SOURCE COMPENSATION.—In no case shall amounts or benefits received by a claimant under this subsection be deemed as collateral source compensation under this Act.

On page 41, line 8, strike ''(e)'' and insert ''(f)''.

On page 52, line 12, strike ''(f)'' and insert ''(g)''.

On page 318, line 5, strike ''(f)'' and insert ''(g)''.

On page 321, line 14, strike ''(f)'' and insert ''(g)''.

On page 322, line 24, strike ''(f)'' and insert ''(g)''.

On page 325, line 18, strike ''(f)'' and insert ''(g)''.

SA 2810. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, line 10, strike ''personal injury claim'' and insert ''civil action in Federal or State court seeking damages for personal injury''.

On page 315, line 25 and page 316, line 1, strike ''a functional impairment'' and insert ''from a disease or condition''.

On page 316, line 5, strike ''functional impairment'' and insert ''disease or condition''.

On page 316, line 7, strike ''(2) .'' and insert ''(2).''.

On page 316, line 18, strike ''Claims'' and insert ''Civil actions seeking damages for personal injury''.

On page 316, line 14, strike ''initial pleading'' and insert ''complaint''.

On page 316, line 18, strike the comma and insert a parenthesis.

On page 316, line 8, strike ''plead with'' and all that follows through ''shall'' on line 20.

On page 316, line 20, strike ''the information'' and all that follows through the end of page 317, line 2.

On page 317, line 4, strike ''report,'' and insert ''report, and''.

On page 317, line 5, strike ''and such other evidence''.

On page 318, between lines 2 and 3, insert the following:

(4) DUAL INJURY.—If an exposed person has both a silica disease or conditions resulting from exposure to silica and a disease or condition resulting from exposure to asbestos, any damages awarded for a claim that meets the requirements of paragraph (2)(A)—

(A) shall be limited to damages attributable to the exposed person's exposure to silica; and

(B) shall not include damages attributable to the exposed person's exposure to asbestos.

SA 2811. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 135, between lines 12 and 13, insert the following:

(c) REIMBURSEMENT FOR REASONABLE MEDICAL EXPENSES.—In addition to the award under subsection (b), an asbestos claimant with a claim for malignant Level IX shall receive reimbursement for reasonable medical expenses recommended by a qualified physician. The Administrator shall promulgate regulations governing the reimbursement of medical expenses under this subsection.

SA 2812. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. CONTINUANCE OF TERMINAL HEALTH CLAIMS.

(a) IN GENERAL.—Nothwithstanding section 106(f)(2) or any other provision of this Act, any individual who has filed a terminal health claim before the date of enactment of this Act may continue that terminal health claim in the court where the case was pending on the date of enactment of this Act. For terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is not stayed and such claimants may continue the terminal health claims where the case is filed.

SA 2813. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 52, line 15, insert ''an exigent health claim to which section 106(f)(2) applies or'' after ''than''.

On page 52, line 16, insert ''or an exigent health claim'' after ''applies''.

On page 53, line 22, strike all through line 25.

On page 60, lines 3 and 4, strike ''before the stay being lifted under subparagraph (B)''.

On page 64, lines 8 through 10, strike ''before the stay being lifted under subparagraph (B)''.

On page 64, line 16, beginning with ''Fund'' strike all through ''the'' on line 18, and insert ''Fund. The''.

On page 64, line 24, strike all through page 65, line 11, and insert the following:

(B) CONTINUANCE OF CLAIMS.—Each person who has filed an exigent health claim before the date of enactment of this Act may continue their exigent health claim in the court where the case was pending on the date of enactment of this Act. For exigent health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is not stayed and such claimants may continue their exigent health claims where the case is filed.

SA 2814. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 73, line 7, strike ''IX'' and insert ''X''.

On page 78, line 23, strike ''or''.

On page 78, line 24, insert after the comma ''or Malignant Level IX''.

On page 88, line 8, strike ''or Malignant Level VIII'' and insert ''Malignant Level VIII, or Malignant Level IX''.

On page 89, line 18, strike ''VII or VIII'' and insert ''Level VIII, or Level IX''.

On page 90, line 1, strike ''VII or VIII'' and insert ''Level VIII, or Level IX''

On page 98, line 17, strike ''IX'' and insert ''X''.

On page 99, line 3, strike ''IX'' and insert ''X''.

On page 102, line 2, strike ''IX'' and insert ''X''.

On page 111, between lines 2 and 3, insert the following:

(7) MALIGNANT LEVEL VII.—

(A) IN GENERAL.—To receive Level VII compensation a claimant shall provide—

(i) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii) evidence of 15 or more weighted years of substantial occupational exposure to asbestos; and

(iii) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

(B) PHYSICIANS PANEL.—All claims filed relating to Level VII under this paragraph

shall be referred to a Physicians Panel for a determination on the amount of award. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

On page 111, strike lines 3 and 4, and insert the following:

(8) MALIGNANT LEVEL VIII.—

(A) IN GENERAL.—To receive Level VIII

On page 112, line 2, strike ''Level VII'' and insert ''Level VIII''.

On page 112, strike lines 15 and 16, and insert the following:

(9) MALIGNANT LEVEL IX.—

(A) IN GENERAL.—To receive Level IX

On page 114, line 13, strike ''Level VIII'' and insert ''Level IX''.

On page 115, strike lines 1 and 2, and insert the following:

(10) MALIGNANT LEVEL X.—To receive Level X compensation, a claimant shall provide—

On page 126, beginning with the matter following line 20, strike all through the matter on page 127 before line 1 and insert the following:

Level	Scheduled Condition or Disease.	Scheduled Value
I	Asbestosis/Pleural Disease A.	Medical Monitoring
II	Mixed Disease With Impairment.	$32,000
III	Asbestosis/Pleural Disease B.	$100,000
IV	Severe Asbestosis	$400,000
V	Disabling Asbestosis	$850,000
VI	Other Cancer	$200,000
VII	Lung Cancer One	individual evaluation; smokers, $75,000; ex-smokers, $200,000; non-smokers, $625,000
VIII	Lung Cancer With Pleural Disease.	smokers, $300,000; ex-smokers, $725,000; non-smokers, $800,000
IX	Lung Cancer With Asbestosis.	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
X	Mesothelioma	$1,100,000

On page 127, line 13, strike ''IX'' and insert ''X''.

On page 127, line 18, strike ''IX'' and insert ''X''.

On page 128, line 1, strike ''IX'' and insert ''X''.

On page 128, line 3, strike ''IX'' and insert ''X''.

On page 141, line 26, strike ''IX'' and insert ''X''.

On page 250, line 10, strike ''IX'' and insert ''X''.

On page 250, line 14, strike ''VIII'' and insert ''IX''.

On page 361, line 24, strike ''VIII'' and insert ''IX''.

SA 2815. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 52, line 16, insert ''or (3)'' after ''section 403(d)(2)''.

On page 321, line 14, strike ''paragraph (2),'' and insert ''paragraphs (2) and (3),''.

On page 322, between lines 14 and 15, insert the following:

(3) ASBESTOS CLAIMS BY CERTAIN LUNG CANCER VICTIMS.—This Act shall not apply to any asbestos claim brought by a person with lung cancer who had substantial exposure to asbestos but is not eligible for compensation from the Fund. Notwithstanding any other provision of this Act, a civil action for such asbestos claims may be pursued in Federal or State court alleging that asbestos exposure was a cause of the lung cancer.

SA 2816. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 41, line 21, strike ''substantial''.

On page 72, line 22, strike ''substantial''.

On page 105, line 23, strike ''substantial''.

On page 107, line 2, strike ''substantial''.

On page 108, line 2, strike ''substantial''.

On page 109, line 9, strike ''substantial''.

On page 110, line 6, strike ''substantial''.

On page 110, lines 12 and 13, strike ''substantial''.

On page 111, line 23, strike ''substantial''.

On page 114, line 8, strike ''substantial''.

On page 116, line 15, strike ''substantial''.

On page 116, line 18, strike ''substantial''.

On page 123, lines 6 and 7, strike ''substantial''.

On page 316, line 4, strike ''substantial''.

On page 347, line 3, strike ''substantial''.

On page 349, line 12, strike ''substantial''.

On page 349, lines 17 and 18, strike ''substantial''.

On page 349, lines 22 and 23, strike ''substantial''.

On page 350, lines 2 and 3, strike ''substantial''.

On page 350, line 9, strike ''substantial''.

On page 350, line 13, strike ''substantial''.

On page 350, line 18, strike ''substantial''.

On page 350, line 21, strike ''substantial''.

SA 2817. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 132, between lines 7 and 8, insert the following:

(c) REIMBURSEMENT FOR REASONABLE MEDICAL EXPENSES.—In addition to the award under subsection (b), an asbestos claimant with a claim for malignant Level IX shall receive reimbursement for reasonable medical expenses recommended by a qualified physician. The Administrator shall promulgate regulations governing the reimbursement of medical expenses under this subsection.

SA 2818. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 321, strike line 6 and all that follows through page 322, line 13, and insert the following:

(1) IN GENERAL.—Except as provided under paragraphs (2) and (3) and section 106(f) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act, the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(2) CIVIL ACTIONS AT TRIAL.—

(A) IN GENERAL.—This Act shall not apply to any asbestos claim that—

(i) is a civil action filed in a Federal or State court (not including a filing in a bankruptcy court);

(ii) is not part of a consolidation of actions or a class action; and

(iii) on the date of enactment of this Act—

(I) in the case of a civil action which includes a jury trial, is before the jury after its impaneling and commencement of presentation of evidence, but before its deliberations;

(II) in the case of a civil action which includes a trial in which a judge is the trier of fact, is at the presentation of evidence at trial; or

(III) with respect to which a verdict, final order, or final judgment has been entered by a trial court.

(B) NONAPPLICABILITY.—This Act shall not apply to a civil action described under subparagraph (A) throughout the final disposition of the action.

(3) ASBESTOS CLAIMS BY CERTAIN LUNG CANCER VICTIMS.—

(A) IN GENERAL.—This Act shall not apply to any asbestos claim brought by a person with lung cancer who had substantial exposure to asbestos but is not eligible for compensation from the Fund. Notwithstanding any other provision of this Act, a civil action for such asbestos claims may be pursued in Federal or State court alleging that asbestos exposure was a cause of the lung cancer.

(B) RELATION TO STAYS.—Notwithstanding any other provision of this Act, section 106(f)(1) shall not apply to a claim described in subparagraph (A).

SA 2819. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, strike line 1 and all that follows through page 318, line 2, and insert the following:

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any civil action in Federal or State court seeking damages for personal injury attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and

the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered from a disease or condition that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such disease or condition; and

(ii) satisfies the requirements of paragraph (2).

(B) PREEMPTION.—Civil actions seeking damages for personal injury attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—In any claim to which paragraph (1) applies, the complaint (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial) shall be accompanied by—

(A) admissible evidence, including at a minimum, a B-reader's report, and the underlying x-ray film showing that the claim may be maintained and is not preempted under paragraph (1);

(B) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(C) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(D) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(4) DUAL INJURY.—If an exposed person has both a silica disease or conditions resulting from exposure to silica and a disease or condition resulting from exposure to asbestos, any damages awarded for a claim that meets the requirements of paragraph (2)—

(A) shall be limited to damages attributable to the exposed person's exposure to silica; and

(B) shall not include damages attributable to the exposed person's exposure to asbestos.

SA 2820. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 130, add after line 21 the following:

Subtitle E—Controlling Level and Awards Provisions

SEC. 141. LEVEL AND AWARDS PROVISIONS.

(a) REFERENCES TO LEVELS.—Notwithstanding any other provision of this Act, any reference to Level VII, VIII, or IX in this Act (other than this subtitle) shall be deemed a reference to Level VIII, IX, or X, respectively, as provided under this subtitle.

(b) MALIGNANT LEVEL VII.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, to receive Level VII compensation a claimant shall provide—

(A) a diagnosis of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(B) evidence of 15 or more weighted years of substantial occupational exposure to asbestos; and

(C) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the lung cancer in question.

(2) PHYSICIANS PANEL.—Notwithstanding any other provision of this Act, all claims filed relating to Level VII under this paragraph shall be referred to a Physicians Panel for a determination on the amount of award. In making its determination under this subparagraph, the Physicians Panel shall consider the intensity and duration of exposure, smoking history, and the quality of evidence relating to exposure and smoking. Claimants shall bear the burden of producing meaningful and credible evidence of their smoking history as part of their claim submission.

(c) AWARDS.—Notwithstanding section 131 of this Act (or any other provision of this Act) the benefits table under subsection (b)(1) of that section shall be administered as follows:

Level	Scheduled condition or disease	Scheduled value
I	Asbestosis/Pleural Disease A	Medical Monitoring
II	Mixed Disease With Impairment	$32,000
III	Asbestosis/Pleural Disease B	$100,000
IV	Severe Asbestosis	$400,000
V	Disabling Asbestosis	$850,000
VI	Other Cancer	$200,000
VII	Lung Cancer One	individual evaluation; smokers, $75,000; ex-smokers, $200,000; non-smokers, $625,000
VIII	Lung Cancer With Pleural Disease	smokers, $300,000; ex-smokers, $725,000; non-smokers, $800,000
IX	Lung Cancer With Asbestosis	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
X	Mesothelioma	$1,100,000

SA 2821. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. CONTINUANCE OF TERMINAL HEALTH CLAIMS.

Nothwithstanding section 106(f)(2) or any other provision of this Act, any individual who has filed a terminal health claim before the date of enactment of this Act may continue that terminal health claim in the court where the case was pending on the date of enactment of this Act. For terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under section 106(f)(2), the pending claim is not stayed and such claimants may continue the terminal health claims where the case is filed.

SA 2822. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. EXPOSURE PRESUMPTIONS.

Notwithstanding any other provision of this Act, any asbestos exposure that is a contributing factor in causing an asbestos-related disease, condition, or illness shall meet the exposure requirements for this Act.

SA 2823. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 98, strike lines 6 through 17, and insert the following:

(4) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE MINING AND PROCESSING COMMUNITIES.—

(A) IN GENERAL.—Because of the nature of asbestos exposure related to the vermiculite mining operations in Libby, Montana, and the vermiculite processing operations associated with such mining operations, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked—

(i) at the vermiculite mining operations in Libby, Montana, or lived or worked within a 20-mile radius of such mining operations, for at least 12 months before December 31, 2004; and

(ii) at sites processing vermiculite mined from mining operations in Libby, Montana; or

(iii) or lived within a 20 mile radius of a processing site described in clause (ii), for at least 12 months before December 31, 2004.

(B) REQUIRED DOCUMENTATION.—Claimants under this paragraph shall provide such supporting documentation as the Administrator shall require.

On page 118, strike line 6 and all that follows through page 120, line 4, and insert the following:

(8) VERMICULITE MINING AND PROCESSING CLAIMANTS.—

(A) IN GENERAL.—A vermiculite mining and processing claimant, as described under subsection (c)(4), may elect to have the claimant's claim designated as an exceptional medical claim and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by such a claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in vermiculite mining and processing operations, including the nature of the pleural disease related to asbestos exposure from such sites.

(B) CLAIMS.—For all claims for Levels II through IV filed by vermiculite mining and processing claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to such claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award determined in accordance with section 114, such claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by vermiculite mining and processing claimants, such claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

On page 366, strike lines 2 through 8, and insert the following:

(a) VERMICULITE MINING AND PROCESSING CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of vermiculite mining and processing communities, as described under section 121(c)(4). The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

On page 120, strike line 5 and all that follows through page 122, line 13.

SA 2824. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, add the following:

TITLE VI—PROTECTIVE ORDERS

SEC. 601. SHORT TITLE.

This title may be cited as the ''Sunshine in Litigation Act of 2006''.

SEC. 602. RESTRICTIONS ON PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS.

(a) IN GENERAL.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following:

''§ 1660. Restrictions on protective orders and sealing of cases and settlements

''(a) ORDERS RESTRICTING DISCLOSURE OF INFORMATION.—

''(1) IN GENERAL.—A court shall not enter an order under rule 26(c) of the Federal Rules of Civil Procedure restricting the disclosure of information obtained through discovery, an order approving a settlement agreement that would restrict the disclosure of such information, or an order restricting access to court records in a civil case unless the court finds—

''(A) that such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

''(B) that—

''(i) the public interest in the disclosure of potential health or safety hazards is outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

''(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

''(2) PERIOD OF EFFECT.—No order entered under paragraph (1), other than an order approving a settlement agreement, shall continue in effect after the entry of final judgment, unless at the time of, or after, such entry the court finds that the requirements of paragraph (1) have been met.

''(3) BURDEN OF PROOF.—The party who is the proponent for the entry of an order under paragraph (1) shall have the burden of proof in obtaining such an order.

''(4) NOT WAIVABLE.—This section shall apply if an order under paragraph (1) is requested—

''(A) by motion pursuant to rule 26(c) of the Federal Rules of Civil Procedure; or

''(B) by application pursuant to the stipulation of the parties.

''(5) EFFECT ON DISCOVERY.—

''(A) IN GENERAL.—The provisions of this section shall not constitute grounds for the withholding of information in discovery that is otherwise discoverable under rule 26 of the Federal Rules of Civil Procedure.

''(B) LIMIT ON REQUESTS.—No party shall request, as a condition for the production of discovery, that another party stipulate to an order that would violate this section.

''(b) DISCLOSURE TO GOVERNMENT AGENCIES.—

''(1) IN GENERAL.—A court shall not approve or enforce any provision of an agreement between or among parties to a civil action, or approve or enforce an order under subsection (a)(1), that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

''(2) SCOPE OF CONFIDENTIALITY.—Any such information disclosed to a Federal or State agency shall be confidential to the extent provided by law.

''(c) SETTLEMENTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a court shall not enforce any provision of a settlement agreement between or among parties that prohibits 1 or more parties from—

''(A) disclosing that a settlement was reached or the terms of such settlement, other than the amount of money paid; or

''(B) discussing a case, or evidence produced in the case, that involves matters related to public health or safety.

''(2) EXCEPTION.—Paragraph (1) shall not apply if the court finds that the public interest in the disclosure of potential health or safety hazards is outweighed by a specific and substantial interest in maintaining the confidentiality of the information.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1659 the following:

''1660. Restrictions on protective orders and sealing of cases and settlements.''.

SEC. 603. EFFECTIVE DATE.

The amendments made by this title shall—

(1) take effect 30 days after the date of enactment of this Act; and

(2) apply only to orders entered in civil actions or agreements entered into on or after the date described in paragraph (1).

SA 2825. Mr. SALAZAR submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. VETERANS AND DEFENSE EMPLOYEE HEALTH CLAIMS.

(a) IN GENERAL.—The Administrator shall develop procedures to provide for an expedited process to categorize, evaluate, and pay veterans and defense employee health claims. Such procedures shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of veterans and defense employee health claims.

(b) ELIGIBLE VETERANS HEALTH CLAIMS.—

(1) IN GENERAL.—A claim shall qualify for treatment as a veterans and defense employee health claim if the claimant—

(A) is living;

(B) provides a diagnosis of an asbestos-related disease or condition meeting the requirements of section 121;

(C) contracted such asbestos-related disease or condition during the claimant's service—

(i) in the Armed Forces of the United States;

(ii) as an employee of the Department of Defense; or

(iii) as an employee performing official duties relating to national defense matters; and

(D) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(2) DEFINITION.—In this paragraph, the term ''employee'' has the same meaning as in section 2105 of title 5, United States Code.

(c) ADDITIONAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as veterans and defense employee health claims under this subsection.

(d) CLAIMS FACILITY.—To facilitate the prompt payment of veterans and defense employee health claim, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, may enter into settlements with claimants. The processing and payment of any such claims shall be subject to regulations promulgated under this Act.

(e) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with a claims facility for the processing of claims (except for exceptional medical claims) in accordance with this title.

(f) RULES OF CONSTRUCTION.—

(1) NO RIGHT UNDER VETERANS' BENEFIT PROGRAM.—Nothing in this subsection shall be construed to provide any claimant with any claim, right, or cause of action for benefits under a veterans' benefit program.

(2) COLLATERAL SOURCE COMPENSATION.—In no case shall amounts or benefits received by a claimant under this subsection be deemed as collateral source compensation under this Act.

SA 2826. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 39, between lines 3 and 4, insert the following:

(C) CLAIMS FROM FORMER CIVIL ACTIONS.—

(i) IN GENERAL.—The Administrator may, in instances where the attorney or attorneys for the plaintiffs in a pending tort case have spent such a substantial amount of time and resources prior to April 19, 2005 that a 5% attorney fee limitation would be manifestly unfair, increase the attorney limitation fee.

SA 2827. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

If the consolidation of the existing asbestos trust funds into this trust fund is ruled unconstitutional by a final ruling of the U.S. Supreme Court, this bill shall be non-severable, unless Congress acts within six months to strike this provision.

SA 2828. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 85, after line 23, insert the following:

SEC. 116. OPT OUT PROVISION FOR CLAIMANTS AGAINST NONPARTICIPANT ENTITIES.

(a) DEFINITION.—In this section, the term ''covered claimant '' means any person who—

(1) may have contracted an asbestos-related disease or condition; and

(2) has filed, or is eligible to file, an asbestos claim under section 113 with the Fund; and

(3) except for the provisions of this Act, could file a civil action on that asbestos claim against any entity that is not a participant as defined under section 3.

(b) ELECTION.—Any covered claimant may—

(1) file an election with the Adminstrator to—

(A) withdraw the claim with the Fund; or

(B) provide notice to pursue the claim in a civil action instead of under title I; and

(2) file a civil action on that asbestos claim in an appropriate Federal or State court.

SA 2829. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 85, after line 23, insert the following:

SEC. 116. OPT OUT PROVISION FOR NATURALLY OCCURRING ASBESTOS CLAIMANTS.

(a) DEFINITION.—In this section, the term ''naturally occurring asbestos claimant '' means any person who—

(1) may have contracted an asbestos-related disease or condition caused by exposure to naturally occurring asbestos; and

(2) has filed, or is eligible to file, an asbestos claim under section 113 with the Fund; and

(3) except for the provisions of this Act, could file a civil action on that asbestos claim against any entity that is not a participant as defined under section 3.

(b) ELECTION.—Any naturally occurring asbestos claimant may—

(1) file an election with the Adminstrator to—

(A) withdraw the claim with the Fund; or

(B) provide notice to pursue the claim in a civil action instead of under title I; and

(2) file a civil action on that asbestos claim in an appropriate Federal or State court.

SA 2830. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES.

(a) IN GENERAL.—Because of the unique nature of asbestos exposure related to the processing operations of vermiculite ore, the Administrator shall waive the exposure requirements under subtitle II for an individual who worked at a vermiculite processing site in the State of California, or lived or worked within a 20 mile radius of such processing site, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

(b) VERMICULITE PROCESSING SITES.—The claims procedures described under section 121(g)(8) relating to Libby, Montana claimants shall apply to any eligible claimant who worked at a vermiculite processing site in the State of California, or lived or worked within a 20 mile radius of such processing site, as described under subsection (a), and where such processing site has been identified by a Federal or State agency as having received or processed vermiculite ore from Libby, Montana.

(c) VERMICULITE PROCESSING SITE CLAIMANTS.—

(1) IN GENERAL.—Nothing is this Act shall preclude the formation of a future fund for the payment of eligible medical expenses related to treating asbestos-related disease for individuals who worked at a vermiculite processing site in the State of California, or lived or worked within a 20 mile radius of such processing site, as described under subsection (a).

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensations as defined under section 134(a).

SA 2831. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES.

(a) IN GENERAL.—Because of the unique nature of asbestos exposure related to the processing operations of vermiculite ore, the Administrator shall waive the exposure requirements under subtitle II for an individual who worked at a site processing vermiculite mined from mining operations in Libby, Montana, or lived or worked within a 20 mile radius of such processing site, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

(b) VERMICULITE PROCESSING SITES.—The claims procedures described under section 121(g)(8) relating to Libby, Montana claimants shall apply to any eligible claimant who worked at a site processing vermiculite mined from mining operations in Libby, Montana, or lived or worked within a 20 mile radius of such processing site, as described under subsection (a), and where such processing site has been identified by a Federal or State agency as having received or processed vermiculite ore from Libby, Montana.

(c) VERMICULITE PROCESSING SITE CLAIMANTS.—

(1) IN GENERAL.—Nothing is this Act shall preclude the formation of a future fund for the payment of eligible medical expenses related to treating asbestos-related disease for

individuals who worked at a site processing vermiculite mined from mining operations in Libby, Montana, or lived or worked within a 20 mile radius of such processing site, as described under subsection (a).

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensations as defined under section 134(a).

SA 2832. Mrs. BOXER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF MINING AND MILLING OPERATIONS AND COMMUNITIES.

(a) IN GENERAL.—Because of the unique nature of asbestos exposure related to the asbestos mining and milling operations in the areas of Coalinga, New Idria, and King City, in the State of California, the Administrator shall waive the exposure requirements under this subtitle for an individual who worked at such a mining or milling operation, or lived or worked within a 20 mile radius of such an operation, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

(b) MISCELLANEOUS.—Notwithstanding section (2)(a)(9), the Congress finds that among the communities hardest hit by this crisis have been those in or near the locations where asbestos fiber was mined and milled, where for years the air and ground was contaminated and residents, as well as mine and mill workers, were exposed, and where citizens continue to be taking ill even though mining operations ceased years ago.

SA 2833. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 322, between lines 13 and 14, insert the following:

(C) SMALL BUSINESS CONCERNS.—

(i) DEFINITION.—In this subparagraph, the term ''small business concern'' has the same meaning as in section 3 of the Small Business Act (15 U.S.C. 632)).

(ii) TREATMENT OF CLAIMS.—Except as provided in clause (iv), in any civil action described under subparagraph (A), the court shall dismiss any asbestos claim against a small business concern, if such small business concern proves that it was not involved in a business involving, and did not use contractors performing duties involving—

(I) handling raw asbestos;

(II) fabricating asbestos-containing products that could lead to exposure to raw asbestos; or

(III) altering, repairing, or otherwise working with asbestos-containing products that could lead to exposure to asbestos fibers.

(iii) PRIOR JUDGMENT.—In a civil action described under subparagraph (A) involving a small business concern, the court may consider the fact that another asbestos claim against such small business concern was dismissed in determining whether such small business concern was not involved in a business involving, and did not use contractors performing duties involving the materials described in subclause (I), (II), or (III) of clause (ii).

(iv) EXCEPTIONS.—Clause (ii) and (iii) of this subparagraph shall not apply to—

(I) a claim against an insurance company; or

(II) a claim against a small business concern by a current or former employee of such small business concern.

(v) PROCEDURES FOR SETTLEMENT OF TERMINAL HEALTH CLAIMS.—Notwithstanding any other provision of this Act, the settlement requirements under section 106(f)(2) shall not apply to any terminal health claim, as provided under section 106(c)(2), against a small business concern filed before, on, or after the date of enactment of this Act seeking a judgment or order for monetary damages in any Federal or State court.

SA 2834. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 122, between lines 17 and 18, insert the following:

(11) ASBESTOS EXPOSURE AS THE RESULT OF A NATURAL OR OTHER DISASTER.—

(A) IN GENERAL.—A claimant may file an exceptional medical claim with the Fund if such claimant has been exposed to asbestos in any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) the attack on the World Trade Center in New York, New York on September 11, 2001; or

(ii) Hurricane Katrina and Hurricane Rita of 2005 in the Gulf Region of the United States.

(B) REVIEW OF EVIDENCE.—In reviewing medical evidence submitted by a claimant under subparagraph (A)(i) or (ii), the Physicians Panel shall take into consideration the unique nature of these disasters and the potential for asbestos exposure resulting from these disasters.

SA 2835. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 315, strike line 1 and all that follows through page 318, line 2, and insert the following:

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any civil action in Federal or State court seeking damages for personal injury attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered from a disease or condition that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such disease or condition; and

(ii) satisfies the requirements of paragraph (2).

(B) PREEMPTION.—Civil actions seeking damages for personal injury attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—In any claim to which paragraph (1) applies, the complaint (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial) shall be accompanied by—

(A) admissible evidence, including at a minimum, a B-reader's report, and the underlying x-ray film showing that the claim may be maintained and is not preempted under paragraph (1);

(B) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(C) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(D) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(4) DUAL INJURY.—If an exposed person has both a silica disease or conditions resulting from exposure to silica and a disease or condition resulting from exposure to asbestos, any damages awarded for a claim that meets the requirements of paragraph (2)—

(A) shall be limited to damages attributable to the exposed person's exposure to silica; and

(B) shall not include damages attributable to the exposed person's exposure to asbestos.

SA 2836. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. CONTINUANCE OF TERMINAL HEALTH CLAIMS.

Nothwithstanding section 106(f)(2) or any other provision of this Act, any individual who has filed a terminal health claim before the date of enactment of this Act may continue that terminal health claim in the court where the case was pending on the date of enactment of this Act. For terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under section 106(f)(2), the pending claim is not stayed and such claimants may continue the terminal health claims where the case is filed.

SA 2837. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 46, line 18, strike all through page 62, line 8, and insert the following:

(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending on the date of enactment of this Act, other than a terminal health claim to which paragraph (2) of this subsection applies, a claim to which section 403(d)(2) applies, a terminal health claim, or as otherwise provided in section 402(f), is stayed.

(2) TERMINAL HEALTH CLAIMS.—

(A) PROCEDURES FOR SETTLEMENT OF TERMINAL HEALTH CLAIMS.—

(i) IN GENERAL.—Any person that has filed a terminal health claim, as provided under subsection (c)(2), seeking a judgment or order for monetary damages in any Federal or State court before the date of the enactment of this Act, shall seek a settlement in accordance with this paragraph. Any person with a terminal health claim, as provided under subsection (c)(2), that arises after such date of enactment shall seek a settlement in accordance with this paragraph.

(ii) FILING.—

(I) IN GENERAL.—At any time before the Fund or claims facility is certified as operational and paying terminal health claims at a reasonable rate, any person with a terminal health claim as described under clause (i) shall file a notice of their intent to seek a settlement or shall file their exigent health claim with the Administrator or claims facility. Filing of an exigent health claim with the Administrator or claims facility may serve as notice of intent to seek a settlement.

(II) EXCEPTION.—Any person who seeks compensation for an exigent health claim from a trust in accordance with section 402(f) shall not be eligible to seek a settlement or settlement offer under this paragraph.

(iii) TERMINAL HEALTH CLAIM INFORMATION.—To file a terminal health claim, each individual shall provide all of the following information:

(I) The amount received or entitled to be received as a result of all collateral source compensation under section 134, and copies of all settlement agreements and related documents sufficient to show the accuracy of that amount.

(II) A description of any claims for compensation for an asbestos related injury or disease filed by the claimant with any trust or class action trust, and the status or disposition or any such claims.

(III) All information that the claimant would be required to provide to the Administrator in support of a claim under sections 113(c) and 121.

(IV) A certification by the claimant that the information provided is true and complete. The certification provided under this subclause shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator or claims facility in support of a claim.

(V) For terminal health claims arising after the date of enactment of this Act, the claimant shall identify each defendant that would be an appropriate defendant in a civil action seeking damages for the asbestos claim of the claimant. Identification of all potential participants shall be made in good faith by the claimant.

(iv) TIMING.—A claimant who has filed a notice of their intent to seek a settlement under clause (ii) shall within 60 days after filing notice provide to the Administrator or claims facility the information required under clause (iii). If a claimant has filed an exigent health claim under clause (ii) the Administrator shall provide all affected defendants the information required under clause (iii).

(v) WEBSITE.—

(I) POSTING.—The Administrator or claims facility shall post the information described in subclause (II) to a secure website, accessible on a passcode-protected basis to participants.

(II) REQUIRED INFORMATION.—The website established under subclause (I) shall contain a listing of—

(aa) each claimant that has filed a notice of intent to seek a settlement or claim under this clause;

(bb) the name of such claimant; and

(cc) if applicable—

(AA) the name of the court where such claim was filed;

(BB) the case or docket number of such claim; and

(CC) the date such claim was filed.

(III) PROHIBITIONS.—The website established under subclause (I) shall not contain specific health or medical information or social security numbers.

(IV) PARTICIPANT ACCESS.—A participant's access to the website established under subclause (I) shall be limited on a need to know basis, and participants shall not disclose or sell data, or retain data for purposes other than paying an asbestos claim.

(V) VIOLATIONS.—Any person or other entity that violates any provision of this clause, including by breaching any data posted on the website, shall be subject to an injunction, or civil penalties, or both.

(vi) ADMINISTRATOR OR CLAIMS FACILITY CERTIFICATION OF SETTLEMENT.—

(I) DETERMINATION.—Within 60 days after the information under clause (iii) is provided, the Administrator or claims facility shall determine whether or not the claim meets the requirements of a terminal health claim.

(II) REQUIREMENTS MET.—If the Administrator or claims facility determines that the claim meets the requirements of a terminal health claim, the Administrator or claims facility shall immediately—

(aa) issue and serve on all parties a certification of eligibility of such claim;

(bb) determine the value of such claim under the Fund by subtracting from the amount in section 131 the total amount of collateral source compensation received by the claimant; and

(cc) pay the award of compensation to the claimant under clause (xiii).

(III) REQUIREMENTS NOT MET.—If the requirements under clause (iii) are not met, the claimant shall have 30 days to perfect the claim. If the claimant fails to perfect the claim within that 30-day period or the Administrator or claims facility determines that the claim does not meet the requirements of a terminal health claim, the claim shall not be eligible to proceed under this paragraph. A claimant may appeal any decision issued by a claims facility with the Administrator in accordance with section 114.

(vii) FAILURE TO CERTIFY.—If the Administrator or claims facility is unable to process the claim and does not make a determination regarding the certification of the claim as required under clause (vi), the Administrator or claims facility shall within 10 days after the end of the 60-day period referred to under clause (vi)(I) provide notice of the failure to act to the claimant and the defendants in the pending Federal or State court action or the defendants identified under clause (iii)(IV). If the Administrator or claims facility fails to provide such notice within 10 days, the claimant may elect to provide the notice to the affected defendants to prompt a settlement offer. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(viii) FAILURE TO PAY.—If the Administrator or claims facility does not pay the award as required under clause (xiii), the Administrator shall refer the certified claim within 10 days as a certified terminal health claim to the defendants in the pending Federal and State court action or to the potential defendants identified under clause (iii)(IV) for terminal claims arising after the date of enactment of this Act. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(ix) SETTLEMENT OFFER.—Any participant or participants may, within 30 days after receipt of such notice as provided under clause (vii) or (viii), file and serve on all parties and the Administrator a good faith settlement offer in an aggregate amount not to exceed the total amount to which the claimant would receive under section 131. If the aggregate amount offered by all participants exceeds the award determined by the Administrator, all offers shall be deemed reduced pro-rata until the aggregate amount equals the award amount. An acceptance of such settlement offer for claims pending before the date of enactment of this Act shall be subject to approval by the trial judge or authorized magistrate in the court where the claim is pending. The court shall approve any such accepted offer within 20 days after a request, unless there is evidence of bad faith or fraud. No court approval is necessary if the terminal health claim was certified by the Administrator or claims facility under clause (vi).

(x) ACCEPTANCE OR REJECTION.—Within 20 days after receipt of the settlement offer, or the amended settlement offer, the claimant shall either accept or reject such offer in writing. If the amount of the settlement offer made by the Administrator, claims facility, or participants equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xi) OPPORTUNITY TO CURE.—If the settlement offer is rejected for being less than what the claimant would receive under the Fund, the participants shall have 10 business days to make an amended offer. If the amended offer equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement offer in writing. If the settlement offer is again rejected as less than what the claimant would

receive under the Fund or if participants fail to make an amended offer, the claimant shall recover 150 percent of what the claimant would receive under the Fund. If the amount of the amended settlement offer made by the Administrator, claims facility, or participants equals 150 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xii) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

(aa) an initial payment of 50 percent shall be made within 30 days after the date the settlement is accepted and the second and final payment shall be made 6 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participant, the payments may be extended 50 percent in 6 months and 50 percent 11 months after the date the settlement offer is accepted.

(II) OTHER TERMINAL CLAIMANTS.—For other terminal claimants, as defined under section 106(c)(2)(B) and (C)—

(aa) the initial payment of 50 percent shall be made within 6 months after the date the settlement is accepted and the second and final payment shall be made 12 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participants, the payments may be extended 50 percent within 1 year after the date the settlement offer is accepted and 50 percent in 2 years after date the settlement offer is accepted.

(III) RELEASE.—Once a claimant has received final payment of the accepted settlement offer, and penalty payment if applicable, the claimant shall release any outstanding asbestos claims.

(xiii) RECOVERY OF COSTS.—

(I) IN GENERAL.—Any participant whose settlement offer is accepted may recover the cost of such settlement by deducting from the participant's next and subsequent contributions to the Fund the full amount of the payment made by such participant to the terminal health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that the participant's offer is not in good faith. Any such payment shall be considered a payment to the Fund for purposes of section 404(e)(1) and in response to the payment obligations imposed on participants in title II.

(II) REIMBURSEMENT.—Notwithstanding subclause (I), if the deductions from the participant's next and subsequent contributions to the Fund do not fully recover the cost of such payments on or before its third annual contribution to the Fund, the Fund shall reimburse such participant for such remaining cost not later than 6 months after the date of the third scheduled Fund contribution.

(xiv) FAILURE TO MAKE OFFER.—If participants fail to make a settlement offer within the 30-day period described under clause (ix) or make amended offers within the 10 business day cure period described under clause (xi), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund.

(xv) FAILURE TO PAY.—If a participant fails to pay an accepted settlement offer within the payment schedule under clause (xii), the claimant shall be entitled to recover 150 percent of what the claimant would receive under the Fund. If the stay is lifted under subparagraph (B) the claimant may seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act.

(B) STAY TERMINATED AND REVERSION TO COURT.—If 9 months after a terminal health claim has been filed under subparagraph (A), a claimant has not received a settlement under subparagraph (A)(xii) and the Administrator has not certified to Congress that the Fund or claims facility is operational and paying terminal health claims at a reasonable rate, the stay of claim provided under paragraph (1) shall be lifted and such terminal health claimant, may immediately seek a judgment or order for monetary damages from the court where the case is currently pending or the appropriate Federal or State court for claims arising after the date of enactment of this Act. If a claimant has failed to file a claim or notice of intent to seek a settlement, as required under subparagraph (A)(ii), the provisions of this subparagraph shall not apply.

(c) CONTINUANCE OF TERMINAL HEALTH CLAIMS.—Nothwithstanding section 106(f)(2) or any other provision of this Act, any individual who has filed a terminal health claim before the date of enactment of this Act may continue that terminal health claim in the court where the case was pending on the date of enactment of this Act. For terminal health claims filed after the date of enactment of this Act and before the Administrator certifies to Congress that the Fund is operational and paying valid claims at a reasonable rate, by claimants who do not elect to seek an offer of judgment under subparagraph (A), the pending claim is not stayed and such claimants may continue the terminal health claims where the case is filed.

SA 2838. Mr. LAUTENBERG (for himself and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for MR. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 102, between lines 17 and 18, insert the following:

(5) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES IN NEW JERSEY.—Because of the unique nature of asbestos exposure related to the processing operations of vermiculite ore, the Administrator shall waive the exposure requirements under this subtitle for an individual who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

On page 102, line 18, strike ''(5)'' and insert ''(6)''.

On page 104, line 14, strike ''(6)'' and insert ''(7)''.

On page 123, between lines 10 and 11, insert the following:

(9) NEW JERSEY PROCESSING SITES.—The claims procedures described under paragraph (8) relating to Libby, Montana claimants shall apply to any eligible claimant who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, as described under subsection (c)(5), and where such processing site has been identified by a Federal or State agency as having received or processed vermiculite ore from Libby, Montana.

On page 123, line 11, strike ''(9)'' and insert ''(10)''.

On page 125, line 19, strike ''(10)'' and insert ''(11)''.

On page 366, between line 11 and 12, insert the following:

(b) NEW JERSEY PROCESSING SITE CLAIMANTS.—

(1) IN GENERAL.—Nothing is this Act shall preclude the formation of a future fund for the payment of eligible medical expenses related to treating asbestos-related disease for individuals who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site.

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensations as defined under section 134(a).

On page 366, line 12, strike ''(b)'' and insert ''(c)''.

SA 2839. Mr. LAUTENBERG (for himself and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES IN NEW JERSEY.

(a) IN GENERAL.—Because of the unique nature of asbestos exposure related to the processing operations of vermiculite ore, the Administrator shall waive the exposure requirements under subtitle II for an individual who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, for at least 12 consecutive months before December 31, 2005. Claimants under this paragraph shall provide such supporting documentation, as the Administrator shall require.

(b) VERMICULITE PROCESSING SITES.—The claims procedures described under section 121(g)(8) relating to Libby, Montana claimants shall apply to any eligible claimant who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, as described under subsection (a), and where such processing site has been identified by a Federal or State agency as having received or processed vermiculite ore from Libby, Montana.

(c) VERMICULITE PROCESSING SITE CLAIMANTS.—

(1) IN GENERAL.—Nothing is this Act shall preclude the formation of a future fund for the payment of eligible medical expenses related to treating asbestos-related diseases for individuals who worked at a vermiculite processing site in the State of New Jersey, or lived or worked within a 10 mile radius of such processing site, as described under subsection (a).

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensations as defined under section 134(a).

SA 2840. Mr. ENSIGN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 298, strike lines 16 and 17, and insert the following:

''(A) the trust qualifies as a trust under section 201 of that Act; and

''(B) the trust does not file an election under section 410 of that Act.''.

On page 301, line 24, insert ''or for electing to opt out under section 410 of the Fairness in Asbestos Injury Resolution Act of 2006 '' before the period.

On page 375, after line 23, insert the following:

SEC. 410. OPT-OUT RIGHTS OF CERTAIN TRUSTS AND EFFECT OF OPT-OUT.

(a) OPT-OUT RIGHTS.—Any trust defined under section 201(8) that has been established or formed under a plan of reorganization under chapter 11 of title 11, United States Code, confirmed by a duly entered order or judgment of a court, which order or judgment is no longer subject to any appeal or judicial review on the date of enactment of this Act, may elect not to be covered by this Act by filing written notice of such election to the Administrator not later than 90 days after the date of enactment of this Act.

(b) EFFECT OF OPT-OUT.—

(1) IN GENERAL.—Neither this Act nor any amendment made by this Act shall apply to—

(A) any trust that makes an election under subsection (a); or

(B) any claim or future demand that has been channeled to that trust.

(2) ASSETS AND OTHER RIGHTS AND CLAIMS.—A trust that makes an election under subsection (a) shall retain all of its assets. The contractual and other rights of a trust making an election under subsection (a) and claims against other persons (whether held directly or indirectly by others for the benefit of the trust), including the rights and claims of the trust against insurers, shall be preserved and not abrogated by this Act.

SA 2841. Mr. BURNS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 70, line 9, strike ''TLC or FVC'' and insert ''TLC, FVC, or DLCO''.

On page 119, line 22, strike ''TLC or FVC'' and insert ''TLC, FVC, or DLCO''.

SA 2842. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES.

(a) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE MINING AND PROCESSING COMMUNITIES.—

(1) IN GENERAL.—Because of the nature of asbestos exposure related to the vermiculite mining operations in Libby, Montana, and the vermiculite processing operations associated with such mining operations, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked—

(A) at the vermiculite mining operations in Libby, Montana, or lived or worked within a 20-mile radius of such mining operations, for at least 12 months before December 31, 2004; and

(B) at sites processing vermiculite mined from mining operations in Libby, Montana, that—

(i) the United States Environmental Protection Agency has designated as requiring further action on the basis of current contamination as of the date of enactment of this Act; or

(ii) processed at least 100,000 tons or more of vermiculite from the Libby, Montana, mine; or

(iii) currently or subsequently have been identified by any Governmental agency as having processed vermiculite from the Libby, Montana, mine that caused risk from asbestos exposure; or

(C) or lived within a 20 mile radius of a processing site described in subparagraph (B), for at least 12 months before December 31, 2004.

(2) REQUIRED DOCUMENTATION.—Claimants under this paragraph shall provide such supporting documentation as the Administrator shall require.

(b) VERMICULITE MINING AND PROCESSING CLAIMANTS.—

(1) IN GENERAL.—Notwithstanding section 121(g)(8), a vermiculite mining and processing claimant, as described under subsection (a), may elect to have the claimant's claim designated as an exceptional medical claim and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by such a claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in vermiculite mining and processing operations, including the nature of the pleural disease related to asbestos exposure from such sites.

(2) CLAIMS.—For all claims for Levels II through IV filed by vermiculite mining and processing claimants, as described under subsection (a), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to such claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award determined in accordance with section 114, such claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by vermiculite mining and processing claimants, such claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

(c) VERMICULITE MINING AND PROCESSING CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of vermiculite mining and processing communities, as described under section 121(c)(4). The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(d) MISCELLANEOUS.—Section (2)(a)(9) shall have no force or effect.

(e) DEFINITION.—For purposes of this section, the term ''Governmental agency'' means any regulatory or administrative unit responsible for evaluating sites that received and processed vermiculite ore mined in Libby, Montana.

SA 2843. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE PROCESSING SITES AND COMMUNITIES.

(a) WAIVER FOR WORKERS AND RESIDENTS OF VERMICULITE MINING AND PROCESSING COMMUNITIES.—

(1) IN GENERAL.—Notwithstanding section 121(c)(4), because of the nature of asbestos exposure related to the vermiculite mining operations in Libby, Montana, and the vermiculite processing operations associated with such mining operations, the Administrator shall waive the exposure requirements under subtitle II for individuals who worked—

(A) at the vermiculite mining operations in Libby, Montana, or lived or worked within a 20-mile radius of such mining operations, for at least 12 months before December 31, 2004; and

(B) at sites processing vermiculite mined from mining operations in Libby, Montana, that—

(i) the United States Environmental Protection Agency has designated as requiring further action on the basis of current contamination as of the date of enactment of this Act; or

(ii) processed at least 100,000 tons or more of vermiculite from the Libby, Montana, mine; or

(C) or lived within a 20 mile radius of a processing site described in subparagraph (B), for at least 12 months before December 31, 2004.

(2) REQUIRED DOCUMENTATION.—Claimants under this subsection shall provide such supporting documentation as the Administrator shall require.

(b) VERMICULITE MINING AND PROCESSING CLAIMANTS.—

(1) IN GENERAL.—Notwithstanding section 121(g)(8), a vermiculite mining and processing claimant, as described under subsection (a), may elect to have the claimant's claim designated as an exceptional medical claim and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by such a claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in vermiculite mining and processing operations, including the nature of the pleural disease related to asbestos exposure from such sites.

(2) CLAIMS.—For all claims for Levels II through IV filed by vermiculite mining and processing claimants, as described under subsection (a), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to such claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance

with this section, or the value of the award determined in accordance with section 114, such claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by vermiculite mining and processing claimants, such claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

(c) VERMICULITE MINING AND PROCESSING CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of vermiculite mining and processing communities, as described under section 121(c)(4). The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(d) MISCELLANEOUS.—Section (2)(a)(9) shall have no force or effect.

SA 2844. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. LIBBY, MONTANA CLAIMANTS.

Notwithstanding any other provision of this Act, any Libby, Montana claimant shall be treated in the same manner and to the same extent as any other claimant under this Act, including for provisions relating to—

(1) eligibility under the Fund;

(2) the filing of claims; and

(3) awards under the Fund.

SA 2845. Mr. BURNS (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 119, line 22, strike ''TLC or FVC'' and insert ''TLC, FVC, or DLCO''.

SA 2846. Mr. CORNYN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the ''Fairness in Asbestos Injury Resolution Act of 2006'' or the ''FAIR Act of 2006''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Millions of Americans have been exposed to forms of asbestos that can have devastating health effects.

(2) Various injuries can be caused by exposure to some forms of asbestos, including pleural disease and some forms of cancer.

(3) The injuries caused by asbestos can have latency periods of up to 40 years, and even limited exposure to some forms of asbestos may result in injury in some cases.

(4) Asbestos litigation has had a significant detrimental effect on the country's economy, driving companies into bankruptcy, diverting resources from those who are truly sick, and endangering jobs and pensions.

(5) The scope of the asbestos litigation crisis cuts across every State and virtually every industry.

(6) The United States Supreme Court has recognized that Congress must act to create a more rational asbestos claims system. In 1991, a Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist, found that the ''ultimate solution should be legislation recognizing the national proportions of the problem . . . and creating a national asbestos dispute resolution scheme . . . . The Court found in 1997 in Amchem Products Inc. v. Windsor, 521 U.S. 591, 595 (1997), that ''[t]he argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.'' In 1999, the Court in Ortiz v. Fibreboard Corp., 527 U.S. 819, 821 (1999), found that the ''elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation.'' That finding was again recognized in 2003 by the Court in Norfolk & Western Railway Co. v. Ayers, 123 S. Ct. 1210 (2003).

(7) This crisis, and its significant effect on the health and welfare of the people of the United States, on interstate and foreign commerce, and on the bankruptcy system, compels Congress to exercise its power to regulate interstate commerce and create this legislative solution in the form of a national asbestos injury claims resolution program to supersede all existing methods to compensate those injured by asbestos, except as specified in this Act.

(8) This crisis has also imposed a deleterious burden upon the United States bankruptcy courts, which have assumed a heavy burden of administering complicated and protracted bankruptcies with limited personnel.

(9) This crisis has devastated many communities across the country, but hardest hit has been Libby, Montana, where tremolite asbestos, 1 of the most deadly forms of asbestos, was contained in the vermiculite ore mined from the area and despite ongoing cleanup by the Environmental Protection Agency, many still suffer from the deadly dust.

(10) The asbestos found in Libby, Montana, tremolite asbestos, has demonstrated an unusually high level of toxicity, as compared to chrysotile asbestos. Diseases contracted from this tremolite asbestos are unique and highly progressive. These diseases typically manifest in a characteristic pleural disease pattern, and often result in severe impairment or death without radiographic interstitial disease or typical chrysotile markers of radiographic severity. According to the Agency for Toxic Substances and Disease Registry previous studies by the National Institutes of Occupational Safety and Health document significantly increased rates of pulmonary abnormalities and disease (asbestosis and lung cancer) among former workers.

(11) Environmental Protection Agency supported studies have determined that the raw vermiculite ore mined and milled in Libby, Montana contained 21 to 26 percent asbestos, by weight. The milled ore, resulting from the processing in Libby, which was shipped out of Libby contained markedly reduced percentages of asbestos. A 1982 Environmental Protection Agency-supported sutdy concluded that oreshipped out of Libby contained 0.3 to 7 percent asbestos, by weight.

(12) In Libby, Montana, exposure pathways are and were not limited to the workplace, rather, for decades there has been an unprecedented 24 hour per day contamination of the community's homes, playgrounds, gardens, and community air, such that the entire community of Libby, Montana, has been designated a Superfund site and is listed on the Environmental Protection Agency's National Priorities List.

(13) These multiple exposure pathways have caused severe asbestos disease and death not only in former workers at the mine and milling facilities, but also in the workers' spouses and children, and in community members who had no direct contact with the mine. According to the Environmental Protection Agency, some potentially important alternative pathways for past asbestos exposure include elevated concentrations of asbestos in ambient air and recreational exposures from children playing in piles of vermiculite. Furthermore, the Environmental Protection Agency has determined that current potential pathways of exposure include vermiculite placed in walls and attics as thermal insulation, vermiculite or ore used as road bed material, ore used as ornamental landscaping, and vermiculite or concentrated ore used as a soil and garden amendment or aggregate in driveways.

(14) The Environmental Protection Agency also concluded, ''Asbestos contamination exists in a number of potential source materials at multiple locations in and around the residential and commercial area of Libby . . . While data are not yet sufficient to perform reliable human-health risk evaluations for all sources and all types of disturbance, it is apparent that releases of fiber concentrations higher than Occupational Safety and Health Administration standards may occur in some cases . . . and that screening-level estimates of lifetime excess cancer risk can exceed the upper-bound risk range of 1E–04 usually used by the Environmental Protection Agency for residents under a variety of exposure scenarios. The occurrence of non-occupational asbestos-related disease that has been observed among Libby residents is extremely unusual, and has not been associated with asbestos mines elsewhere, suggesting either very high and prolonged environmental exposures and/or increased toxicity of this form of amphibole asbestos.''.

(15) According to a November 2003 article from the Journal Environmental Health Perspectives titled, Radiographic Abnormalities and Exposure to Asbestos-Contaminated Vermiculite in the Community of Libby, Montana, USA, Libby residents who have evidence of ''no apparent exposure'', i.e., did not work with asbestos, were not a family member of a former worker, etc., had a greater rate of pleural abnormalities (6.7 percent) than did those in control groups or general populations found in other studies from other states (which ranged from 0.2 percent to 4.6 percent). ''Given the ubiquitous nature of vermiculite contamination in Libby, along with historical evidence of elevated asbestos concentrations in the air, it would be difficult to find participants who could be characterized as unexposed.''.

(16) Nothing in this Act is intended to increase the Federal deficit or impose any burden on the taxpayer. The Office of Asbestos Disease Compensation established under this Act shall be privately funded by annual payments from defendant participants that have been subject to asbestos liability and their insurers. Section 406(b) of this Act expressly

provides that nothing in this Act shall be construed to create any obligation of funding from the United States or to require the United States to satisfy any claims if the amounts in the Fund are inadequate. Any borrowing by the Fund is limited to monies expected to be paid into the Fund, and the Administrator shall have no fiscal authroity beyond the amount of private money coming into the Fund. This Act provides the Administrator with broad enforcement authority to pursue debts to the Fund owed by defendant participants or insurer participants and their successors in interest.

(b) PURPOSE.—The purpose of this Act is to—

(1) create a privately funded, publicly administered fund to provide the necessary resources for a fair and efficient system to resolve asbestos injury claims that will provide compensation for legitimate present and future claimants of asbestos exposure as provided in this Act;

(2) provide compensation to those present and future victims based on the severity of their injuries, while establishing a system flexible enough to accommodate individuals whose conditions worsens;

(3) relieve the Federal and State courts of the burden of the asbestos litigation; and

(4) increase economic stability by resolving the asbestos litigation crisis that has bankrupted companies with asbestos liability, diverted resources from the truly sick, and endangered jobs and pensions.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Office of Asbestos Disease Compensation appointed under section 101(b).

(2) ASBESTOS.—The term ''asbestos'' includes—

(A) chrysotile;

(B) amosite;

(C) crocidolite;

(D) tremolite asbestos;

(E) winchite asbestos;

(F) richterite asbestos;

(G) anthophyllite asbestos;

(H) actinolite asbestos;

(I) asbestiform amphibole minerals;

(J) any of the minerals listed under subparagraphs (A) through (I) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and

(K) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM.—

(A) IN GENERAL.—The term ''asbestos claim'' means any claim, premised on any theory, allegation, or cause of action for damages or other relief presented in a civil action or bankruptcy proceeding, directly, indirectly, or derivatively arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child, or other relative of any exposed person.

(B) EXCLUSION.—The term does not include—

(i) claims alleging damage or injury to tangible property;

(ii) claims for benefits under a workers' compensation law or veterans' benefits program;

(iii) claims arising under any governmental or private health, welfare, disability, death or compensation policy, program or plan;

(iv) claims arising under any employment contract or collective bargaining agreement;

(v) claims arising out of medical malpractice; or

(vi) any claim arising under—

(I) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(II) title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(III) the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.);

(IV) the Equal Pay Act of 1963 (29 U.S.C. 206);

(V) the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.);

(VI) section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983); or

(VII) the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(4) ASBESTOS CLAIMANT.—The term ''asbestos claimant'' means an individual who files a claim under section 113.

(5) CIVIL ACTION.—The term ''civil action'' means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(6) COLLATERAL SOURCE COMPENSATION.—The term ''collateral source compensation'' means the compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a final judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(7) ELIGIBLE DISEASE OR CONDITION.—The term ''eligible disease or condition'' means the extent that an illness meets the medical criteria requirements established under subtitle C of title I.

(8) EMPLOYERS' LIABILITY ACT.—The term ''Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employer's Liability Act'' shall, for all purposes of this Act, include the Act of June 5, 1920 (46 U.S.C. App. 688), commonly known as the Jones Act, and the related phrase ''operations as a common carrier by railroad'' shall include operations as an employer of seamen.

(9) FUND.—The term ''Fund'' means the Asbestos Injury Claims Resolution Fund established under section 221.

(10) INSURANCE RECEIVERSHIP PROCEEDING.—The term ''insurance receivership proceeding'' means any State proceeding with respect to a financially impaired or insolvent insurer or reinsurer including the liquidation, rehabilitation, conservation, supervision, or ancillary receivership of an insurer under State law.

(11) LAW.—The term ''law'' includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.

(12) PARTICIPANT.—

(A) IN GENERAL.—The term ''participant'' means any person subject to the funding requirements of title II, including—

(i) any defendant participant subject to liability for payments under subtitle A of that title;

(ii) any insurer participant subject to a payment under subtitle B of that title; and

(iii) any successor in interest of a participant.

(B) EXCEPTION.—

(i) IN GENERAL.—A defendant participant shall not include any person protected from any asbestos claim by reason of an injunction entered in connection with a plan of reorganization under chapter 11 of title 11, United States Code, that has been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(ii) APPLICABILITY.—Clause (i) shall not apply to a person who may be liable under subtitle A of title II based on prior asbestos expenditures related to asbestos claims that are not covered by an injunction described under clause (i).

(13) PERSON.—The term ''person''—

(A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and

(B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.

(14) STATE.—The term ''State'' means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.

(15) SUBSTANTIALLY CONTINUES.—The term ''substantially continues'' means that the business operations have not been significantly modified by the change in ownership.

(16) SUCCESSOR IN INTEREST.—The term ''successor in interest'' means any person that, in 1 or a series of transactions, acquires all or substantially all of the assets and properties (including, without limitation, under section 363(b) or 1123(b)(4) of title 11, United States Code), and substantially continues the business operations, of a participant. The factors to be considered in determining whether a person is a successor in interest include—

(A) retention of the same facilities or location;

(B) retention of the same employees;

(C) maintaining the same job under the same working conditions;

(D) retention of the same supervisory personnel;

(E) continuity of assets;

(F) production of the same product or offer of the same service;

(G) retention of the same name;

(H) maintenance of the same customer base;

(I) identity of stocks, stockholders, and directors between the asset seller and the purchaser; or

(J) whether the successor holds itself out as continuation of previous enterprise, but expressly does not include whether the person actually knew of the liability of the participant under this Act.

(17) VETERANS' BENEFITS PROGRAM.—The term ''veterans' benefits program'' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.

(18) WORKERS' COMPENSATION LAW.—The term ''workers' compensation law''—

(A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;

(B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) and chapter 81 of title 5, United States Code; and

(C) does not include the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, or damages

recovered by any employee in a liability action against an employer.

(19) CLASS ACTION TRUST.—The term ''class action trust'' means a trust or similar entity established to hold assets for the payment of asbestos claims asserted against a debtor or participating defendant, under a settlement that—

(A) is a settlement of class action claims under rule 23 of the Federal Rules of Civil Procedure; and

(B) has been approved by a final judgment of a United States district court before the date of enactment of this Act.

(20) DEBTOR.—The term ''debtor''—

(A) means—

(i) a person that is subject to a case pending under a chapter of title 11, United States Code, on the date of enactment of this Act or at any time during the 1-year period immediately preceding that date, irrespective of whether the debtor's case under that title has been dismissed; and

(ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and

(B) shall not include an entity—

(i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or

(ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review, and the substantial consummation, as such term is defined in section 1101(2) of title 11, United States Code, of such plan of reorganization has occurred.

(21) TRUST.—The term ''trust'' means any trust, as described in sections 524(g)(2)(B)(i) or 524(h) of title 11, United States Code, or established in conjunction with an order issued under section 105 of title 11, United States Code, established or formed under the terms of a chapter 11 plan of reorganization, which in whole or in part provides compensation for asbestos claims.

TITLE I—ASBESTOS CLAIMS RESOLUTION

Subtitle A—Office of Asbestos Disease Compensation

SEC. 101. ESTABLISHMENT OF OFFICE OF ASBESTOS DISEASE COMPENSATION.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—There is established within the Department of Labor the Office of Asbestos Disease Compensation (hereinafter referred to in this Act as the ''Office''), which shall be headed by an Administrator.

(2) PURPOSE.—The purpose of the Office is to provide timely, fair compensation, in the amounts and under the terms specified in this Act, on a no-fault basis and in a non-adversarial manner, to individuals whose health has been adversely affected by exposure to asbestos.

(3) TERMINATION OF THE OFFICE.—The Office of Asbestos Disease Compensation shall terminate effective not later than 12 months following certification by the Administrator that the Fund has neither paid a claim in the previous 12 months nor has debt obligations remaining to pay.

(4) EXPENSES.—There shall be available from the Fund to the Administrator such sums as are necessary for any and all expenses associated with the Office of Asbestos Disease Compensation and necessary to carry out the purposes of this Act. Expenses covered should include—

(A) management of the Fund;

(B) personnel salaries and expenses, including retirement and similar benefits;

(C) the sums necessary for conducting the studies required under this Act;

(D) all administrative and legal expenses; and

(E) any other sum that could be attributable to the Fund.

(b) APPOINTMENT OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator of the Office of Asbestos Disease Compensation shall be appointed by the President. The Administrator shall serve for a term of 10 years.

(2) REPORTING.—The Administrator shall report directly to the Assistant Secretary of Labor for the Employment Standards Administration.

(c) DUTIES OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator shall be responsible for—

(A) processing claims for compensation for asbestos-related injuries and paying compensation to eligible claimants under the criteria and procedures established under title I;

(B) determining, levying, and collecting assessments on participants under title II;

(C) appointing or contracting for the services of such personnel, making such expenditures, and taking any other actions as may be necessary and appropriate to carry out the responsibilities of the Office, including entering into cooperative agreements with other Federal agencies or State agencies and entering into contracts with nongovernmental entities;

(D) conducting such audits and additional oversight as necessary to assure the integrity of the program;

(E) managing the Asbestos Injury Claims Resolution Fund established under section 221, including—

(i) administering, in a fiduciary capacity, the assets of the Fund for the primary purpose of providing benefits to asbestos claimants and their beneficiaries;

(ii) defraying the reasonable expenses of administering the Fund;

(iii) investing the assets of the Fund in accordance with section 222(b);

(iv) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets; and

(v) borrowing amounts authorized by section 221(b) on appropriate terms and conditions, including pledging the assets of or payments to the Fund as collateral;

(F) promulgating such rules, regulations, and procedures as may be necessary and appropriate to implement the provisions of this Act;

(G) making such expenditures as may be necessary and appropriate in the administration of this Act;

(H) excluding evidence and disqualifying or debarring any attorney, physician, provider of medical or diagnostic services, including laboratories and others who provide evidence in support of a claimant's application for compensation where the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by such individuals or entities; and

(I) having all other powers incidental, necessary, or appropriate to carrying out the functions of the Office.

(2) CERTAIN ENFORCEMENTS.—For each infraction relating to paragraph (1)(H), the Administrator also may impose a civil penalty not to exceed $10,000 on any person or entity found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall prescribe appropriate regulations to implement paragraph (1)(H).

(3) SELECTION OF DEPUTY ADMINISTRATORS.—The Administrator shall select a Deputy Administrator for Claims Administration to carry out the Administrator's responsibilities under this title and a Deputy Administrator for Fund Management to carry out the Administrator's responsibilities under title II of this Act. The Deputy Administrators shall report directly to the Administrator and shall be in the Senior Executive Service.

(d) EXPEDITIOUS DETERMINATIONS.—The Administrator shall prescribe rules to expedite claims for asbestos claimants with terminal circumstances in order to expedite the payment of such claims as soon as possible after startup of the Fund. The Administrator shall contract out the processing of such claims.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES.—The Administrator shall establish audit and personnel review procedures for evaluating the accuracy of eligibility recommendations of agency and contract personnel.

(f) APPLICATION OF FOIA.—

(1) IN GENERAL.—Section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) shall apply to the Office of Asbestos Disease Compensation and the Asbestos Insurers Commission.

(2) CONFIDENTIALITY OF FINANCIAL RECORDS.—

(A) IN GENERAL.—Any person may label any record submitted under this section as a confidential commercial or financial record for the purpose of requesting exemption from disclosure under section 552(b)(4) of title 5, United States Code.

(B) DUTIES OF ADMINISTRATOR AND CHAIRMAN OF THE ASBESTOS INSURERS COMMISSION.—The Administrator and Chairman of the Asbestos Insurers Commission—

(i) shall adopt procedures for—

(I) handling submitted records marked confidential; and

(II) protecting from disclosure records they determine to be confidential commercial or financial information exempt under section 552(b)(4) of title 5, United States Code; and

(ii) may establish a pre-submission determination process to protect from disclosure records on reserves and asbestos-related liabilities submitted by any defendant participant that is exempt under section 552(b)(4) of title 5, United States Code.

(C) REVIEW OF COMPLAINTS.—Nothing in this section shall supersede or preempt the de novo review of complaints filed under section 552(b)(4) of title 5, United States Code.

(3) CONFIDENTIALITY OF MEDICAL RECORDS.—Any claimant may designate any record submitted under this section as a confidential personnel or medical file for purposes of section 552 of title 5, United States Code. The Administrator and the Chairman of the Asbestos Insurers Commission shall adopt procedures for designating such records as confidential.

SEC. 102. ADVISORY COMMITTEE ON ASBESTOS DISEASE COMPENSATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, the Administrator shall establish an Advisory Committee on Asbestos Disease Compensation (hereinafter the ''Advisory Committee'').

(2) COMPOSITION AND APPOINTMENT.—The Advisory Committee shall be composed of 20 members, appointed by the President.

(3) QUALIFICATIONS.—All of the members described in paragraph (2) shall have expertise or experience relevant to the asbestos compensation program, including experience or expertise in diagnosing asbestos-related

diseases and conditions, assessing asbestos exposure and health risks, filing asbestos claims, administering a compensation or insurance program, or as actuaries, auditors, or investment managers. None of the members described in paragraph (2)(B) shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

(b) DUTIES.—The Advisory Committee shall advise the Administrator on—

(1) claims filing and claims processing procedures;

(2) claimant assistance programs;

(3) audit procedures and programs to ensure the quality and integrity of the compensation program;

(4) the development of a list of industries, occupations and time periods for which there is a presumption of substantial occupational exposure to asbestos;

(5) recommended analyses or research that should be conducted to evaluate past claims and to project future claims under the program;

(6) the annual report required to be submitted to Congress under section 405; and

(7) such other matters related to the implementation of this Act as the Administrator considers appropriate.

(c) OPERATION OF THE COMMITTEE.—

(1) Each member of the Advisory Committee shall be appointed for a term of 10 years.

(2) Any member appointed to fill a vacancy occurring before the expiration of the term shall be appointed only for the remainder of such term.

(3) The Administrator shall designate a Chairperson and Vice Chairperson from among members of the Advisory Committee appointed under subsection (a)(2)(B).

(4) The Advisory Committee shall meet at the call of the Chairperson or the majority of its members, and at a minimum shall meet at least 4 times per year during the first 5 years of the asbestos compensation program, and at least 2 times per year thereafter.

(5) The Administrator shall provide to the Committee such information as is necessary and appropriate for the Committee to carry out its responsibilities under this section. The Administrator may, upon request of the Advisory Committee, secure directly from any Federal, State, or local department or agency such information as may be necessary and appropriate to enable the Advisory Committee to carry out its duties under this section. Upon request of the Administrator, the head of such department or agency shall furnish such information to the Advisory Committee.

(6) The Administrator shall provide the Advisory Committee with such administrative support as is reasonably necessary to enable it to perform its functions.

(d) EXPENSES.—Members of the Advisory Committee, other than full-time employees of the United States, while attending meetings of the Advisory Committee or while otherwise serving at the request of the Administrator, and while serving away from their homes or regular places of business, shall be allowed travel and meal expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government serving without pay.

SEC. 103. MEDICAL ADVISORY COMMITTEE.

(a) IN GENERAL.—The Administrator shall establish a Medical Advisory Committee to provide expert advice regarding medical issues arising under the statute.

(b) QUALIFICATIONS.—None of the members of the Medical Advisory Committee shall be individuals who, for each of the 5 years before their appointments, earned more than 15 percent of their income by serving in matters related to asbestos litigation as consultants or expert witnesses.

SEC. 104. CLAIMANT ASSISTANCE.

(a) ESTABLISHMENT.—Not later than 120 days after the enactment of this Act, the Administrator shall establish a comprehensive asbestos claimant assistance program to—

(1) publicize and provide information to potential claimants about the availability of benefits for eligible claimants under this Act, and the procedures for filing claims and for obtaining assistance in filing claims;

(2) provide assistance to potential claimants in preparing and submitting claims, including assistance in obtaining the documentation necessary to support a claim and any other appropriate paralegal assistance;

(3) respond to inquiries from claimants and potential claimants;

(4) provide training with respect to the applicable procedures for the preparation and filing of claims to persons who provide assistance or representation to claimants; and

(5) provide for the establishment of a website where claimants may access all relevant forms and information.

(b) RESOURCE CENTERS.—The claimant assistance program shall provide for the establishment of resource centers in areas where there are determined to be large concentrations of potential claimants. These centers shall be located, to the extent feasible, in facilities of the Department of Labor or other Federal agencies.

(c) CONTRACTS.—The claimant assistance program may be carried out in part through contracts with labor organizations, community-based organizations, and other entities which represent or provide services to potential claimants, except that such organizations may not have a financial interest in the outcome of claims filed with the Office.

(d) LEGAL ASSISTANCE.—

(1) IN GENERAL.—As part of the program established under subsection (a), the Administrator shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS.—As part of the program, the Administrator shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Administrator. The claimants shall not be required to use the attorneys listed on such roster.

(3) NOTICE.—

(A) NOTICE BY ADMINISTRATOR.—The Administrator shall provide asbestos claimants with notice of, and information relating to—

(i) pro bono services for legal assistance available to those claimants; and

(ii) any limitations on attorneys fees for claims filed under this title.

(B) NOTICE BY ATTORNEYS.—Before a person becomes a client of an attorney with respect to an asbestos claim, that attorney shall provide notice to that person of pro bono services for legal assistance available for that claim.

(e) ATTORNEY'S FEES.—

(1) LIMITATION.—

(A) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under the Fund, more than a reasonable attorney's fee.

(ii) CALCULATION OF REASONABLE FEE.—Any fee obtained under clause (i) shall be calculated by multiplying a reasonable hourly rate by the number of hours reasonably expended on the claim of the individual.

(iii) REQUIREMENTS FOR COMPENSATION.—A representative of an individual shall not be eligible to receive a fee under clause (i), unless—

(I) such representative submits to the Administrator detailed contemporaneous billing records for any work actually performed in the course of representation of an individual; and

(II) the Administrator finds, based on billing records submitted by the representative under subclause (I), that the work for which compensation is sought was reasonably performed, and that the requested hourly fee is reasonable.

(2) PENALTY.—Any representative of an asbestos claimant who violates this subsection shall be fined not more than the greater of—

(A) $5,000; or

(B) twice the amount received by the representative for services rendered in connection with each such violation.

SEC. 105. PHYSICIANS PANELS.

(a) APPOINTMENT.—The Administrator shall, in accordance with section 3109 of title 5, United States Code, appoint physicians with experience and competency in diagnosing asbestos-related diseases to be available to serve on Physicians Panels, as necessary to carry out this Act.

(b) FORMATION OF PANELS.—

(1) IN GENERAL.—The Administrator shall periodically determine—

(A) the number of Physicians Panels necessary for the efficient conduct of the medical review process under section 121;

(B) the number of Physicians Panels necessary for the efficient conduct of the exceptional medical claims process under section 121; and

(C) the particular expertise necessary for each panel.

(2) EXPERTISE.—Each Physicians Panel shall be composed of members having the particular expertise determined necessary by the Administrator, randomly selected from among the physicians appointed under subsection (a) having such expertise.

(3) PANEL MEMBERS.—Except as provided under subparagraph (B), each Physicians Panel shall consist of 3 physicians, 2 of whom shall be designated to participate in each case submitted to the Physicians Panel, and the third of whom shall be consulted in the event of disagreement.

(c) QUALIFICATIONS.—To be eligible to serve on a Physicians Panel under subsection (a), a person shall be—

(1) a physician licensed in any State;

(2) board-certified in pulmonary medicine, occupational medicine, internal medicine, oncology, or pathology; and

(3) an individual who, for each of the 5 years before and during his or her appointment to a Physicians Panel, has earned not more than 15 percent of his or her income as an employee of a participating defendant or insurer or a law firm representing any party in asbestos litigation or as a consultant or expert witness in matters related to asbestos litigation.

(d) DUTIES.—Members of a Physicians Panel shall—

(1) make such medical determinations as are required to be made by Physicians Panels under section 121; and

(2) perform such other functions as required under this Act.

(e) COMPENSATION.—Notwithstanding any limitation otherwise established under section 3109 of title 5, United States Code, the Administrator shall be authorized to pay members of a Physician Panel such compensation as is reasonably necessary to obtain their services.

(f) FEDERAL ADVISORY COMMITTEE ACT.—A Physicians Panel established under this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App. 2).

SEC. 106. PROGRAM STARTUP.

(a) IMMEDIATE STARTUP.—

(1) IN GENERAL.—Subject to section 101(d), the Administrator may—

(A) start receiving, reviewing, and deciding claims immediately upon the date of enactment of this Act; and

(B) reimburse the Department of Labor from the Fund for any expense incurred—

(i) before that date of enactment in preparation for carrying out any of the responsibilities of the Administrator under this Act; and

(ii) during the 60-day period following that date of enactment to carry out such responsibilities.

(2) INTERIM REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate interim regulations and procedures for the processing of claims under this title and the operation of the Fund under title II, including procedures for the expediting of terminal health claims, and processing of claims through the claims facility.

(b) INTERIM PERSONNEL AND CONTRACTING.—The Secretary of Labor and the Assistant Secretary of Labor for the Employment Standards Administration shall make available to the Administrator on a temporary basis such personnel and other resources as may be necessary to facilitate the expeditious startup of the program. The Administrator may in addition contract with individuals or entities having relevant experience to assist in the expeditious startup of the program including entering into contracts on an expedited or sole source basis during the startup period for the purpose of processing claims or providing financial analysis or assistance. Such relevant experience shall include, but not be limited to, experience with the review of workers' compensation, occupational disease, or similar claims and with financial matters relevant to the operation of the program.

(c) TERMINAL HEALTH CLAIMS.—

(1) IN GENERAL.—The Administrator shall develop procedures, as provided in section 106(f), to provide for an expedited process to categorize, evaluate, and pay terminal health claims. Such procedures, as provided in section 106(f), shall include, pending promulgation of final regulations, adoption of interim regulations as needed for processing of terminal health claims.

(2) ELIGIBLE TERMINAL HEALTH CLAIMS.—A claim shall qualify for treatment as a terminal health claim if—

(A) the claimant is living and provides a diagnosis of mesothelioma meeting the requirements of section 121(d)(9);

(B) the claimant is living and provides a credible declaration or affidavit, from a diagnosing physician who has examined the claimant within 120 days before the date of such declaration or affidavit, that the physician has diagnosed the claimant as being terminally ill from an asbestos-related illness and having a life expectancy of less than 1 year due to such asbestos-related illness; or

(C) the claimant is the spouse or child of an eligible terminal health claimant who—

(i) was living when the claim was filed with the Fund, or if before the implementation of interim regulations for the filing of claims with the Fund, on the date of enactment of this Act;

(ii) has since died from a malignant disease or condition; and

(iii) has not received compensation from the Fund for the disease or condition for which the claim was filed.

(3) ADDITIONAL TERMINAL HEALTH CLAIMS.—The Administrator may, in final regulations promulgated under section 101(c), designate additional categories of claims that qualify as terminal health claims under this subsection except that exceptional medical claims may not proceed.

(4) CLAIMS FACILITY.—To facilitate the prompt payment of terminal health claims prior to the Fund being certified as operational, the Administrator shall contract with a claims facility, which applying the medical criteria of section 121, shall process and pay claims in accordnace with section 106(f)(2). The processing and payment of claims shall be subject to regulations promulgated under this Act.

(5) AUTHORIZATION FOR CONTRACTS WITH CLAIMS FACILITIES.—The Administrator may enter into contracts with a claims facility for the processing of claims (except for exceptional medical claims) in accordance with this title.

(d) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health claims. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(e) INTERIM ADMINISTRATOR.—Until an Administrator is appointed and confirmed under section 101(b), the responsibilities of the Administrator under this Act shall be performed by the Assistant Secretary of Labor for the Employment Standards Administration, who shall have all the authority conferred by this Act on the Administrator and who shall be deemed to be the Administrator for purposes of this Act. Before final regulations being promulgated relating to claims processing, the Interim Administrator may prioritize claims processing, without regard to the time requirements prescribed in subtitle B of this title, based on severity of illness and likelihood that exposure to asbestos was a substantial contributing factor for the illness in question.

(f) STAY OF CLAIMS.—

(1) STAY OF CLAIMS.—Notwithstanding any other provision of this Act, any asbestos claim pending on the date of enactment of this Act is stayed.

(2) TERMINAL HEALTH CLAIMS.—

(A) PROCEDURES FOR SETTLEMENT OF TERMINAL HEALTH CLAIMS.—

(i) IN GENERAL.—Any person that has filed a terminal health claim, as provided under subsection (c)(2), seeking a judgment or order for monetary damages in any Federal or State court before the date of the enactment of this Act, shall seek a settlement in accordance with this paragraph. Any person with a terminal health claim, as provided under subsection (c)(2), that arises after such date of enactment shall seek a settlement in accordance with this paragraph.

(ii) FILING.—

(I) IN GENERAL.—At any time before the Fund or claims facility is certified as operational and paying terminal health claims at a reasonable rate, any person with a terminal health claim as described under clause (i) shall file a notice of their intent to seek a settlement or shall file their exigent health claim with the Administrator or claims facility. Filing of an exigent health claim with the Administrator or claims facility may serve as notice of intent to seek a settlement.

(II) EXCEPTION.—Any person who seeks compensation for an exigent health claim from a trust in accordance with section 402(f) shall not be eligible to seek a settlement or settlement offer under this paragraph.

(iii) TERMINAL HEALTH CLAIM INFORMATION.—To file a terminal health claim, each individual shall provide all of the following information:

(I) The amount received or entitled to be received as a result of all collateral source compensation under section 134, and copies of all settlement agreements and related documents sufficient to show the accuracy of that amount.

(II) A description of any claims for compensation for an asbestos related injury or disease filed by the claimant with any trust or class action trust, and the status or disposition or any such claims.

(III) All information that the claimant would be required to provide to the Administrator in support of a claim under sections 113(c) and 121.

(IV) A certification by the claimant that the information provided is true and complete. The certification provided under this subclause shall be subject to the same penalties for false or misleading statements that would be applicable with regard to information provided to the Administrator or claims facility in support of a claim.

(V) For terminal health claims arising after the date of enactment of this Act, the claimant shall identify each defendant that would be an appropriate defendant in a civil action seeking damages for the asbestos claim of the claimant. Identification of all potential participants shall be made in good faith by the claimant.

(iv) TIMING.—A claimant who has filed a notice of their intent to seek a settlement under clause (ii) shall within 60 days after filing notice provide to the Administrator or claims facility the information required under clause (iii). If a claimant has filed an exigent health claim under clause (ii) the Administrator shall provide all affected defendants the information required under clause (iii).

(v) WEBSITE.—

(I) POSTING.—The Administrator or claims facility shall post the information described in subclause (II) to a secure website, accessible on a passcode-protected basis to participants.

(II) REQUIRED INFORMATION.—The website established under subclause (I) shall contain a listing of—

(aa) each claimant that has filed a notice of intent to seek a settlement or claim under this clause;

(bb) the name of such claimant; and

(cc) if applicable—

(AA) the name of the court where such claim was filed;

(BB) the case or docket number of such claim; and

(CC) the date such claim was filed.

(III) PROHIBITIONS.—The website established under subclause (I) shall not contain specific health or medical information or social security numbers.

(IV) PARTICIPANT ACCESS.—A participant's access to the website established under subclause (I) shall be limited on a need to know basis, and participants shall not disclose or sell data, or retain data for purposes other than paying an asbestos claim.

(V) VIOLATIONS.—Any person or other entity that violates any provision of this clause, including by breaching any data posted on the website, shall be subject to an injunction, or civil penalties, or both.

(vi) ADMINISTRATOR OR CLAIMS FACILITY CERTIFICATION OF SETTLEMENT.—

(I) DETERMINATION.—Within 60 days after the information under clause (iii) is provided, the Administrator or claims facility shall determine whether or not the claim

meets the requirements of a terminal health claim.

(II) REQUIREMENTS MET.—If the Administrator or claims facility determines that the claim meets the requirements of a terminal health claim, the Administrator or claims facility shall immediately—

(aa) issue and serve on all parties a certification of eligibility of such claim;

(bb) determine the value of such claim under the Fund by subtracting from the amount in section 131 the total amount of collateral source compensation received by the claimant; and

(cc) pay the award of compensation to the claimant under clause (xiii).

(III) REQUIREMENTS NOT MET.—If the requirements under clause (iii) are not met, the claimant shall have 30 days to perfect the claim. If the claimant fails to perfect the claim within that 30-day period or the Administrator or claims facility determines that the claim does not meet the requirements of a terminal health claim, the claim shall not be eligible to proceed under this paragraph. A claimant may appeal any decision issued by a claims facility with the Administrator in accordance with section 114.

(vii) FAILURE TO CERTIFY.—If the Administrator or claims facility is unable to process the claim and does not make a determination regarding the certification of the claim as required under clause (vi), the Administrator or claims facility shall within 10 days after the end of the 60-day period referred to under clause (vi)(I) provide notice of the failure to act to the claimant and the defendants in the pending Federal or State court action or the defendants identified under clause (iii)(IV). If the Administrator or claims facility fails to provide such notice within 10 days, the claimant may elect to provide the notice to the affected defendants to prompt a settlement offer. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(viii) FAILURE TO PAY.—If the Administrator or claims facility does not pay the award as required under clause (xiii), the Administrator shall refer the certified claim within 10 days as a certified terminal health claim to the defendants in the pending Federal and State court action or to the potential defendants identified under clause (iii)(IV) for terminal claims arising after the date of enactment of this Act. The Administrator or claims facility shall list all terminal health claims for which notice has been provided under this clause on the website established under clause (v).

(ix) SETTLEMENT OFFER.—Any participant or participants may, within 30 days after receipt of such notice as provided under clause (vii) or (viii), file and serve on all parties and the Administrator a good faith settlement offer in an aggregate amount not to exceed the total amount to which the claimant would receive under section 131. If the aggregate amount offered by all participants exceeds the award determined by the Administrator, all offers shall be deemed reduced pro-rata until the aggregate amount equals the award amount. An acceptance of such settlement offer for claims pending before the date of enactment of this Act shall be subject to approval by the trial judge or authorized magistrate in the court where the claim is pending. The court shall approve any such accepted offer within 20 days after a request, unless there is evidence of bad faith or fraud. No court approval is necessary if the terminal health claim was certified by the Administrator or claims facility under clause (vi).

(x) ACCEPTANCE OR REJECTION.—Within 20 days after receipt of the settlement offer, or the amended settlement offer, the claimant shall either accept or reject such offer in writing. If the amount of the settlement offer made by the Administrator, claims facility, or participants equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement in writing.

(xi) OPPORTUNITY TO CURE.—If the settlement offer is rejected for being less than what the claimant would receive under the Fund, the participants shall have 10 business days to make an amended offer. If the amended offer equals 100 percent of what the claimant would receive under the Fund, the claimant shall accept such settlement offer in writing.

(xii) PAYMENT SCHEDULE.—

(I) MESOTHELIOMA CLAIMANTS.—For mesothelioma claimants—

(aa) an initial payment of 50 percent shall be made within 30 days after the date the settlement is accepted and the second and final payment shall be made 6 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participant, the payments may be extended 50 percent in 6 months and 50 percent 11 months after the date the settlement offer is accepted.

(II) OTHER TERMINAL CLAIMANTS.—For other terminal claimants, as defined under section 106(c)(2)(B) and (C)—

(aa) the initial payment of 50 percent shall be made within 6 months after the date the settlement is accepted and the second and final payment shall be made 12 months after date the settlement is accepted; or

(bb) if the Administrator determines that the payment schedule would impose a severe financial hardship on the Fund, or if the court determines that the settlement offer would impose a severe financial hardship on the participants, the payments may be extended 50 percent within 1 year after the date the settlement offer is accepted and 50 percent in 2 years after date the settlement offer is accepted.

(III) RELEASE.—Once a claimant has received final payment of the accepted settlement offer, and penalty payment if applicable, the claimant shall release any outstanding asbestos claims.

(xiii) RECOVERY OF COSTS.—

(I) IN GENERAL.—Any participant whose settlement offer is accepted may recover the cost of such settlement by deducting from the participant's next and subsequent contributions to the Fund the full amount of the payment made by such participant to the terminal health claimant, unless the Administrator finds, on the basis of clear and convincing evidence, that the participant's offer is not in good faith. Any such payment shall be considered a payment to the Fund for purposes of section 404(e)(1) and in response to the payment obligations imposed on participants in title II.

(II) REIMBURSEMENT.—Notwithstanding subclause (I), if the deductions from the participant's next and subsequent contributions to the Fund do not fully recover the cost of such payments on or before its third annual contribution to the Fund, the Fund shall reimburse such participant for such remaining cost not later than 6 months after the date of the third scheduled Fund contribution.

(3) RESERVATION OF RIGHTS.—Participation in the offer and settlement process under this subsection shall not affect or prejudice any rights or defenses a party might have in any litigation.

SEC. 107. AUTHORITY OF THE ADMINISTRATOR.

The Administrator, on any matter within the jurisdiction of the Administrator under this Act, may—

(1) issue subpoenas for and compel the attendance of witnesses within a radius of 200 miles;

(2) administer oaths;

(3) examine witnesses;

(4) require the production of books, papers, documents, and other evidence; and

(5) request assistance from other Federal agencies with the performance of the duties of the Administrator under this Act.

Subtitle B—Asbestos Disease Compensation Procedures

SEC. 111. ESSENTIAL ELEMENTS OF ELIGIBLE CLAIM.

To be eligible for an award under this Act for an asbestos-related disease or injury, an individual shall—

(1) file a claim in a timely manner in accordance with sections 106(f)(2) and 113; and

(2) prove, by a preponderance of the evidence, that the claimant suffers from an eligible disease or condition, as demonstrated by evidence that meets the requirements established under subtitle C.

SEC. 112. GENERAL RULE CONCERNING NO-FAULT COMPENSATION.

An asbestos claimant shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.

SEC. 113. FILING OF CLAIMS.

(a) WHO MAY SUBMIT.—

(1) IN GENERAL.—Any individual who has suffered from a disease or condition that is believed to meet the requirements established under subtitle C (or the personal representative of the individual, if the individual is deceased or incompetent) may file a claim with the Office for an award with respect to such injury.

(2) DEFINITION.—In this Act, the term ''personal representative'' shall have the same meaning as that term is defined in section 104.4 of title 28 of the Code of Federal Regulations, as in effect on December 31, 2004.

(3) LIMITATION.—A claim may not be filed by any person seeking contribution or indemnity.

(4) EFFECT OF MULTIPLE INJURIES.—

(A) IN GENERAL.—A claimant who receives an award for an eligible disease or condition shall not be precluded from submitting claims for and receiving additional awards under this title for any higher disease level for which the claimant becomes eligible, subject to appropriate setoffs as provided under section 134.

(B) LIBBY, MONTANA CLAIMS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), if a Libby, Montana claimant worsens in condition, as measured by pulmonary function tests, such that a claimant qualifies for a higher nonmalignant level, the claimant shall be eligible for an additional award, at the appropriate level, offset by any award previously paid under this Act, such that a claimant would qualify for Level IV if the claimant satisfies section 121(f)(8), and would qualify for Level V if the claimant provides—

(I) a diagnosis of bilateral asbestos related nonmalignant disease;

(II) evidence of TLC or FVC less than 60 percent; and

(III) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(ii) SUBSEQUENT MALIGNANT DISEASE.—If a Libby, Montana, claimant develops malignant disease, such that the claimant qualifies for Level VI, VII, VIII, or IX, subparagraph (A) shall apply.

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—If a claim is not filed with the Office within the limitations period specified in this subsection for that category of claim, such claim shall be extinguished, and any recovery thereon shall be prohibited.

(2) INITIAL CLAIMS.—An initial claim for an award under this Act shall be filed within 2 years after the date on which the claimant first received a medical diagnosis and medical test results sufficient to satisfy the criteria for the disease level for which the claimant is seeking compensation.

(3) CLAIMS FOR ADDITIONAL AWARDS.—

(A) NON-MALIGNANT DISEASES.—If a claimant has previously filed a timely initial claim for compensation for any non-malignant disease level, there shall be no limitations period applicable to the filing of claims by the claimant for additional awards for higher disease levels based on the progression of the non-malignant disease.

(B) MALIGNANT DISEASES.—Regardless of whether the claimant has previously filed a claim for compensation for any other disease level, a claim for compensation for a malignant disease level shall be filed within 2 years after the claimant first obtained a medical diagnosis and medical test results sufficient to satisfy the criteria for the malignant disease level for which the claimant is seeking compensation.

(4) EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—If, on the date of enactment of this Act, an asbestos claimant has any timely filed asbestos claim that is preempted under section 403(e), such claimant shall file a claim under this section within 2 years after such date of enactment, or any claim relating to that injury, and any other asbestos claim related to that injury shall be extinguished, and recovery on any such claim shall be prohibited.

(B) SPECIAL RULE.—For purposes of this paragraph, a claim shall not be treated as pending with a trust established under title 11, United States Code, solely because a claimant whose claim was previously compensated by the trust has or alleges—

(i) a non-contingent right to the payment of future installments of a fixed award; or

(ii) a contingent right to recover some additional amount from the trust on the occurrence of a future event, such as the reevaluation of the trust's funding adequacy or projected claims experience.

(c) REQUIRED INFORMATION.—A claim filed under subsection (a) shall be in such form, and contain such information in such detail, as the Administrator shall by regulation prescribe. At a minimum, a claim shall include—

(1) the name, social security number, gender, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) an employment history sufficient to establish required asbestos exposure, accompanied by social security or other payment records or a signed release permitting access to such records;

(4) a description of the asbestos exposure of the claimant, including, to the extent known, information on the site, or location of exposure, and duration and intensity of exposure;

(5) a description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases or conditions of the claimant, accompanied by a written report by the claimant's physician with medical diagnoses and x-ray films, and other test results necessary to establish eligibility for an award under this Act;

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal, or pleural injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise; and

(8) for any claimant who asserts that he or she is a nonsmoker or an ex-smoker, as defined in section 131, for purposes of an award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, evidence to support the assertion of nonsmoking or ex-smoking, including relevant medical records.

(d) DATE OF FILING.—A claim shall be considered to be filed on the date that the claimant mails the claim to the Office, as determined by postmark, or on the date that the claim is received by the Office, whichever is the earliest determinable date.

(e) INCOMPLETE CLAIMS.—If a claim filed under subsection (a) is incomplete, the Administrator shall notify the claimant of the information necessary to complete the claim and inform the claimant of such services as may be available through the Claimant Assistance Program established under section 104 to assist the claimant in completing the claim. Any time periods for the processing of the claim shall be suspended until such time as the claimant submits the information necessary to complete the claim. If such information is not received within 1 year after the date of such notification, the claim shall be dismissed.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) IN GENERAL.—

(1) REVIEW OF CLAIMS.—The Administrator shall, in accordance with this section, determine whether each claim filed under the Fund or claims facility satisfies the requirements for eligibility for an award under this Act and, if so, the value of the award. In making such determinations, the Administrator shall consider the claim presented by the claimant, the factual and medical evidence submitted by the claimant in support of the claim, the medical determinations of any Physicians Panel to which a claim is referred under section 121, and the results of such investigation as the Administrator may deem necessary to determine whether the claim satisfies the criteria for eligibility established by this Act.

(2) ADDITIONAL EVIDENCE.—The Administrator may request the submission of medical evidence in addition to the minimum requirements of section 113(c) if necessary or appropriate to make a determination of eligibility for an award, in which case the cost of obtaining such additional information or testing shall be borne by the Office.

(b) PROPOSED DECISIONS.—Not later than 90 days after the filing of a claim, the Administrator shall provide to the claimant (and the claimant's representative) a proposed decision accepting or rejecting the claim in whole or in part and specifying the amount of the proposed award, if any. The proposed decision shall be in writing, shall contain findings of fact and conclusions of law, and shall contain an explanation of the procedure for obtaining review of the proposed decision.

(d) REVIEW OF PROPOSED DECISIONS.—

(1) RIGHT TO HEARING.—

(A) IN GENERAL.—Any claimant not satisfied with a proposed decision of the Administrator under subsection (b) shall be entitled, on written request made within 90 days after the date of the issuance of the decision, to a hearing on the claim of that claimant before a representative of the Administrator. At the hearing, the claimant shall be entitled to present oral evidence and written testimony in further support of that claim.

(B) CONDUCT OF HEARING.—When practicable, the hearing will be set at a time and place convenient for the claimant. In conducting the hearing, the representative of the Administrator shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of title 5, United States Code, except as provided by this Act, but shall conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, the representative shall receive such relevant evidence as the claimant adduces and such other evidence as the representative determines necessary or useful in evaluating the claim.

(C) REQUEST FOR SUBPOENAS.—

(i) IN GENERAL.—A claimant may request a subpoena but the decision to grant or deny such a request is within the discretion of the representative of the Administrator. The representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers, or other relevant documents. Subpoenas are issued for documents only if such documents are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(ii) REQUEST.—A claimant may request a subpoena only as part of the hearing process. To request a subpoena, the requester shall—

(I) submit the request in writing and send it to the representative as early as possible, but no later than 30 days after the date of the original hearing request; and

(II) explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(iii) FEES AND MILEAGE.—Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. Such fees and mileage shall be paid from the Fund.

(2) REVIEW OF WRITTEN RECORD.—In lieu of a hearing under paragraph (1), any claimant not satisfied with a proposed decision of the Administrator shall have the option, on written request made within 90 days after the date of the issuance of the decision, of obtaining a review of the written record by a representative of the Administrator. If such review is requested, the claimant shall be afforded an opportunity to submit any written evidence or argument which the claimant believes relevant.

(e) FINAL DECISIONS.—

(1) IN GENERAL.—If the period of time for requesting review of the proposed decision expires and no request has been filed, or if the claimant waives any objections to the proposed decision, the Administrator shall issue a final decision. If such decision materially differs from the proposed decision, the claimant shall be entitled to review of the decision under subsection (d).

(2) TIME AND CONTENT.—If the claimant requests review of all or part of the proposed decision the Administrator shall issue a final decision on the claim not later than 180 days after the request for review is received, if the claimant requests a hearing, or not later than 90 days after the request for review is received, if the claimant requests review of the written record. Such decision shall be in writing and contain findings of fact and conclusions of law.

(f) REPRESENTATION.—A claimant may authorize an attorney or other individual to

represent him or her in any proceeding under this Act.

SEC. 115. AUDITING PROCEDURES.

(a) IN GENERAL.—

(1) DEVELOPMENT.—The Administrator shall develop methods for auditing and evaluating the medical and exposure evidence submitted as part of the claims process. The Administrator may develop additional methods for auditing and evaluating other types of evidence or information received by the Administrator.

(2) REFUSAL TO CONSIDER CERTAIN EVIDENCE.—

(A) IN GENERAL.—If the Administrator determines that an audit conducted in accordance with the methods developed under paragraph (1) demonstrates that the medical evidence submitted by a specific physician, medical facility or attorney or law firm is not consistent with prevailing medical practices or the applicable requirements of this Act, any medical evidence from such physician, facility or attorney or law firm shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(B) NOTIFICATION.—Upon a determination by the Administrator under subparagraph (A), the Administrator shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal such determination under procedures issued by the Administrator.

(b) REVIEW OF CERTIFIED B-READERS.—

(1) IN GENERAL.—The Administrator shall prescribe procedures to randomly evaluate the x-rays submitted in support of a statistically significant number of claims by independent certified B-readers, the cost of which shall be paid by the Fund.

(2) DISAGREEMENT.—If an independent certified B-reader assigned under paragraph (1) disagrees with the quality grading or ILO level assigned to an x-ray submitted in support of a claim, the Administrator shall require a review of such x-rays by a second independent certified B-reader.

(3) EFFECT ON CLAIM.—If neither certified B-reader under paragraph (2) agrees with the quality grading and the ILO grade level assigned to an x-ray as part of the claim, the Administrator shall take into account the findings of the 2 independent B readers in making the determination on such claim.

(4) CERTIFIED B-READERS.—The Administrator shall maintain a list of a minimum of 50 certified B-readers eligible to participate in the independent reviews, chosen from all certified B-readers. When an x-ray is sent for independent review, the Administrator shall choose the certified B-reader at random from that list.

(c) SMOKING ASSESSMENT.—

(1) IN GENERAL.—

(A) RECORDS AND DOCUMENTS.—To aid in the assessment of the accuracy of claimant representations as to their smoking status for purposes of determining eligibility and amount of award under Malignant Level VI, Malignant Level VII, or Malignant Level VIII, and exceptional medical claims, the Administrator shall have the authority to obtain relevant records and documents, including—

(i) records of past medical treatment and evaluation;

(ii) affidavits of appropriate individuals;

(iii) applications for insurance and supporting materials; and

(iv) employer records of medical examinations.

(B) CONSENT.—The claimant shall provide consent for the Administrator to obtain such records and documents where required.

(2) REVIEW.—The frequency of review of records and documents submitted under paragraph (1)(A) shall be at the discretion of the Administrator, but shall address at least 5 percent of the claimants asserting status as nonsmokers or ex-smokers.

(3) CONSENT.—

(A) IN GENERAL.—The Administrator may require the performance of blood tests or any other appropriate medical test, where claimants assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(B) SERUM COTININE SCREENING.—The Administrator shall require the performance of serum cotinine screening on all claimants who assert they are nonsmokers or ex-smokers for purposes of an award under Malignant Level VI, VII, or VIII, or as an exceptional medical claim, the cost of which shall be paid by the Fund.

(4) PENALTY FOR FALSE STATEMENTS.—Any false information submitted under this subsection shall be subject to criminal prosecution or civil penalties as provided under section 1348 of title 18, United States Code (as added by this Act) and section 101(c)(2).

(d) PULMONARY FUNCTION TESTING.—The Administrator shall develop auditing procedures for pulmonary function test results submitted as part of a claim, to ensure that such tests are conducted in accordance with American Thoracic Society Criteria, as defined under section 121(a)(13).

Subtitle C—Medical Criteria

SEC. 121. MEDICAL CRITERIA REQUIREMENTS.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) ASBESTOSIS DETERMINED BY PATHOLOGY.—The term ''asbestosis determined by pathology'' means indications of asbestosis based on the pathological grading system for asbestosis described in the Special Issues of the Archives of Pathology and Laboratory Medicine, ''Asbestos-associated Diseases'', Vol. 106, No. 11, App. 3 (October 8, 1982).

(2) BILATERAL ASBESTOS-RELATED NONMALIGNANT DISEASE.—The term ''bilateral asbestos-related nonmalignant disease'' means a diagnosis of bilateral asbestos-related nonmalignant disease based on—

(A) an x-ray reading of 1/0 or higher based on the ILO grade scale;

(B) bilateral pleural plaques;

(C) bilateral pleural thickening; or

(D) bilateral pleural calcification.

(3) BILATERAL PLEURAL DISEASE OF B2.—The term ''bilateral pleural disease of B2'' means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least ¼ of the projection of the lateral chest wall.

(4) CERTIFIED B-READER.—The term ''certified B-reader'' means an individual who is certified by the National Institute of Occupational Safety and Health and whose certification by the National Institute of Occupational Safety and Health is up to date.

(5) DIFFUSE PLEURAL THICKENING.—The term ''diffuse pleural thickening'' means blunting of either costophrenic angle and bilateral pleural plaque or bilateral pleural thickening.

(7) FEV1.—The term ''FEV1'' means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.

(8) FVC.—The term ''FVC'' means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.

(9) ILO GRADE.—The term ''ILO grade'' means the radiological ratings for the presence of lung changes as determined from a chest x-ray, all as established from time to time by the International Labor Organization.

(10) LOWER LIMITS OF NORMAL.—The term ''lower limits of normal'' means the fifth percentile of healthy populations as defined in the American Thoracic Society statement on lung function testing (Amer. Rev. Resp. Disease 1991, 144:1202–1218) and any future revision of the same statement.

(11) NONSMOKER.—The term ''nonsmoker'' means a claimant who—

(A) never smoked; or

(B) has smoked fewer than 100 cigarettes or the equivalent amount of other tobacco products during the claimant's lifetime.

(12) PO_2.—The term ''PO_2'' means the partial pressure (tension) of oxygen, which measures the amount of dissolved oxygen in the blood.

(13) PULMONARY FUNCTION TESTING.—The term ''pulmonary function testing'' means spirometry testing that is in material compliance with the quality criteria established by the American Thoracic Society and is performed on equipment which is in material compliance with the standards of the American Thoracic Society for technical quality and calibration.

(14) SUBSTANTIAL OCCUPATIONAL EXPOSURE TO ASBESTOS.—

(A) IN GENERAL.—The term ''substantial occupational exposure'' means employment in an industry and an occupation where for a substantial portion of a normal work year for that occupation, the claimant—

(i) handled raw asbestos fibers;

(ii) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed to raw asbestos fibers;

(iii) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to a significant amount of asbestos fibers; or

(iv) worked in close proximity to other workers engaged in the activities described under clause (i), (ii), or (iii), such that the claimant was exposed on a regular basis to a significant amount of asbestos fibers.

(B) REGULAR BASIS.—In this paragraph, the term ''on a regular basis'' means on a frequent or recurring basis.

(15) TLC.—The term ''TLC'' means total lung capacity, which is the total volume of air in the lung after maximal inspiration.

(16) WEIGHTED OCCUPATIONAL EXPOSURE.—

(A) IN GENERAL.—The term ''weighted occupational exposure'' means exposure for a period of years calculated according to the exposure weighting formula under subparagraphs (B) through (E).

(B) MODERATE EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved working in areas immediate to where asbestos-containing products were being installed, repaired, or removed under circumstances that involved regular airborne emissions of asbestos fibers, shall count as 1 year of substantial occupational exposure.

(C) HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that occupation, involved the direct installation, repair, or removal of asbestos-containing products such that the person was exposed on a regular basis to a significant amount of asbestos fibers, shall count as 2 years of substantial occupational exposure.

(D) VERY HEAVY EXPOSURE.—Subject to subparagraph (E), each year that a claimant's primary occupation, during a substantial portion of a normal work year for that

occupation, was in primary asbestos manufacturing, a World War II shipyard, or the asbestos insulation trades, such that the person was exposed on a regular basis to a significant amount of asbestos fibers, shall count as 4 years of substantial occupational exposure.

(E) DATES OF EXPOSURE.—Each year of exposure calculated under subparagraphs (B), (C), and (D) that occurred before 1976 shall be counted at its full value. Each year from 1976 to 1986 shall be counted as ½ of its value. Each year after 1986 shall be counted as 1/10 of its value.

(F) OTHER CLAIMS.—Individuals who do not meet the provisions of subparagraphs (A) through (E) and believe their post-1976 or post-1986 exposures exceeded the Occupational Safety and Health Administration standard may submit evidence, documentation, work history, or other information to substantiate noncompliance with the Occupational Safety and Health Administration standard (such as lack of engineering or work practice controls, or protective equipment) such that exposures would be equivalent to exposures before 1976 or 1986, or to documented exposures in similar jobs or occupations where control measures had not been implemented. Claims under this subparagraph shall be evaluated on an individual basis by a Physicians Panel.

(b) MEDICAL EVIDENCE.—

(1) LATENCY.—Unless otherwise specified, all diagnoses of an asbestos-related disease for a level under this section shall be accompanied by—

(A) a statement by the physician providing the diagnosis that at least 10 years have elapsed between the date of first exposure to asbestos or asbestos-containing products and the diagnosis; or

(B) a history of the claimant's exposure that is sufficient to establish a 10-year latency period between the date of first exposure to asbestos or asbestos-containing products and the diagnosis.

(2) DIAGNOSTIC GUIDELINES.—All diagnoses of asbestos-related diseases shall be based upon—

(A) for disease Levels I through V, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination of the claimant by the physician providing the diagnosis;

(ii) an evaluation of smoking history and exposure history before making a diagnosis;

(iii) an x-ray reading by a certified B-reader; and

(iv) pulmonary function testing in the case of disease Levels III, IV, and V;

(B) for disease Levels I through V, in the case of a claimant who was deceased at the time the claim was filed, a report from a physician based upon a review of the claimant's medical records which shall include—

(i) pathological evidence of the nonmalignant asbestos-related disease; or

(ii) an x-ray reading by a certified B-reader;

(C) for disease Levels VI through IX, in the case of a claimant who was living at the time the claim was filed—

(i) a physical examination by the claimant's physician providing the diagnosis; or

(ii) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(D) for disease Levels VI through IX, in the case of a claimant who was deceased at the time the claim was filed—

(i) a diagnosis of such a malignant asbestos-related disease, as described in this section, by a board-certified pathologist; and

(ii) a report from a physician based upon a review of the claimant's medical records.

(3) CREDIBILITY OF MEDICAL EVIDENCE.—To ensure the medical evidence provided in support of a claim is credible and consistent with recognized medical standards, a claimant under this title may be required to submit—

(A) x-rays or computerized tomography;

(B) detailed results of pulmonary function tests;

(C) laboratory tests;

(D) tissue samples;

(E) results of medical examinations;

(F) reviews of other medical evidence; and

(G) medical evidence that complies with recognized medical standards regarding equipment, testing methods, and procedure to ensure the reliability of such evidence as may be submitted.

(c) EXPOSURE EVIDENCE.—

(1) IN GENERAL.—To qualify for any disease level, the claimant shall demonstrate—

(A) a minimum exposure to asbestos or asbestos-containing products;

(B) the exposure occurred in the United States, its territories or possessions, or while a United States citizen, while an employee of an entity organized under any Federal or State law regardless of location, or while a United States citizen while serving on any United States flagged or owned ship, provided the exposure results from such employment or service; and

(C) any additional asbestos exposure requirement under this section.

(2) PROOF OF EXPOSURE.—

(A) AFFIDAVITS.—Exposure to asbestos sufficient to satisfy the exposure requirements for any disease level may be established by a detailed and specific affidavit that—

(i) is filed by—

(I) the claimant; or

(II) if the claimant is deceased, a coworker or a family member of the claimant; and

(ii) is found in proceedings under this title to be—

(I) reasonably reliable, attesting to the claimant's exposure; and

(II) credible and not contradicted by other evidence.

(B) OTHER PROOF.—Exposure to asbestos may alternatively be established by invoices, construction or other similar records, or any other reasonably reliable and credible evidence.

(C) ADDITIONAL EVIDENCE.—The Administrator may require submission of other or additional evidence of exposure, if available, for a particular claim when determined necessary, as part of the minimum information required under section 113(c).

(3) TAKE-HOME EXPOSURE.—

(A) IN GENERAL.—A claimant may alternatively satisfy the medical criteria requirements of this section where a claim is filed by a person who alleges their exposure to asbestos was the result of living with a person who, if the claim had been filed by that person, would have met the exposure criteria for the given disease level, and the claimant lived with such person for the time period necessary to satisfy the exposure requirement, for the claimed disease level.

(B) REVIEW.—Except for claims for disease Level IX (mesothelioma), all claims alleging take-home exposure shall be submitted as an exceptional medical claim under section 121(g) for review by a Physicians Panel.

(4) WAIVER FOR WORKERS AND RESIDENTS OF LIBBY, MONTANA.—Because of the unique nature of the asbestos exposure related to the vermiculite mining and milling operations in Libby, Montana, the Administrator shall waive the exposure requirements under this subtitle for individuals who worked at the vermiculite mining and milling facility in Libby, Montana, or lived or worked within a 20-mile radius of Libby, Montana, for at least 12 consecutive months before December 31, 2004. Claimants under this section shall provide such supporting documentation as the Administrator shall require.

(6) PENALTY FOR FALSE STATEMENT.—Any false information submitted under this subsection shall be subject to section 1348 of title 18, United States Code (as added by this Act).

(d) ASBESTOS DISEASE LEVELS.—

(1) NONMALIGNANT LEVEL I.—To receive Level I compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease; and

(B) evidence of 5 years cumulative occupational exposure to asbestos.

(2) NONMALIGNANT LEVEL II.—To receive Level II compensation, a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater, and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology, or blunting of either costophrenic angle and bilateral pleural plaque;

(B) evidence of TLC less than 80 percent or FVC less than the lower limits of normal, and FEV1/FVC ratio less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as the cause of the pulmonary condition in question.

(3) NONMALIGNANT LEVEL III.—To receive Level III compensation a claimant shall provide—

(A) a diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/0 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology;

(B) evidence of TLC less than 80 percent; FVC less than the lower limits of normal and FEV1/FVC ratio greater than or equal to 65 percent; or evidence of a decline in FVC of 20 percent or greater, after allowing for the expected decrease due to aging, and an FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

(ii) excluding other more likely causes of that pulmonary condition.

(4) NONMALIGNANT LEVEL IV.—To receive Level IV compensation a claimant shall provide—

(B) evidence of TLC less than 60 percent or FVC less than 60 percent, and FEV1/FVC ratio greater than or equal to 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos before diagnosis; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, of that pulmonary condition.

(5) NONMALIGNANT LEVEL V.—To receive Level V compensation a claimant shall provide—

(A) diagnosis of bilateral asbestos-related nonmalignant disease with ILO grade of 1/1 or greater and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones, or asbestosis determined by pathology;

(B)(i) evidence of TLC less than 50 percent or FVC less than 50 percent, and FEV1/FVC ratio greater than or equal to 65 percent; or

(iii) PO_2 less than 55 mm/Hg, plus a FEV1/FVC ratio not less than 65 percent;

(C) evidence of 5 or more weighted years of substantial occupational exposure to asbestos; and

(D) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2)—

(i) establishing asbestos exposure as the cause of the pulmonary condition in question; and

(ii) excluding other more likely causes, other than silica, of that pulmonary condition.

(8) MALIGNANT LEVEL VIII.—

(A) IN GENERAL.—To receive Level VIII compensation, a claimant shall provide a diagnosis—

(i) of a primary lung cancer disease on the basis of findings by a board certified pathologist;

(ii)(I) of—

(aa) asbestosis based on a chest x-ray of at least 1/0 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones; and

(bb) 10 or more weighted years of substantial occupational exposure to asbestos;

(II) of—

(aa) asbestosis based on a chest x-ray of at least 1/1 on the ILO scale and showing small irregular opacities of shape or size, either ss, st, or tt, and present in both lower lung zones; and

(bb) 8 or more weighted years of substantial occupational exposure to asbestos;

(III) asbestosis determined by pathology and 10 or more weighted years of substantial occupational exposure to asbestos; and

(iii) supporting medical documentation, such as a written opinion by the examining or diagnosing physician, according to the diagnostic guidelines in section 121(b)(2), establishing asbestos exposure as the cause of the lung cancer in question; and 10 or more weighted years of substantial occupational exposure to asbestos.

(9) MALIGNANT LEVEL IX.—To receive Level IX compensation, a claimant shall provide—

(A) a diagnosis of malignant mesothelioma disease on the basis of findings by a board certified pathologist; and

(B) credible evidence of identifiable exposure to asbestos resulting from—

(i) occupational exposure to asbestos;

(ii) exposure to asbestos fibers brought into the home of the claimant by a worker occupationally exposed to asbestos; or

(iii) exposure to asbestos fibers resulting from living or working in the proximate vicinity of a factory, shipyard, building demolition site, or other operation that regularly released asbestos fibers into the air due to operations involving asbestos at that site.

(g) EXCEPTIONAL MEDICAL CLAIMS.—

(1) IN GENERAL.—A claimant who does not meet the medical criteria requirements under this section may apply for designation of the claim as an exceptional medical claim.

(2) APPLICATION.—When submitting an application for review of an exceptional medical claim, the claimant shall—

(A) state that the claim does not meet the medical criteria requirements under this section; or

(B) seek designation as an exceptional medical claim within 60 days after a determination that the claim is ineligible solely for failure to meet the medical criteria requirements under subsection (d).

(3) REPORT OF PHYSICIAN.—

(A) IN GENERAL.—Any claimant applying for designation of a claim as an exceptional medical claim shall support an application filed under paragraph (1) with a report from a physician meeting the requirements of this section.

(B) CONTENTS.—A report filed under subparagraph (A) shall include—

(i) a complete review of the claimant's medical history and current condition;

(ii) such additional material by way of analysis and documentation as shall be prescribed by rule of the Administrator; and

(iii) a detailed explanation as to why the claim meets the requirements of paragraph (4)(B).

(4) REVIEW.—

(A) IN GENERAL.—The Administrator shall refer all applications and supporting documentation submitted under paragraph (2) to a Physicians Panel for review for eligibility as an exceptional medical claim.

(B) STANDARD.—A claim shall be designated as an exceptional medical claim if the claimant, for reasons beyond the control of the claimant, cannot satisfy the requirements under this section, but is able, through comparably reliable evidence that meets the standards under this section, to show that the claimant has an asbestos-related condition that is substantially comparable to that of a medical condition that would satisfy the requirements of a category under this section.

(C) ADDITIONAL INFORMATION.—A Physicians Panel may request additional reasonable testing to support the claimant's application.

(E) MESOTHELIOMA CASES.—

(i) IN GENERAL.—The Physicans Panel shall grant priority status to—

(I) all Level IX claims with other identifiable asbestos exposure as provided under paragraph (9)(B)(iv); and

(II) all Level IX claims that are filed as exceptional medical claims.

(ii) PHYSICIAN PANEL.—If the Physicians Panel issues a certificate of medical eligibility, the claimant shall be deemed to qualify for Level IX compensation. If the Physicians Panel rejects the claim, and the Administrator deems it rejected, the claimant may immediately seek judicial review under section 302.

(5) APPROVAL.—

(A) IN GENERAL.—If the Physicians Panel determines that the medical evidence is sufficient to show a comparable asbestos-related condition, it shall issue a certificate of medical eligibility designating the category of asbestos-related injury under this section for which the claimant shall be eligible to seek compensation.

(B) REFERRAL.—Upon the issuance of a certificate under subparagraph (A), the Physicians Panel shall submit the claim to the Administrator, who shall give due consideration to the recommendation of the Physicians Panel in determining whether the claimant meets the requirements for compensation under this Act.

(6) RESUBMISSION.—Any claimant whose application for designation as an exceptional medical claim is rejected may resubmit an application if new evidence becomes available. The application shall identify any prior applications and state the new evidence that forms the basis of the resubmission.

(7) RULES.—The Administrator shall promulgate rules governing the procedures for seeking designation of a claim as an exceptional medical claim.

(8) LIBBY, MONTANA.—

(A) IN GENERAL.—A Libby, Montana, claimant may elect to have the claimant's claims designated as exceptional medical claims and referred to a Physicians Panel for review. In reviewing the medical evidence submitted by a Libby, Montana claimant in support of that claim, the Physicians Panel shall take into consideration the unique and serious nature of asbestos exposure in Libby, Montana, including the nature of the pleural disease related to asbestos exposure in Libby, Montana.

(B) CLAIMS.—For all claims for Levels II through IV filed by Libby, Montana claimants, as described under subsection (c)(4), once the Administrator or the Physicians Panel issues a certificate of medical eligibility to a Libby, Montana claimant, and notwithstanding the disease category designated in the certificate or the eligible disease or condition established in accordance with this section, or the value of the award determined in accordance with section 114, the Libby, Montana claimant shall be entitled to an award that is not less than that awarded to claimants who suffer from asbestosis, Level IV. For all malignant claims filed by Libby, Montana claimants, the Libby, Montana claimant shall be entitled to an award that corresponds to the malignant disease category designated by the Administrator or the Physicians Panel.

(C) EVALUATION OF CLAIMS.—For purposes of evaluating exceptional medical claims from Libby, Montana, a claimant shall be deemed to have a comparable asbestos-related condition to an asbestos disease category Level IV, and shall be deemed to qualify for compensation at Level IV, if the claimant provides—

(i) a diagnosis of bilateral asbestos related nonmalignant disease;

(ii) evidence of TLC or FVC less than 80 percent; and

(iii) supporting medical documentation establishing asbestos exposure as a substantial contributing factor in causing the pulmonary condition in question, and excluding more likely causes of that pulmonary condition.

(9) STUDY OF VERMICULITE PROCESSING FACILITIES.—

(A) IN GENERAL.—As part of the ongoing National Asbestos Exposure Review (in this section referred to as ''NAER'') being conducted by the Agency for Toxic Substances and Disease Registry (in this section referred to as ''ATSDR'') of facilities that received vermiculite ore from Libby, Montana, the ATSDR shall conduct a study of all Phase 1 sites where—

(i) the Environmental Protection Agency has mandated further action at the site on the basis of current contamination; or

(ii) the site was an exfoliation facility that processed roughly 100,000 tons or more of vermiculite from the Libby mine.

(B) STUDY BY ATSDR.—The study by the ATSDR shall evaluate the facilities identified under subparagraph (A) and compare—

(i) the levels of asbestos emissions from such facilities;

(ii) the resulting asbestos contamination in areas surrounding such facilities;

(iii) the levels of exposure to residents living in the vicinity of such facilities;

(iv) the risks of asbestos-related disease to the residents living in the vicinity of such facilities; and

(v) the risk of asbestos-related mortality to residents living in the vicinity of such facilities,

to the emissions, contamination, exposures, and risks resulting from the mining of vermiculite ore in Libby, Montana.

(C) RESULTS OF STUDY.—The results of the study required under this paragraph shall be transmitted to the Administrator.

Subtitle D—Awards

SEC. 131. AMOUNT.

(a) IN GENERAL.—An asbestos claimant who meets the requirements of section 111 shall be entitled to an award in an amount determined by reference to the benefit table and the matrices developed under subsection (b).

(b) BENEFIT TABLE.—

(1) IN GENERAL.—An asbestos claimant with an eligible disease or condition established in accordance with section 121 shall be eligible for an award as determined under this subsection. The award for all asbestos claimants with an eligible disease or condition established in accordance with section 121 shall be according to the following schedule:

Level	Scheduled Condition or Disease.	Scheduled Value
I	Asbestosis/Pleural Disease A.	Medical Monitoring
II	Mixed Disease With Impairment.	$25,000
III	Asbestosis/Pleural Disease B.	$100,000
IV	Severe Asbestosis.	$400,000
V	Disabling Asbestosis.	$850,000
VIII	Lung Cancer With Asbestosis.	smokers, $600,000; ex-smokers, $975,000; non-smokers, $1,100,000
IX	Mesothelioma	$1,100,000

(2) DEFINITIONS.—In this section—

(A) the term ''nonsmoker'' means a claimant who—

(i) never smoked; or

(ii) has smoked fewer than 100 cigarettes or the equivalent of other tobacco products during the claimant's lifetime; and

(B) the term ''ex-smoker'' means a claimant who has not smoked during any portion of the 12-year period preceding the diagnosis of lung cancer.

(3) LEVEL IX ADJUSTMENTS.—

(A) IN GENERAL.—The Administrator may increase awards for Level IX claimants who have dependent children so long as the increase under this paragraph is cost neutral. Such increased awards shall be paid for by decreasing awards for claimants other than Level IX, so long as no award levels are decreased more than 10 percent.

(B) IMPLEMENTATION.—Before making adjustments under this paragraph, the Administrator shall publish in the Federal Register notice of, and a plan for, making such adjustments.

(4) SPECIAL ADJUSTMENT FOR FELA CASES.—

(A) IN GENERAL.—A claimant who would be eligible to bring a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, but for section 403 of this Act, shall be eligible for a special adjustment under this paragraph.

(B) REGULATIONS.—

(i) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate regulations relating to special adjustments under this paragraph.

(ii) JOINT PROPOSAL.—Not later than 45 days after the date of enactment of this Act, representatives of railroad management and representatives of railroad labor shall submit to the Administrator a joint proposal for regulations describing the eligibility for and amount of special adjustments under this paragraph. If a joint proposal is submitted, the Administrator shall promulgate regulations that reflect the joint proposal.

(iii) ABSENCE OF JOINT PROPOSAL.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the benefits prescribed in subparagraph (E) shall be the benefits available to claimants, and the Administrator shall promulgate regulations containing such benefits.

(iv) REVIEW.—The parties participating in the arbitration may file in the United States District Court for the District of Columbia a petition for review of the Administrator's order. The court shall have jurisdiction to affirm the order of the Administrator, or to set it aside, in whole or in part, or it may remand the proceedings to the Administrator for such further action as it may direct. On such review, the findings and order of the Administrator shall be conclusive on the parties, except that the order of the Administrator may be set aside, in whole or in parts or remanded to the Administrator, for failure of the Administrator to comply with the requirements of this section, for failure of the order to conform, or confine itself, to matters within the scope of the Administrator's jurisdiction, or for fraud or corruption.

(C) ELIGIBILITY.—An individual eligible to file a claim under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be eligible for a special adjustment under this paragraph if such individual meets the criteria set forth in subparagraph (F).

(D) AMOUNT.—

(i) IN GENERAL.—The amount of the special adjustment shall be based on the type and severity of asbestos disease, and shall be 110 percent of the average amount an injured individual with a disease caused by asbestos, as described in section 121(d) of this Act, would have received, during the 5-year period before the enactment of this Act, adjusted for inflation. This adjustment shall be in addition to any other award for which the claimant is eligible under this Act. The amount of the special adjustment shall be reduced by an amount reasonably calculated to take into account all expenses of litigation normally borne by plaintiffs, including attorney's fees.

(ii) LIMITATION.—The amount under clause (i) may not exceed the amount the claimant is eligible to receive before applying the special adjustment under that clause.

(E) ARBITRATED BENEFITS.—If railroad management and railroad labor are unable to agree on a joint proposal within 45 days after the date of enactment of this Act, the Administrator shall appoint an arbitrator to determine the benefits under subparagraph (D). The Administrator shall appoint an arbitrator who shall be acceptable to both railroad management and railroad labor. Railroad management and railroad labor shall each designate their representatives to participate in the arbitration. The arbitrator shall submit the benefits levels to the Administrator not later than 30 days after appointment and such benefits levels shall be based on information provided by rail labor and rail management. The information submitted to the arbitrator by railroad management and railroad labor shall be considered confidential and shall be disclosed to the other party upon execution of an appropriate confidentiality agreement. Unless the submitting party provides written consent, neither the arbitrator nor either party to the arbitration shall divulge to any third party any information or data, in any form, submitted to the arbitrator under this section. Nor shall either party use such information or data for any purpose other than participation in the arbitration proceeding, and each party shall return to the other any information it has received from the other party as soon the arbitration is concluded. Information submitted to the arbitrator may not be admitted into evidence, nor discovered, in any civil litigation in Federal or State court. The nature of the information submitted to the arbitrator shall be within the sole discretion of the submitting party, and the arbitrator may not require a party to submit any particular information, including information subject to a prior confidentiality agreement.

(F) DEMONSTRATION OF ELIGIBILITY.—

(i) IN GENERAL.—A claimant under this paragraph shall be required to demonstrate—

(I) employment of the claimant in the railroad industry;

(II) exposure of the claimant to asbestos as part of that employment; and

(III) the nature and severity of the asbestos-related injury.

(ii) MEDICAL CRITERIA.—In order to be eligible for a special adjustment a claimant shall meet the criteria set forth in section 121 that would qualify a claimant for a payment under Level II or greater.

(5) MEDICAL MONITORING.—An asbestos claimant with asymptomatic exposure, based on the criteria under section 121(d)(1), shall only be eligible for medical monitoring reimbursement as provided under section 132.

(6) COST-OF-LIVING ADJUSTMENT.—

(A) IN GENERAL.—Beginning January 1, 2007, award amounts under paragraph (1) shall be annually increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment, rounded to the nearest $1,000 increment.

(B) CALCULATION OF COST-OF-LIVING ADJUSTMENT.—For the purposes of subparagraph (A), the cost-of-living adjustment for any calendar year shall be the percentage, if any, by which the consumer price index for the succeeding calendar year exceeds the consumer price index for calendar year 2005.

(C) CONSUMER PRICE INDEX.—

(i) IN GENERAL.—For the purposes of subparagraph (B), the consumer price index for any calendar year is the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year.

(ii) DEFINITION.—For purposes of clause (i), the term ''consumer price index'' means the consumer price index published by the Department of Labor. The consumer price index series to be used for award escalations shall include the consumer price index used for all-urban consumers, with an area coverage of the United States city average, for all items, based on the 1982–1984 index based period, as published by the Department of Labor.

SEC. 132. MEDICAL MONITORING.

(a) RELATION TO STATUTE OF LIMITATIONS.—The filing of a claim under this Act that seeks reimbursement for medical monitoring shall not be considered as evidence that the claimant has discovered facts that would otherwise commence the period applicable

for purposes of the statute of limitations under section 113(b).

(b) COSTS.—Reimbursable medical monitoring costs shall include the costs of a claimant not covered by health insurance for an examination by the claimant's physician, x-ray tests, and pulmonary function tests every 3 years.

(c) REGULATIONS.—The Administrator shall promulgate regulations that establish—

(1) the reasonable costs for medical monitoring that is reimbursable; and

(2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENT.

(a) STRUCTURED PAYMENTS.—

(1) IN GENERAL.—An asbestos claimant who is entitled to an award should receive the amount of the award through structured payments from the Fund, made over a period of 3 years, and in no event more than 4 years after the date of final adjudication of the claim.

(2) PAYMENT PERIOD AND AMOUNT.—There shall be a presumption that any award paid under this subsection shall provide for payment of—

(A) 40 percent of the total amount in year 1;

(B) 30 percent of the total amount in year 2; and

(C) 30 percent of the total amount in year 3.

(3) EXTENSION OF PAYMENT PERIOD.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for the payment period of an award under subsection (a) to be extended to a 4-year period if such action is warranted in order to preserve the overall solvency of the Fund. Such guidelines shall include reference to the number of claims made to the Fund and the awards made and scheduled to be paid from the Fund as provided under section 405.

(B) LIMITATIONS.—In no event shall less than 50 percent of an award be paid in the first 2 years of the payment period under this subsection.

(4) LUMP-SUM PAYMENTS.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for 1 lump-sum payment to asbestos claimants who are mesothelioma victims and who are alive on the date on which the Administrator receives notice of the eligibility of the claimant.

(B) TIMING OF PAYMENTS.—Lump-sum payments shall be made within the shorter of—

(i) not later than 30 days after the date the claim is approved by the Administrator; or

(ii) not later than 6 months after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 11 months after the date the claim is filed.

(5) EXPEDITED PAYMENTS.—

(A) IN GENERAL.—The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of terminal health claims as described under section 106(c)(2)(B) and (C).

(B) TIMING OF PAYMENTS.—Total payments shall be made within the shorter of—

(i) not later than 6 months after the date the claim is approved by the Administrator; or

(ii) not later than 1 year after the date the claim is filed.

(C) TIMING OF PAYMENTS TO BE ADJUSTED WITH RESPECT TO SOLVENCY OF THE FUND.—If the Administrator determines that solvency of the Fund would be severely harmed by the timing of the payments required under subparagraph (B), the time for such payments may be extended to the shorter of—

(i) not later than 1 year after the date the claim is approved by the Administrator; or

(ii) not later than 2 years after the date the claim is filed.

(D) PRIORITIZATION OF CLAIMS.—The Administrator shall, in final regulations promulgated under section 101(c), designate categories of claims to be handled on an expedited basis. The Administrator shall prioritize the processing and payment of health claims involving claimants with the most serious health risks. The Administrator shall also prioritize claims from claimants who face extreme financial hardship.

(6) ANNUITY.—An asbestos claimant may elect to receive any payments to which that claimant is entitled under this title in the form of an annuity.

(b) LIMITATION ON TRANSFERABILITY.—A claim filed under this Act shall not be assignable or otherwise transferable under this Act.

(c) CREDITORS.—An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

(d) MEDICARE AS SECONDARY PAYER.—No award under this title shall be deemed a payment for purposes of section 1862 of the Social Security Act (42 U.S.C. 1395y).

(e) EXEMPT PROPERTY IN ASBESTOS CLAIMANT'S BANKRUPTCY CASE.—If an asbestos claimant files a petition for relief under section 301 of title 11, United States Code, no award granted under this Act shall be treated as property of the bankruptcy estate of the asbestos claimant in accordance with section 541(b)(6) of title 11, United States Code.

(f) EFFECT OF PAYMENT.—The payment of an asbestos claim under this section shall be in full satisfaction of such claim and shall be deemed to operate as a release to such claim. No claimant with an asbestos claim that will be paid under this section may proceed in the tort system with respect to such claim.

SEC. 134. SETOFFS FOR COLLATERAL SOURCE COMPENSATION AND PRIOR AWARDS.

(a) IN GENERAL.—The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of any collateral source compensation and by any amounts paid or to be paid to the claimant for a prior award under this Act.

(b) EXCLUSIONS.—

(1) COLLATERAL SOURCE COMPENSATION.—In no case shall special adjustments made under section 131(b)(3), occupational or total disability benefits under the Railroad Retirement Act (45 U.S.C. 201 et seq.), sickness benefits under the Railroad Unemployment Insurance Act (45 U.S.C 351 et seq.), and veterans' benefits programs be deemed as collateral source compensation for purposes of this section.

(2) PRIOR AWARD PAYMENTS.—Any amounts paid or to be paid for a prior claim for a nonmalignant disease (Levels I through V) filed against the Fund shall not be deducted as a setoff against amounts payable for the second injury claims for a malignant disease (Levels VI through IX), unless the malignancy was diagnosed before the date on which the nonmalignancy claim was compensated.

SEC. 135. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT OF AWARDS.

(a) IN GENERAL.—The payment of an award under section 106 or 133 shall not be considered a form of compensation or reimbursement for a loss for purposes of imposing liability on any asbestos claimant receiving such payment to repay any—

(1) life or health insurance carrier for insurance payments; or

(2) person or governmental entity on account of health care or disability payments.

(b) NO EFFECT ON CLAIMS.—

(1) IN GENERAL.—The payment of an award to an asbestos claimant under section 106 or 133 shall not affect any claim of an asbestos claimant against—

(A) a life or health insurance carrier with respect to insurance; or

(B) against any person or governmental entity with respect to healthcare or disability.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the pursuit of a claim that is preempted under section 403.

TITLE II—ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A—Asbestos Defendants Funding Allocation

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) AFFILIATED GROUP.—The term ''affiliated group''—

(A) means a defendant participant that is an ultimate parent and any person whose entire beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and

(B) shall not include any person that is a debtor or any direct or indirect majority-owned subsidiary of a debtor.

(2) INDEMNIFIABLE COST.—The term ''indemnifiable cost'' means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.

(3) INDEMNITEE.—The term ''indemnitee'' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(4) INDEMNITOR.—The term ''indemnitor'' means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(5) PRIOR ASBESTOS EXPENDITURES.—The term ''prior asbestos expenditures''—

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(h);

(C) shall not include any payment made by a person in connection with or as a result of

changes in insurance reserves required by contract or any activity or dispute related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad, including settlement, judgment, defense, or indemnity costs associated with these claims.

(6) ULTIMATE PARENT.—The term ''ultimate parent'' means a person—

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person (other than a natural person).

(7) ASBESTOS PREMISES CLAIM.—The term ''asbestos premises claim''—

(A) means an asbestos claim against a current or former premises owner or landowner, or person controlling or possessing premises or land, alleging injury or death caused by exposure to asbestos on such premises or land or by exposure to asbestos carried off such premises or land on the clothing or belongings of another person; and

(B) includes any such asbestos claim against a current or former employer alleging injury or death caused by exposure to asbestos on premises or land owned, controlled or possessed by the employer, if such claim is not a claim for benefits under a workers' compensation law or veterans' benefits program.

(8) ASBESTOS PREMISES DEFENDANT PARTICIPANT.—The term ''asbestos premises defendant participant'' means any defendant participant for which 95 percent or more of its prior asbestos expenditures relate to asbestos premises claims against that defendant participant.

SEC. 202. AUTHORITY AND TIERS.

(a) LIABILITY FOR PAYMENTS TO THE FUND.—

(1) IN GENERAL.—Defendant participants shall be liable for payments to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE PAYMENT OBLIGATIONS LEVEL.—The total payments required of all defendant participants over the life of the Fund shall not exceed a sum equal to $90,000,000,000 less any bankruptcy trust credits under section 222(d). The Administrator shall have the authority to allocate the payments required of the defendant participants among the tiers as provided in this title.

(3) ABILITY TO ENTER REORGANIZATION.—Notwithstanding any other provision of this Act, all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures less than $1,000,000 may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code. Any asbestos claim made in conjunction with a plan of reorganization allowable under the preceding sentence shall be subject to section 403(d) of this Act.

(b) TIER I.—Tier I shall include all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than $1,000,000.

(c) TREATMENT OF TIER I BUSINESS ENTITIES IN BANKRUPTCY.—

(1) DEFINITION.—

(A) IN GENERAL.—In this subsection, the term ''bankrupt business entity'' means a person that is not a natural person that—

(i) filed a petition for relief under chapter 11, of title 11, United States Code, before January 1, 2003;

(ii) has not substantially consummated, as such term is defined under section 1101(2) of title 11, United States Code, a plan of reorganization as of the date of enactment of this Act; and

(iii) the bankruptcy court presiding over the business entity's case determines, after notice and a hearing upon motion filed by the entity within 30 days after the date of enactment of this Act, that asbestos liability was not the sole or precipitating cause of the entity's chapter 11 filing.

(B) MOTION AND RELATED MATTERS.—A motion under subparagraph (A)(iii) shall be supported by—

(i) an affidavit or declaration of the chief executive officer, chief financial officer, or chief legal officer of the business entity; and

(ii) copies of the entity's public statements and securities filings made in connection with the entity's filing for chapter 11 protection.

Notice of such motion shall be as directed by the bankruptcy court, and the hearing shall be limited to consideration of the question of whether or not asbestos liability was the sole or precipitating cause of the entity's chapter 11 filing. The bankruptcy court shall hold a hearing and make its determination with respect to the motion within 30 days after the date the motion is filed. In making its determination, the bankruptcy court shall take into account the affidavits, public statements, and securities filings, and other information, if any, submitted by the entity and all other facts and circumstances presented by an objecting party. Any review of this determination shall be an expedited appeal and limited to whether the decision was against the weight of the evidence. Any appeal of a determination shall be an expedited review to the United States Circuit Court of Appeals for the circuit in which the bankruptcy is filed.

(2) PROCEEDING WITH REORGANIZATION PLAN.—A bankrupt business entity may proceed with the filing, solicitation, confirmation, and consummation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction described in section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if the bankruptcy court makes a favorable determination under paragraph (1)(B), unless the bankruptcy court's determination is overruled on appeal and all appeals are final. Such a bankrupt business entity may continue to so proceed, if—

(A) on request of a party in interest or on a motion of the court, and after a notice and a hearing, the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that such confirmation is required to avoid the liquidation or the need for further financial reorganization of that entity; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY.—If the bankruptcy court does not make the determination required under paragraph (2), or if an order confirming the plan is not entered within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of this Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS.—

(A) PAYMENTS BY INSURERS.—To the extent that a bankrupt business entity or debtor successfully confirms a plan of reorganization, including a trust, and channeling injunction that involves payments by insurers who are otherwise subject to this Act as described under section 524(g) of title 11, United States Code, an insurer who makes payments to the trust shall obtain a dollar-for-dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

(B) CONTRIBUTIONS TO FUND.—Any cash payments by a bankrupt business entity, if any, to a trust described under section 524(g) of title 11, United States Code, may be counted as a contribution to the Fund.

(d) TIERS II THROUGH VI.—Except as provided in section 204 and subsection (b) of this section, persons or affiliated groups are included in Tier II, III, IV, V, or VI, according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

(1) Tier II: $75,000,000 or greater.

(2) Tier III: $50,000,000 or greater, but less than $75,000,000.

(3) Tier IV: $10,000,000 or greater, but less than $50,000,000.

(4) Tier V: $5,000,000 or greater, but less than $10,000,000.

(5) Tier VI: $1,000,000 or greater, but less than $5,000,000.

(6) ASBESTOS PREMISES DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—Asbestos premises defendant participants that would be included in Tier II, III, IV or V according to their prior asbestos expenditures shall, after 5 years of the Fund being operational, instead be assigned to the immediately lower tier, such that—

(i) an asbestos premises defendant participant that would be assigned to Tier II shall instead be assigned to Tier III;

(ii) an asbestos premises defendant participant that would be assigned to Tier III shall instead be assigned to Tier IV;

(iii) an asbestos premises defendant participant that would be assigned to Tier IV shall instead be assigned to Tier V; and

(iv) an asbestos premises defendant participant that would be assigned to Tier V shall instead be assigned to Tier VI.

(B) RETURN TO ORIGINAL TIER.—The Administrator may return asbestos premises defendant participants to their original tier, on a yearly basis, if the Administrator determines that the additional revenues that would be collected are needed to preserve the solvency of the Fund.

(e) TIER PLACEMENT AND COSTS.—

(1) PERMANENT TIER PLACEMENT.—After a defendant participant or affiliated group is assigned to a tier and subtier under section 204(j)(6), the participant or affiliated group shall remain in that tier and subtier throughout the life of the Fund, regardless of subsequent events, including—

(A) the filing of a petition under a chapter of title 11, United States Code;

(B) a discharge of debt in bankruptcy;

(C) the confirmation of a plan of reorganization; or

(D) the sale or transfer of assets to any other person or affiliated group, unless the Administrator finds that the information submitted by the participant or affiliated group to support its inclusion in that tier was inaccurate.

(2) COSTS.—Payments to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act—

(A) shall constitute costs and expenses of administration of the case under section 503 of title 11, United States Code, and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;

(B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and

(C) shall not be impaired or discharged in any current or future case under title 11, United States Code.

(f) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—All of the following shall be superseded in their entireties by this Act:

(A) The treatment of any asbestos claim in any plan of reorganization with respect to any debtor included in Tier I.

(B) Any asbestos claim against any debtor included in Tier I.

(C) Any agreement, understanding, or undertaking by any such debtor or any third party with respect to the treatment of any asbestos claim filed in a debtor's bankruptcy case or with respect to a debtor before the date of enactment of this Act, whenever such debtor's case is either still pending, if such case is pending under a chapter other than chapter 11 of title 11, United States Code, or subject to confirmation or substantial consummation of a plan of reorganization under chapter 11 of title 11, United States Code.

(2) PRIOR AGREEMENTS OF NO EFFECT.—Notwithstanding section 403(c)(3), any plan of reorganization, agreement, understanding, or undertaking by any debtor (including any pre-petition agreement, understanding, or undertaking that requires future performance) or any third party under paragraph (1), and any agreement, understanding, or undertaking entered into in anticipation, contemplation, or furtherance of a plan of reorganization, to the extent it relates to any asbestos claim, shall be of no force or effect, and no person shall have any right or claim with respect to any such agreement, understanding, or undertaking.

SEC. 203. SUBTIERS.

(a) IN GENERAL.—

(1) SUBTIER LIABILITY.—Except as otherwise provided under subsections (b), (d), and (l) of section 204, persons or affiliated groups shall be included within Tiers I through VII and shall pay amounts to the Fund in accordance with this section.

(2) REVENUES.—

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant or affiliated group would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

(B) INSURANCE PREMIUMS.—Any portion of revenues of a defendant participant that is derived from insurance premiums shall not be used to calculate the payment obligation of that defendant participant under this subtitle.

(C) DEBTORS.—Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is included in Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person. If a debtor or affiliated group includes a person in respect of whose liabilities for asbestos claims a class action trust has been established, there shall be excluded from the 2002 revenues of such debtor or affiliated group—

(i) all revenues of the person in respect of whose liabilities for asbestos claims the class action trust was established; and

(ii) all revenues of the debtor and affiliated group attributable to the historical business operations or assets of such person, regardless of whether such business operations or assets were owned or conducted during the year 2002 by such person or by any other person included within such debtor and affiliated group.

(b) TIER I SUBTIERS.—

(1) IN GENERAL.—Each debtor in Tier I shall be included in subtiers and shall pay amounts to the Fund as provided under this section.

(2) SUBTIER 1.—

(A) IN GENERAL.—All persons that are debtors with prior asbestos expenditures of $1,000,000 or greater, shall be included in Subtier 1.

(B) PAYMENT.—

(i) IN GENERAL.—Each debtor included in Subtier 1 shall pay on an annual basis 1.67024 percent of the debtor's 2002 revenues.

(ii) EXCEPTION TO PAYMENT PERCENTAGE.—Notwithstanding clause (i), a debtor in Subtier 1 shall pay, on an annual basis, $500,000 if—

(I) such debtor, including its direct or indirect majority-owned subsidiaries, has less than $10,000,000 in prior asbestos expenditures;

(II) at least 95 percent of such debtors revenues derive from the provision of engineering and construction services; and

(III) such debtor, including its direct or indirect majority-owned subsidiaries, never manufactured, sold, or distributed asbestos-containing products in the stream of commerce.

(C) OTHER ASSETS.—The Administrator, at the sole discretion of the Administrator, may allow a Subtier 1 debtor to satisfy its funding obligation under this paragraph with assets other than cash if the Administrator determines that requiring an all-cash payment of the debtor's funding obligation would render the debtor's reorganization infeasible.

(D) LIABILITY.—

(i) IN GENERAL.—If a person who is subject to a case pending under a chapter of title 11, United States Code, as defined in section 201(3)(A)(i), does not pay when due any payment obligation for the debtor, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the debtor may be liable under sections 223 and 224) from any of the direct or indirect majority-owned subsidiaries under section 201(3)(A)(ii).

(ii) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within a debtor under section 201(3)(A) (i) and (ii) with respect to the payment obligations under this Act.

(iii) RIGHT OF CONTRIBUTION.—

(I) IN GENERAL.—Notwithstanding any other provision of this Act, if a direct or indirect majority-owned foreign subsidiary of a debtor participant (with such relationship to the debtor participant as determined on the date of enactment of this Act) is or becomes subject to any foreign insolvency proceedings, and such foreign direct or indirect-majority owned subsidiary is liquidated in connection with such foreign insolvency proceedings (or if the debtor participant's interest in such foreign subsidiary is otherwise canceled or terminated in connection with such foreign insolvency proceedings), the debtor participant shall have a claim against such foreign subsidiary or the estate of such foreign subsidiary in an amount equal to the greater of—

(aa) the estimated amount of all current and future asbestos liabilities against such foreign subsidiary; or

(bb) the foreign subsidiary's allocable share of the debtor participant's funding obligations to the Fund as determined by such foreign subsidiary's allocable share of the debtor participant's 2002 gross revenue.

(II) DETERMINATION OF CLAIM AMOUNT.—The claim amount under subclause (I) (aa) or (bb) shall be determined by a court of competent jurisdiction in the United States.

(III) EFFECT ON PAYMENT OBLIGATION.—The right to, or recovery under, any such claim shall not reduce, limit, delay, or otherwise affect the debtor participant's payment obligations under this Act.

(iv) MAXIMUM ANNUAL PAYMENT OBLIGATION.—Subject to any payments under paragraphs (3), (4), and (5) of this subsection, the annual payment obligation by a debtor under subparagraph (B) of this paragraph shall not exceed $80,000,000.

(3) SUBTIER 2.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations, other than class action trusts under paragraph (6), but hold cash or other assets that have been allocated or earmarked for the settlement of asbestos claims shall be included in Subtier 2.

(B) ASSIGNMENT OF ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 2 shall assign all of its unencumbered assets to the Fund.

(4) SUBTIER 3.—

(A) IN GENERAL.—Notwithstanding paragraph (2), all persons that are debtors other than those included in Subtier 2, which have no material continuing business operations and no cash or other assets allocated or earmarked for the settlement of any asbestos claim, shall be included in Subtier 3.

(B) ASSIGNMENT OF UNENCUMBERED ASSETS.—Not later than 90 days after the date of enactment of this Act, each person included in Subtier 3 shall contribute an amount equal to 50 percent of its total unencumbered assets.

(5) CALCULATION OF UNENCUMBERED ASSETS.—Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance-related assets, jointly held, in trust or otherwise, with a defendant participant, less—

(A) all allowable administrative expenses;

(B) allowable priority claims under section 507 of title 11, United States Code; and

(C) allowable secured claims.

(6) CLASS ACTION TRUST.—The assets of any class action trust that has been established in respect of the liabilities for asbestos claims of any person included within a debtor and affiliated group that has been included in Tier I (exclusive of any assets needed to pay previously incurred expenses and asbestos claims within the meaning of section 403(d)(1), before the date of enactment of this Act) shall be transferred to the Fund not later than 60 days after the date of enactment of this Act.

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers

shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $27,500,000.

(B) Subtier 2: $24,750,000.

(C) Subtier 3: $22,000,000.

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $16,500,000.

(B) Subtier 2: $13,750,000.

(C) Subtier 3: $11,000,000.

(D) Subtier 4: $8,250,000.

(E) Subtier 5: $5,500,000.

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier IV shall be included in 1 of the 4 subtiers of Tier IV, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $3,850,000.

(B) Subtier 2: $2,475,000.

(C) Subtier 3: $1,650,000.

(D) Subtier 4: $550,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 3 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $1,000,000.

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 3 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(3) OTHER PAYMENT FOR CERTAIN PERSONS AND AFFILIATED GROUPS.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, and if an adjustment authorized by this subsection does not impair the overall solvency of the Fund, any person or affiliated group within Tier VI whose required subtier payment in any given year would exceed such person's or group's average annual expenditure on settlements, and judgments of asbestos disease-related claims over the 8 years before the date of enactment of this Act shall make the payment required of the immediately lower subtier or, if the person's or group's average annual expenditures on settlements and judgments over the 8 years before the date of enactment of this Act is less than $100,000, shall not be required to make a payment under this Act.

(B) NO FURTHER ADJUSTMENT.—Any person or affiliated group that receives an adjustment under this paragraph shall not be eligible to receive any further adjustment under section 204(e).

(h) TIER VII.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, or VI, a person or affiliated group shall also be included in Tier VII, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims, and such settlement, judgment, defense, or indemnity costs constitute 75 percent or more of the total prior asbestos expenditures by the person or affiliated group.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier VII shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VI.

(3) SUBTIER 1.—Each person or affiliated group in Tier VII with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier VII with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier VII with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) IN GENERAL.—Each defendant participant or affiliated group shall pay to the Fund in the amounts provided under this subtitle as appropriate for its tier and subtier each year until the earlier to occur of the following:

(1) The participant or affiliated group has satisfied its obligations under this subtitle during the 30 annual payment cycles of the operation of the Fund.

(2) The amount received by the Fund from defendant participants, excluding any amounts rebated to defendant participants under subsections (e) and (n), equals the maximum aggregate payment obligation of section 202(a)(2).

(b) SMALL BUSINESS EXEMPTION.—Notwithstanding any other provision of this subtitle, a person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any payment requirement under this subtitle and shall not be included in the subtier allocations under section 203.

(c) LIMITATION.—For any affiliated group, the total payment in any year, including any guaranteed pay'ment surcharge under subsection (m) and any bankruptcy trust guarantee surcharge under section 222(c), shall not exceed the lesser of $16,702,400 or 1.67024 percent of the revenues of the affiliated group for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation is applied, whichever is greater. For purposes of this subsection, the term ''affiliated group'' shall include any defendant participant that is an ultimate parent. The limitation in this subsection shall not apply to defendant participants in Tier I or to any affiliated group whose revenues for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation applied, whichever is greater, exceeds $1,000,000,000. The revenues of the affiliated group shall be determined in accordance with section 203(a)(2), except for the applicable date. An affiliated group that claims a reduction in its payment in any year shall file with the Administrator, in accordance with procedures prescribed by the Administrator, sufficient infonnation to allow the Administrator to determine the amount of any such reduction in that year. If as a result of the application of the limitation provided in this subsection an affiliated group is exempt from paying all or part of a guaranteed payment surcharge or bankruptcy trust surcharge, then the reduction in the affiliated group's payment obligation due to the limitation in this subsection shall be redistributed in accordance with subsection (m). Nothing in this subsection shall be construed as reducing the minimum aggregate annual payment obligation of defendant participants as provided in section 204(i)(1).''

(d) PROCEDURES.—The Administrator shall prescribe procedures on how amounts payable under this subtitle are to be paid, including, to the extent the Administrator determines appropriate, procedures relating to payment in installments.

(e) ADJUSTMENTS.—

(1) IN GENERAL.—Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its payment obligation based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. A defendant participant has a right to obtain a rehearing of the Administrator's determination under this subsection under the procedures prescribed in subsection (j)(10). The Administrator may adjust a defendant participant's payment obligations under this subsection, either by forgiving the relevant portion of the otherwise applicable payment obligation or by providing relevant rebates from the defendant hardship and inequity adjustment account created under subsection (k) after payment of the otherwise applicable payment obligation, at the discretion of the Administrator.

(2) FINANCIAL HARDSHIP ADJUSTMENTS.—

(A) IN GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such an adjustment by demonstrating to the satisfaction of the Administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the Administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.—In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected financial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately preceding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101 (31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments of extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the Administrator considers relevant.

(B) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the Administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(C) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the Administrator determines at the time of the renewed adjustment that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this sub-paragraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and analyses submitted to the Administrator were made in good faith and are reasonable and attainable.

(3) INEQUITY ADJUSTMENTS.—

(A) IN GENERAL.—A defendant participant—

(i) may qualify for an adjustment based on inequity by demonstrating that the amount of its payment obligation under the statutory allocation is exceptionally inequitable—

(I) when measured against the amount of the likely cost to the defendant participant net of insurance of its future liability in the tort system in the absence of the Fund;

(II) when measured against the likely cost of past and potential future claims in the absence of this Act;

(III) when compared to the median payment rate for all defendant participants in the same tier; or

(IV) when measured against the percentage of the prior asbestos expenditures of the defendant that were incurred with respect to claims that neither resulted in an adverse judgment against the defendant, nor were the subject of a settlement that required a payment to a plaintiff by or on behalf of that defendant;

(ii) shall be granted a two-tier main tier and a two-tier subtier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such person's prior asbestos expenditures arose from claims related to the manufacture and sale of railroad locomotives and related products, so long as such person's manufacture and sale of railroad locomotives and related products is temporally and causally remote, and for purposes of this clause, a person's manufacture and sale of railroad locomotives and related products shall be deemed to be temporally and causally remote if the asbestos claims historically and generally filed against such person relate to the manufacture and sale of railroad locomotives and related products by an entity dissolved more than 25 years before the date of enactment of this Act;

(iii) shall be granted a two-tier adjustment reducing the defendant participant's payment obligation based on inequity by demonstrating that not less than 95 percent of such participant's prior asbestos expenditures arose from asbestos claims based on successor liability arising from a merger to which the participant or its predecessor was a party that occurred at least 30 years before the date of enactment of this Act, and that such prior asbestos expenditures exceed the inflation-adjusted value of the assets of the company from which such liability was derived in such merger, and upon such demonstration the Administrator shall grant such adjustment for the life of the Fund and amounts paid by such defendant participant prior to such adjustment in excess of its adjusted payment obligation under this clause shall be credited against next succeeding required payment obligations; and

(iv) may, subject to the discretion of the Administrator, be exempt from any payment obligation if such defendant participant establishes with the Administrator that—

(I) such participant has satisfied all past claims; and

(II) there is no reasonable likelihood in the absence of this Act of any future claims with costs for which the defendant participant might be responsible.

(B) PAYMENT RATE.—For purposes of subparagraph (A), the payment rate of a defendant participant is the payment amount of the defendant participant as a percentage of such defendant participant's gross revenues for the year ending December 31, 2002.

(C) TERM.—Subject to the annual availability of funds in the defendant inequity adjustment account established under subsection (k), an inequity adjustment under this subsection shall have a term of 3 years.

(D) RENEWAL.—A defendant participant may renew an inequity adjustment every 3 years by demonstrating that the adjustment remains justified.

(E) REINSTATEMENT.—

(i) IN GENERAL.—Following the termination of an inequity adjustment under subparagraph (A), and during the funding period prescribed under subsection (a), the Administrator shall annually determine whether there has been a material change in conditions which would support a finding that the amount of the defendant participant's payment under the statutory allocation was not inequitable. Based on this determination, the Administrator may, consistent with the policies and legislative intent underlying this Act, reinstate any or all of the payment obligations of the defendant participant as if the inequity adjustment had not been granted for that 3-year period.

(ii) TERMS AND CONDITIONS.—In the event of a reinstatement under clause (i), the Administrator may require the defendant participant to pay any part or all of amounts not paid due to the inequity adjustment on such terms and conditions as established by the Administrator.

(4) LIMITATION ON ADJUSTMENTS.—The aggregate total of inequity adjustments under paragraph (3) in effect in any given year shall not exceed $300,000,000, except to the extent that additional monies are available for such adjustments as a result of carryover of prior years' funds under subsection (k)(3) or as a result of monies being made available in that year under subsection (l)(1)(A).

(B) the Administrator determines that the $300,000,000 is insufficient and additional adjustments as provided under paragraph (5) are needed to address situations in which a defendant participant would otherwise be rendered insolvent by its payment obligations without such adjustment.

(6) RULEMAKING AND ADVISORY PANELS.—

(A) APPOINTMENT.—The Administrator may appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

(B) MEMBERSHIP.—The membership of the panels appointed under subparagraph (A) may overlap.

(C) COORDINATION.—The panels appointed under subparagraph (A) shall coordinate their deliberations and advice. The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable.

(f) LIMITATION ON LIABILITY.—The liability of each defendant participant to pay to the Fund shall be limited to the payment obligations under this Act, and, except as provided in subsection (f) and section 203(b)(2)(D), no defendant participant shall have any liability for the payment obligations of any other defendant participant.

(g) CONSOLIDATION OF PAYMENTS.—

(1) IN GENERAL.—For purposes of determining the payment levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submissions to be made under paragraphs (1) and (3) of subsection (j), to report on a consolidated basis all of the information necessary to determine the payment level under this subtitle and pay to the Fund on a consolidated basis.

(2) ELECTION.—If an affiliated group elects consolidation as provided in this subsection—

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including with respect to the assessment of a single annual payment under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit each submission to be made under subsection (i) on behalf of the entire affiliated group and shall be solely liable, as between the Administrator and the affiliated group only, for the payment of the annual amount due from the affiliated group under this subtitle, except that, if the ultimate parent does not pay when due any payment obligation for the affiliated group, the Administrator shall have the right to seek payment of all or any portion of the entire amount due (as well as any other amount for which the affiliated group may be liable under sections 223 and 224) from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (j) and shall certify compliance with this subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(3) CAUSE OF ACTION.—Notwithstanding section 221(e), this Act shall not preclude actions among persons within an affiliated group with respect to the payment obligations under this Act.

(h) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES.—

(1) IN GENERAL.—For purposes of determining a defendant participant's prior asbestos expenditures, the Administrator shall prescribe such rules as may be necessary or appropriate to assure that payments by indemnitors before December 31, 2002, shall be counted as part of the indemnitor's prior asbestos expenditures, rather than the indemnitee's prior asbestos expenditures, in accordance with this subsection.

(2) INDEMNIFIABLE COSTS.—If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

(3) INSURANCE PAYMENTS.—When computing the prior asbestos expenditures with respect to an asbestos claim, any amount paid or reimbursed by insurance shall be solely for the account of the indemnitor, even if the indemnitor would have no direct right to the benefit of the insurance, if—

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee; and

(B) the indemnitor has either, with respect to such asbestos claim or any similar asbestos claim, paid or reimbursed to its indemnitee any indemnifiable cost or paid to any third party on behalf of or for the benefit of the indemnitee any indemnifiable cost.

(4) TREATMENT OF CERTAIN EXPENDITURES.—Notwithstanding any other provision of this Act, where—

(A) an indemnitor entered into a stock purchase agreement in 1988 that involved the sale of the stock of businesses that produced friction and other products; and

(B) the stock purchase agreement provided that the indemnitor indemnified the indemnitee and its affiliates for losses arising from various matters, including asbestos claims—

(i) asserted before the date of the agreement; and

(ii) filed after the date of the agreement and prior to the 10-year anniversary of the stock sale,

then the prior asbestos expenditures arising from the asbestos claims described in clauses (i) and (ii) shall not be for the account of either the indemnitor or indemnitee.

(i) MINIMUM ANNUAL PAYMENTS.—

(1) IN GENERAL.—The aggregate annual payments of defendant participants to the Fund shall be at least $3,000,000,000 for each calendar year in the first 30 years of the Fund, or until such shorter time as the condition set forth in subsection (a)(2) is attained.

(2) GUARANTEED PAYMENT ACCOUNT.—To the extent payments in accordance with sections 202 and 203 (as modified by subsections (b), (e), (g), (h), and (n) of this section) fail in any year to raise at least $3,000,000,000, after applicable reductions or adjustments have been taken according to subsections (e) and (n), the balance needed to meet this required minimum aggregate annual payment shall be obtained from the defendant guaranteed payment account established under subsection (k).

(j) PROCEDURES FOR MAKING PAYMENTS.—

(1) INITIAL YEAR: TIERS II–VI.—

(A) IN GENERAL.—Not later than 90 days after enactment of this Act, each defendant participant that is included in Tiers II, III, IV, V, or VI shall file with the Administrator—

(i) a statement of whether the defendant participant irrevocably elects to report on a consolidated basis under subsection (g);

(ii) a good-faith estimate of its prior asbestos expenditures;

(iii) a statement of its 2002 revenues, determined in accordance with section 203(a)(2);

(iv) payment in the amount specified in section 203 for the lowest subtier of the tier within which the defendant participant falls, except that if the defendant participant, or the affiliated group including the defendant participant, had 2002 revenues exceeding $3,000,000,000, it or its affiliated group shall pay the amount specified for Subtier 3 of Tiers II, III, or IV or Subtier 2 of Tiers V or VI, depending on the applicable Tier; and

(v) a signature page personally verifying the truth of the statements and estimates described under this subparagraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(B) RELIEF.—

(i) IN GENERAL.—The Administrator shall establish procedures to grant a defendant participant relief from its initial payment obligation if the participant shows that—

(I) the participant is likely to qualify for a financial hardship adjustment; and

(II) failure to provide interim relief would cause severe irreparable harm.

(ii) JUDICIAL RELIEF.—The Administrator's refusal to grant relief under clause (i) is subject to immediate judicial review under section 303.

(2) INITIAL YEAR: TIER I.—Not later than 60 days after enactment of this Act, each debtor shall file with the Administrator—

(A) a statement identifying the bankruptcy case(s) associated with the debtor;

(B) a statement whether its prior asbestos expenditures exceed $1,000,000;

(C) a statement whether it has material continuing business operations and, if not, whether it holds cash or other assets that have been allocated or earmarked for asbestos settlements;

(D) in the case of debtors falling within Subtier 1 of Tier I—

(i) a statement of the debtor's 2002 revenues, determined in accordance with section 203(a)(2);

(ii) for those debtors subject to the payment requirement of section 203(b)(2)(B)(ii), a statement whether its prior asbestos expenditures do not exceed $10,000,000, and a description of its business operations sufficient to show the requirements of that section are met; and

(iii) a payment under section 203(b)(2)(B);

(E) in the case of debtors falling within Subtier 2 of Tier I, an assignment of its assets under section 203(b)(3)(B);

(F) in the case of debtors falling within Subtier 3 of Tier I, a payment under section 203(b)(4)(B), and a statement of how such payment was calculated; and

(G) a signature page personally verifying the truth of the statements and estimates described under this paragraph, as required under section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.).

(3) INITIAL YEAR: TIER VII.—Not later than 90 days after enactment of this Act, each defendant participant in Tier VII shall file with the Administrator—

(A) a good-faith estimate of all payments of the type described in section 203(h)(1) (as modified by section 203(h)(6));

(B) a statement of revenues calculated in accordance with sections 203(a)(2) and 203(h); and

(C) payment in the amount specified in section 203(h).

(4) NOTICE TO PARTICIPANTS.—Not later than 240 days after enactment of this Act, the Administrator shall—

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund; and

(B) publish in the Federal Register a notice—

(i) setting forth the criteria in this Act, and as prescribed by the Administrator in accordance with this Act, for paying under this subtitle as a defendant participant and requiring any person who may be a defendant participant to submit such information; and

(ii) that includes a list of all defendant participants notified by the Administrator under subparagraph (A), and provides for 30 days for the submission by the public of comments or information regarding the completeness and accuracy of the list of identified defendant participants.

(5) RESPONSE REQUIRED.—

(A) IN GENERAL.—Any person who receives notice under paragraph (4)(A), and any other person meeting the criteria specified in the notice published under paragraph (4)(B), shall provide the Administrator with an address to send any notice from the Administrator in accordance with this Act and all the information required by the Administrator in accordance with this subsection no later than the earlier of—

(i) 30 days after the receipt of direct notice; or

(ii) 30 days after the publication of notice in the Federal Register.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(C) CONSENT TO AUDIT AUTHORITY.—The response submitted under subparagraph (A) shall include, on behalf of the defendant participant or affiliated group, a consent to the Administrator's audit authority under section 221(d).

(6) NOTICE OF INITIAL DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INDIVIDUAL.—Not later than 60 days after receiving a response under paragraph (5), the Administrator shall send the person a notice of initial determination identifying the tier and subtier, if any, into which the person falls and the annual payment obligation, if any, to the Fund, which determination shall be based on the information received from the person under this subsection and any other pertinent information available to the Administrator and identified to the defendant participant.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to defendant participants, the Administrator shall publish in the Federal Register a notice listing the defendant participants that have been sent such notification, and the initial determination identifying the tier and subtier assignment and annual payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response in accordance with paragraph (5) is received from a defendant participant, or if the response is incomplete, the initial determination shall be based on the best information available to the Administrator.

(C) PAYMENTS.—Within 30 days of receiving a notice of initial determination requiring payment, the defendant participant shall pay the Administrator the amount required by the notice, after deducting any previous payment made by the participant under this subsection. If the amount that the defendant participant is required to pay is less than any previous payment made by the participant under this subsection, the Administrator shall credit any excess payment against the future payment obligations of that defendant participant. The pendency of a petition for rehearing under paragraph (10) shall not stay the obligation of the participant to make the payment specified in the Administrator's notice.

(7) EXEMPTIONS FOR INFORMATION REQUIRED.—

(A) PRIOR ASBESTOS EXPENDITURES.—In lieu of submitting information related to prior asbestos expenditures as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Tier II.

(B) REVENUES.—In lieu of submitting information related to revenues as may be required for purposes of this subtitle, a non-debtor defendant participant may consent to be assigned to Subtier 1 of the defendant participant's applicable tier.

(8) NEW INFORMATION.—

(A) EXISTING PARTICIPANT.—The Administrator shall adopt procedures for requiring additional payment, or refunding amounts already paid, based on new information received.

(B) ADDITIONAL PARTICIPANT.—If the Administrator, at any time, receives information that an additional person may qualify as a defendant participant, the Administrator shall require such person to submit information necessary to determine whether that person is required to make payments, and in what amount, under this subtitle and shall make any determination or take any other act consistent with this Act based on such information or any other information available to the Administrator with respect to such person.

(9) SUBPOENAS.—The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(10) REHEARING.—A defendant participant has a right to obtain rehearing of the Administrator's determination under this subsection of the applicable tier or subtier of the Administrator's determination under subsection (e) of a financial hardship or inequity adjustment, and of the Administrator's determination under subsection (n) of a distributor's adjustment, if the request for rehearing is filed within 30 days after the defendant participant's receipt of notice from the Administrator of the determination. A defendant participant may not file an action under section 303 unless the defendant participant requests a rehearing under this paragraph. The Administrator shall publish a notice in the Federal Register of any change in a defendant participant's tier or subtier assignment or payment obligation as a result of a rehearing.

(k) DEFENDANT INEQUITY ADJUSTMENT ACCOUNT.—

(1) IN GENERAL.—To the extent the total payments by defendant participants in any given year exceed the minimum aggregate annual payments required under subsection (i), excess monies up to a maximum of $300,000,000 in any such year shall be placed in a defendant inequity adjustment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant inequity adjustment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to make up for any relief granted to a defendant participant for demonstrated inequity under subsection (d) or to reimburse any defendant participant granted such relief after its payment of the amount otherwise due; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(3) CARRYOVER OF UNUSED FUNDS.—To the extent the Administrator does not, in any given year, use all of the funds allocated to the account under paragraph (1) for adjustments granted under subsection (e), remaining funds in the account shall be carried forward for use by the Administrator for adjustments in subsequent years.

(l) DEFENDANT GUARANTEED PAYMENT ACCOUNT.—

(1) IN GENERAL.—Subject to subsections (i) and (k), if there are excess monies paid by defendant participants in any given year, including any bankruptcy trust credits that may be due under section 222(d), such monies—

(A) at the discretion of the Administrator, may be used to provide additional adjustments under subsection (e), up to a maximum aggregate of $50,000,000 in such year; and

(B) to the extent not used under subparagraph (A), shall be placed in a defendant guaranteed payment account established within the Fund by the Administrator.

(2) USE OF ACCOUNT MONIES.—Monies from the defendant guaranteed payment account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only—

(A) to ensure the minimum aggregate annual payment required under subsection (i), after applicable reductions or adjustments have been taken according to subsections (e) and (m) is reached each year; and

(B) if the condition set forth in subsection (a)(2) is met, for any purpose that the Fund may serve under this Act.

(n) ADJUSTMENTS FOR DISTRIBUTORS.—

(1) DEFINITION.—In this subsection, the term ''distributor'' means a person—

(A) whose prior asbestos expenditures arise exclusively from the sale of products manufactured by others;

(B) who did not prior to December 31, 2002, sell raw asbestos or a product containing more than 95 percent asbestos by weight;

(C) whose prior asbestos expenditures did not arise out of—

(i) the manufacture, installation, repair, reconditioning, maintaining, servicing, constructing, or remanufacturing of any product;

(ii) the control of the design, specification, or manufacture of any product; or

(iii) the sale or resale of any product under, as part of, or under the auspices of, its own brand, trademark, or service mark; and

(D) who is not subject to assignment under section 202 to Tier I, II, III or VII.

(2) TIER REASSIGNMENT FOR DISTRIBUTORS.—

(A) IN GENERAL.—Notwithstanding section 202, the Administrator shall assign a distributor to a Tier for purposes of this title under the procedures set forth in this paragraph.

(B) DESIGNATION.—After a final determination by the Administrator under section 204(j), any person who is, or any affiliated group in which every member is, a distributor may apply to the Administrator for adjustment of its Tier assignment under this subsection. Such application shall be prepared in accordance with such procedures as

the Administrator shall promulgate by rule. Once the Administrator designates a person or affiliated group as a distributor under this subsection, such designation and the adjustment of tier assignment under this subsection are final.

(C) PAYMENTS.—Any person or affiliated group that seeks adjustment of its Tier assignment under this subsection shall pay all amounts required of it under this title until a final determination by the Administrator is made under this subsection. Such payments may not be stayed pending any appeal. The Administrator shall grant any person or affiliated group a refund or credit of any payments made if such adjustment results in a lower payment obligation.

(D) ADJUSTMENT.—Subject to paragraph (3), any person or affiliated group that the Administrator has designated as a distributor under this subsection shall be given an adjustment of Tier assignment as follows:

(i) A distributor that but for this subsection would be assigned to Tier IV shall be deemed assigned to Tier V.

(ii) A distributor that but for this subsection would be assigned to Tier V shall be deemed assigned to Tier VI.

(iii) A distributor that but for this subsection would be assigned to Tier VI shall be deemed assigned to no Tier and shall have no obligation to make any payment to the Fund under this Act.

(E) EXCLUSIVE TO INEQUITY ADJUSTMENT.—Any person or affiliated group designated by the Administrator as a distributor under this subsection shall not be eligible for an inequity adjustment under subsection 204(e).

(3) LIMITATION ON ADJUSTMENTS.—The aggregate total of distributor adjustments under this subsection in effect in any given year shall not exceed $50,000,000. If the aggregate total of distributors adjustments under this subsection would otherwise exceed $50,000,000, then each distributor's adjustment shall be reduced pro rata until the aggregate of all adjustments equals $50,000,000.

(4) REHEARING.—A defendant participant has a right to obtain a rehearing of the Administrator's determination on an adjustment under this subsection under the procedures prescribed in subsection (j)(10).

SEC. 205. STEPDOWNS AND FUNDING HOLIDAYS.

(a) STEPDOWNS.—

(1) IN GENERAL.—Subject to paragraph (2), the minimum aggregate annual funding obligation under section 204(i) shall be reduced by 10 percent of the initial minimum aggregate funding obligation at the end of the tenth, fifteenth, twentieth, and twenty-fifth years after the date of enactment of this Act. Except as otherwise provided in this paragraph, the reductions under this paragraph shall be applied on an equal pro rata basis to the funding obligations of all defendant participants.

The reductions under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligations shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reduction provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.

(2) LIMITATION.—The Administrator shall suspend, cancel, reduce, or delay any reduction under paragraph (1) if at any time the Administrator finds, in accordance with subsection (c), that such action is necessary and appropriate to ensure that the assets of the Fund and expected future payments remain sufficient to satisfy the Fund's anticipated obligations.

(b) FUNDING HOLIDAYS.—

(1) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments, taking into consideration any reductions under subsection (a), are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from defendant participants for that year.

(2) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under paragraph (1) every year.

(3) LIMITATIONS ON FUNDING HOLIDAYS.—Any reduction or waiver of the defendant participants' funding obligations shall—

(A) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(B) be applied on an equal pro rata basis to the funding obligations of all defendant participants, except as otherwise provided under this paragraph. The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c0 or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions or waivers under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.

(4) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all defendant participants, except defendant participants in Subtiers 2 and 3 of Tier I and class action trusts, for that year.

(c) CERTIFICATION.—

(1) IN GENERAL.—Before suspending, canceling, reducing, or delaying any reduction under subsection (a) or granting or revoking a reduction or waiver under subsection (b), the Administrator shall certify that the requirements of this section are satisfied.

(2) NOTICE AND COMMENT.—Before making a final certification under this subsection, the Administrator shall publish a notice in the Federal Register of a proposed certification and a statement of the basis therefor and provide in such notice for a public comment period of 30 days.

(3) FINAL CERTIFICATION.—

(A) IN GENERAL.—The Administrator shall publish a notice of the final certification in the Federal Register after consideration of all comments submitted under paragraph (2).

(B) WRITTEN NOTICE.—Not later than 30 days after publishing any final certification under subparagraph (A), the Administrator shall provide each defendant participant with written notice of that defendant's funding obligation for that year.

SEC. 206. ACCOUNTING TREATMENT.

Defendant participants payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each defendant participant. This section shall in no way reduce the amount of monetary payments to the Fund by defendant participants as required under section 202(a)(2).

Subtitle B—Asbestos Insurers Commission

SEC. 210. DEFINITION.

In this subtitle, the term ''captive insurance company'' means a company—

(1) whose entire beneficial interest is owned on the date of enactment of this Act, directly or indirectly, by a defendant participant or by the ultimate parent or the affiliated group of a defendant participant;

(2) whose primary commercial business during the period from calendar years 1940 through 1986 was to provide insurance to its ultimate parent or affiliated group, or any portion of the affiliated group or a combination thereof; and

(3) that was incorporated or operating no later than December 31, 2003.

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) ESTABLISHMENT.—There is established the Asbestos Insurers Commission (referred to in this subtitle as the ''Commission'') to carry out the duties described in section 212.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall be composed of 5 members who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—

(A) EXPERTISE.—Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST.—

(i) IN GENERAL.—No member of the Commission appointed under paragraph (1) may be an employee or immediate family member of an employee of an insurer participant. No

member of the Commission shall be a shareholder of any insurer participant. No member of the Commission shall be a former officer or director, or a former employee or former shareholder of any insurer participant who was such an employee, shareholder, officer, or director at any time during the 2-year period ending on the date of the appointment, unless that is fully disclosed before consideration in the Senate of the nomination for appointment to the Commission.

(ii) DEFINITION.—In clause (i), the term ''shareholder'' shall not include a broadly based mutual fund that includes the stocks of insurer participants as a portion of its overall holdings.

(C) FEDERAL EMPLOYMENT.—A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

(3) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Commission.

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) CHAIRMAN.—The President shall select a Chairman from among the members of the Commission.

(c) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—The Commission shall meet at the call of the Chairman, as necessary to accomplish the duties under section 212.

(3) QUORUM.—No business may be conducted or hearings held without the participation of a majority of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) DETERMINATION OF INSURER PAYMENT OBLIGATIONS.—

(1) IN GENERAL.—

(A) DEFINITIONS.—For the purposes of this Act, the terms ''insurer'' and ''insurer participant'' shall, unless stated otherwise, include direct insurers and reinsurers, as well as any run-off entity established, in whole or in part, to review and pay asbestos claims.

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—The Commission shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Commission shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology may include 1 or more allocation formulas to be applied to all insurer participants or groups of similarly situated participants. The Commission's rule shall include a methodology for adjusting payments by insurer participants to make up, during the first 5 years of the life of the Fund and any subsequent years as provided in section 405(f) for any reduction in an insurer participant's annual allocated amount caused by the granting of a financial hardship or exceptional circumstance adjustment under this section, and any amount by which aggregate insurer payments fall below the level required under paragraph (3)(C) by reason of the failure or refusal of any insurer participant to make a required payment, or for any other reason that causes such payments to fall below the level required under paragraph (3)(C). The Commission shall conduct a thorough study (within the time limitations under this subparagraph) of the accuracy of the reserve allocation of each insurer participant, and may request information from the Securities and Exchange Commission or any State regulatory agency. Under this procedure, not later than 120 days after the initial meeting of the Commission, the Commission shall commence a rulemaking proceeding under section 213(a) to propose and adopt a methodology for allocating payments among insurer participants. In proposing an allocation methodology, the Commission may consult with such actuaries and other experts as it deems appropriate. After hearings and public comment on the proposed allocation methodology, the Commission shall as promptly as possible promulgate a final rule establishing such methodology. After promulgation of the final rule, the Commission shall determine the individual payment of each insurer participant under the procedures set forth in subsection (b).

(C) SCOPE.—Every insurer, reinsurer, and runoff entity with asbestos-related obligations in the United States shall be subject to the Commission's and Administrator's authority under this Act, including allocation determinations, and shall be required to fulfill its payment obligation without regard as to whether it is licensed in the United States. Every insurer participant not licensed or domiciled in the United States shall, upon the first payment to the Fund, submit a written consent to the Commission's and Administrator's authority under this Act, and to the jurisdiction of the courts of the United States for purposes of enforcing this Act, in a form determined by the Administrator. Any insurer participant refusing to provide a written consent shall be subject to fines and penalties as provided in section 223.

(D) ISSUERS OF FINITE RISK POLICIES.—

(i) IN GENERAL.—The issuer of any policy of retrospective reinsurance purchased by an insurer participant or its affiliate after 1990 that provides for a risk or loss transfer to insure for asbestos losses and other losses (both known and unknown), including those policies commonly referred to as ''finite risk'', ''aggregate stop loss'', ''aggregate excess of loss'', or ''loss portfolio transfer'' policies, shall be obligated to make payments required under this Act directly to the Fund on behalf of the insurer participant who is the beneficiary of such policy, subject to the underlying retention and the limits of liability applicable to such policy.

(ii) PAYMENTS.—Payments to the Fund required under this Act shall be treated as loss payments for asbestos bodily injury (as if such payments were incurred as liabilities imposed in the tort system) and shall not be subject to exclusion under policies described under clause (i) as a liability with respect to tax or assessment. Within 90 days after the scheduled date to make an annual payment to the Fund, the insurer participant shall, at its discretion, direct the reinsurer issuing such policy to pay all or a portion of the annual payment directly to the Fund up to the full applicable limits of liability under the policy. The reinsurer issuing such policy shall be obligated to make such payments directly to the Fund and shall be subject to the enforcement provisions under section 223. The insurer participant shall remain obligated to make payment to the Fund of that portion of the annual payment not directed to the issuer of such reinsurance policy.

(2) AMOUNT OF PAYMENTS.—

(A) AGGREGATE PAYMENT OBLIGATION.—The total payment required of all insurer participants over the life of the Fund shall be equal to $46,025,000,000, less any bankruptcy trust credits under section 222(d).

(B) ACCOUNTING STANDARDS.—In determining the payment obligations of participants that are not licensed or domiciled in the United States or that are runoff entities, the Commission shall use accounting standards required for United States licensed direct insurers.

(C) CAPTIVE INSURANCE COMPANIES.—No payment to the Fund shall be required from a captive insurance company, unless and only to the extent a captive insurance company, on the date of enactment of this Act, insures the asbestos liability, directly or indirectly, of (and that arises out of the manufacture, sale, distribution or installation of materials or products by, or other conduct of) a person or persons other than and unaffiliated with its ultimate parent or affiliated group or pool in which the ultimate parent participates or participated, or unaffiliated with a person that was its ultimate parent or a member of its affiliated group or pool at the time the relevant insurance or reinsurance was issued by the captive insurance company.

(D) SEVERAL LIABILITY.—Unless otherwise provided under this Act, each insurer participant's obligation to make payments to the Fund is several. Unless otherwise provided under this Act, there is no joint liability, and the future insolvency by any insurer participant shall not affect the payment required of any other insurer participant.

(3) PAYMENT OF CRITERIA.—

(A) INCLUSION IN INSURER PARTICIPANT CATEGORY.—

(i) IN GENERAL.—Insurers that have paid, or been assessed by a legal judgment or settlement, at least $1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries arising from a policy of liability insurance or contract of liability reinsurance or retrocessional reinsurance shall be insurer participants in the Fund. Other insurers shall be exempt from mandatory payments.

(ii) INAPPLICABILITY OF SECTION 202.—Since insurers may be subject in certain jurisdictions to direct action suits, and it is not the intent of this Act to impose upon an insurer, due to its operation as an insurer, payment obligations to the Fund in situations where the insurer is the subject of a direct action, no insurer subject to mandatory payments under this section shall also be liable for payments to the Fund as a defendant participant under section 202.

(B) INSURER PARTICIPANT ALLOCATION METHODOLOGY.—

(i) IN GENERAL.—The Commission shall establish the payment obligations of individual insurer participants to reflect, on an equitable basis, the relative tort system liability of the participating insurers in the absence of this Act, considering and weighting, as appropriate (but exclusive of workers' compensation), such factors as—

(I) historic premium for lines of insurance associated with asbestos exposure over relevant periods of time;

(II) recent loss experience for asbestos liability;

(III) amounts reserved for asbestos liability;

(IV) the likely cost to each insurer participant of its future liabilities under applicable insurance policies; and

(V) any other factor the Commission may determine is relevant and appropriate.

(ii) DETERMINATION OF RESERVES.—The Commission may establish procedures and standards for determination of the asbestos reserves of insurer participants. The reserves of a United States licensed reinsurer that is wholly owned by, or under common control of, a United States licensed direct insurer shall be included as part of the direct insurer's reserves when the reinsurer's financial results are included as part of the direct insurer's United States operations, as reflected in footnote 33 of its filings with the National Association of Insurance Commissioners or

in published financial statements prepared in accordance with generally accepted accounting principles.

(C) PAYMENT SCHEDULE.—The aggregate annual amount of payments by insurer participants over the life of the Fund shall be as follows:

(i) For years 1 and 2, $2,700,000,000 annually.

(ii) For years 3 through 5, $5,075,000,000 annually.

(iii) For years 6 through 27, $1,147,000,000 annually.

(iv) For year 28, $166,000,000.

(D) CERTAIN RUNOFF ENTITIES.—A runoff entity shall include any direct insurer or reinsurer whose asbestos liability reserves have been transferred, directly or indirectly, to the runoff entity and on whose behalf the runoff entity handles or adjusts and, where appropriate, pays asbestos claims.

(E) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—

(i) IN GENERAL.—Under the procedures established in subsection (b), an insurer participant may seek adjustment of the amount of its payments based on exceptional circumstances or severe financial hardship.

(ii) FINANCIAL ADJUSTMENTS.—An insurer participant may qualify for an adjustment based on severe financial hardship by demonstrating that payment of the amounts required by the Commission's methodology would jeopardize the solvency of such participant.

(iii) EXCEPTIONAL CIRCUMSTANCE ADJUSTMENT.—An insurer participant may qualify for an adjustment based on exceptional circumstances by demonstrating—

(I) that the amount of its payments under the Commission's allocation methodology is exceptionally inequitable when measured against the amount of the likely cost to the participant of its future liability in the tort system in the absence of the Fund;

(II) an offset credit as described in subparagraphs (A) and (C) of subsection (b)(4); or

(III) other exceptional circumstances.

The Commission may determine whether to grant an adjustment and the size of any such adjustment, but except as provided under paragraph (1)(B), subsection (f)(3), and section 405(f), any such adjustment shall not affect the aggregate payment obligations of insurer participants specified in paragraph (2)(A) and subparagraph (C) of this paragraph.

(iv) TIME PERIOD OF ADJUSTMENT.—Except for adjustments for offset credits, adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating to the Administrator that it remains justified.

(F) FUNDING HOLIDAYS.—

(i) IN GENERAL.—If the Administrator determines, at any time after 10 years following the date of enactment of this Act, that the assets of the Fund at the time of such determination and expected future payments are sufficient to satisfy the Fund's anticipated obligations without the need for all, or any portion of, that year's payment otherwise required under this subtitle, the Administrator shall reduce or waive all or any part of the payments required from insurer participants for that year.

(ii) ANNUAL REVIEW.—The Administrator shall undertake the review required by this subsection and make the necessary determination under clause (i) every year.

(iii) LIMITATIONS OF FUNDING HOLIDAYS.—Any reduction or waiver of the insurer participants' funding obligations shall—

(I) be made only to the extent the Administrator determines that the Fund will still be able to satisfy all of its anticipated obligations; and

(II) be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(iv) NEW INFORMATION.—If at any time the Administrator determines that a reduction or waiver under this section may cause the assets of the Fund and expected future payments to decrease to a level at which the Fund may not be able to satisfy all of its anticipated obligations, the Administrator shall revoke all or any part of such reduction or waiver to the extent necessary to ensure that the Fund's obligations are met. Such revocations shall be applied on an equal pro rata basis to the funding obligations of all insurer participants for that year.

(b) PROCEDURE FOR NOTIFYING INSURER PARTICIPANTS OF INDIVIDUAL PAYMENT OBLIGATIONS.—

(1) NOTICE TO PARTICIPANTS.—Not later than 30 days after promulgation of the final rule establishing an allocation methodology under subsection (a)(1), the Commission shall—

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required payment to the Fund under the allocation methodology; and

(B) publish in the Federal Register a notice—

(i) requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information; and

(ii) that includes a list of all insurer participants notified by the Commission under subparagraph (A), and provides for 30 days for the submission of comments or information regarding the completeness and accuracy of the list of identified insurer participants.

(2) RESPONSE REQUIRED BY INDIVIDUAL INSURER PARTICIPANTS.—

(A) IN GENERAL.—Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice under a schedule or by a date established by the Commission.

(B) CERTIFICATION.—The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE TO INSURER PARTICIPANTS OF INITIAL PAYMENT DETERMINATION.—

(A) IN GENERAL.—

(i) NOTICE TO INSURERS.—Not later than 120 days after receipt of the information required by paragraph (2), the Commission shall send each insurer participant a notice of initial determination requiring payments to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information. An insurer participant's payments shall be payable over the schedule established in subsection (a)(3)(C), in annual amounts proportionate to the aggregate annual amount of payments for all insurer participants for the applicable year.

(ii) PUBLIC NOTICE.—Not later than 7 days after sending the notification of initial determination to insurer participants, the Commission shall publish in the Federal Register a notice listing the insurer participants that have been sent such notification, and the initial determination on the payment obligation of each identified participant.

(B) NO RESPONSE; INCOMPLETE RESPONSE.—If no response is received from an insurer participant, or if the response is incomplete, the initial determination requiring a payment from the insurer participant shall be based on the best information available to the Commission.

(4) COMMISSION REVIEW, REVISION, AND FINALIZATION OF INITIAL PAYMENT DETERMINATIONS.—

(A) COMMENTS FROM INSURER PARTICIPANTS.—Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support adjustments to the required payments to reflect severe financial hardship or exceptional circumstances, including the provision of an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy judicially confirmed after May 22, 2003, but before the date of enactment of this Act.

(B) ADDITIONAL PARTICIPANTS.—If, before the final determination of the Commission, the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether payments from that person should be required, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES.—The Commission shall adopt procedures for revising initial payments based on information received under subparagraphs (A) and (B), including a provision requiring an offset credit for an insurer participant for the amount of any asbestos-related payments it made or was legally obligated to make, including payments released from an escrow, as the result of a bankruptcy confirmed after May 22, 2003, but before the date of enactment of this Act.

(5) EXAMINATIONS AND SUBPOENAS.—

(A) EXAMINATIONS.—The Commission may conduct examinations of the books and records of insurer participants to determine the completeness and accuracy of information submitted, or required to be submitted, to the Commission for purposes of determining participant payments.

(B) SUBPOENAS.—The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) ESCROW PAYMENTS.—Without regard to an insurer participant's payment obligation under this section, any escrow or similar account established before the date of enactment of this Act by an insurer participant in connection with an asbestos trust fund that has not been judicially confirmed by final order by the date of enactment of this Act shall be the property of the insurer participant and returned to that insurer participant.

(7) NOTICE TO INSURER PARTICIPANTS OF FINAL PAYMENT DETERMINATIONS.—Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(c) INSURER PARTICIPANTS VOLUNTARY ALLOCATION AGREEMENT.—

(1) IN GENERAL.—Not later than 30 days after the Commission proposes its rule establishing an allocation methodology under subsection (a)(1), direct insurer participants licensed or domiciled in the United States, other direct insurer participants, reinsurer participants licensed or domiciled in the

United States, or other reinsurer participants, may submit an allocation agreement, approved by all of the participants in the applicable group, to the Commission.

(2) ALLOCATION AGREEMENT.—To the extent the participants in any such applicable group voluntarily agree upon an allocation arrangement, any such allocation agreement shall only govern the allocation of payments within that group and shall not determine the aggregate amount due from that group.

(3) CERTIFICATION.—The Commission shall determine whether an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle and, if so, shall certify the agreement as establishing the allocation methodology governing the individual payment obligations of the participants who are parties to the agreement. The authority of the Commission under this subtitle shall, with respect to participants who are parties to a certified allocation agreement, terminate on the day after the Commission certifies such agreement. Under subsection (f), the Administrator shall assume responsibility, if necessary, for calculating the individual payment obligations of participants who are parties to the certified agreement.

(d) COMMISSION REPORT.—

(1) RECIPIENTS.—Until the work of the Commission has been completed and the Commission terminated, the Commission shall submit an annual report, containing the information described under paragraph (2), to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Administrator.

(2) CONTENTS.—The report under paragraph (1) shall state the amount that each insurer participant is required to pay to the Fund, including the payment schedule for such payments.

(e) INTERIM PAYMENTS.—

(1) AMOUNT OF INTERIM PAYMENT.—Within 90 days after the date of enactment of this Act, insurer participants shall make an aggregate payment to the Fund not to exceed 50 percent of the aggregate funding obligation specified under subsection (a)(3)(C) for year 1.

(2) RESERVE INFORMATION.—Within 30 days after the date of enactment of this Act, each insurer participant shall submit to the Administrator a certified statement of its net held reserves for asbestos liabilities as of December 31, 2004.

(3) ALLOCATION OF INTERIM PAYMENT.—The Administrator shall allocate the interim payment among the individual insurer participants on an equitable basis using the net held asbestos reserve information provided by insurer participants under subsection (a)(3)(B). Within 60 days after the date of enactment of this Act, the Administrator shall publish in the Federal Register the name of each insurer participant, and the amount of the insurer participant's allocated share of the interim payment. The use of net held asbestos reserves as the basis to determine an interim allocation shall not be binding on the Administrator in the determination of an appropriate final allocation methodology under this section. All payments required under this paragraph shall be credited against the participant's ultimate payment obligation to the Fund established by the Commission. If an interim payment exceeds the ultimate payment, the Fund shall pay interest on the amount of the overpayment at a rate determined by the Administrator. If the ultimate payment exceeds the interim payment, the participant shall pay interest on the amount of the underpayment at the same rate. Any participant may seek an exemption from or reduction in any payment required under this subsection under the financial hardship and exceptional circumstance standards established under subsection (a)(3)(E).

(4) APPEAL OF INTERIM PAYMENT DECISIONS.—A decision by the Administrator to establish an interim payment obligation shall be considered final agency action and reviewable under section 303, except that the reviewing court may not stay an interim payment during the pendency of the appeal.

(f) TRANSFER OF AUTHORITY FROM THE COMMISSION TO THE ADMINISTRATOR.—

(1) IN GENERAL.—Upon termination of the Commission under section 215, the Administrator shall assume all the responsibilities and authority of the Commission, except that the Administrator shall not have the power to modify the allocation methodology established by the Commission or by certified agreement or to promulgate a rule establishing any such methodology.

(2) FINANCIAL HARDSHIP AND EXCEPTIONAL CIRCUMSTANCE ADJUSTMENTS.—Upon termination of the Commission under section 215, the Administrator shall have the authority, upon application by any insurer participant, to make adjustments to annual payments upon the same grounds as provided in subsection (a)(3)(D). Adjustments granted under this subsection shall have a term not to exceed 3 years. An insurer participant may renew its adjustment by demonstrating that it remains justified. Upon the grant of any adjustment, the Administrator shall increase the payments, consistent with subsection (a)(1)(B), required of all other insurer participants so that there is no reduction in the aggregate payment required of all insurer participants for the applicable years. The increase in an insurer participant's required payment shall be in proportion to such participant's share of the aggregate payment obligation of all insurer participants.

(3) CREDITS FOR SHORTFALL ASSESSMENTS.—If insurer participants are required during the first 5 years of the life of the Fund to make up any shortfall in required insurer payments under subsection (a)(1)(B), then, beginning in year 6, the Administrator shall grant each insurer participant a credit against its annual required payments during the applicable years that in the aggregate equal the amount of shortfall assessments paid by such insurer participant during the first 5 years of the life of the Fund. The credit shall be prorated over the same number of years as the number of years during which the insurer participant paid a shortfall assessment. Insurer participants which did not pay all required payments to the Fund during the first 5 years of the life of the Fund shall not be eligible for a credit. The Administrator shall not grant a credit for shortfall assessments imposed under section 405(f).

(4) FINANCIAL SECURITY REQUIREMENTS.—Whenever an insurer participant's A.M. Best's claims payment rating or Standard and Poor's financial strength rating falls below A−, and until such time as either the insurer participant's A.M. Best's Rating or Standard and Poor's rating is equal to or greater than A−, the Administrator shall have the authority to require that the participating insurer either—

(A) pay the present value of its remaining Fund payments at a discount rate determined by the Administrator; or

(B) provide an evergreen letter of credit or financial guarantee for future payments issued by an institution with an A.M. Best's claims payment rating or Standard & Poor's financial strength rating of at least A+.

(g) ACCOUNTING TREATMENT.—Insurer participants' payment obligations to the Fund shall be subject to discounting under the applicable accounting guidelines for generally accepted accounting purposes and statutory accounting purposes for each insurer participant. This subsection shall in no way reduce the amount of monetary payments to the Fund by insurer participants as required under subsection (a).

(h) JUDICIAL REVIEW.—The Commission's rule establishing an allocation methodology, its final determinations of payment obligations and other final action shall be judicially reviewable as provided in title III.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) RULEMAKING.—The Commission shall promulgate such rules and regulations as necessary to implement its authority under this Act, including regulations governing an allocation methodology. Such rules and regulations shall be promulgated after providing interested parties with the opportunity for notice and comment.

(b) HEARINGS.—The Commission may hold such 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 Act. The Commission shall also hold a hearing on any proposed regulation establishing an allocation methodology, before the Commission's adoption of a final regulation.

(c) INFORMATION FROM FEDERAL AND STATE AGENCIES.—The Commission may secure directly from any Federal or State department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(d) 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.

(e) GIFTS.—The Commission may not accept, use, or dispose of gifts or donations of services or property.

(f) EXPERT ADVICE.—In carrying out its responsibilities, the Commission may enter into such contracts and agreements as the Commission determines necessary to obtain expert advice and analysis.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

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

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate

of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 90 days after the last date on which the Commission makes a final determination of contribution under section 212(b) or 90 days after the last appeal of any final action by the Commission is exhausted, whichever occurs later.

SEC. 216. EXPENSES AND COSTS OF COMMISSION.

All expenses of the Commission shall be paid from the Fund.

Subtitle C—Asbestos Injury Claims Resolution Fund

SEC. 221. ESTABLISHMENT OF ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT.—There is established in the Office of Asbestos Disease Compensation the Asbestos Injury Claims Resolution Fund, which shall be available to pay—

(1) claims for awards for an eligible disease or condition determined under title I;

(2) claims for reimbursement for medical monitoring determined under title I;

(3) principal and interest on borrowings under subsection (b);

(4) the remaining obligations to the asbestos trust of a debtor and the class action trust under section 405(g)(8); and

(5) administrative expenses to carry out the provisions of this Act.

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The Administrator is authorized to borrow from time to time amounts as set forth in this subsection, for purposes of enhancing liquidity available to the Fund for carrying out the obligations of the Fund under this Act. The Administrator may authorize borrowing in such form, over such term, with such necessary disclosure to its lenders as will most efficiently enhance the Fund's liquidity.

(3) BORROWING CAPACITY.—The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations of the Fund at the time of borrowing, can be repaid in full (with interest) in a timely fashion from—

(A) the available assets of the Fund as of the time of borrowing; and

(B) all amounts expected to be paid by participants during the subsequent 2 years.

(4) REPAYMENT OBLIGATIONS.—Repayment of monies borrowed by the Administrator under this subsection shall be repaid in full by the Fund contributors and is limited solely to amounts available, present or future, in the Fund.

(c) LOCKBOX FOR SEVERE ASBESTOS-RELATED INJURY CLAIMANTS.—

(1) IN GENERAL.—Within the Fund, the Administrator shall establish the following accounts:

(A) A Mesothelioma Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IX.

(B) A Lung Cancer Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level VIII.

(C) A Severe Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level V.

(D) A Moderate Asbestosis Account, which shall be used solely to make payments to claimants eligible for an award under the criteria of Level IV.

(2) ALLOCATION.—The Administrator shall allocate to each of the 4 accounts established under paragraph (1) a portion of payments made to the Fund adequate to compensate all anticipated claimants for each account. Within 60 days after the date of enactment of this Act, and periodically during the life of the Fund, the Administrator shall determine an appropriate amount to allocate to each account after consulting appropriate epidemiological and statistical studies.

(d) AUDIT AUTHORITY.—

(1) IN GENERAL.—For the purpose of ascertaining the correctness of any information provided or payments made to the Fund, or determining whether a person who has not made a payment to the Fund was required to do so, or determining the liability of any person for a payment to the Fund, or collecting any such liability, or inquiring into any offense connected with the administration or enforcement of this title, the Administrator is authorized—

(A) to examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(B) to summon the person liable for a payment under this title, or officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable or any other person the Administrator may deem proper, to appear before the Administrator at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(C) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(2) FALSE, FRAUDULENT, OR FICTITIOUS STATEMENTS OR PRACTICES.—If the Administrator determines that materially false, fraudulent, or fictitious statements or practices have been submitted or engaged in by persons submitting information to the Administrator or to the Asbestos Insurers Commission or any other person who provides evidence in support of such submissions for purposes of determining payment obligations under this Act, the Administrator may impose a civil penalty not to exceed $10,000 on any person found to have submitted or engaged in a materially false, fraudulent, or fictitious statement or practice under this Act. The Administrator shall promulgate appropriate regulations to implement this paragraph.

(e) IDENTITY OF CERTAIN DEFENDANT PARTICIPANTS; TRANSPARENCY.—

(1) SUBMISSION OF INFORMATION.—Not later than 60 days after the date of enactment of this Act, any person who, acting in good faith, has knowledge that such person or such person's affiliated group has prior asbestos expenditures of $1,000,000 or greater, shall submit to the Administrator—

(A) either the name of such person, or such person's ultimate parent; and

(B) the likely tier to which such person or affiliated group may be assigned under this Act.

(2) PUBLICATION.—Not later than 20 days after the end of the 60-day period referred to in paragraph (1), the Administrator or Interim Administrator, if the Administrator is not yet appointed, shall publish in the Federal Register a list of submissions required by this subsection, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person who, acting in good faith, has knowledge that any other person has prior asbestos expenditures of $1,000,000 or greater may submit to the Administrator or Interim Administrator information on the identity of that person and the person's prior asbestos expenditures.

(f) NO PRIVATE RIGHT OF ACTION.—Except as provided in sections 203(b)(2)(D)(ii) and 204(g)(3), there shall be no private right of action under any Federal or State law against any participant based on a claim of compliance or noncompliance with this Act or the involvement of any participant in the enactment of this Act.

SEC. 222. MANAGEMENT OF THE FUND.

(a) IN GENERAL.—Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries and to otherwise defray the reasonable expenses of administering the Fund.

(b) INVESTMENTS.—

(1) IN GENERAL.—Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(2) STRATEGY.—The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action—

(A) the size of the Fund;

(B) the nature and estimated duration of the Fund;

(C) the liquidity and distribution requirements of the Fund;

(D) general economic conditions at the time of the investment;

(E) the possible effect of inflation or deflation on Fund assets;

(F) the role that each investment or course of action plays with respect to the overall assets of the Fund;

(G) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and

(H) the needs of asbestos claimants for current and future distributions authorized under this Act.

(d) BANKRUPTCY TRUST CREDITS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, but subject to paragraph (2) of this subsection, the Administrator shall provide a credit toward the aggregate payment obligations under sections 202(a)(2) and 212(a)(2)(A) for assets received by the Fund from any bankruptcy trust established under a plan of reorganization confirmed and substantially consummated after July 31, 2004.

(2) ALLOCATION OF CREDITS.—The Administrator shall allocate, for each such bankruptcy trust, the credits for such assets between the defendant and insurer aggregate payment obligations as follows:

(A) DEFENDANT PARTICIPANTS.—The aggregate amount that all persons other than insurers contributing to the bankruptcy trust would have been required to pay as Tier I defendants under section 203(b) if the plan of reorganization under which the bankruptcy trust was established had not been confirmed and substantially consummated and the proceeding under chapter 11 of title 11, United

States Code, that resulted in the establishment of the bankruptcy trust had remained pending as of the date of enactment of this Act.

(B) INSURER PARTICIPANTS.—The aggregate amount of all credits to which insurers are entitled to under section 202(c)(4)(A) of the Act.

SEC. 223. ENFORCEMENT OF PAYMENT OBLIGATIONS.

(a) DEFAULT.—If any participant fails to make any payment in the amount of and according to the schedule under this Act or as prescribed by the Administrator, after demand and a 30-day opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest) upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY.—In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code. The United States Bankruptcy Court shall have jurisdiction over any issue or controversy regarding lien priority and lien perfection arising in a bankruptcy case due to a lien imposed under subsection (a).

(c) CIVIL ACTION.—

(1) IN GENERAL.—In any case in which there has been a refusal or failure to pay any liability imposed under this Act, including a refusal or failure to provide the information required under section 204 needed to determine liability, the Administrator may bring a civil action in any appropriate United States District Court, or any other appropriate lawsuit or proceeding outside of the United States—

(A) to enforce the liability and any lien of the United States imposed under this section;

(B) to subject any property of the participant, including any property in which the participant has any right, title, or interest to the payment of such liability;

(C) for temporary, preliminary, or permanent relief; or

(D) to enforce a subpoena issued under section 204(i)(9) to compel the production of documents necessary to determine liability.

(2) ADDITIONAL PENALTIES.—In any action under paragraph (1) in which the refusal or failure to pay was willful, the Administrator may seek recovery—

(A) of punitive damages;

(B) of the costs of any civil action under this subsection, including reasonable fees incurred for collection, expert witnesses, and attorney's fees; and

(C) in addition to any other penalty, of a fine equal to the total amount of the liability that has not been collected.

(d) ENFORCEMENT AUTHORITY AS TO INSURER PARTICIPANTS.—

(1) IN GENERAL.—In addition to or in lieu of the enforcement remedies described in subsection (c), the Administrator may seek to recover amounts in satisfaction of a payment not timely paid by an insurer participant under the procedures under this subsection.

(2) SUBROGATION.—To the extent required to establish personal jurisdiction over nonpaying insurer participants, the Administrator shall be deemed to be subrogated to the contractual rights of participants to seek recovery from nonpaying insuring participants that are domiciled outside the United States under the policies of liability insurance or contracts of liability reinsurance or retrocessional reinsurance applicable to asbestos claims, and the Administrator may bring an action or an arbitration against the nonpaying insurer participants under the provisions of such policies and contracts, provided that—

(A) any amounts collected under this subsection shall not increase the amount of deemed erosion allocated to any policy or contract under section 404, or otherwise reduce coverage available to a participant; and

(B) subrogation under this subsection shall have no effect on the validity of the insurance policies or reinsurance, and any contrary State law is expressly preempted.

(3) RECOVERABILITY OF CONTRIBUTION.—For purposes of this subsection—

(A) all contributions to the Fund required of a participant shall be deemed to be sums legally required to be paid for bodily injury resulting from exposure to asbestos;

(B) all contributions to the Fund required of any participant shall be deemed to be a single loss arising from a single occurrence under each contract to which the Administrator is subrogated; and

(C) with respect to reinsurance contracts, all contributions to the Fund required of a participant shall be deemed to be payments to a single claimant for a single loss.

(4) NO CREDIT OR OFFSET.—In any action brought under this subsection, the nonpaying insurer or reinsurer shall be entitled to no credit or offset for amounts collectible or potentially collectible from any participant nor shall such defaulting participant have any right to collect any sums payable under this section from any participant.

(5) COOPERATION.—Insureds and cedents shall cooperate with the Administrator's reasonable requests for assistance in any such proceeding. The positions taken or statements made by the Administrator in any such proceeding shall not be binding on or attributed to the insureds or cedents in any other proceeding. The outcome of such a proceeding shall not have a preclusive effect on the insureds or cedents in any other proceeding and shall not be admissible against any subrogee under this section. The Administrator shall have the authority to settle or compromise any claims against a nonpaying insurer participant under this subsection.

(e) BAR ON UNITED STATES BUSINESS.—If any direct insurer or reinsurer refuses to pay any contribution required by this Act, then, in addition to any other penalties imposed by this Act, the Administrator shall issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. If any direct insurer or reinsurer refuses to furnish any information requested by the Administrator, the Administrator may issue an order barring such entity and its affiliates from insuring risks located within the United States or otherwise doing business within the United States unless and until it complies. Insurer participants or their affiliates seeking to obtain a license from any State to write any type of insurance shall be barred from obtaining any such license until payment of all contributions required as of the date of license application.

(f) CREDIT FOR REINSURANCE.—If the Administrator determines that an insurer participant that is a reinsurer is in default in paying any required contribution or otherwise not in compliance with this Act, the Administrator may issue an order barring any direct insurer participant from receiving credit for reinsurance purchased from the defaulting reinsurer after the date of the Administrator's determination of default. Any State law governing credit for reinsurance to the contrary is preempted.

(g) DEFENSE LIMITATION.—In any proceeding under this section, the participant shall be barred from bringing any challenge to any determination of the Administrator or the Asbestos Insurers Commission regarding its liability under this Act, or to the constitutionality of this Act or any provision thereof, if such challenge could have been made during the review provided under section 204(j)(10), or in a judicial review proceeding under section 303.

(h) DEPOSIT OF FUNDS.—

(1) IN GENERAL.—Any funds collected under subsection (c)(2) (A) or (C) shall be—

(A) deposited in the Fund; and

(B) used only to pay—

(i) claims for awards for an eligible disease or condition determined under title I; or

(ii) claims for reimbursement for medical monitoring determined under title I.

(2) NO EFFECT ON OTHER LIABILITIES.—The imposition of a fine under subsection (c)(2)(C) shall have no effect on—

(A) the assessment of contributions under subtitles A and B; or

(B) any other provision of this Act.

(i) PROPERTY OF THE ESTATE.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (4)(B)(ii), by striking ''or'' at the end;

(2) in paragraph (5), by striking ''prohibition.'' and inserting ''prohibition; or''; and

(3) by inserting after paragraph (5) and before the last undesignated sentence the following:

''(6) the value of any pending claim against or the amount of an award granted from the Asbestos Injury Claims Resolution Fund established under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(j) PROPOSED TRANSACTIONS.—

(1) NOTICE OF PROPOSED TRANSACTION.—Any participant that has taken any action to effectuate a proposed transaction or a proposed series of transactions under which a significant portion of such participant's assets, properties or business will, if consummated as proposed, be, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such proposed transaction (or proposed series of transactions). Upon the request of such participant, and for so long as the participant shall not publicly disclose the transaction or series of transactions and the Administrator shall not commence any action under paragraph (6), the Administrator shall treat any such notice as confidential commercial information under section 552 of title 5, United States Code.

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days before the date of consummation of the proposed transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business are being transferred in the proposed transaction (or proposed series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or

(ii) the proposed transaction (or proposed series of transactions) would, if consummated, be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person will or has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it will or has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term ''significant portion of the assets, properties or business of a participant'' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(g)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) CONSUMMATION OF TRANSACTION.—Any proposed transaction (or proposed series of transactions) with respect to which a participant is required to provide notice under paragraph (1) may not be consummated until at least 30 days after delivery to the Administrator of such notice, unless the Administrator shall earlier terminate the notice period. The Administrator shall endeavor whenever possible to terminate a notice period at the earliest practicable time.

(6) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant proposes to engage or has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status or potential status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person will or has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person will not or has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person will or has become a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(7) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing and content of notices.

SEC. 224. INTEREST ON UNDERPAYMENT OR NONPAYMENT.

If any amount of payment obligation under this title is not paid on or before the last date prescribed for payment, the liable party shall pay interest on such amount at the Federal short-term rate determined under section 6621(b) of the Internal Revenue Code of 1986, plus 5 percentage points, for the period from such last date to the date paid.

SEC. 225. EDUCATION, CONSULTATION, SCREENING, AND MONITORING.

(a) IN GENERAL.—The Administrator shall establish a program for the education, consultation, medical screening, and medical monitoring of persons with exposure to asbestos. The program shall be funded by the Fund.

(b) OUTREACH AND EDUCATION.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall establish an outreach and education program, including a website designed to provide information about asbestos-related medical conditions to members of populations at risk of developing such conditions.

(2) INFORMATION.—The information provided under paragraph (1) shall include information about—

(A) the signs and symptoms of asbestos-related medical conditions;

(B) the value of appropriate medical screening programs; and

(C) actions that the individuals can take to reduce their future health risks related to asbestos exposure.

(3) CONTRACTS.—Preference in any contract under this subsection shall be given to providers that are existing nonprofit organizations with a history and experience of providing occupational health outreach and educational programs for individuals exposed to asbestos.

(c) MEDICAL SCREENING PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—Not sooner than 18 months or later than 24 months after the Administrator certifies that the Fund is fully operational and processing claims at a reasonable rate, the Administrator shall adopt guidelines establishing a medical screening program for individuals at high risk of asbestos-related disease resulting from an asbestos-related disease. In promulgating such guidelines, the Administrator shall consider the views of the Advisory Committee on Asbestos Disease Compensation, the Medical Advisory Committee, and the public.

(2) ELIGIBILITY CRITERIA.—

(A) IN GENERAL.—The guidelines promulgated under this subsection shall establish criteria for participation in the medical screening program.

(B) CONSIDERATIONS.—In promulgating eligibility criteria the Administrator shall take into consideration all factors relevant to the individual's effective cumulative exposure to asbestos, including—

(i) any industry in which the individual worked;

(ii) the individual's occupation and work setting;

(iii) the historical period in which exposure took place;

(iv) the duration of the exposure;

(v) the intensity and duration of non-occupational exposures;

(vi) the intensity and duration of exposure to risk levels of naturally occurring asbestos as defined by the Environmental Protection Agency; and

(vii) any other factors that the Administrator determines relevant.

(3) PROTOCOLS.—The guidelines developed under this subsection shall establish protocols for medical screening, which shall include—

(A) administration of a health evaluation and work history questionnaire;

(B) an evaluation of smoking history;

(C) a physical examination by a qualified physician with a doctor-patient relationship with the individual;

(D) a chest x-ray read by a certified B-reader as defined under section 121(a)(4); and

(E) pulmonary function testing as defined under section 121(a)(13).

(4) FREQUENCY.—The Administrator shall establish the frequency with which medical screening shall be provided or be made available to eligible individuals, which shall be not less than every 5 years.

(5) PROVISION OF SERVICES.—The Administrator shall provide medical screening to eligible individuals directly or by contract with another agency of the Federal Government,

with State or local governments, or with private providers of medical services. The Administrator shall establish strict qualifications for the providers of such services, and shall periodically audit the providers of services under this subsection, to ensure their integrity, high degree of competence, and compliance with all applicable technical and professional standards. No provider of medical screening services may have earned more than 15 percent of their income from the provision of services of any kind in connection with asbestos litigation in any of the 3 years preceding the date of enactment of this Act. All contracts with providers of medical screening services under this subsection shall contain provisions for reimbursement of screening services at a reasonable rate and termination of such contracts for cause if the Administrator determines that the service provider fails to meet the qualifications established under this subsection.

(6) LIMITATION OF COMPENSATION FOR SERVICES.—The compensation required to be paid to a provider of medical screening services for such services furnished to an eligible individual shall be limited to the amount that would be reimbursed at the time of the furnishing of such services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for similar services if such services are covered under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(7) FUNDING; PERIODIC REVIEW.—

(A) FUNDING.—The Administrator shall make such funds available from the Fund to implement this section, with a minimum of $5,000,000 but not more than $10,000,000 each year in each of the 5 years following the effective date of the medical screening program. Notwithstanding the preceding sentence, the Administrator shall suspend the operation of the program or reduce its funding level if necessary to preserve the solvency of the Fund.

(B) REVIEW.—The Administrator may reduce the amount of funding below $5,000,000 each year if the program is fully implemented. The Administrator's first annual report under section 405 following the close of the 4th year of operation of the medical screening program shall include an analysis of the usage of the program, its cost and effectiveness, its medical value, and the need to continue that program for an additional 5-year period. The Administrator shall also recommend to Congress any improvements that may be required to make the program more effective, efficient, and economical, and shall recommend a funding level for the program for the 5 years following the period of initial funding referred to under subparagraph (A).

(d) LIMITATION.—In no event shall the total amount allocated to the medical screening program established under this subsection over the lifetime of the Fund exceed $100,000,000.

(e) MEDICAL MONITORING PROGRAM AND PROTOCOLS.—

(1) IN GENERAL.—The Administrator shall establish procedures for a medical monitoring program for persons exposed to asbestos who have been approved for level I compensation under section 131.

(2) PROCEDURES.—The procedures for medical monitoring shall include—

(A) specific medical tests to be provided to eligible individuals and the periodicity of those tests, which shall initially be provided every 3 years and include—

(i) administration of a health evaluation and work history questionnaire;

(ii) physical examinations, including blood pressure measurement, chest examination, and examination for clubbing;

(iii) AP and lateral chest x-ray; and

(iv) spirometry performed according to ATS standards;

(B) qualifications of medical providers who are to provide the tests required under subparagraph (A); and

(C) administrative provisions for reimbursement from the Fund of the costs of monitoring eligible claimants, including the costs associated with the visits of the claimants to physicians in connection with medical monitoring, and with the costs of performing and analyzing the tests.

(f) CONTRACTS.—The Administrator may enter into contracts with qualified program providers that would permit the program providers to undertake large-scale medical screening and medical monitoring programs by means of subcontracts with a network of medical providers, or other health providers.

(g) REVIEW.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Administrator shall review, and if necessary update, the protocols and procedures established under this section.

SEC. 226. NATIONAL MESOTHELIOMA RESEARCH AND TREATMENT PROGRAM.

(a) IN GENERAL.—There is established the National Mesothelioma Research and Treatment Program (referred to in this section as the ''Program'') to investigate and advance the detection, prevention, treatment, and cure of malignant mesothelioma.

(b) MESOTHELIOMA CENTERS.—

(1) IN GENERAL.—The Administrator shall make available $1,500,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015, for the establishment of each of 10 mesothelioma disease research and treatment centers.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, in consultation with the Medical Advisory Committee, shall conduct a competitive peer review process to select sites for the centers described in paragraph (1). The Director shall ensure that sites selected under this paragraph are—

(A) geographically distributed throughout the United States with special consideration given to areas of high incidence of mesothelioma disease;

(B) closely associated with Department of Veterans Affairs medical centers, in order to provide research benefits and care to veterans who have suffered excessively from mesothelioma;

(C) engaged in exemplary laboratory and clinical mesothelioma research, including clinical trials, to provide mechanisms for effective therapeutic treatments, as well as detection and prevention, particularly in areas of palliation of disease symptoms and pain management;

(D) participants in the National Mesothelioma Registry and Tissue Bank under subsection (c) and the annual International Mesothelioma Symposium under subsection (d)(2)(E);

(E) with respect to research and treatment efforts, coordinated with other centers and institutions involved in exemplary mesothelioma research and treatment;

(F) able to facilitate transportation and lodging for mesothelioma patients, so as to enable patients to participate in the newest developing treatment protocols, and to enable the centers to recruit patients in numbers sufficient to conduct necessary clinical trials; and

(G) nonprofit hospitals, universities, or medical or research institutions incorporated or organized in the United States.

(c) MESOTHELIOMA REGISTRY AND TISSUE BANK.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, maintenance, and operation of a National Mesothelioma Registry to collect data regarding symptoms, pathology, evaluation, treatment, outcomes, and quality of life and a Tissue Bank to include the pre- and post-treatment blood (serum and blood cells) specimens as well as tissue specimens from biopsies and surgery. Not less than $500,000 of the amount made available under the preceding sentence in each fiscal year shall be allocated for the collection and maintenance of tissue specimens.

(2) REQUIREMENTS.—The Director of the National Institutes of Health, with the advice and consent of the Medical Advisory Committee, shall conduct a competitive peer review process to select a site to administer the Registry and Tissue Bank described in paragraph (1). The Director shall ensure that the site selected under this paragraph—

(A) is available to all mesothelioma patients and qualifying physicians throughout the United States;

(B) is subject to all applicable medical and patient privacy laws and regulations;

(C) is carrying out activities to ensure that data is accessible via the Internet; and

(D) provides data and tissue samples to qualifying researchers and physicians who apply for such data in order to further the understanding, prevention, screening, diagnosis, or treatment of malignant mesothelioma.

(d) CENTER FOR MESOTHELIOMA EDUCATION.—

(1) ESTABLISHMENT.—The Administrator shall make available $1,000,000 from the Fund, and the Director of the National Institutes of Health shall make available $1,000,000 from amounts available to the Director, for each of fiscal years 2006 through 2015 for the establishment, with the advice and consent of the Medical Advisory Committee, of a Center for Mesothelioma Education (referred to in this section as the ''Center'') to—

(A) promote mesothelioma awareness and education;

(B) assist mesothelioma patients and their family members in obtaining necessary information; and

(C) work with the centers established under subsection (b) in advancing mesothelioma research.

(2) ACTIVITIES.—The Center shall—

(A) educate the public about the new initiatives contained in this section through a National Mesothelioma Awareness Campaign;

(B) develop and maintain a Mesothelioma Educational Resource Center (referred to in this section as the ''MERCI''), that is accessible via the Internet, to provide mesothelioma patients, family members, and front-line physicians with comprehensive, current information on mesothelioma and its treatment, as well as on the existence of, and general claim procedures for the Asbestos Injury Claims Resolution Fund;

(C) through the MERCI and otherwise, educate mesothelioma patients, family members, and front-line physicians about, and encourage such individuals to participate in, the centers established under subsection (b), the Registry and the Tissue Bank;

(D) complement the research efforts of the centers established under subsection (b) by awarding competitive, peer-reviewed grants for the training of clinical specialist fellows in mesothelioma, and for highly innovative, experimental or pre-clinical research; and

(E) conduct an annual International Mesothelioma Symposium.

(3) REQUIREMENTS.—The Center shall—

(A) be a nonprofit corporation under section 501(c)(3) of the Internal Revenue Code of 1986;

(B) be a separate entity from and not an affiliate of any hospital, university, or medical or research institution; and

(C) demonstrate a history of program spending that is devoted specifically to the mission of extending the survival of current and future mesothelioma patients, including a history of soliciting, peer reviewing through a competitive process, and funding research grant applications relating to the detection, prevention, treatment, and cure of mesothelioma.

(4) CONTRACTS FOR OVERSIGHT.—The Director of the National Institutes of Health may enter into contracts with the Center for the selection and oversight of the centers established under subsection (b), or selection of the director of the Registry and the Tissue Bank under subsection (c) and oversight of the Registry and the Tissue Bank.

(e) REPORT AND RECOMMENDATIONS.—Not later than September 30, 2015, The Director of the National Institutes of Health shall, after opportunity for public comment and review, publish and provide to Congress a report and recommendations on the results achieved and information gained through the Program, including—

(1) information on the status of mesothelioma as a national health issue, including—

(A) annual United States incidence and death rate information and whether such rates are increasing or decreasing;

(B) the average prognosis; and

(C) the effectiveness of treatments and means of prevention;

(2) promising advances in mesothelioma treatment and research which could be further developed if the Program is reauthorized; and

(3) a summary of advances in mesothelioma treatment made in the 10-year period prior to the report and whether those advances would justify continuation of the Program and whether it should be reauthorized for an additional 10 years.

(f) SEVERABILITY.—If any provision of this Act, or amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act (including this section), the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g) REGULATIONS.—The Director of the National Institutes of Health shall promulgate regulations to provide for the implementation of this section.

TITLE III—JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF RULES AND REGULATIONS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review rules or regulations promulgated by the Administrator or the Asbestos Insurers Commission under this Act.

(b) PERIOD FOR FILING PETITION.—A petition for review under this section shall be filed not later than 60 days after the date notice of such promulgation appears in the Federal Register.

(c) EXPEDITED PROCEDURES.—The United States Court of Appeals for the District of Columbia shall provide for expedited procedures for reviews under this section.

SEC. 302. JUDICIAL REVIEW OF AWARD DECISIONS.

(a) IN GENERAL.—Any claimant adversely affected or aggrieved by a final decision of the Administrator awarding or denying compensation under title I may petition for judicial review of such decision. Any petition for review under this section shall be filed within 90 days of the issuance of a final decision of the Administrator.

(b) EXCLUSIVE JURISDICTION.—A petition for review may only be filed in the United States Court of Appeals for the circuit in which the claimant resides at the time of the issuance of the final order.

(c) STANDARD OF REVIEW.—The court shall uphold the decision of the Administrator unless the court determines, upon review of the record as a whole, that the decision is not supported by substantial evidence, is contrary to law, or is not in accordance with procedure required by law.

(d) EXPEDITED PROCEDURES.—The United States Court of Appeals shall provide for expedited procedures for reviews under this section.

SEC. 303. JUDICIAL REVIEW OF PARTICIPANTS' ASSESSMENTS.

(a) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the liability of any person to make a payment to the Fund, including a notice of applicable subtier assignment under section 204(j), a notice of financial hardship or inequity determination under section 204(e), a notice of a distributor's adjustment under section 204(n), and a notice of insurer participant obligation under section 212(b).

(b) PERIOD FOR FILING ACTION.—A petition for review under subsection (a) shall be filed not later than 60 days after a final determination by the Administrator or the Commission giving rise to the action. Any defendant participant who receives a notice of its applicable subtier under section 204(j), a notice of financial hardship or inequity determination under section 204(e), or a notice of a distributor's adjustment under section 204(n), shall commence any action within 30 days after a decision on rehearing under section 204(j)(10), and any insurer participant who receives a notice of a payment obligation under section 212(b) shall commence any action within 30 days after receiving such notice. The court shall give such action expedited consideration.

SEC. 304. OTHER JUDICIAL CHALLENGES.

(a) EXCLUSIVE JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action for declaratory or injunctive relief challenging any provision of this Act. An action under this section shall be filed not later than 60 days after the date of enactment of this Act or 60 days after the final action by the Administrator or the Commission giving rise to the action, whichever is later.

(b) DIRECT APPEAL.—A final decision in the action shall be reviewable on appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 30 days, and the filing of a jurisdictional statement within 60 days, of the entry of the final decision.

(c) EXPEDITED PROCEDURES.—It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

SEC. 305. STAYS, EXCLUSIVITY, AND CONSTITUTIONAL REVIEW.

(a) NO STAYS.—

(1) PAYMENTS.—No court may issue a stay of payment by any party into the Fund pending its final judgment.

(2) LEGAL CHALLENGES.—No court may issue a stay or injunction pending final judicial action, including the exhaustion of all appeals, on a legal challenge to this Act or any portion of this Act.

(b) EXCLUSIVITY OF REVIEW.—An action of the Administrator or the Asbestos Insurers Commission for which review could have been obtained under section 301, 302, or 303 shall not be subject to judicial review in any other proceeding.

(c) CONSTITUTIONAL REVIEW.—

(1) IN GENERAL.—The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action challenging the constitutionality of any provision or application of this Act. The following rules shall apply:

(A) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened under section 2284 of title 28, United States Code.

(B) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, after the entry of the final decision.

(C) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

(2) REPAYMENT TO ASBESTOS TRUST AND CLASS ACTION TRUST.—If the transfer of the assets of any asbestos trust of a debtor or any class action trust (or this Act as a whole) is held to be unconstitutional or otherwise unlawful, the Fund shall transfer the remaining balance of such assets (determined under section 405(f)(1)(A)(iii)) back to the appropriate asbestos trust or class action trust within 90 days after final judicial action on the legal challenge, including the exhaustion of all appeals.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) NO AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2006, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).''.

(b) ASSUMPTION OF EXECUTORY CONTRACT.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.''.

(c) ALLOWED ADMINISTRATIVE EXPENSES.—Section 503 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of

that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

''(2) For purposes of paragraph (1), the term 'asbestos payment obligation' means any payment obligation under title II of the Fairness in Asbestos Injury Resolution Act of 2006.''.

(d) NO DISCHARGE.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

''(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) of the debtor's payment obligations assessed against the participant under title II of that Act.''.

(e) PAYMENT.—Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) PARTICIPANT DEBTORS.—

''(1) IN GENERAL.—Paragraphs (2) and (3) shall apply to a debtor who—

''(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2006); and

''(B) is subject to a case under this title that is pending—

''(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(ii) at any time during the 1-year period preceding the date of enactment of that Act.

''(2) TIER I DEBTORS.—A debtor that has been assigned to Tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2006, shall make payments in accordance with sections 202 and 203 of that Act.

''(3) TREATMENT OF PAYMENT OBLIGATIONS.—All payment obligations of a debtor under sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2006 shall—

''(A) constitute costs and expenses of administration of a case under section 503 of this title;

''(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

''(C) not be stayed;

''(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

''(E) not be impaired or discharged in any current or future case under this title.''.

(f) TREATMENT OF TRUSTS.—Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(j) ASBESTOS TRUSTS.—

''(1) IN GENERAL.—A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as established under the Fairness in Asbestos Injury Resolution Act of 2006 if the trust qualifies as a 'trust' under section 201 of that Act.

''(2) TRANSFER OF TRUST ASSETS.—

''(A) IN GENERAL.—

''(i) Except as provided under clause (ii) of this subparagraph and subparagraphs (B), (C), and (E), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006) shall be transferred to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006 or 30 days following funding of a trust established under a reorganization plan subject to section 202(c) of that Act. Except as provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 221 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(ii) Notwithstanding clause (i), and except as provided under subparagraphs (B), (C), and (E), any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), other than a trust established under a reorganization plan subject to section 202(c) of that Act, shall transfer the assets in such trust to the Fund as follows:

''(I) In the case of a trust established on or before December 31, 2005, such trust shall transfer 90 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) In the case of a trust established after December 31, 2005, such trust shall transfer 88 percent of the assets in such trust to the Fund not later than 90 days after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(iii) Not later than 90 days after the date on which the Administrator of the Office of Asbestos Disease Compensation (referred to in this section as the 'Administrator') certifies in accordance with section 106(f)(3)(E)(ii) of the Fairness in Asbestos Injury Resolution Act of 2006 that the Fund is fully operational and paying all valid asbestos claims at a reasonable rate, any trust transferring assets under clause (ii) shall transfer all remaining assets in such trust to the Fund. The transfer required by this clause shall not include any trust assets needed to pay—

''(I) previously incurred expenses; or

''(II) claims determined to be eligible for compensation under clause (vi).

''(iv) Except as provided under subparagraph (B), the Administrator of the Fund shall accept any assets transferred under clauses (ii) or (iii) and utilize them for any purposes for the Fund under section 221 of the Fairness in Asbestos Injury Resolution Act of 2006, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred.

''(v) Notwithstanding any other provision of Federal or State law, no liability of any kind may be imposed on a trustee of a trust for transferring assets to the Fund in accordance with clause (i).

''(vi) Any trust transferring assets under clause (ii) shall be subject to the following requirements:

''(I) The trust may continue to process asbestos claims, make eligibility determinations, and pay claims in a manner consistent with this clause if a claimant—

''(aa) has a pending asbestos claim as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(bb) provides to the trust a copy of a binding election submitted to Administrator waiving the right to secure compensation under section 106(f)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, unless the claimant is permitted under section 106(f)(2)(B) of such Act to seek a judgment or order for monetary damages from a Federal or State court;

''(cc) meets the requirements for compensation under the distribution plan for the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(dd) for any non-malignant condition satisfies the medical criteria under the distribution plan for the trust that is most nearly equivalent to the medical criteria described in section 121(d)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, except that, notwithstanding any provision of the distribution plan of the trust to the contrary, the trust shall not accept the results of a DLCO test (as such test is defined in section 121(a) of the Fairness in Asbestos Injury Resolution Act of 2006) for the purpose of demonstrating respiratory impairment; and

''(ee) for any of the cancers listed in section 121(d)(6) of the Fairness in Asbestos Injury Resolution Act of 2006 does not seek, and the trust does not pay, any compensation until such time as the Institute of Medicine finds that there is a causal relationship between asbestos exposure and such cancer, in which case such claims may be paid if such claims otherwise qualify for compensation under the distribution plan of the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(II) The trust shall not accept medical evidence from any physician, medical facility, or laboratory whose evidence would be not be accepted as evidence—

''(aa) under the Manville Trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006; or

''(bb) by the Administrator under section 115(a)(2) of such Act.

''(III) The trust shall not amend its scheduled payment amount or payment percentage as in effect on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

''(IV) The trust shall not amend its eligibility criteria after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, except to conform any criteria in any category under the distribution plan of the trust with related criteria in a related category under section 121 of the Fairness in Asbestos Injury Resolution Act of 2006.

''(V) The trust shall notify the Administrator of the Fund of any claim determined to be eligible for compensation after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and the amount of any such compensation awarded to the claimant of such claim. The notification required by this subclause shall be made in such form as the Administrator shall require, and not later than 15 days after the date the determination is made.

''(VI) The trust shall not pay any claim without a certification by a claimant, subject to the penalties described in the Fairness in Asbestos Injury Resolution Act of 2006, stating the amount of collateral source compensation that such claimant has received, or is entitled to receive, under section 134 of the Fairness in Asbestos Injury Resolution Act of 2006. In the event that collateral source compensation exceeds the amount that a claimant would be paid in the category under that Act that is most nearly similar to the claimant's claim under the distribution plan of the trust, the aggregate value of the awards received by the claimant shall be reduced pro rata so that the claimant's total compensation does not exceed what would be paid for such a condition under the Fairness in Asbestos Injury Resolution Act of 2006, excluding any adjustments under section 131(b)(3) and (4) of that Act.

''(VII) Upon finding that the trust has breached any condition or conditions of this clause, the Administrator shall require the immediate payment of remaining trust assets into the Fund in accordance with section 402(f) of the Fairness in Asbestos Injury Resolution Act of 2006. The Administrator shall be entitled to an injunction against further payments of nonliquidated claims from the assets of the trust during the pendency of any dispute regarding the findings of noncompliance by the Administrator. The

court in which any action to enforce the obligations of the trust is pending shall afford the action expedited consideration.

''(B) AUTHORITY TO REFUSE ASSETS.—The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

''(C) ALLOCATION OF TRUST ASSETS.—If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. The trustees shall demonstrate to the satisfaction of the Administrator, or by clear and convincing evidence in a proceeding brought before the United States District Court for the District of Columbia in accordance with paragraph (4), that the amount reserved is properly allocable to claims other than asbestos claims.

''(D) SALE OF FUND ASSETS.—The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2006 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

''(E) LIQUIDATED CLAIMS.—Except as specifically provided in this subparagraph, all asbestos claims against a trust are superseded and preempted as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, and a trust shall not make any payment relating to asbestos claims after that date. If, in the ordinary course and the normal and usual administration of the trust consistent with past practices, a trust had before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006, made all determinations necessary to entitle an individual claimant to a noncontingent cash payment from the trust, the trust shall (i) make any lump-sum cash payment due to that claimant, and (ii) make or provide for all remaining noncontingent payments on any award being paid or scheduled to be paid on an installment basis, in each case only to the same extent that the trust would have made such cash payments in the ordinary course and consistent with past practices before enactment of that Act. A trust shall not make any payment in respect of any alleged contingent right to recover any greater amount than the trust had already paid, or had completed all determinations necessary to pay, to a claimant in cash in accordance with its ordinary distribution procedures in effect as of June 1, 2003.

''(3) INJUNCTION.—

''(A) IN GENERAL.—Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect. No court, Federal or State, may enjoin the transfer of assets by a trust to the Fund in accordance with this subsection pending resolution of any litigation challenging such transfer or the validity of this subsection or of any provision of the Fairness in Asbestos Injury Resolution Act of 2006, and an interlocutory order denying such relief shall not be subject to immediate appeal under section 1291(a) of title 28.

''(B) AVAILABILITY OF FUND ASSETS.—Notwithstanding any other provision of law, once such a transfer has been made, the assets of the Fund shall be available to satisfy any final judgment entered in such an action and such transfer shall no longer be subject to any appeal or review—

''(i) declaring that the transfer effected a taking of a right or property for which an individual is constitutionally entitled to just compensation; or

''(ii) requiring the transfer back to a trust of any or all assets transferred by that trust to the Fund.

''(4) JURISDICTION.—Solely for purposes of implementing this subsection, personal jurisdiction over every covered trust, the trustees thereof, and any other necessary party, and exclusive subject matter jurisdiction over every question arising out of or related to this subsection, shall be vested in the United States District Court for the District of Columbia. Notwithstanding any other provision of law, including section 1127 of this title, that court may make any order necessary and appropriate to facilitate prompt compliance with this subsection, including assuming jurisdiction over and modifying, to the extent necessary, any applicable confirmation order or other order with continuing and prospective application to a covered trust. The court may also resolve any related challenge to the constitutionality of this subsection or of its application to any trust, trustee, or individual claimant. The Administrator of the Fund may bring an action seeking such an order or modification, under the standards of rule 60(b) of the Federal Rules of Civil Procedure or otherwise, and shall be entitled to intervene as of right in any action brought by any other party seeking interpretation, application, or invalidation of this subsection. Any order denying relief that would facilitate prompt compliance with the transfer provisions of this subsection shall be subject to immediate appeal under section 304 of the Fairness in Asbestos Injury Resolution Act of 2006.

(g) NO AVOIDANCE OF TRANSFER.—Section 546 of title 11, United States Code, is amended by adding at the end the following:

''(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the trustee may not avoid a transfer made by the debtor under its payment obligations under section 202 or 203 of that Act.''.

(h) CONFIRMATION OF PLAN.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2006), the plan provides for the continuation after its effective date of payment of all payment obligations under title II of that Act.''.

(i) EFFECT ON INSURANCE RECEIVERSHIP PROCEEDINGS.—

(1) LIEN.—In an insurance receivership proceeding involving a direct insurer, reinsurer or runoff participant, there shall be a lien in favor of the Fund for the amount of any assessment and any such lien shall be given priority over all other claims against the participant in receivership, except for the expenses of administration of the receivership and the perfected claims of the secured creditors. Any State law that provides for priorities inconsistent with this provision is preempted by this Act.

(2) PAYMENT OF ASSESSMENT.—Payment of any assessment required by this Act shall not be subject to any automatic or judicially entered stay in any insurance receivership proceeding. This Act shall preempt any State law requiring that payments by a direct insurer, reinsurer or runoff participant in an insurance receivership proceeding be approved by a court, receiver or other person. Payments of assessments by any direct insurer or reinsurer participant under this Act shall not be subject to the avoidance powers of a receiver or a court in or relating to an insurance receivership proceeding.

(j) STANDING IN BANKRUPTCY PROCEEDINGS.—The Administrator shall have standing in any bankruptcy case involving a debtor participant. No bankruptcy court may require the Administrator to return property seized to satisfy obligations to the Fund.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) EFFECT ON FEDERAL AND STATE LAW.—The provisions of this Act shall supersede any Federal or State law insofar as such law may relate to any asbestos claim, including any claim described under subsection (e)(2).

(b) EFFECT ON SILICA CLAIMS.—

(1) IN GENERAL.—

(A) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preempt, bar, or otherwise preclude any personal injury claim attributable to exposure to silica as to which the plaintiff—

(i) pleads with particularity and establishes by a preponderance of evidence either that—

(I) no claim has been asserted or filed by or with respect to the exposed person in any forum for any asbestos-related condition and the exposed person (or another claiming on behalf of or through the exposed person) is not eligible for any monetary award under this Act; or

(II)(aa) the exposed person suffers or has suffered a functional impairment that was caused by exposure to silica; and

(bb) asbestos exposure was not a substantial contributing factor to such functional impairment; and

(ii) satisfies the requirements of paragraph (2) .

(B) PREEMPTION.—Claims attributable to exposure to silica that fail to meet the requirements of subparagraph (A) shall be preempted by this Act.

(2) REQUIRED EVIDENCE.—

(A) IN GENERAL.—In any claim to which paragraph (1) applies, the initial pleading (or, for claims pending on the date of enactment of this Act, an amended pleading to be filed within 60 days after such date, but not later than 60 days before trial, shall plead with particularity the elements of subparagraph (A)(i)(I) or (II) and shall be accompanied by the information described under subparagraph (B)(i) through (iv).

(B) PLEADINGS.—If the claim pleads the elements of paragraph (1)(A)(i)(II) and by the information described under clauses (i) through (iv) of this subparagraph if the claim pleads the elements of paragraph (1)(A)(i)(I)—

(i) admissible evidence, including at a minimum, a B-reader's report, the underlying x-ray film and such other evidence showing that the claim may be maintained and is not preempted under paragraph (1);

(ii) notice of any previous lawsuit or claim for benefits in which the exposed person, or another claiming on behalf of or through the injured person, asserted an injury or disability based wholly or in part on exposure to asbestos;

(iii) if known by the plaintiff after reasonable inquiry by the plaintiff or his representative, the history of the exposed person's exposure, if any, to asbestos; and

(iv) copies of all medical and laboratory reports pertaining to the exposed person that refer to asbestos or asbestos exposure.

(3) STATUTE OF LIMITATIONS.—In general, the statute of limitations for a silica claim shall be governed by applicable State law, except that in any case under this subsection, the statute of limitations shall only start to run when the plaintiff becomes impaired.

(c) SUPERSEDING PROVISIONS.—

(1) IN GENERAL.—Except as provided under paragraph (3) and section 106(f), any agreement, understanding, or undertaking by any person or affiliated group with respect to the treatment of any asbestos claim, including a claim described under subsection (e)(2), that requires future performance by any party, insurer of such party, settlement administrator, or escrow agent shall be superseded in its entirety by this Act.

(2) NO FORCE OR EFFECT.—Except as provided under paragraph (3), any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any such agreement, understanding, or undertaking.

(3) EXCEPTION.—

(A) IN GENERAL.—Except as provided in section 202(f), nothing in this Act shall abrogate a binding and legally enforceable written settlement agreement between any defendant participant or its insurer and a specific named plaintiff with respect to the settlement of an asbestos claim of the plaintiff if—

(i) before the date of enactment of this Act, the settlement agreement was executed by—

(I) the authorized legal representative acting on behalf of the settling defendant or insurer, the settling defendant or the settling insurer; and

(II)(aa) the specific individual plaintiff, or the individual's immediate relatives; or

(bb) an authorized legal representative acting on behalf of the plaintiff where the plaintiff is incapacitated and the settlement agreement is signed by that authorized legal representative;

(ii) the settlement agreement contains an express obligation by the settling defendant or settling insurer to make a future direct monetary payment or payments in a fixed amount or amounts to the individual plaintiff; and

(iii) within 30 days after the date of enactment of this Act, or such shorter time period specified in the settlement agreement, the plaintiff has fulfilled all conditions to payment under the settlement agreement.

(B) BANKRUPTCY-RELATED AGREEMENTS.—The exception set forth in this paragraph shall not apply to any bankruptcy-related agreement.

(C) COLLATERAL SOURCE.—Any settlement payment under this section is a collateral source if the plaintiff seeks recovery from the Fund.

(D) ABROGATION.—Nothing in subparagraph (A) shall abrogate a settlement agreement otherwise satisfying the requirements of that subparagraph if such settlement agreement expressly anticipates the enactment of this Act and provides for the effects of this Act.

(E) HEALTH CARE INSURANCE OR EXPENSES SETTLEMENTS.—Nothing in this Act shall abrogate or terminate an otherwise fully enforceable settlement agreement which was executed before the date of enactment of this Act directly by the settling defendant or the settling insurer and a specific named plaintiff to pay the health care insurance or health care expenses of the plaintiff.

(d) EXCLUSIVE REMEDY.—

(1) IN GENERAL.—Except as provided under paragraph (2) and section 106(f) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act, the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(2) CERTAIN SPECIFIED CLAIMS.—

(A) IN GENERAL.—Subject to section 404 (d) and (e)(3) of this Act, no claim may be brought or pursued in any Federal or State court or insurance receivership proceeding—

(i) relating to any default, confessed or stipulated judgment on an asbestos claim if the judgment debtor expressly agreed, in writing or otherwise, not to contest the entry of judgment against it and the plaintiff expressly agreed, in writing or otherwise, to seek satisfaction of the judgment only against insurers or in bankruptcy;

(ii) relating to the defense, investigation, handling, litigation, settlement, or payment of any asbestos claim by any participant, including claims for bad faith or unfair or deceptive claims handling or breach of any duties of good faith; or

(iii) arising out of or relating to the asbestos-related injury of any individual and—

(I) asserting any conspiracy, concert of action, aiding or abetting, act, conduct, statement, misstatement, undertaking, publication, omission, or failure to detect, speak, disclose, publish, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos; or

(II) asserting any conspiracy, act, conduct, statement, omission, or failure to detect, disclose, or warn relating to the presence or health effects of asbestos or the use, sale, distribution, manufacture, production, development, inspection, advertising, marketing, or installation of asbestos, asserted as or in a direct action against an insurer or reinsurer based upon any theory, statutory, contract, tort, or otherwise; or

(iv) by any third party, and premised on any theory, allegation, or cause of action, for reimbursement of healthcare costs allegedly associated with the use of or exposure to asbestos, whether such claim is asserted directly, indirectly or derivatively.

(B) EXCEPTIONS.—Subparagraph (A) (ii) and (iii) shall not apply to claims against participants by persons—

(i) with whom the participant is in privity of contract;

(ii) who have received an assignment of insurance rights not otherwise voided by this Act; or

(iii) who are beneficiaries covered by the express terms of a contract with that participant.

(3) PREEMPTION.—Any action asserting an asbestos claim (including a claim described in paragraph (2)) in any Federal or State court is preempted by this Act.

(4) DISMISSAL.—No judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(5) REMOVAL.—

(A) IN GENERAL.—If an action in any State court under paragraph (3) is preempted, barred, or otherwise precluded under this Act, and not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

(B) TIME LIMITS.—For actions originally filed after the date of enactment of this Act, the notice of removal shall be filed within the time limits specified in section 1441(b) of title 28, United States Code.

(C) PROCEDURES.—The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act.

(D) REVIEW OF REMAND ORDERS.—

(i) IN GENERAL.—Section 1447 of title 28, United States Code, shall apply to any removal of a case under this section, except that notwithstanding subsection (d) of that section, a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand an action to the State court from which it was removed if application is made to the court of appeals not less than 30 days after entry of the order.

(ii) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under clause (i), the court shall complete all action on such appeal, including rendering judgment, not later than 180 days after the date on which such appeal was filed, unless an extension is granted under clause (iii).

(iii) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 180-day period described in clause (ii) if—

(I) all parties to the proceeding agree to such extension, for any period of time; or

(II) such extension is for good cause shown and in the interests of justice, for a period not to exceed 30 days.

(iv) DENIAL OF APPEAL.—If a final judgment on the appeal under clause (i) is not issued before the end of the period described in clause (ii), including any extension under clause (iii), the appeal shall be denied.

(E) JURISDICTION.—The jurisdiction of the district court shall be limited to—

(i) determining whether removal was proper; and

(ii) determining, based on the evidentiary record, whether the claim presented is preempted, barred, or otherwise precluded under this Act.

(6) CREDITS.—

(A) IN GENERAL.—If, notwithstanding the express intent of Congress stated in this section, any court finally determines for any reason that an asbestos claim is not barred under this subsection and is not subject to the exclusive remedy or preemption provisions of this section, then any participant required to satisfy a final judgment executed with respect to any such claim may elect to receive a credit against any assessment owed to the Fund equal to the amount of the payment made with respect to such executed judgment.

(B) REQUIREMENTS.—The Administrator shall require participants seeking credit under this paragraph to demonstrate that the participant—

(i) timely pursued all available remedies, including remedies available under this paragraph to obtain dismissal of the claim; and

(ii) notified the Administrator at least 20 days before the expiration of any period within which to appeal the denial of a motion to dismiss based on this section.

(C) INFORMATION.—The Administrator may require a participant seeking credit under this paragraph to furnish such further information as is necessary and appropriate to establish eligibility for, and the amount of, the credit.

(D) INTERVENTION.—The Administrator may intervene in any action in which a credit may be due under this paragraph.

SEC. 404. EFFECT ON INSURANCE AND REINSURANCE CONTRACTS.

(a) EROSION OF INSURANCE COVERAGE LIMITS.—

(1) DEFINITIONS.—In this section, the following definitions shall apply:

(A) DEEMED EROSION AMOUNT.—The term ''deemed erosion amount'' means the amount of erosion deemed to occur at enactment under paragraph (2).

(C) EARNED EROSION AMOUNT.—The term ''earned erosion amount'' means the percentage, as set forth in the following schedule, depending on the year in which the defendant participants' funding obligations end, of those amounts which, at the time of the early sunset, a defendant participant has paid to the fund and remains obligated to pay into the fund.

Year After Enactment In Which Defendant Participant's Funding Obligation Ends:	Applicable Percentage:
2	67.06
3	86.72
4	96.55
5	102.45
6	90.12
7	81.32
8	74.71
9	69.58
10	65.47
11	62.11
12	59.31
13	56.94
14	54.90
15	53.14
16	51.60
17	50.24
18	49.03
19	47.95
20	46.98
21	46.10
22	45.30
23	44.57
24	43.90
25	43.28
26	42.71
27	42.18
28	40.82
29	39.42

(D) REMAINING AGGREGATE PRODUCTS LIMITS.—The term ''remaining aggregate products limits'' means aggregate limits that apply to insurance coverage granted under the ''products hazard'', ''completed operations hazard'', or ''Products—Completed Operations Liability'' in any comprehensive general liability policy issued between calendar years 1940 and 1986 to cover injury which occurs in any State, as reduced by—

(i) any existing impairment of such aggregate limits as of the date of enactment of this Act; and

(ii) the resolution of claims for reimbursement or coverage of liability or paid or incurred loss for which notice was provided to the insurer before the date of enactment of this Act.

(E) SCHEDULED PAYMENT AMOUNTS.—The term ''scheduled payment amounts'' means the future payment obligation to the Fund under this Act from a defendant participant in the amount established under sections 203 and 204.

(F) UNEARNED EROSION AMOUNT.—The term ''unearned erosion amount'' means the difference between the deemed erosion amount and the earned erosion amount.

(2) QUANTUM AND TIMING OF EROSION.—

(A) EROSION UPON ENACTMENT.—The collective payment obligations to the Fund of the insurer and reinsurer participants as assessed by the Administrator shall be deemed as of the date of enactment of this Act to erode remaining aggregate products limits available to a defendant participant only in an amount of 38.1 percent of each defendant participant's scheduled payment amount.

(B) NO ASSERTION OF CLAIM.—No insurer or reinsurer may assert any claim against a defendant participant or captive insurer for insurance, reinsurance, payment of a deductible, or retrospective premium adjustment arising out of that insurer's or reinsurer's payments to the Fund or the erosion deemed to occur under this section.

(C) POLICIES WITHOUT CERTAIN LIMITS OR WITH EXCLUSION.—Except as provided under subparagraph (E), nothing in this section shall require or permit the erosion of any insurance policy or limit that does not contain an aggregate products limit, or that contains an asbestos exclusion.

(D) TREATMENT OF CONSOLIDATION ELECTION.—If an affiliated group elects consolidation as provided in section 204(g), the total erosion of limits for the affiliated group under paragraph (2)(A) shall not exceed 38.1 percent of the scheduled payment amount of the single payment obligation for the entire affiliated group. The total erosion of limits for any individual defendant participant in the affiliated group shall not exceed its individual share of 38.1 percent of the affiliated group's scheduled payment amount, as measured by the individual defendant participant's percentage share of the affiliated group's prior asbestos expenditures.

(E) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, nothing in this Act shall be deemed to erode remaining aggregate products limits of a defendant participant that can demonstrate by a preponderance of the evidence that 75 percent of its prior asbestos expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury arising exclusively from the exposure to asbestos at premises owned, rented, or controlled by the defendant participant (a ''premises defendant''). In calculating such percentage, where expenditures were made in defense or satisfaction of asbestos claims alleging bodily injury due to exposure to the defendant participant's products and to asbestos at premises owned, rented, or controlled by the defendant participant, half of such expenditures shall be deemed to be for such premises exposures. If a defendant participant establishes itself as a premises defendant, 75 percent of the payments by such defendant participant shall erode coverage limits, if any, applicable to premises liabilities under applicable law.

(3) METHOD OF EROSION.—

(A) ALLOCATION.—The amount of erosion allocated to each defendant participant shall be allocated among periods in which policies with remaining aggregate product limits are available to that defendant participant pro rata by policy period, in ascending order by attachment point.

(B) OTHER EROSION METHODS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), the method of erosion of any remaining aggregate products limits which are subject to—

(I) a coverage-in-place or settlement agreement between a defendant participant and 1 or more insurance participants as of the date of enactment; or

(II) a final and nonappealable judgment as of the date of enactment or resulting from a claim for coverage or reimbursement pending as of such date, shall be as specified in such agreement or judgment with regard to erosion applicable to such insurance participants' policies.

(ii) REMAINING LIMITS.—To the extent that a final nonappealable judgment or settlement agreement to which an insurer participant and a defendant participant are parties in effect as of the date of enactment of this Act extinguished a defendant participant's right to seek coverage for asbestos claims under an insurer participant's policies, any remaining limits in such policies shall not be considered to be remaining aggregate products limits under subsection (a)(1)(A).

(5) PAYMENTS BY DEFENDANT PARTICIPANT.—Payments made by a defendant participant shall be deemed to erode, exhaust, or otherwise satisfy applicable self-insured retentions, deductibles, retrospectively rated premiums, and limits issued by nonparticipating insolvent or captive insurance companies. Reduction of remaining aggregate limits under this subsection shall not limit the right of a defendant participant to collect from any insurer not a participant.

(6) EFFECT ON OTHER INSURANCE CLAIMS.—Other than as specified in this subsection, this Act does not alter, change, modify, or affect insurance for claims other than asbestos claims.

(b) DISPUTE RESOLUTION PROCEDURE.—

(1) ARBITRATION.—The parties to a dispute regarding the erosion of insurance coverage limits under this section may agree in writing to settle such dispute by arbitration. Any such provision or agreement shall be valid, irrevocable, and enforceable, except for any grounds that exist at law or in equity for revocation of a contract.

(2) TITLE 9, UNITED STATES CODE.—Arbitration of such disputes, awards by arbitrators, and confirmation of awards shall be governed by title 9, United States Code, to the extent such title is not inconsistent with this section. In any such arbitration proceeding, the erosion principles provided for under this section shall be binding on the arbitrator, unless the parties agree to the contrary.

(3) FINAL AND BINDING AWARD.—An award by an arbitrator shall be final and binding between the parties to the arbitration, but shall have no force or effect on any other person. The parties to an arbitration may agree that in the event a policy which is the subject matter of an award is subsequently determined to be eroded in a manner different from the manner determined by the arbitration in a judgment rendered by a court of competent jurisdiction from which no appeal can or has been taken, such arbitration award may be modified by any court of competent jurisdiction upon application by any party to the arbitration. Any such modification shall govern the rights and obligations between such parties after the date of such modification.

(c) EFFECT ON NONPARTICIPANTS.—

(1) IN GENERAL.—No insurance company or reinsurance company that is not a participant, other than a captive insurer, shall be entitled to claim that payments to the Fund erode, exhaust, or otherwise limit the nonparticipant's insurance or reinsurance obligations.

(2) OTHER CLAIMS.—Nothing in this Act shall preclude a participant from pursuing any claim for insurance or reinsurance from any person that is not a participant other than a captive insurer.

(d) FINITE RISK POLICIES NOT AFFECTED.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, except subject to section 212(a)(1)(D), this Act shall not alter, affect or impair any rights or obligations of—

(A) any party to an insurance contract that expressly provides coverage for governmental charges or assessments imposed to replace insurance or reinsurance liabilities in effect on the date of enactment of this Act; or

(B) subject to paragraph (2), any person with respect to any insurance purchased by a participant after December 31, 1990, that expressly (but not necessarily exclusively) provides coverage for asbestos liabilities, including those policies commonly referred to as ''finite risk'' policies.

(2) LIMITATION.—No person may assert that any amounts paid to the Fund in accordance with this Act are covered by any policy described under paragraph (1)(B) purchased by a defendant participant, unless such policy specifically provides coverage for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims.

(e) EFFECT ON CERTAIN INSURANCE AND REINSURANCE CLAIMS.—

(1) NO COVERAGE FOR FUND ASSESSMENTS.—Subject to section 212(a)(1)(D), no participant or captive insurer may pursue an insurance or reinsurance claim against another participant or captive insurer for payments to the Fund required under this Act, except under a written agreement specifically providing insurance, reinsurance, or other reimbursement for required payments to a Federal trust fund established by a Federal statute to resolve asbestos injury claims or, where applicable, under finite risk policies under subsection (d).

(2) CERTAIN INSURANCE ASSIGNMENTS VOIDED.—Any assignment of any rights to insurance coverage for asbestos claims to any person who has asserted an asbestos claim before the date of enactment of this Act, or to any trust, person, or other entity not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims which were asserted before such date of enactment, or by any Tier I defendant participant shall be null and void. This subsection shall not void or affect in any way any assignments of rights to insurance coverage other than to asbestos claimants or to trusts, persons, or other entities not part of an affiliated group as defined in section 201(1) of this Act established or appointed for the purpose of paying asbestos claims, or by Tier I defendant participants.

(3) INSURANCE CLAIMS PRESERVED.—Notwithstanding any other provision of this Act, this Act shall not alter, affect, or impair any rights or obligations of any person with respect to any insurance or reinsurance for amounts that any person pays, has paid, or becomes legally obligated to pay in respect of asbestos or other claims except to the extent that—

(A) such claims are preempted, barred, or superseded by section 403;

(B) any such rights or obligations of such person with respect to insurance or reinsurance are prohibited by paragraph (1) or (2) of subsection (e); or

(C) the limits of insurance otherwise available to such participant in respect of asbestos claims are deemed to be eroded under subsection (a).

SEC. 405. ANNUAL REPORT OF THE ADMINISTRATOR.

(a) IN GENERAL.—The Administrator shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the operation of the Asbestos Injury Claims Resolution Fund within 6 months after the close of each fiscal year.

(b) CONTENTS OF REPORT.—The annual report submitted under this subsection shall include an analysis of—

(1) the claims experience of the program during the most recent fiscal year, including—

(A) the number of claims made to the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims;

(B) the number of claims denied by the Office and a description of the types of medical diagnoses and asbestos exposures underlying those claims, and a general description of the reasons for their denial;

(C) a summary of the eligibility determinations made by the Office under section 114;

(D) a summary of the awards made from the Fund, including the amount of the awards; and

(E) for each disease level, a statement of the percentage of asbestos claimants who filed claims during the prior calendar year and were determined to be eligible to receive compensation under this Act, who have received the compensation to which such claimants are entitled according to section 131;

(2) the administrative performance of the program, including—

(A) the performance of the program in meeting the time limits prescribed by law and an analysis of the reasons for any systemic delays;

(B) any backlogs of claims that may exist and an explanation of the reasons for such backlogs;

(C) the costs to the Fund of administering the program; and

(D) any other significant factors bearing on the efficiency of the program;

(3) the financial condition of the Fund, including—

(A) statements of the Fund's revenues, expenses, assets, and liabilities;

(B) the identity of all participants, the funding allocations of each participant, and the total amounts of all payments to the Fund;

(C) a list of all financial hardship or inequity adjustments applied for during the fiscal year, and the adjustments that were made during the fiscal year;

(D) a statement of the investments of the Fund; and

(E) a statement of the borrowings of the Fund;

(4) the financial prospects of the Fund, including—

(A) an estimate of the number and types of claims, the amount of awards, and the participant payment obligations for the next fiscal year;

(B) an analysis of the financial condition of the Fund, including an estimation of the Fund's ability to pay claims for the subsequent 5 years in full and over the predicted lifetime of the program as and when required, an evaluation of the Fund's ability to retire its existing debt and assume additional debt, and an evaluation of the Fund's ability to satisfy other obligations under the program; and

(C) a report on any changes in projections made in earlier annual reports or sunset analyses regarding the Fund's ability to meet its financial obligations;

(5) a summary of any legal actions brought or penalties imposed under section 223, any referrals made to law enforcement authorities under section 408 (a) and (b), and any contributions to the Fund collected under section 408(e);

(6) any recommendations from the Advisory Committee on Asbestos Disease Compensation and the Medical Advisory Committee of the Fund to improve the diagnostic, exposure, and medical criteria so as to pay those claimants who suffer from diseases or conditions for which exposure to asbestos was a substantial contributing factor;

(7) a summary of the results of audits conducted under section 115; and

(8) a summary of prosecutions under section 1348 of title 18, United States Code (as added by this Act).

(c) CERTIFICATION.—The Administrator shall certify in the annual report required under subsection (a) whether, in the best judgment of the Administrator, the Fund will have sufficient resources for the fiscal year in which the report is issued to make all required payments—

(1) with respect to all claims determined eligible for compensation that have been filed and that the Administrator projects will be filed with the Office for the fiscal year; and

(2) to satisfy the Fund's debt repayment obligation, administrative costs, and other financial obligations.

(d) CLAIMS ANALYSIS AND VERIFICATION OF UNANTICIPATED CLAIMS.—

(1) IN GENERAL.—If the Administrator concludes, on the basis of the annual report submitted under this section, that—

(A) the average number of claims that qualify for compensation under a claim level or designation exceeds 125 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims qualifying for compensation under the appropriate claim level or designation; or

(B) the average number of claims that qualify for compensation under a claim level or designation is less than 75 percent of the number of claims expected to qualify for compensation under that claim level or designation in the most recent Congressional Budget Office estimate of asbestos-injury claims for any 3-year period, the Administrator shall conduct a review of a statistically significant sample of claims deemed ineligible for compensation under the appropriate claim level or designation.

(2) DETERMINATIONS.—The Administrator shall examine the best available medical evidence and any recommendation made under subsection (b)(5) in order to determine which 1 or more of the following is true:

(A) Without a significant number of exceptions, all of the claimants who qualified for compensation under the claim level or designation suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(B) A significant number of claimants who qualified for compensation under the claim level or designation do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(C) A significant number of claimants who were denied compensation under the claim level of designation did suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(D) The Congressional Budget Office projections underestimated or overestimated the actual number of persons who suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor.

(3) RECOMMENDATIONS CONCERNING CLAIMS CRITERIA.—If the Administrator determines that a significant number of the claimants who qualified for compensation under the claim level under review do not suffer from an injury or disease for which exposure to asbestos was a substantial contributing factor, or that a significant number of the claimants who were denied compensation under the claim level under review suffered from an injury or disease for which exposure to asbestos was a substantial contributing factor, the Administrator shall recommend to Congress, under subsection (f), changes to the compensation criteria in order to ensure that the Fund provides compensation for injury or disease for which exposure to asbestos was a substantial contributing factor, but does not provide compensation to claimants who do not suffer from an injury or disease for which asbestos exposure was a substantial contributing factor.

(e) RECOMMENDATIONS OF ADMINISTRATOR AND ADVISORY COMMITTEE.—

(1) REFERRAL.—If the Administrator recommends changes to this Act under subsection (d), the recommendations and accompanying analysis shall be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 (in this subsection referred to as the ''Advisory Committee'').

(2) ADVISORY COMMITTEE RECOMMENDATIONS.—The Advisory Committee shall hold

expedited public hearings on the alternatives and recommendations of the Administrator and make its own recommendations for reform of the program under titles I and II.

(3) TRANSMITTAL TO CONGRESS.—Not later than 90 days after receiving the recommendations of the Administrator, the Advisory Committee shall transmit the recommendations of the Administrator and the recommendations of the Advisory Committee to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(f) SHORTFALL ANALYSIS.—

(1) IN GENERAL.—

(A) ANALYSIS.—If the Administrator concludes, at any time, that the Fund may not be able to pay claims as such claims become due at any time within the next 5 years and to satisfy its other obligations, the Administrator shall prepare an analysis of the reasons for the situation, an estimation of when the Fund will no longer be able to pay claims as such claims become due, a description of the range of reasonable alternatives for responding to the situation, and a recommendation as to which alternative best serves the interest of claimants and the public. The report may include a description of changes in the diagnostic, exposure, or medical criteria of section 121 that the Administrator believes may be necessary to protect the Fund. The Administrator shall submit such analysis to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives. Any recommendations made by the Administrator for changes to the program shall, in addition, be referred to the Advisory Committee on Asbestos Disease Compensation established under section 102 for review.

(B) RANGE OF ALTERNATIVES.—The range of alternatives under subparagraph (A) may include—

(ii) reform of the program set forth in titles I and II of this Act (including changes in the diagnostic, exposure, or medical criteria, changes in the enforcement or application of those criteria, enhancement of enforcement authority, changes in the timing of payments, changes in contributions by defendant participants, insurer participants (or both such participants), or changes in award values); or

(iii) any measure that the Administrator considers appropriate.

(2) CONSIDERATIONS.—In formulating recommendations, the Administrator shall take into account the reasons for any shortfall, actual or projected, which may include—

(A) financial factors, including return on investments, borrowing capacity, interest rates, ability to collect contributions, and other relevant factors;

(B) the operation of the Fund generally, including administration of the claims processing, the ability of the Administrator to collect contributions from participants, potential problems of fraud, the adequacy of the criteria to rule out idiopathic mesothelioma, and inadequate flexibility to extend the timing of payments;

(C) the appropriateness of the diagnostic, exposure, and medical criteria, including the adequacy of the criteria to rule out idiopathic mesothelioma;

(D) the actual incidence of asbestos-related diseases, including mesothelioma, based on epidemiological studies and other relevant data;

(E) compensation of diseases with alternative causes; and

(F) other factors that the Administrator considers relevant.

(4) RESOLVED CLAIMS.—For purposes of this section, a claim shall be deemed resolved when the Administrator has determined the amount of the award due the claimant, and either the claimant has waived judicial review or the time for judicial review has expired.

SEC. 406. RULES OF CONSTRUCTION RELATING TO LIABILITY OF THE UNITED STATES GOVERNMENT.

(a) CAUSES OF ACTIONS.—Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as creating a cause of action against the United States Government, any entity established under this Act, or any officer or employee of the United States Government or such entity.

(b) FUNDING LIABILITY.—Nothing in this Act shall be construed to—

(1) create any obligation of funding from the United States Government, including any borrowing authorized under section 221(b)(2); or

(2) obligate the United States Government to pay any award or part of an award, if amounts in the Fund are inadequate.

SEC. 407. RULES OF CONSTRUCTION.

(a) LIBBY, MONTANA CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for current and former residents of Libby, Montana. The payment of any such medical expenses shall not be collateral source compensation as defined under section 134(a).

(b) HEALTHCARE FROM PROVIDER OF CHOICE.—Nothing in this Act shall be construed to preclude any eligible claimant from receiving healthcare from the provider of their choice.

SEC. 408. VIOLATIONS OF ENVIRONMENTAL HEALTH AND SAFETY REQUIREMENTS.

(a) ASBESTOS IN COMMERCE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), relating to the manufacture, importation, processing, disposal, and distribution in commerce of asbestos-containing products, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible civil or criminal penalties, including those under section 17 of the Toxic Substances Control Act (15 U.S.C. 2616), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(b) ASBESTOS AS AIR POLLUTANT.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under the Clean Air Act (42 U.S.C. 7401 et seq.), relating to asbestos as a hazardous air pollutant, the Administrator shall refer the matter in writing within 30 days after receiving that information to the Administrator of the Environmental Protection Agency and the United States attorney for possible criminal and civil penalties, including those under section 113 of the Clean Air Act (42 U.S.C. 7413), and to the appropriate State authority with jurisdiction to investigate asbestos matters.

(c) OCCUPATIONAL EXPOSURE.—If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator shall refer the matter in writing within 30 days after receiving that information and refer the matter to the Secretary of Labor or the appropriate State agency with authority to enforce occupational safety and health standards, for investigation for possible civil or criminal penalties under section 17 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 666).

SEC. 409. NONDISCRIMINATION OF HEALTH INSURANCE.

(a) DENIAL, TERMINATION, OR ALTERATION OF HEALTH COVERAGE.—No health insurer offering a health plan may deny or terminate coverage, or in any way alter the terms of coverage, of any claimant or the beneficiary of a claimant, on account of the participation of the claimant or beneficiary in a medical monitoring program under this Act, or as a result of any information discovered as a result of such medical monitoring.

(b) DEFINITIONS.—In this section:

(1) HEALTH INSURER.—The term ''health insurer'' means—

(A) an insurance company, healthcare service contractor, fraternal benefit organization, insurance agent, third-party administrator, insurance support organization, or other person subject to regulation under the laws related to health insurance of any State;

(B) a managed care organization; or

(C) an employee welfare benefit plan regulated under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

(2) HEALTH PLAN.—The term ''health plan'' means—

(A) a group health plan (as such term is defined in section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167)), and a multiple employer welfare arrangement (as defined in section 3(4) of such Act) that provides health insurance coverage; or

(B) any contractual arrangement for the provision of a payment for healthcare, including any health insurance arrangement or any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organizing subscriber contract.

(c) CONFORMING AMENDMENTS.—

(1) ERISA.—Section 702(a)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)), is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(2) PUBLIC SERVICE HEALTH ACT.—Section 2702(a)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)) is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

(3) INTERNAL REVENUE CODE OF 1986.—Section 9802(a)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(I) Participation in a medical monitoring program under the Fairness in Asbestos Injury Resolution Act of 2006.''.

SA 2847. Mr. ISAKSON submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 223(j) and insert the following:

Section 223

(j) TRANSACTIONS.—

(1) NOTICE OF TRANSACTION.—Any participant that has engaged in any transaction or series of transactions under which a significant portion of such participant's assets, properties or business was, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such transaction (or series of transactions).

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days after the date of consummation of the transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business were transferred in the transaction (or series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act, or (ii) the transaction (or series of transactions) is subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term 'significant portion of the assets, properties or business of a participant' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States' generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant for purposes of this Act, where the status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person has become the successor in interest of such participant for purposes of this Act; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A)—

(I) a temporary restraining order or a preliminary or permanent injunction against such transaction (or series of transactions); or

(II) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person became a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(6) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing and content of notices.

SA 2848. Mr. THUNE (for himself, Mr. COLEMAN, and Mr. GRAHAM) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 144, between lines 6 and 7, insert the following:

(9) SAFETY EQUIPMENT MANUFACTURER DEFENDANT PARTICIPANT.—The term ''safety equipment manufacturer defendant participant'' means any defendant participant that—

(A) has continuously manufactured respiratory protection equipment in the United States on and after December 31, 1972; and

(B) based upon the portion of its prior asbestos expenditures attributable to asbestos claims relating to respiratory protection products being treated as total prior asbestos expenditures would result in that participant being assigned to the same tier to which that participant is assigned under section 202(d) based on its total prior asbestos expenditures.

On page 151, between lines 16 and 17, insert the following:

(7) SAFETY EQUIPMENT MANUFACTURER DEFENDANT PARTICIPANTS.—

(A) IN GENERAL.—A safety equipment manufacturer defendant participant that would be included in Tier II, III, IV, or V according to that defendant participant's prior asbestos expenditures shall instead be assigned to the immediately lower tier, such that—

(i) a safety equipment manufacturer defendant participant that would be assigned to Tier II shall instead be assigned to Tier III;

(ii) a safety equipment manufacturer defendant participant that would be assigned to Tier III shall instead be assigned to Tier IV;

(iii) a safety equipment manufacturer defendant participant that would be assigned to Tier IV shall instead be assigned to Tier V; and

(iv) a safety equipment manufacturer defendant participant that would be assigned to Tier V shall instead be assigned to Tier VI.

(B) RETURN TO ORIGINAL TIER.—

(i) CESSATION OF MANUFACTURING.—The Administrator shall return a safety equipment manufacturer defendant participant to that participant's original tier, on a yearly basis, if the Administrator determines that the safety equipment manufacturer defendant has ceased manufacturing respiratory protection equipment in the United States.

(ii) SOLVENCY OF FUND.—The Administrator may return all safety equipment manufacturer defendant participants to their original tiers, on a yearly basis, if the Administrator determines that the additional revenues that would be collected are needed to preserve the solvency of the Fund.

SA 2849. Mr. SESSIONS submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury

caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 366, between lines 12 and 13, insert the following:

(c) APPLICATION OF THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT.—Employers and their insurers who pay compensation or medical benefits or who are potentially liable to their employees and other beneficiaries for compensation or medical benefits under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) shall be entitled to—

(1) a lien for compensation and medical benefits paid; and

(2) release as the case may be, as per the provisions of 33 U.S.C. Section 933; provided, however, that such employers, insurers, employees and other persons entitled to the compensation or medical benefits under that Act may not bring actions under Section 933 against third parties who are protected under this Act.

SA 2850. Mr. KYL (for himself and Mr. CHAMBLISS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

SEC. 1. PROPORTIONAL PAYMENTS.

(a) At page 171, after line 5, insert new (c) as follows, the subsection references assume that the required renumbering has occurred:

''(c) LIMITATION.—For any affiliated group, the total payment in any year, including any guaranteed payment surcharge under subsection (m) and any bankruptcy trust guarantee surcharge under section 222(c), shall not exceed the lesser of $16,702,400 or 1.67024 percent of the revenues of the affiliated group for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation is applied, whichever is greater. For purposes of this subsection, the term ''affiliated group'' shall include any defendant participant that is an ultimate parent. The limitation in this subsection shall not apply to defendant participants in Tier I or to any affiliated group whose revenues for the most recent fiscal year ending on or prior to December 31, 2002, or for the most recent 12-month fiscal year as of the date the limitation applied, whichever is greater, exceeds $1,000,000,000. The revenues of the affiliated group shall be determined in accordance with section 203(a)(2), except for the applicable date. An affiliated group that claims a reduction in its payment in any year shall file with the administrator, in accordance with procedures prescribed by the administrator, sufficient information to allow the administrator to determine the amount of any such reduction in that year. If as a result of the application of the limitation provided in this subsection an affiliated group is exempt from paying all or part of a guaranteed payment surcharge or bankruptcy trust surcharge, then the reduction in the affiliated group's payment obligation due to the limitation in this subsection shall be redistributed in accordance with subsection (m). Nothing in this subsection shall be construed as reducing the minimum aggregate annual payment obligation of defendant participants as provided in section 204(i)(1).''

(b) Renumber subsections following new subsection (c).

(c) Subsequent to renumbering the subsections following new subsection 204(c), make the following cross-reference changes:

At page 142, line 7, replace ''204(g)'' with ''204(h)''.

At page 151, line 20, replace ''204(i)(6)'' with ''204(j)(6)''.

At page 160, line 21, replace ''204(1)'' with ''204(m)''.

At page 167, line 24, replace ''204(d)'' with ''204(e)''.

At page 170, lines 21 and 22, replace ''(d) and (m)'' with ''(e) and (n)''.

At page 171, line 22, replace ''(i)(10)'' with ''(j)(10)''.

At page 172, line 3, replace ''(j)'' with ''(k)''.

At page 177, line 12, replace ''(j) with ''(k)''.

At page 178, line 25, replace ''(j)(3)'' with ''(k)(3)''.

At page 179, line 2, replace ''(k)(1)(A)'' with ''(l)(1)(A)''.

At page 182, line 16, replace ''(i) with ''(j)''.

At page 183, line 6, replace ''(i)'' with ''(j)''.

At page 186, lines 7 and 8, replace ''(d), (f), (g), and (m)'' with ''(e), (g), (h) and (n)''.

At page 186, line 11, replace ''(d) and (m)'' with ''(e) and ''(n)''.

At page 186, line 20, replace ''(d) and (m)'' with ''(e) and ''(n)''.

At page 186, line 23, replace ''(l)'' with ''(m)''.

At page 187, line 8, replace ''(f)'' with ''(g)''.

At page 196, line 20, replace ''(d)'' with ''(e)''.

At page 196, line 22, replace ''(m)'' with ''(n)''.

At page 197, line 13, replace ''(h)'' with ''(i)''.

At page 198, line 11, replace ''(d)'' with ''(e)''.

At page 198, line 16, replace ''(h)'' with ''(i)''.

At page 198, line 17, replace ''(j)'' with ''(k)''.

At page 198, line 23, replace ''(d)'' with ''(e)''.

At page 199, line 10, replace ''(h)'' with ''(i)''.

At page 199, line 12, replace ''(d) and (m)'' with ''(e) and (n)''.

At page 199, line 20, replace ''(k)'' with ''(l)''.

At page 199, line 22, replace ''(h)'' with ''(i)''.

At page 200, line 3, replace ''(h)'' with ''(i)''.

At page 200, line 7, replace ''(d), (t), (g), and (m)'' with ''(e), (g), (h) and (n)''.

At page 200, line 22, replace ''(d), (t), and (g)'' with ''(e), (g), and (h)''.

At page 201, line 5, replace ''(i)(9)'' with ''(j)(9)''.

At page 203, line 6, replace ''204(i)'' with ''204(j)''.

At page 204, line 23, replace ''204(d)'' with ''204(e)''.

At page 205, line 11, replace ''(i)(10)'' with ''(j)(10)''.

At page 205, line 16, replace ''204(h)'' with ''204(i)''.

At page 248, line 21, replace ''204(f)(3)'' with ''204(g)(3)''.

At page 261, line 14, replace ''204(i)(10)'' with ''204(j)(10)''.

At page 266, line 14, replace ''204(f)'' with ''204(g)''.

At page 289, line 9, replace ''204(i)'' with ''204(j)''.

At page 289, line 11, replace ''204(d)'' with ''204(e)''.

At page 289, line 12, replace ''204(m)'' with ''204(n)''.

At page 289, line 19, replace ''204(i)'' with ''204(j)''.

At page 289, line 20, replace ''204(d)'' with ''204(e)''.

At page 289, line 21, replace ''204(m)'' with ''204(n)''.

At page 289, line 23, replace ''204(i)(10)'' with ''204(j)(10)''.

At page 334, line 8, replace ''204(f)'' with ''204(g)''.

SEC. 2. HARDSHIP ADJUSTMENTS.

(a) Strike page 172, line 6, through page 173, line 17, and insert the following:

(2) FINANCIAL HARDSHIP ADJUSTMENTS.

(A) IN GENERAL.—Any defendant participant in any tier may apply for an adjustment under this paragraph at any time during the period in which a payment obligation to the Fund remains outstanding and may qualify for such an adjustment by demonstrating to the satisfaction of the administrator that the amount of its payment obligation would materially and adversely affect the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due. Such an adjustment shall be in an amount that in the judgment of the administrator is reasonably necessary to prevent such material and adverse effect on the defendant participant's ability to continue its business and to pay or satisfy its debts generally as and when they come due.

(B) FACTORS TO CONSIDER.—In determining whether to make an adjustment under subparagraph (A) and the amount thereof, the Administrator shall consider—

(1) the financial situation of the defendant participant and its affiliated group as shown in historical audited financial statements, including income statement, balance sheet, and statement of cash flow, for the three fiscal years ending immediately prior to the application and projected financial statements for the three fiscal years following the application;

(2) an analysis of capital spending and fixed charge coverage on a historical basis for the three fiscal years immediately preceding a defendant participant's application and for the three fiscal years following the application;

(3) any payments or transfers of property made, or obligations incurred, within the preceding 6 years by the defendant participant to or for the benefit of any insider as defined under section 101(31) of title 11 of the United States Code or any affiliate as defined under section 101(2) of title 11 of the United States Code;

(4) any prior extraordinary transactions within the preceding 6 years involving the defendant participant, including without limitation payments of extraordinary salaries, bonuses, or dividends;

(5) the defendant participant's ability to satisfy its payment obligations to the Fund by borrowing or financing with equity capital, or through issuance of securities of the defendant participant or its affiliated group to the Fund;

(6) the defendant participant's ability to delay discretionary capital spending; and

(7) any other factor that the administrator considers relevant.

(C) TERM.—A financial hardship adjustment under this paragraph shall have a term of 5 years unless the administrator determines at the time the adjustment is made that a shorter or longer period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(D) RENEWAL.—A defendant participant may renew a hardship adjustment upon expiration by demonstrating that it remains justified. Such renewed hardship adjustments shall have a term of 5 years unless the administrator determines at the time of the renewed adjustment that a shorter or longer

period is appropriate in the light of the financial condition of the defendant participant and its affiliated group and other relevant factors, provided that a renewed financial hardship adjustment under this paragraph shall terminate automatically in the event that the defendant participant holding the adjustment files a petition under title 11, United States Code.

(E) PROCEDURE.—

(1) The Administrator shall prescribe the information to be submitted in applications for adjustments under this paragraph.

(2) All audited financial information required under this paragraph shall be as reported by the defendant participant in its annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq. Any defendant participant that does not file reports with the Securities and Exchange Commission or which does not have audited financial statements shall submit financial statements prepared pursuant to generally accepted accounting principles. The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify under penalty of law the completeness and accuracy of the financial statements provided under this subparagraph.

(3) The chairman, chief executive officer, and chief financial officer of the defendant participant shall certify that any projected information and analyses submitted to the administrator were made in good faith and are reasonable and attainable.

(b) CONFORMING CHANGES.—

At page 177, line 10, strike ''hardship and''.

At page 178, lines 19–20, strike ''financial hardship adjustments under paragraph (2) and''.

At page 178, lines 22–23, strike ''—(A).''.

At page 179, line 2, insert a period after ''(k)(1)(A)'' and delete '';or''.

At pages 179–181, strike line 10 on page 179 through line 2 on page 181.

At page 181, at line 3: Insert ''RULEMAKING AND'' before ''ADVISORY''.

At page 181, line 5: Strike ''shall'' and insert ''may''.

At page 181, following line 14, insert: ''The Administrator may adopt rules consistent with this Act to make the determination of hardship and inequity adjustments more efficient and predictable.''.

At page 197, line 8, strike ''HARDSHIP AND''.

At page 197, line 15, strike ''hardship and''.

At page 197, line 19, strike ''hardship and''.

At page 197, lines 24 and 25, strike ''severe financial hardship or''.

SEC. 3. STEPDOWNS AND FUNDING HOLIDAYS.

(a) At page 205, line 20, strike ''The'' and insert: ''Except as otherwise provided in this paragraph, the''

(b) At page 205, lines 22 through 24 strike: '', except with respect to defendant participants in Tier I, Subtiers 2 and 3, and class action trusts'' and insert the following:

''. The reductions under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reduction under this subsection exceeds the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reduction provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reduction provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.''

(c) At page 207, line 10 through 12, strike the text following ''except'' in line 10 and insert ''as otherwise provided under this paragraph. The reductions or waivers provided under this subsection shall not apply to defendant participants in Tier I, subtiers 2 and 3, and class action trusts. For defendant participants whose payment obligation has been limited under section 204(c) or who have received a financial hardship adjustment under section 204(e)(2), aggregate potential reductions or waivers under this subsection shall be calculated on the basis of the defendant participant's tier and subtier without regard to such limitation or adjustment. If the aggregate potential reductions or waivers under this subsection exceed the reduction in the defendant participant's payment obligation due to the limitation under section 204(c) and the financial hardship adjustment under section 204(e)(2), then the defendant participant's payment obligation shall be further reduced by the difference between the potential reductions or waivers provided under this subsection and the reductions that the defendant participant has already received due to the application of the limitation provided in section 204(c) and the financial hardship adjustment provided under section 204(e)(2). If the reduction in the defendant participant's payment obligation due to the limitation provided in section 204(c) and any the financial hardship adjustment provided under section 204(e)(2) exceeds the amount of the reductions or waivers provided in this subsection, then the defendant participant's payment obligation shall not be further reduced under this paragraph.''

SEC. 4. ECONOMICALLY DISTRESSED INDUSTRIES.

(a) On page 145, between lines 8 and 9, insert the following:

''(4) ECONOMICALLY DISTRESSED INDUSTRY.—The term ''economically distressed industry'' means an industry, defined by a primary 5–digit NAICS code, wherein two or more defendant participants are in Subtier of Tier II, under sections 202 and 203, and at least two-thirds of such Tier II defendant participants suffered net operating losses in their U.S. manufacturing business in 2005.''

(b) On page 204, line 3, insert ''— (i)'' before ''impose''.

On page 204, line 6, strike the period and insert ''; or''.

On page 204, insert between lines 6 and 7 the following:

''(ii) notwithstanding paragraph (1), impose in any year a surcharge under this subsection on any defendant participant in an economically distressed industry in excess of 15 percent of the amount set forth for Tier II, Subtier 1 defendant participants under section 203(c)(2)(A).''

SA 2851. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 310, lines 15–16, strike ''effect'' and insert the following: '';provided, however, that any provision of such an injunction channeling asbestos claims to such a trust for resolution shall be of no force and effect.''

On page 312, line 18, strike ''Notwithstanding'' and all that follows through ''retain such jurisdiction.''

On pages 359–60, strike subparagraphs (7) and (8) of subsection 405(g) and insert the following:

''(7) ESTABLISHMENT OF MASTER ASBESTOS TRUST.—

(A) CREATION.—Within 120 days after the determination of the Administrator under paragraph (1), the Administrator shall create a trust to be the successor to the asbestos trusts and any class action trust, to receive funds equal to the amount determined by the Administrator to be necessary to pay the remaining aggregate obligations to the asbestos trusts and any class action trust under paragraphs 1(A)(iii) and 1(B), and to use such funds for the exclusive purpose of providing benefits in accordance with the terms of this [master trust section?] to persons who would have held valid asbestos claims against the asbestos trusts or any class action trust had the Fairness in Asbestos Resolution Act of [2006] not been enacted and to otherwise defray the reasonable expenses of administering the master trust.

(B) JURISDICTION.—The United States District Court for the District of Columbia shall have exclusive jurisdiction, without regard to amount in controversy, over the master trust and all civil actions involving the application and construction of this subparagraph and the trust documents, including any action for the payment of benefits due under the terms of this subparagraph after exhaustion of trust remedies and any action for breach of fiduciary duty on the part of any fiduciary of the master trust.

(C) TRUSTEES.—The district court shall appoint, upon petition by the Administrator after consultation with the Advisory Committee, three trustees to administer the master trust. Each trustee, and any successor to each trustee, must be independent, free of any adverse interest and have sufficient qualifications and experience to fulfill the responsibilities described in this section.

(D) TRUST ADVISORY COMMITTEE.—The Administrator, in consultation with the Advisory Committee, shall appoint three persons to represent the interests of trust beneficiaries as members of a trust advisory committee to consult with and advise the trustees respecting the administration of the master trust and resolution of asbestos claims. At least one of the members of the trust advisory committee shall be selected from among individuals recommended by recognized national labor federations, and at least one of the members of the trust advisory committee shall be experienced in representing the interests of trust beneficiaries.

(E) LEGAL REPRESENTATIVE.—The district court shall appoint, upon petition by the Administrator after consultation with the Advisory Committee, a legal representative of persons who may in the future have claims against the master trust for the purpose of protecting the rights of such persons respecting the master trust and consulting with and advising the trustees respecting the administration of the master trust and resolution of asbestos claims. The legal representative,

and any successor to the legal representative, must be independent, free of any adverse interest and have sufficient qualifications and experience to fulfill the responsibilities described in this section. The legal representative shall have standing to appear and be heard as a representative of the future asbestos claimants in any civil action before the district court relating to the master trust. The legal representative shall not represent the interests of any person who has filed a claim for benefits against the master trust with respect to such claim.

(F) TRUST DOCUMENTS.—The Administrator, in consultation with the Advisory Committee, shall create such trust documents as may be necessary to create and govern the operations of the master trust. The trust documents shall contain provisions that (i) address the payment of compensation to and reimbursement of necessary and reasonable expenses of the trustees, trust advisory committee members and legal representative, and appointment of successors to such persons, subject to approval by the district court in the case of successors to the trustees and legal representative, and (ii) provide for the master trust's obligation to defend and indemnify the Administrator, trustees, members of the trust advisory committee, legal representative and their respective successors against and from legal actions and related losses to the extent that a corporation is permitted under the laws of Delaware to defend and indemnify its officers and directors.

(G) DUTY OF TRUSTEES.—The trustees shall administer the master trust in accordance with the terms of this subparagraph and the Trust Documents for the exclusive purpose of providing benefits to persons with valid claims against the master trust and otherwise defraying the reasonable expenses of administering the master trust, and shall manage and invest the assets of the trust with the care, skill, prudence, and diligence, under like circumstances prevailing at the time, that a prudent person acting in like capacity and manner would use.

(H) CLAIMS RESOLUTION PROCEDURES.—The trustees, in consultation with the trust advisory committee and the legal representative, shall adopt claims resolution procedures that provide for fair and expeditious payment of benefits to all persons described in subpart A of this subparagraph. The claims resolution procedures adopted and implemented by the trustees shall contain the following features:

(i) pro rata distributions of award amounts that are subject to adjustment, if necessary, based on periodic evaluations of the value of the master trust's assets and estimates of the numbers and values of present and future asbestos claims for benefits that may be awarded by the master trust and other mechanisms that provide reasonable assurance that the master trust will value, and be in a financial position to pay, similarly situated asbestos claims presented to it that involve similar diseases in substantially the same manner;

(ii) proof requirements, claim submission procedures, and claim evaluation and allowance procedures that provide for expeditious filing and evaluation of all asbestos claims submitted to the master trust;

(iii) provisions for priority review and payment of claimants whose circumstances require expedited evaluation and compensation;

(iv) exposure requirements for asbestos claimants to qualify for a remedy that fairly reflect the legal responsibility of at least one entity whose liabilities were channeled to an asbestos trust or any class action trust; and

(v) review and dispute resolution procedures for disputes regarding the master trust's disallowance or other treatment of claims for benefits.

(I) MEDICAL CRITERIA.—The trustees, in consultation with the trust advisory committee and the legal representative, shall adopt and maintain uniform medical criteria that fairly reflect a current state of applicable law and scientific and medical knowledge. The trustees may adopt the medical criteria of section 121.

(J) AWARD AMOUNTS.—The trustees, in consultation with the trust advisory committee and the legal representative, shall adopt a matrix of award amounts for disease categories that applies to all claimants who qualify for payment under the medical criteria and claims resolution procedures. The trustees may adopt the matrix of award amounts of section 131 or such other matrix that the trustees determine provides similar benefits for similar claims and fairly reflects the liability of the entities whose liabilities were channeled to the asbestos trusts and any class action trust.

(K) PAYMENTS TO CLAIMANTS.—The trustees shall pay each qualifying claimant a benefit equal to the product of the master trust payment percentage and the award amount to such claimant. The master trust payment percentage at any given time shall be determined by the trustees based on their periodic evaluation of the master trust's assets and projected claims as described in subpart (H)(i) of this subparagraph.

(L) AMENDMENTS.—The trustees, in consultation with the trust advisory committee and legal representative, may amend the trust documents, the claims resolution procedures, the medical criteria and the award matrix to the extent necessary to more effectively and efficiently carry out the purpose of the master trust. Further, if the substantive consolidation of the asbestos trusts and any class action trust effected by this subsection is held to be unconstitutional, the trustees shall adopt amendments to the trust documents, claims resolution procedures, medical criteria and award matrix as may be necessary to bring the master trust in compliance with the Constitution, including if necessary amendments requiring, for each such trust, separate claims resolution procedures, award amounts and accounting of assets and liabilities.

(8) PAYMENT TO MASTER TRUST.—The amount determined by the Administrator to be necessary to pay the remaining aggregate obligations to the asbestos trusts and any class action trust under paragraphs 1(A)(iii) and 1(B) shall be transferred to the master trust within 90 days of termination under this subsection. Any individual with a valid asbestos claim against any asbestos trust or class action trust shall be entitled to seek relief on account of such claim from the master trust described in subparagraph (7) in accordance with the provisions of such subparagraph.''

On page 357, strike lines 12 through 24 and insert the following:

''(B) REMAINING OBLIGATIONS.—For purposes of subparagraph (A)(ii)(II), the remaining obligations to the asbestos trust of the debtor and the class action trust shall be determined by multiplying the amount of assets transferred to the Fund by such debtor or class action trust by the applicable percentage set forth in the following schedule depending on the year in which a termination shall take effect under paragraph (2). The applicable percentage shall be adjusted between years by quarter-annual increments.

Year after Enactment in Which the Termination is Effective	Applicable Percentage
1	100.00
2	93.95
3	87.98
4	82.40
5	76.97
6	71.66
7	66.50
8	61.48
9	56.61
10	52.01
11	47.65
12	43.52
13	39.62
14	35.96
15	32.55
16	29.36
17	26.39
18	23.65
19	21.11
20	18.76
21	16.62
22	14.66
23	12.86
24	11.24
25	9.78
26	8.48
27	7.32
28	6.29
29	5.37
30	4.55
31	3.83
32	3.20
33	2.66
34	2.18
35	1.77
36	1.42
37	1.13
38	0.89
39	0.70
40	0.54
41	0.40
42	0.29
43	0.19
44	0.12
45	0.05
46 and thereafter	0.00''

On page 360, line 21, strike the period and insert the following:

''; provided, however, that any individual who would have held a valid asbestos claim against any asbestos trust or class action trust had the Fairness in Asbestos Resolution Act not been enacted may obtain relief on account of such claim only from the master trust described in subparagraph (g)(7) in accordance with the provisions of such subparagraph.''

On page 364, line 4, strike ''; and'' and insert a period.

On page 364, strike lines 5–14.

SA 2852. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, strike lines 16 through 22.

SA 2853. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, strike line 6 and all that follows through page 244, line 14, and insert the following:

(b) BORROWING AUTHORITY.—The Administrator is authorized to borrow, in any calendar year, an amount not to exceed anticipated contributions to the Fund in the following calendar year for purposes of carrying out the obligations of the Fund under this Act.

SA 2854. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, strike lines 16 through 22 and insert the following:

(2) FEDERAL FINANCING BANK.—

(A) IN GENERAL.—In addition to the general authority in paragraph (1), the Administrator may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 (12 U.S.C. 2285) in an amount not to exceed $5,000,000,000 for performance of the Administrator's duties under this Act for the first 5 years.

(B) INTEREST TO BE CHARGED.—

(i) IN GENERAL.—Any funds borrowed under subparagraph (A) shall be charged interest at the private market prime lending rate and repaid not later than 18 months after the date on which such funds were borrowed.

(ii) SURCHARGE.—The Administrator shall impose a surcharge on defendants and insurers to meet the repayment obligations under clause (i) and paragraph (4).

SA 2855. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 186, between lines 4 and 5, insert the following:

(2) INSUFFICIENT FUNDS IN YEARS 1 THOUGH 6.—

(A) IN GENERAL.—Notwithstanding any provision of sections 202 or 203 or this section, during the 6-year period beginning on the date of enactment of this Act, if at any time during such period the Administrator determines that there are insufficient funds available to pay all qualifying claims that have been received and to satisfy all other obligations of the Fund, the Administrator shall impose on each defendant participant in Tier I and Tier II a surcharge in such amounts as necessary to meet the cost of paying such claims and satisfying such other obligations.

(B) PRO RATA BASIS.—Any surcharge imposed under subparagraph (A) shall be imposed on a prorated basis in accordance with the liability of each defendant participant established under sections 202 and 203.

On page 186, line 5, strike ''(2)'' and insert ''(3)''.

On page 186, line 15, strike ''(3)'' and insert ''(4)''.

On page 243, strike lines 7 through 15, and insert the following:

(3) BORROWING CAPACITY.—The Administrator is authorized to borrow, in any calendar year, an amount not to exceed anticipated contributions to the Fund in the following calendar year for purposes of carrying out the obligations of the Fund under this Act.

SA 2856. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 67, between lines 10 and 11, insert the following:

(g) PRECONDITIONS FOR CERTIFICATION.—For the purpose of this section, the Administrator is prohibited from certifying the Fund as operational until the Administrator has—

(1) finalized the tier designation and amount of assessment to each participating defendant or insurer; and

(2) determined from such designations that such assessments will produce the annual statutory revenues required under title II.

SA 2857. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 183, between lines 17 and 18, insert the following:

(4) CERTAIN CONSOLIDATIONS PROHIBITED.—Notwithstanding paragraphs (1) through (3), the following consolidations are prohibited:

(A) Any consolidation, including a consolidation involving intra-company or intercompany affiliates, that would lessen the amount that otherwise would be collected by the Administrator under Title II.

(B) Any consolidation, including a consolidation involving intra-company or intercompany affiliates, that would reduce the payment amount of any participating defendant in a consolidation that has greater liabilities than another participating defendant in the same consolidation.

SA 2858. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 14, strike line 19 and all that follows through page 15, line 2, and insert the following:

(6) COLLATERAL SOURCE COMPENSATION.—

(A) IN GENERAL.—The term ''collateral source compensation'' means the net compensation that the claimant received, or is entitled to receive, from a defendant or an insurer of that defendant, or compensation trust as a result of a final judgment or settlement for an asbestos-related injury that is the subject of a claim filed under section 113.

(B) NET COMPENSATION.—Amounts paid or incurred by the claimant for legal or related expenses in connection with the asbestos-related injury shall be excluded in computing the reduction under this paragraph. Such legal or related expenses may be evidenced by an award, written agreement, or court order in a State or Federal proceeding or by such other evidence as the Administrator may require.

SA 2859. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 123, between lines 2 and 3, insert the following:

SEC. 122. EXTENSION OF CERTAIN BENEFITS TO OTHERS SUBJECT TO COMMUNITY EXPOSURE TO ASBESTOS.

(a) WAIVER FOR RESIDENTS OF WEST CHICAGO, ILLINOIS.—The Administrator shall waive the exposure requirements under this subtitle for individuals who lived or worked within 10 miles of the former W.R. Grace & Company facility in West Chicago, Illinois, for at least 12 consecutive months before December 31, 2004. Claimants under this subsection shall provide such supporting documentation as the Administrator shall require.

(b) CLAIMS PROCEDURES FOR WEST CHICAGO, ILLINOIS.—The claims procedures described under section 121(g)(8) relating to Libby, Montana, claimants shall also apply to any eligible claimants who resided within 10 miles of the former W.R. Grace & Company facility in West Chicago, Illinois.

(c) WEST CHICAGO, ILLINOIS CLAIMANTS.—Nothing in this Act shall preclude the formation of a fund for the payment of eligible medical expenses related to treating asbestos-related disease for individuals who reside, or resided, within 10 miles of the former W.R. Grace & Company facility in West Chicago, Illinois. The payment of any such medical expenses shall not be collateral source compensation, as defined under section 134(a).

SA 2860. Mr. SCHUMER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. INTERSTATE COMPACTS AND CAPTIVE INSURANCE COMPANY.

(a) DEFINITION OF PERSON.—The term person as defined in section 3(13) shall not include the captive insurance company established and funded under title III of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 517).

(b) DEFINITION OF STATE.—The term State as defined in section 3(14) shall include entities created by interstate compact.

SA 2861. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 199, line 25, insert ''in Tier II'' after ''participant''.

SA 2862. Mr. FEINGOLD submitted an amendment intended to be proposed

to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, insert the following:

SEC. 503. NON-SEVERABILITY.

Notwithstanding section 226(f), if any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall have no force and effect.

SA 2863. Mr. FEINGOLD submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 325, strike line 17 and all that follows through page 326, line 2, and insert the following:

(4) DISMISSAL.—

(A) IN GENERAL.—Except as provided under subsection (d)(2), no judgment other than a judgment for dismissal may be entered in any action asserting an asbestos claim (including any claim described in paragraph (2)) in any Federal or State court on or after the date of enactment of this Act.

(B) DISMISSAL ON MOTION.—A court may dismiss any action asserting an asbestos claim (including any claim described in paragraph (2)) on—

(i) motion by any party to such action; or

(ii) its own motion.

(C) DENIAL OF MOTION.—If a court denies a motion to dismiss under subparagraph (B)(i), it shall stay further proceedings in any such action until final disposition of any appeal taken under this Act.

(D) EXCEPTION FOR PENDING CLAIMS IN COURT.—

(i) IN GENERAL.—Except as provided under subsection (d)(2) and clause (ii) of this subparagraph, an action asserting an asbestos claim that is pending on the date of enactment of this Act in any Federal or State court may not be dismissed under subparagraph (A), but any stay shall continue in effect, if the plaintiff (or the personal representative of the plaintiff, if the plaintiff is deceased or incompetent) in such action has filed a claim, or is still entitled under section 113(b) to file a claim, with the Fund with respect to the disease, condition, or injury forming the basis of such action.

(ii) DISMISSAL ALLOWED IF CLAIM IS ADJUDICATED.—An action exempt from dismissal under clause (i) shall be dismissed if—

(I) the plaintiff's claim under the Fund has been finally adjudicated and the award, if any, to the plaintiff from the Fund has been paid in full;

(II) the plaintiff's claim under the Fund has been finally adjudicated and the claimant is not entitled to receive a monetary award or medical monitoring under subtitle D of title I;

(III) the plaintiff's claim has been resolved and paid in full under section 106(f); or

(IV) after the Administrator certifies to Congress that the Fund has become operational and paying all valid asbestos claims at a reasonable rate, the plaintiff's claim is pending in any venue other than a venue described under section 405(g)(3).

(E) NOTICE.—The Administrator shall send notice to the appropriate Federal or State court of any adjudication of any claim with the Fund filed by a plaintiff in an action that has been stayed under subparagraph (D)(i).

(F) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit dismissal, at any time, of a claim pending in Federal or State court for reasons independent of the enactment of this Act.

SA 2864. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 67, between lines 10 and 11, insert the following:

(g) PRECONDITIONS FOR CERTIFICATION.—For the purpose of this section, the Administrator is prohibited from certifying the Fund as operational until the Administrator has—

(1) finalized the tier designation and amount of assessment to each participating defendant or insurer; and

(2) determined from such designations that such assessments will produce the annual statutory revenues required under title II.

SA 2865. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 162, line 22 strike all through page 163, line 22, and insert the following:

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the revenues of such person or affiliated group. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in subtier 4; and

(E) those persons or affiliated groups remaining included in subtier 3.

(2) PAYMENTS.—Except as adjusted by paragraph (3), each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $27,500,000.

(B) Subtier 2: $24,750,000.

(C) Subtier 3: $22,000,000.

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(3) ADJUSTMENTS.—The following persons or affiliated groups in Tier II shall have their annual payment to the Fund adjusted as follows:

(A) Each person or affiliated group with prior asbestos expenditures equal to, or greater than, $200,000,000 but less than $300,000,000 shall pay, on an annual basis, an amount equal to 200 percent of the amount for the subtier to which that person or affiliated group is assigned under this subsection.

(B) Each person or affiliated group with prior asbestos expenditures equal to, or greater than, $300,000,000 but less than $400,000,000 shall pay, on an annual basis, an amount equal to 250 percent of the amount for the subtier to which that person or affiliated group is assigned under this subsection.

(C) Each person or affiliated group with prior asbestos expenditures equal to, or greater than, $400,000,000 but less than $500,000,000 shall pay, on an annual basis, an amount equal to 300 percent of the amount for the subtier to which that person or affiliated group is assigned under this subsection.

(D) Each person or affiliated group with prior asbestos expenditures equal to, or greater than, $500,000,000 shall pay, on an annual basis, an amount equal to 350 percent of the amount for the subtier to which that person or affiliated group is assigned under this subsection.

SA 2866. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 46, line 20, strike ''date of enactment of this Act'' and insert ''effective date of this subsection''.

On page 392, after line 5, insert the following:

TITLE VI—EFFECTIVE DATE

SEC. 601. EFFECTIVE DATE.

Notwithstanding any other provision of this Act, section 106(f) and section 403 shall not become effective until—

(1) the Administrator has met the public notice requirements for defendant and insurer participants under section 204(i)(6)(A)(ii) and section 212(b)(1);

(2) defendant and insurer participants have made their initial payments under section 204(i)(6)(C) and section 212(e); and

(3) the Administrator has certified that the aggregate payments by defendant and insurer participants are sufficient to satisfy the requirements of section 204(h)(1) and section 212(a)(3)(C)(i) for the first calendar year of the Fund.

SA 2867. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 291, between lines 12 and 13, insert the following:

(c) JUDICIAL STAYS.—Notwithstanding subsections (d) and (e) of section 403, if this Act is stayed by judicial order, pending judicial review of the constitutionality or enforceability of this Act, asbestos claims shall be permitted to continue in Federal or State court for as long as such stay remains in effect.

On page 291, line 13, strike ''(c)'' and insert ''(d)''.

SA 2868. Mr. BIDEN submitted an amendment intended to be proposed to

amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 319, strike lines 3 through 18, and insert the following:

(i) before the date of enactment of this Act, the settlement agreement or confirmation of settlement was authorized by the settling defendant or the settling insurer, and confirmed by, or with, counsel for the settling defendant or settling insurer;

On page 320, between lines 6 and 7, insert the following:

(B) AGREEMENTS DEALING WITH MORE THAN 1 CLAIM.—For the purposes of subparagraph (A), a settlement agreement which includes more than 1 asbestos claim shall only be enforceable as to any asbestos claim settled within such settlement agreement if—

(i) before the date of enactment of this Act, the specific asbestos claim was settled under such settlement agreement for a specific sum with a specific named plaintiff; and

(ii) the specific named plaintiff has complied with subparagraph (A)(iii).

On page 320, line 7, strike ''(B)'' and insert ''(C)''.

On page 320, line 11, strike ''(C)'' and insert ''(D)''.

On page 320, line 15, strike ''(D)'' and insert ''(E)''.

On page 320, line 21, strike ''(E)'' and insert ''(F)''.

SA 2869. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 344, line 16, insert ''(i)'' before ''who''.

On page 344, line 17, strike ''calendar'' and insert ''fiscal''.

On page 344, line 19, insert ''and (ii)'' before ''who have received''.

On page 347, strike line 13 and all that follows through ''Administrator,'' on line 15, and insert the following:

(c) CERTIFICATION.—The Administrator shall certify in the annual report required under subsection (a)—

(1) that

On page 347, line 18, strike ''(1)'' and insert ''(A)''.

On page 347, line 22, strike ''(2)'' and insert ''(B)''.

On page 347, line 24, strike the period and insert ''; and''.

On page 347, after line 24, insert the following:

(2) that—

(A) 100 percent of the asbestos claimants who filed claims during the prior fiscal year, and who were determined to be eligible to receive compensation under this Act, received the compensation to which they are entitled during that fiscal year; and

(B) 100 percent of the total obligations due to be paid to eligible claimants in the prior fiscal year have been paid.

On page 350, strike line 4 and all that follows through page 351, line 21.

On page 351, line 24, insert ''INITIAL'' before ''ANALYSIS''.

On page 352, line 5, strike ''when'' and insert ''the date on which''.

On page 352, line 6, insert ''in full'' after ''claims''.

On page 352, line 10, insert a period after ''claimants''.

On page 352, lines 10 and 11, strike ''and the public.'' and all that follows through ''Fund'' on line 15.

On page 353, line 6, strike the semicolon and insert ''; or''.

On page 353, line 7, strike ''reform'' and all that follows through line 13.

On page 353, line 14, strike ''changes'' and insert ''increases''.

On page 353, lines 16 and 17, strike '', or changes in award values)'' and insert ''in order to keep the Fund operational''.

On page 353, line 17, strike ''; or'' and insert a period.

On page 353, strike lines 18 through 19.

On page 354, line 6, strike ''except'' through ''212(a)(3)(C).'' on line 15.

On page 355, line 7, insert ''and'' after ''fraud,''.

On page 355, line 8, strike all after ''mesothelioma'' through line 10 and insert a semicolon.

On page 355, strike lines 11 through 14.

On page 355, line 15, strike ''(D)'' and insert ''(C)''.

On page 355, line 18, strike ''(E)'' and insert ''(D)''.

On page 355, line 20, strike ''(F)'' and insert ''(E)''.

On page 355, strike line 22 and all that follows through page 356, line 4, and insert the following:

(3) TERMINATION PLAN.—

(A) IN GENERAL.—Any recommendation of termination shall include a plan for terminating the affairs of the Fund (and the program generally) within a defined period.

(B) PLAN REQUIREMENTS.—The termination plan shall—

(i) specify the date on which the Fund will no longer be able to timely process and pay all eligible claims that are filed with the Fund while satisfying the other financial obligations of the Fund; and

(ii) provide for paying in full all such eligible claims and all claims resolved before that date.

On page 356, between lines 4 and 5, insert the following:

(4) PERIODIC REVIEWS.—The Administrator shall provide updates on any shortfall analysis to Congress every 6 months, or at such shorter intervals as the Administrator determines appropriate.

On page 356, line 5, strike ''(4)'' and insert ''(5)''.

On page 356, line 14, strike ''titles I (except subtitle A) and II and''.

On page 356, line 15, strike ''403 and 404(e)(2)'' and insert ''113, 403, 404, and 406''.

On page 356, line 19 insert ''(I)'' after ''(ii)''.

On page 356, line 19 strike ''part of the'' and all that follows through ''determines'' on line 24, and insert ''a result of the annual report, shortfall analysis or periodic reviews the Administrator determines''.

On page 356, line 25, strike ''claims are resolved'' and insert ''eligible claims are received''.

On page 357, line 3, strike ''221when'' and insert ''221 when''.

On page 357, line 3, insert ''such eligible claims and all previously'' after ''all''.

On page 357, line 7 strike ''(I)'' and insert ''(aa)''.

On page 357, line 9 strike ''(II)'' and insert ''(bb)''.

On page 357, line 11, strike the period and insert ''; or''.

On page 357, between lines 11 and 12, insert the following:

(II)(aa) the Administrator has failed to make the certifications under subsection (c); or

(bb) the Government Accountability Office has failed to report, pursuant to subsection (j), that the Administrator's certifications under subsection (c) are accurate.

On page 358, line 2, after ''effect'' insert ''either—

(A) on the date which the Administrator has determined is the date the Fund will not have sufficient funds to pay all eligible claims filed with the Fund and all claims resolved prior to that date while satisfying its financial obligations; or

(B) ''.

On page 358, line 3, strike ''180'' and insert ''90''.

On page 358, line 3, strike ''date of a determination of the'' and all that follows through line 6, and insert ''date on which the certifications described in paragraph (1)(A)(iii) failed to occur.''.

On page 359, strike line 24 and all that follows through page 360, line 4.

On page 360, line 5, strike ''(8)'' and insert ''(7)''.

On page 361, line 13, strike ''MESOTHELIOMA CLAIM'' and insert ''ADDITIONAL CLAIMS''.

On page 361, line 17, insert ''a more serious condition or'' after ''a claim for''.

On page 361, line 18, insert ''more serious condition or'' after ''unless the''.

On page 362, line 15, strike ''or''.

On page 362, line 17, strike the period and insert a semicolon.

On page 362, between lines 17 and 18, insert the following:

(iv) any State court in a State where the company has its headquarters or its principal place of business; or

(v) any State court in a State where the company has at least 10 percent of its employees or 10 percent of its sales.

On page 362, line 20, strike ''(ii) or (iii)'' and insert ''(ii), (iii), (iv), or (v)''.

On page 363, strike line 1 and all that follows through line 18.

On page 364 strike line 15 and all that follows through page 365 line 4.

On page 365 between lines 8 and 9, insert ''(j) GOVERNMENT ACCOUNTABILITY OFFICE REPORT.—The Government Accountability Office shall annually review the certifications required in subsection (c), and any relevant supporting documentation, and report to Congress whether these certifications are accurate.

SA 2870. Mr. BIDEN submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 143, line 8 strike all through page 144 line 6 and insert the following:

(7) ASBESTOS PREMISES CLAIM.—The term ''asbestos premises claim''—

(A) means an asbestos claim against a current or former premises owner or landowner, or person controlling or possessing premises or land, alleging injury or death caused by exposure to asbestos on such premises or land or by exposure to asbestos carried off such premises or land on the clothing or belongings of another person; and

(B) includes any such asbestos claim against a current or former employer alleging injury or death caused by exposure to asbestos on premises or land owned, controlled, or possessed by the employer, if that claim is not a claim for benefits under a workers' compensation law or veteran benefits program.

(8) ASBESTOS PREMISES DEFENDANT PARTICIPANT.—The term ''asbestos premises defendant participant'' means any defendant participant for which 90 percent or more of its prior asbestos expenditures relate to asbestos premises claims against that defendant participant.

On page 150, strike lines 1 through page 151 line 16, and insert the following:

(d) TIERS II THROUGH VIII.—

(1) IN GENERAL.—Except as provided in section 204 and subsection (b) of this section, persons or affiliated groups are included in Tier II, III, IV, V, VI, VII, or VIII according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

(A) Tier II: $350,000,000 or greater.

(B) Tier III: $200,000,000 or greater, but less than $350,000,000.

(C) Tier IV: $75,000,000 or greater, but less than $200,000,000.

(D) Tier V: $50,000,000 or greater, but less than $75,000,000.

(E) Tier VI: $10,000,000 or greater, but less than $50,000,000.

(F) Tier VII: $5,000,000 or greater, but less than $10,000,000.

(G) Tier VIII: $1,000,000 or greater, but less than $5,000,000.

(2) ASBESTOS PREMISES DEFENDANT PARTICIPANTS.—Asbestos premises defendant participants which would be assigned to Tiers IV, V, VI, or VII according to their prior asbestos expenditures shall instead be assigned to the immediately lower tier, such that an asbestos premises defendant participant which would be assigned to Tier IV shall instead be assigned to Tier V, an asbestos premises defendant participant which would be assigned to Tier V shall instead be assigned to Tier VI, an asbestos premises defendant participant which would be assigned to Tier VI shall instead be assigned to Tier VII, and an asbestos premises defendant participant which would be assigned to Tier VII shall instead be assigned to Tier VIII.

On page 162, strike line 22 through page 170, line 9, and insert the following:

(c) TIER II SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier II shall be included in 1 of the 5 subtiers of Tier II, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with —

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $49,500,000.

(B) Subtier 2: $46,750,000.

(C) Subtier 3: $44,000,000.

(D) Subtier 4: $41,250,000.

(E) Subtier 5: $38,500,000.

(d) TIER III SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier III shall be included in 1 of the 5 subtiers of Tier III, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $38,500,000.

(B) Subtier 2: $35,750,000.

(C) Subtier 3: $33,000,000.

(D) Subtier 4: $30,250,000.

(E) Subtier 5: $27,500,000.

(e) TIER IV SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier IV shall be included in 1 of the 5 subtiers of Tier IV, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $27,500,000.

(B) Subtier 2: $24,750,000.

(C) Subtier 3: $22,000,000.

(D) Subtier 4: $19,250,000.

(E) Subtier 5: $16,500,000.

(f) TIER V SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier V shall be included in 1 of the 5 subtiers of Tier V, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with—

(A) those persons or affiliated groups with the highest revenues included in Subtier 1;

(B) those persons or affiliated groups with the next highest revenues included in Subtier 2;

(C) those persons or affiliated groups with the lowest revenues included in Subtier 5;

(D) those persons or affiliated groups with the next lowest revenues included in Subtier 4; and

(E) those persons or affiliated groups remaining included in Subtier 3.

(2) PAYMENTS.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $16,500,000.

(B) Subtier 2: $13,750,000.

(C) Subtier 3: $11,000,000.

(D) Subtier 4: $8,250,000.

(E) Subtier 5: $5,500,000.

(g) TIER VI SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VI shall be included in 1 of the 4 subtiers of Tier VI, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be included in Subtier 2 and the rest in Subtier 3.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $3,850,000.

(B) Subtier 2: $2,475,000.

(C) Subtier 3: $1,650,000.

(D) Subtier 4: $550,000.

(h) TIER VII SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VII shall be included in 1 of the 3 subtiers of Tier VII, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $1,000,000.

(B) Subtier 2: $500,000.

(C) Subtier 3: $200,000.

(i) TIER VIII SUBTIERS.—

(1) IN GENERAL.—Each person or affiliated group in Tier VIII shall be included in 1 of the 3 subtiers of Tier VIII, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT.—Each person or affiliated group within each subtier shall pay, on an annual basis, the following:

(A) Subtier 1: $500,000.

(B) Subtier 2: $250,000.

(C) Subtier 3: $100,000.

(j) TIER IX.—

(1) IN GENERAL.—Notwithstanding prior asbestos expenditures that might qualify a person or affiliated group to be included in Tiers II, III, IV, V, VI, VII, or VIII, a person or affiliated group shall also be included in Tier IX, if the person or affiliated group—

(A) is or has at any time been subject to asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, as a result of operations as a common carrier by railroad; and

(B) has paid (including any payments made by others on behalf of such person or affiliated group) not less than $5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims.

(2) ADDITIONAL AMOUNT.—The payment requirement for persons or affiliated groups included in Tier IX shall be in addition to any payment requirement applicable to such person or affiliated group under Tiers II through VIII.

(3) SUBTIER 1.—Each person or affiliated group in Tier IX with revenues of $6,000,000,000 or more is included in Subtier 1 and shall make annual payments of $11,000,000 to the Fund.

(4) SUBTIER 2.—Each person or affiliated group in Tier IX with revenues of less than $6,000,000,000, but not less than $4,000,000,000 is included in Subtier 2 and shall make annual payments of $5,500,000 to the Fund.

(5) SUBTIER 3.—Each person or affiliated group in Tier IX with revenues of less than $4,000,000,000, but not less than $500,000,000 is included in Subtier 3 and shall make annual payments of $550,000 to the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY.—

(A) REVENUES.—For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The

joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY.—For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a payment amount under this provision.

SA 2871. Mr. LAUTENBERG submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

Strike from line 6 on page 321 to line 13 on page 322, and insert in lieu thereof the following:

(1) IN GENERAL.—Except as provided under paragraph (2) and section 106(f) of this Act and section 524(j)(3) of title 11, United States Code, as amended by this Act, the remedies provided under this Act shall be the exclusive remedy for any asbestos claim, including any claim described in subsection (e)(2), under any Federal or State law.

(2) CIVIL ACTIONS AT TRIAL.—

(A) This Act shall not be the exclusive remedy for claims in which a defendant is a company or any domestic or foreign subsidiary of that company that does business with the Islamic Republic of Iran.

(B) IN GENERAL.—This Act shall not apply to any asbestos claim that—

i. Is a civil action filed in a Federal or State court (not including a filing in a bankruptcy court);

ii. Is not part of a consolidation of actions or a class action; and

iii. On the date of enactment of this Act—

I. In the case of a civil action which includes a jury trial, is before the jury after its impaneling and commencement of presentation of evidence, but before its deliberations;

II. In the case of a civil action which includes a trial in which a judge is the trier of fact, is at the presentation of evidence at trial; or

III. a verdict, final order, or final judgment has been entered by a trial court.

(C) NONAPPLICABILITY.—This Act shall not apply to a civil action described under subparagraph (B) throughout the final disposition of the action.

SA 2872. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 369, line 3, strike all through page 371, line 5 and insert the following:

(e) CONTRIBUTIONS TO THE ASBESTOS TRUST FUND BY OSHA ASBESTOS VIOLATORS.—

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor and State agencies that are counterparts, for contributions to the Asbestos Injury Claims Resolution Fund.

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 C.F.R. 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668).

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual under paragraph (2) for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

SA 2873. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 376, line 5, strike all through the matter between lines 5 and 6 on page 386.

On page 370, lines 14 through 16, strike ''and the regulations banning asbestos promulgated under section 501 of this Act),''.

SA 2874. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 370, lines 14 through 16, strike ''and the regulations banning asbestos promulgated under section 501 of this Act),''.

On page 369, line 3, strike all through page 371, line 5 and insert the following:

(1) IN GENERAL.—The Administrator shall assess employers or other individuals determined to have violated asbestos statutes, standards, or regulations administered by the Department of Labor and State agencies that are counterparts, for contributions to the Asbestos Injury Claims Resolution Fund.

(2) IDENTIFICATION OF VIOLATORS.—Each year, the Administrator shall in consultation with the Assistant Secretary of Labor for Occupational Safety and Health, identify all employers that, during the previous year, were subject to final orders finding that they violated standards issued by the Occupational Safety and Health Administration for control of occupational exposure to asbestos (29 C.F.R. 1910.1001, 1915.1001, and 1926.1101) or the equivalent asbestos standards issued by any State under section 18 of the Occupational Safety and Health Act (29 U.S.C. 668).

(3) ASSESSMENT FOR CONTRIBUTION.—The Administrator shall assess each such identified employer or other individual under paragraph (2) for a contribution to the Fund for that year in an amount equal to—

(A) 2 times the amount of total penalties assessed for the first violation of occupational health statutes, standards, or regulations;

(B) 4 times the amount of total penalties for a second violation of such statutes, standards, or regulations; and

(C) 6 times the amount of total penalties for any violations thereafter.

On page 376, line 5, strike all through the matter between lines 5 and 6 on page 386.

On page 386, line 6, strike all through page 393, line 7.

SA 2875. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 376, line 4, strike all through page 393, line 7.

On page 370, lines 14 through 16, strike ''and the regulations banning asbestos promulgated under section 501 of this Act),''.

SA 2876. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 386, line 6, strike all through page 393, line 7.

SA 2877. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 392, after line 5, add the following:

SEC. 503. ASBESTOS EXPOSURE AS THE RESULT OF A NATURAL OR OTHER DISASTER.

(a) MEDICAL CLAIMS.—

(1) IN GENERAL.—A claimant may file an exceptional medical claim with the Fund under section 121 if —

(A) such claimant has been exposed to asbestos from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(I) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(II) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(ii) the clean up and remediation following a disaster described in clause (i); or

(B) as a result of living with a person who has met the exposure requirements described in subparagraph (A).

(2) PHYSICIAN PANEL.—In reviewing medical evidence submitted by a claimant under paragraph (1), the Physicians Panel shall take into consideration the unique nature of such disasters and the potential for asbestos exposure resulting from such disasters.

(b) PRESERVATION OF ACTIONS.—Nothing in this Act shall be construed to limit or abrogate any pending or future civil action against the United States Government or any State or local government, or any agency or subdivision thereof, or any former or present officer or employee thereof, in either their official or individual capacities, seeking redress for exposure to asbestos—

(1) from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(A) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(i) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(ii) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(B) the clean up and remediation following a disaster described in subparagraph (A); or

(2) as a result of living with a person who has met the exposure requirements described in paragraph (1).

(c) NATURAL OR OTHER DISASTER FUNDS.—

(1) IN GENERAL.—Nothing in this Act shall be construed to limit or abrogate any existing fund, or preclude the formation of any future fund, for the payment of eligible medical expenses relating to treating asbestos-related disease for individuals exposed to asbestos—

(A) from any area that is subject to a declaration by the President of a major disaster, as defined under section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), as the result of—

(i) a natural or other disaster, occurring before, on, or after the date of enactment of this Act, including—

(I) the attack on the World Trade Center in New York, New York on September 11, 2001; and

(II) Hurricane Katrina of 2005 in the Gulf Region of the United States; or

(ii) the clean up and remediation following a disaster described in clause (i); or

(B) as a result of living with a person who has met the exposure requirements described in subparagraph (A).

(2) COLLATERAL SOURCE COMPENSATION EXCEPTION.—The payment of any medical expense under paragraph (1) shall not be collateral source compensation as defined under section 134(a).

(d) DEFINITION OF PERSON.—The term person as defined in section 3(13) shall not include the captive insurance company established and funded under title III of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 517).

SA 2878. Mrs. CLINTON (for herself, Mr. KERRY, Mr. LAUTENBERG, and Mr. MENENDEZ) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 17, line 21, before the period at the end, insert the following: '', or the captive insurance company established and funded under title III of division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; 117 Stat. 517)''.

SA 2879. Mr. REID (for Mr. BIDEN) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 359, strike line 3 and all that follows through page 361, line 23, and insert the following:

(6) ASBESTOS TRUSTS AND CLASS ACTION TRUSTS.—On and after the date of termination under this subsection, the trust distribution program of any asbestos trust and the class action trust shall be replaced with the medical criteria requirements of section 121.

(7) PAYMENT TO ASBESTOS TRUSTS AND CLASS ACTION TRUSTS.—The amounts determined under paragraph (1)(B) for payment to the asbestos trusts and the class action trust shall be transferred to the respective asbestos trusts of the debtor and the class action trust within 90 days.

(h) NATURE OF CLAIM AFTER SUNSET.—

(1) IN GENERAL.—

(A) RELIEF.—

(i) IN GENERAL.—Except as provided in subparagraphs (B) and (C), on and after the date of termination under subsection (g), any individual with an asbestos claim who has not previously had a claim resolved by the Fund, may in a civil action obtain relief in damages subject to the terms and conditions under this subsection and paragraph (6) of subsection (g).

(ii) RULE OF CONSTRUCTION.—This subparagraph shall not be construed as creating a new Federal cause of action.

(B) RESOLVED CLAIMS.—An individual who has had a claim resolved by the Fund may not pursue a court action, except that an individual who received an award for a nonmalignant disease (Levels I through V) from the Fund may assert a claim for a subsequent or progressive disease under this subsection, unless the disease was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the previous claim against the Fund was disposed.

(C) MESOTHELIOMA CLAIM.—An individual who received an award for a nonmalignant or malignant disease (except mesothelioma) (Levels I through VIII) from the Fund may assert a claim for mesothelioma under this subsection, unless the mesothelioma was diagnosed or the claimant had discovered facts that would have led a reasonable person to obtain such a diagnosis before the date on which the nonmalignant or other malignant claim was disposed.

(D) STATUTE OF LIMITATIONS.—Notwithstanding any other provision of law, a claimant who, on the date of termination under subsection (g), had a claim filed with the Fund that was unresolved or was eligible to file a claim with the Fund under section 113(b) may file a civil action in accordance with this section not less than 2 years after the date of termination under subsection (g).

SA 2880. Mr. MARTINEZ (for himself, Mr. ALLEN, Mr. ROBERTS, and Mr. BURR) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 155, line 17, strike all through page 115, line 8, and insert the following:

(A) IN GENERAL.—For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant or affiliated group does not file reports with the Securities and Exchange Commission, revenues shall be the amount previously reported as revenues or that would have been reported as revenues, and determined in accordance with generally accepted accounting principles, for the most recent fiscal year ending on or before December 31, 2002.

SA 2881. Mr. BURNS (for himself and Mr. BAUCUS) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 70, line 9, strike ''TLC or FVC'' and insert ''TLC, FVC, or DLCO''.

SA 2882. Mr. SPECTER (for himself, Mr. LIEBERMAN, and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 329, line 4 , insert '', including a claim described under paragraph (2),'' after ''claim''.

SA 2883. Mr. SPECTER (for himself, Mr. LIEBERMAN, and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 212, line 21, strike all through page 214, line 22, and insert the following:

(B) PROCEDURES FOR DETERMINING INSURER PAYMENTS.—

(i) AMOUNT OF PAYMENTS.—The Commission shall determine the amount that each insurer participant shall be required to pay into the Fund under the procedures described in this section. The Commission shall make this determination by first promulgating a rule establishing a methodology for allocation of payments among insurer participants and then applying such methodology to determine the individual payment for each insurer participant. The methodology shall be uniform for all insurer participants.

(ii) RESERVE STUDY REQUIRED.—The Commission shall conduct a reserve study (the

''Reserve Study'') to determine the appropriate reserve allocation of each insurer participant and may request information from each insurer participant, defendant participant, the Securities and Exchange Commission or any State regulatory agency for the purpose of conducting the Reserve Study. The Reserve Study shall calculate each insurer's exposure to current and future asbestos claims in the asbestos litigation environment as it existed prior to enactment. Such calculation shall be derived from the following elements:

(I) an estimation of each and every defendant participant's current and future exposure to expense and loss costs in the asbestos litigation environment as it existed prior to enactment (''Ultimate Expense and Loss'');

(II) applying a uniform set of assumptions regarding the application of insurance and reinsurance to Ultimate Expense and Loss, an analysis of each insurer participant's unresolved or unexhausted insurance or reinsurance coverage applicable to such Ultimate Expense and Loss for each defendant participant;

(III) a project of each insurer's exposure to claims by entities that had not yet become defendants as of the date of enactment, but might reasonably have been anticipated to become defendants in the future if the asbestos litigation environment as it existed prior to enactment had continued. Not later than 60 days after the initial meeting of the Commission, the Commission shall commence a rulemaking proceeding under section 213(a) to propose and adopt a methodology for conducting the Reserve Study and allocating payments among insurer participants on the basis of the Reserve Study. Such methodology shall be consistent with the provisions of this paragraph.

(iii) PERMITTED EXTRAPOLATION OF ULTIMATE EXPENSE AND LOSS FOR PERIPHERAL DEFENDANT PARTICIPANTS.—The Commission shall be given the discretion to establish an appropriate methodology to extrapolate Ultimate Expense and Loss for Tier VI defendant participants for the purposes of the Reserve Study. Considerations for such methodology shall include, but not be limited to, the nature of that Tier VI defendant participant's asbestos liability, the number of pending and historic asbestos claims against the Tier VI defendant participant and the jurisdictions in which such Tier VI defendant participant had been sued for asbestos liability.

(iv) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall undermine the initial payment requirement in section 212(e)(1).

SA 2884. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 70, line 23, strike all through page 73, line 2, and insert the following:

(b) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—If a claim is not filed with the Office within the limitations period specified in this subsection for that category of claim, such claim shall be extinguished, and any recovery thereon shall be prohibited.

(2) INITIAL CLAIMS.—An initial claim for an award under this Act shall be filed within 5 years after the date on which the claimant first received a medical diagnosis and medical test results sufficient to satisfy the criteria for the disease level for which the claimant is seeking compensation.

(3) CLAIMS FOR ADDITIONAL AWARDS.—

(A) NONMALIGNANT DISEASES.—If a claimant has previously filed a timely initial claim for compensation for any nonmalignant disease level, there shall be no limitations period applicable to the filing of claims by the claimant for additional awards for higher disease levels based on the progression of the nonmalignant disease.

(B) MALIGNANT DISEASES.—Regardless of whether the claimant has previously filed a claim for compensation for any other disease level, a claim for compensation for a malignant disease level shall be filed within 5 years after the claimant first obtained a medical diagnosis and medical test results sufficient to satisfy the criteria for the malignant disease level for which the claimant is seeking compensation.

(4) EFFECT ON PENDING CLAIMS.—

(A) IN GENERAL.—Subject to subparagraph (C), if an asbestos claim that was timely filed within ten years prior to the date of enactment is pending as of the date of enactment and is preempted under section 403(e), a claim under this Act for the same disease or condition may be filed with the Office under this section within 5 years after such date of enactment.

(B) SPECIAL RULE.—For purposes of this paragraph, a claim shall not be treated as pending with a trust established under title 11, United States.

SA 2885. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 306, line 20, strike all after the period through page 307, line 10, and insert ''In the event that collateral source compensation exceeds the amount that the claimant would be paid (excluding any adjustments under section 131(b) (3) and (4) of the Act) for such condition under the Act most similar to the claimant's claim with the trust, such trust shall not make any payment to the claimant.''.

SA 2886. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 262, line 20, strike all through page 270, line 20, and insert the following:

(j) TRANSACTIONS.—

(1) NOTICE OF TRANSACTION.—Any participant that has engaged in any transaction or series of transactions under which a significant portion of such participant's assets, properties or business was, directly or indirectly, transferred by any means (including, without limitation, by sale, dividend, contribution to a subsidiary or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such transaction (or series of transactions).

(2) TIMING OF NOTICE AND RELATED ACTIONS.—

(A) IN GENERAL.—Any notice that a participant is required to give under paragraph (1) shall be given not later than 30 days after the date of consummation of the transaction or the first transaction to occur in a proposed series of transactions.

(B) OTHER NOTIFICATIONS.—

(i) IN GENERAL.—Not later than the date in any year by which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(I) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this subsection; or

(II) the participant was not required to provide any notice under this subsection during such period.

(ii) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(C) NOTICE COMPLETION.—The Administrator shall not consider any notice given under paragraph (1) as given until such time as the Administrator receives substantially all the information required by this subsection.

(3) CONTENTS OF NOTICE.—

(A) IN GENERAL.—The Administrator shall determine by rule or regulation the information to be included in the notice required under this subsection, which shall include such information as may be necessary to enable the Administrator to determine whether—

(i) the person or persons to whom the assets, properties or business were transferred in the transaction (or series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act; or

(ii) the transaction (or series of transactions) is subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(B) STATEMENTS.—The notice shall also include—

(i) a statement by the participant as to whether it believes any person has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(ii) a statement by the participant as to whether that person has acknowledged that it has become a successor in interest for purposes of this Act.

(4) DEFINITION.—In this subsection, the term ''significant portion of the assets, properties or business of a participant'' means assets (including, without limitation, tangible or intangible assets, securities and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States' generally accepted accounting principles as in effect from time to time—

(A) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(B) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(C) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(D) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(5) RIGHT OF ACTION.—

(A) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions)—

(i) involving a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(ii) that may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(B) RELIEF ALLOWED.—In any action commenced under this subsection, the Administrator or a participant, as applicable, may seek—

(i) with respect to a transaction (or series of transactions) referenced in clause (i) of subparagraph (A), a declaratory judgment regarding whether such person has become the successor in interest of such participant; or

(ii) with respect to a transaction (or series of transactions) referenced in clause (ii) of subparagraph (A) a temporary restraining order or a preliminary or permanent injunction such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(C) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person has not become a successor in interest for purposes of this Act, then this paragraph shall be the exclusive means by which the determination of whether such person became a successor in interest of the participant shall be made. This paragraph shall not preempt any other rights of any person under applicable Federal or State law.

(D) VENUE.—Any action under this paragraph shall be exclusively brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(6) RULES AND REGULATIONS.—The Administrator may promulgate regulations to effectuate the intent of this subsection, including regulations relating to the form, timing, and content of notices.

SA 2887. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 2746 proposed by Mr. FRIST (for Mr. SPECTER (for himself and Mr. LEAHY)) to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

On page 302, strike line 9 and all that follows through page 304, line 17, and insert the following:

''(aa) provides to the trust a copy of a binding election submitted to Administrator waiving the right to secure compensation under section 106(f)(2) of the Fairness in Asbestos Injury Resolution Act of 2006, unless the claimant is permitted under section 106(f)(2)(B) of such Act to seek a judgment or order for monetary damages from a Federal or State court;

''(bb) meets the requirements for compensation under the distribution plan for the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006;

''(cc) for any condition satisfies the medical criteria under the distribution plan for the trust that is most nearly equivalent to the medical criteria described in paragraph (2), (3), (4), (5), (7), (8), or (9) of section 121(d) of the Fairness in Asbestos Injury Resolution Act of 2006, except that, notwithstanding any provision of the distribution plan of the trust to the contrary, the trust shall not accept the results of a DLCO test (as such test is defined in section 121(a) of the Fairness in Asbestos Injury Resolution Act of 2006) for the purpose of demonstrating respiratory impairment; and

''(dd) for any of the cancers listed in section 121(d)(6) of the Fairness in Asbestos Injury Resolution Act of 2006 does not seek, and the trust does not pay, any compensation until such time as the Institute of Medicine finds that there is a causal relationship between asbestos exposure and such cancer, in which case such claims may be paid if such claims otherwise qualify for compensation under the distribution plan of the trust as of the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2006.

SA 2888. Mr. ISAKSON submitted an amendment intended to be proposed by him to the bill S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter, insert the following:

SEC. 503. TRANSACTIONS.

(a) NOTICE OF TRANSACTIONS.—Notwithstanding any other provision of this Act, any participant that has engaged in any transaction or a series of transactions under which a significant portion of such participant's assets, properties, or business was, directly or indirectly, transferred by any means (including by sale, dividend, contribution to a subsidiary, or split-off) to 1 or more persons other than the participant shall provide written notice to the Administrator of such transaction (or series of transactions).

(b) TIMING OF NOTICE AND RELATED ACTIONS.—

(1) IN GENERAL.—Any notice that a participant is required to give under subsection (a) shall be given not later than 30 days after the date of consummation of the transaction or the first transaction to occur in a proposed series of transactions.

(2) OTHER NOTIFICATIONS.—

(A) IN GENERAL.—Not later than the date in any year on which a participant is required to make its contribution to the Fund, the participant shall deliver to the Administrator a written certification stating that—

(i) the participant has complied during the period since the last such certification or the date of enactment of this Act with the notice requirements set forth in this section; or

(ii) the participant was not required to provide any notice under this section during such period.

(B) SUMMARY.—The Administrator shall include in the annual report required to be submitted to Congress under section 405 a summary of all such notices (after removing all confidential identifying information) received during the most recent fiscal year.

(3) NOTICE COMPLETION.—The Administrator shall not consider any notice given under subsection (a) as given until such time as the Administrator receives substantially all the information required by this section.

(c) CONTENTS OF NOTICE.—

(1) IN GENERAL.—The Administrator shall determine by regulation the information to be included in the notice required under this section, which shall include such information as may be necessary to enable the Administrator to determine whether—

(A) the person or persons to whom the assets, properties or business were transferred in the transaction (or series of transactions) should be considered to be the successor in interest of the participant for purposes of this Act; or

(B) the transaction (or series of transactions) is subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is subject to a case under title 11, United States Code.

(2) STATEMENTS.—The notice shall also include—

(A) a statement by the participant as to whether the participant believes any person has become a successor in interest to the participant for purposes of this Act and, if so, the identity of that person; and

(B) a statement by the participant as to whether that person has acknowledged that such person has become a successor in interest for purposes of this Act.

(d) DEFINITION.—In this section, the term ''significant portion of the assets, properties or business of a participant'' means assets (including tangible or intangible assets, securities, and cash), properties or business of such participant (or its affiliated group, to the extent that the participant has elected to be part of an affiliated group under section 204(f)) that, together with any other asset, property or business transferred by such participant in any of the previous completed 5 fiscal years of such participant (or, as appropriate, its affiliated group), and as determined in accordance with United States generally accepted accounting principles as in effect from time to time—

(1) generated at least 40 percent of the revenues of such participant (or its affiliated group);

(2) constituted at least 40 percent of the assets of such participant (or its affiliated group);

(3) generated at least 40 percent of the operating cash flows of such participant (or its affiliated group); or

(4) generated at least 40 percent of the net income or loss of such participant (or its affiliated group),

as measured during any of such 5 previous fiscal years.

(e) RIGHT OF ACTION.—

(1) IN GENERAL.—Notwithstanding section 221(f), if the Administrator or any participant believes that a participant has engaged, directly or indirectly, in, or is the subject of, a transaction (or series of transactions) that—

(A) involves a person or persons who, as a result of such transaction (or series of transactions), may have or may become the successor in interest or successors in interest of such participant, where the status as a successor in interest has not been stated and acknowledged by the participant and such person; or

(B) may be subject to avoidance by a trustee under section 544(b) or 548 of title 11, United States Code, as if, but whether or not, the participant is a subject to a case under title 11, United States Code,

then the Administrator or such participant may, as a deemed creditor under applicable law, bring a civil action in an appropriate forum against the participant or any other person who is either a party to the transaction (or series of transactions) or the recipient of any asset, property or business of the participant.

(2) RELIEF ALLOWED.—In any action commenced under this section, the Administrator or a participant, as applicable, may seek—

(A) with respect to a transaction (or series of transactions) referred to under subparagraph (A) of paragraph (1), a declaratory judgment regarding whether such person has become the successor in interest of such participant; or

(B) with respect to a transaction (or series of transactions) referred to under subparagraph (B) of paragraph (1)—

(i) a temporary restraining order or a preliminary or permanent injunction; or

(ii) such other relief regarding such transaction (or series of transactions) as the court determines to be necessary to ensure that performance of a participant's payment obligations under this Act is not materially impaired by reason of such transaction (or series of transactions).

(3) APPLICABILITY.—If the Administrator or a participant wishes to challenge a statement made by a participant that a person has not become a successor in interest for purposes of this Act, then this subsection shall be the exclusive means by which the determination of whether such person became a successor in interest of the participant shall be made. This subsection shall not preempt any other rights of any person under applicable Federal or State law.

(4) VENUE.—Any action under this subsection shall be exclusively brought in any appropriate United States district court or, to the extent necessary to obtain complete relief, any other appropriate forum outside of the United States.

(f) REGULATIONS.—The Administrator—

(1) shall promulgate rules to carry out subsection (c), including regulations relating to the form, timing and content of notices; and

(2) may promulgate regulations to effectuate the intent of this section.

(g) PREEMPTION OF SECTION 223(J).—Section 223(j) shall have no force or effect.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been rescheduled before the Subcommittee on National Parks.

The hearing originally scheduled for Thursday, February 16, 2006 at 2:30 p.m. in Room SD–366 of the Dirksen Senate Office Building will now be held at 1:30 p.m. on February 16, 2006 in the same room.

The purpose of the hearing is to receive testimony on the following bills: S.J. Res. 28, a joint resolution approving the location of the commemorative work in the District of Columbia honoring former President Dwight D. Eisenhower; S. 1870, a bill to clarify the authorities for the use of certain National Park Service properties within Golden Gate National Recreation Area and San Francisco Maritime National Historical Park, and for other purposes; S. 1913, a bill to authorize the Secretary of the Interior to lease a portion of the Dorothy Buell Memorial Visitor Center for use as a visitor center for the Indiana Dunes National Lakeshore, and for other purposes; S. 1970, a bill to amend the National Trails System Act to update the feasibility and suitability study originally prepared for the Trail of Tears National Historic Trail and provide for the inclusion of new trail segments, land components, and campgrounds associated with that trail, and for other purposes; H.R. 562, a bill to authorize the Government of Ukraine to establish a memorial on Federal land in the District of Columbia to honor the victims of the manmade famine that occurred in Ukraine in 1932–1933; H.R. 318, a bill to authorize the Secretary of the Interior to study the suitability and feasibility of designating Castle Nugent Farms located on St. Croix, Virgin Islands, as a unit of the National Park System, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Tom, Lillie at (202) 224–5161 or David Szymanski at (202) 224–6293.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been rescheduled before the Committee on Energy and Natural Resources.

The hearing originally scheduled for Tuesday, February, 14, 2006 at 10 a.m. in Room. SD–366 of the Dirksen Senate Office Building will now be held on Thursday, February 16, 2006 at 2:30 p.m. in the same room.

The purpose of the hearing is to discuss the Energy Information Administration's 2006 Annual Energy Outlook on trends and issues affecting the United States' energy market.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Lisa Epifani 202–224–5269 or Shannon Ewan at 202–224–7555.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on February 14, 2006, at 10 a.m., to conduct a hearing on the nomination of Mr. Randall S. Kroszner, of New Jersey, to be a member of the Board of Governors of the Federal Reserve System; Mr. Edward P. Lazear, of California, to be a member of the Council of Economic Advisers; Mr. Kevin M. Warsh, of New York, to be a member of the Board of Governors of the Federal Reserve System.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, February 14, 2006, at 10 a.m., on State and local issues and municipal networks.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, February 14 at 10 a.m. The purpose of this hearings is to discuss the Energy Information Administration's 2006 annual energy outlook on trends and issues affecting the United States Energy Market.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, February 14, 2006, at 10 a.m. to hold a hearing on the President's budget for foreign affairs, and a business meeting.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Tuesday, February 14, 2006, at 10 a.m. for a hearing titled, ''Hurricane Katrina: The Homeland Security Department's Preparation and Response.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Tuesday, February 14, 2006, at 2:30 p.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on the President's Fiscal Year 2007 Budget Request for Indian Programs. Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Tuesday, February 14, 2006, for a committee hearing on the Administration's proposed fiscal year 2007 Department of Veterans Affairs budget. The hearing will take place in room 418 of the Russell Senate Office Building at 10 a.m.

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

SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Subcommittee on Readiness and Management Support be authorized to meet during the session of the Senate on February 14, 2006, at 2:30 p.m., in open session to receive testimony on improving contractor incentives in review of the defense authorization request for fiscal year 2007.

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

SUBCOMMITTEE ON RETIREMENT SECURITY AND AGING

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Subcommittee on Retirement Security and Aging, be authorized to hold a hearing during the session of the Senate on Tuesday, February 14th at 2:30 a.m. in SD–430.

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

SUBCOMMITTEE ON TRADE, TOURISM, AND ECONOMIC DEVELOPMENT

Mr. GRASSLEY. Mr. President. I ask unanimous consent that the Subcommittee on Trade, Tourism, and Economic Development be authorized to meet on Tuesday, February 14, 2006, at 2:30 p.m., on Canadian softwood lumber.

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

AMERICAN JEWISH HISTORY MONTH

Mr. FRIST. Mr. President, I ask unanimous consent the Judiciary Committee be discharged from further consideration of H. Con. Res. 315 and the Senate now proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 315) urging the President to issue a proclamation for the observance of an American Jewish History Month.

There being no objection, the Senate proceeded to consideration of the concurrent resolution.

Mr. FRIST. I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be laid on the table.

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

The concurrent resolution (H. Con. Res. 315) was agreed to.

CARIBBEAN-AMERICAN HERITAGE MONTH

Mr. FRIST. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H. Con. Res. 71 and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 71) expressing the sense of Congress that there should be established a Caribbean-American Heritage Month.

There being no objection, the Senate proceeded to consideration of the concurrent resolution.

Mr. FRIST. I ask unanimous consent the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid on the table, and any statements be printed in the RECORD, with no intervening action.

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

The concurrent resolution (H. Con. Res. 71), was agreed to.

The preamble was agreed to.

ORDERS FOR WEDNESDAY, FEBRUARY 15, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Wednesday, February 15; I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then begin a period of morning business for up to 30 minutes with the first 15 minutes under the control of the majority leader or his designee and the second 15 minutes under the control of the Democratic leader or his designee; provided that following morning business, the Senate resume the motion to proceed to S. 2271.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow, following morning business, the Senate will resume debate on the motion to proceed to the PATRIOT Act Amendments Act. I filed cloture on that motion, and we will announce when that vote will occur.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:19 p.m., adjourned until Wednesday, February 15, 2006, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 14, 2006:

FEDERAL DEPOSIT INSURANCE CORPORATION

JON T. RYMER, OF TENNESSEE, TO BE INSPECTOR GENERAL, FEDERAL DEPOSIT INSURANCE CORPORATION, VICE GASTON L. GIANNI, JR.

THE JUDICIARY

JEROME A. HOLMES, OF OKLAHOMA, TO BE UNITED STATE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA, VICE SVEN E. HOLMES, RESIGNED.

MILAN D. SMITH, JR., OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT, VICE A. WALLACE TASHIMA, RETIRED.

FRANK D. WHITNEY, OF NORTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA, VICE H. BRENT MCKNIGHT, DECEASED.

EXTENSIONS OF REMARKS

HONORING CHARLES C. COOK, SR. ON HIS RETIREMENT FROM THE GOVERNMENT PRINTING OFFICE

HON. VERNON J. EHLERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. EHLERS. Mr. Speaker, I rise to honor Charles C. Cook, Sr., for his 36 years of exemplary service at the U.S. Government Printing Office, GPO.

Charlie came to the GPO in November 1969 and was assigned as a Compositor in the Monotype Section. In 1978, he was promoted to the position of Printing Specialist in the Composing Division, Office of Superintendent. In June 1979, Charlie was reassigned to the Customer Service Department, Congressional Information Division. It was here that Charlie truly honed his skills serving GPO's congressional customers. Over the years, Charlie worked closely with Senate and House committee staff, the Office of the Secretary of the Senate, the Clerk of the House, Sergeant at Arms, and the Capitol Police on numerous projects. One of the most prestigious of these projects was the Presidential Inauguration. Charlie coordinated all the printing requirements for the Joint Congressional Committee on Inaugural Ceremonies for the four inaugurations from 1989 to 2001.

In 1993, Charlie was promoted to Superintendent, Congressional Printing Management Division, and in 2004, he was called on by the Public Printer of the United States to serve as Strategic Marketing Officer. He has served in that capacity until his retirement.

On behalf of the entire Congressional community, I extend congratulations to Charlie for his many years of exemplary service to the GPO and the Congress. We wish him all the best in his retirement.

IN HONOR AND RECOGNITION OF BARBARA BYRD BENNETT

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. KUCINICH. Mr. Speaker, I rise today in honor and recognition of Barbara Byrd Bennett, upon the occasion of her retirement that follows seven years of steadfast service and commitment as Chief Executive Officer of the Cleveland Municipal School District.

Ms. Bennett was born and raised in Harlem and was educated in the public school system. She graduated high school early at age 16 and earned a Bachelor's of Arts degree in English from Long Island University at age 19. She earned two Masters degrees, was a Penn Fellow at Columbia University during her doctoral studies and holds several honorary doctoral degrees. Ms. Bennett was an adjunct professor at several New York City universities and is currently an adjunct faculty member at Cleveland State University.

Her life long professional focus on improving the state of struggling urban school districts is evidenced throughout her profession. Her career in education began in her hometown of New York City, where she taught at the elementary and high school levels. She later served as a school principal and District Administrator and served twice as Superintendent of two of the lowest performing school districts in New York City, Chancellor's District and Crown Heights District in Brooklyn. Her leadership is credited with dramatically improving academic achievement in both of those districts.

Ms. Bennett's tenure in Cleveland parallels that of her work in New York. Chosen as Superintendent of the Cleveland Municipal School District in 1998, she began the monumental task of lifting the Cleveland School District out of its decades-old state of failure and despair. During her tenure, Ms. Bennett implemented policies and programs that served to raise the grade throughout the system, including academic performance, financial stability and the restoration of school classrooms and buildings. Additionally, Ms. Bennett forged vital partnerships with parents, teachers and local and state leaders, thereby fostering an atmosphere of achievement and renewal through a unified effort.

Mr. Speaker, please join me in honor and recognition of Superintendent Barbara Byrd Bennett, whose leadership, dedication and service on behalf of every child of the Cleveland Municipal School District has become a source of hope and foundation for academic achievement today, and for the future of public education in Cleveland. I wish Ms. Bennett and her family an abundance of health, peace and happiness as she journeys onward from here.

HONORING THE LIFE OF RETIRED NEW YORK STATE COURT OF APPEALS JUDGE MATTHEW J. JASEN

HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. HIGGINS. Mr. Speaker, on April 14, 2005, as New York's highest court prepared to sit outside of Albany for the first time in recent memory, I had occasion to recognize the professional career of retired New York State Court of Appeals Judge Matthew Jasen. During that extension of remarks, I was honored to take note of the many personal and professional accomplishments of Judge Jasen, in a manner consistent with the honors bestowed upon him by his successor colleagues on the Court of Appeals that day.

Today, Mr. Speaker, I rise to call the House's attention to the passing of this great legal giant in New York State. Judge Matthew J. Jasen entered into his eternal rest on February 4, 2006, at the age of 90.

Without seeking to be repetitive, Mr. Speaker, the fact remains that Judge Jasen was widely regarded as one of the sharpest legal minds of his era. Taking his seat on the Court of Appeals back in the days when that bench was still elected by popular vote statewide, Judge Jasen was the last western New Yorker to serve on the court, and his decisions were widely regarded as fair and impeccably researched. Rising to the position of senior associate judge before his mandated retirement in 1985, Judge Jasen was well known as a lawyer's judge—someone who knew the law, who understood both its limits and its full potential.

Following his retirement, Judge Jasen's career in law—even past his 80th birthday—continued to flourish and become all the more distinguished. His appointment by the United States Supreme Court as a special master to assist in determining the true border between Illinois and Kentucky along the Ohio River is but one example of how this keen legal mind continued its contribution to the jurisprudence of his State and Nation.

This past Sunday's Buffalo News editorialized the career of Judge Jasen, and it is that editorial with which I will close this extension of remarks.

On behalf of all Members of the House, I extend to the Jasen family our most heartfelt sympathy, as well as our appreciation for the many contributions made by Judge Matthew Jasen to the American way of life. Judge Jasen was the Court of Appeals' first Polish-American member, and it is fitting that I close this extension of remarks with the traditional Polish toast—''Sto Lat''—which literally translated means ''100 years.'' While Judge Jasen could not give a chronological century to serve the people of this State and Nation, in effect he made good on that toast, and I am honored to pay tribute to his memory here today.

[From the Buffalo News, Feb. 12, 2006]

JASEN, GENERATION'S LEGAL STANDOUT

Sorrow flows at the passing of one of the most respected and skilled lawyers and judges of his generation. Former Court of Appeals Judge Matthew J. Jasen, who died Saturday at the age of 90, was both a brilliant legal mind and a respected adviser who guided the practice of law in this region and nationally.

Jasen was the first Polish-American and the last Western New Yorker to sit on the state's highest court, serving there for 18 years, becoming senior associate judge there before retiring at the legally mandated age of 70 (a mandate he upheld in writing the high court's opinion on its validity). He also was a highly regarded arbiter who, even in retirement, was called upon by the U.S. Supreme Court to work as a ''special master'' deciding such questions as the proper location of the Illinois-Kentucky boundary along the Ohio River. He was known for clear and concise opinions, and for his mentoring of lawyers and judges.

He was a forceful arguer and legal scholar whose fairly common early year dissents to Court of Appeals decisions in several areas

were later vindicated in subsequent court rulings, sometimes after his retirement. He won a string of legal honors, including a special Buffalo Law Review issue featuring accolades from the state's top judges.

Jasen should have been New York's chief judge; he was proposed for that post by a nominating commission in the late 1970s, but passed over by then-Gov. Hugh Carey for a more politically connected junior judge. As a conservative Democrat and fiercely independent thinker, Jasen had distanced himself from politics while serving on the high court; that cost him politically, but provides a truer measure of his worth as a judge.

Even during his retirement, New Yorkers benefited from Jasen's fair-mindedness and independence as he joined or led task forces and committees dealing with matters such as judicial conduct or traffic court fairness, and state agency adjudication procedures. Jasen was a champion of the rule of law, and a man who would have desired no other epitaph.

RAISING THE MINIMUM WAGE IS GOOD ECONOMICS

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. FRANK of Massachusetts. Mr. Speaker, a study completed last month by Alicia Sasser, of the Federal Reserve Bank of Boston's New England Public Policy Center, contains good news for those of us who have been pushing for an increase in the minimum wage. Ms. Sasser's very careful and well-documented conclusion is that an increase in the minimum wage in the State of Massachusetts would have significant overall benefits for the people of the State. To summarize her conclusion, ''increasing the minimum wage by $1.50 in Massachusetts is likely to have a small impact on employment—roughly on the order of 1 to 4 percent of affected workers. In addition, according to the analysis presented in this report, the combined impact of the two wage increases (contemplated and pending legislation in Massachusetts) would result in an estimated net wage gain of approximately $255 million. It should be noted, however, that the benefits of this increased wage gain may be diminished if employers respond by cutting hours or reducing their contributions to health insurance.''

It should be noted, Mr. Speaker, that this is an analysis of what will happen in one State if that State alone raises the minimum wage. One of the potential negative effects is the loss of jobs for competitive reasons to the nearby State of New Hampshire, which does not have a minimum wage. What this means is that if we were to adopt a minimum wage increase on the national level, we would get, I believe, the advantages that Ms. Sasser's analysis, shows without that particular competitive disadvantage that comes from two States of virtually identical social composition right next to each other, having significant minimum wage differentials. While obviously there is international economic competition, it is not nearly as direct, especially in the industries that are affected by minimum wage increase.

Mr. Speaker, I recommend that Members read this report. It is too long for inclusion here in the RECORD, but it is New England Public Policy Center Research Report Series, No. 06–1, issued in January. This analysis in my view—I do not impute it to either the Federal Reserve or Ms. Sasser—strongly argues in favor of Federal legislation to raise the minimum wage.

JOHN PEPPER HONORED AS A GREAT LIVING CINCINNATIAN

HON. JEAN SCHMIDT

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mrs. SCHMIDT. Mr. Speaker, I rise today to honor John Pepper, an international business leader, visionary, community activist and champion of education, who will be formally honored as a Great Living Cincinnatian on February 16 by the Greater Cincinnati Chamber of Commerce.

The Chamber has bestowed this award on distinguished members of the community annually since 1967. Recipients of this prestigious award are chosen on the basis of professional achievement, community service, leadership, compassion, and vision. Past honorees have included Neil Armstrong, Dr. Albert Sabin and Charles Scripps.

Mr. Pepper has inspired and impacted the lives of people in our community and across the globe. Throughout his career, he has led, trained and motivated people by his example.

In his 39-year career at Procter & Gamble, Mr. Pepper helped to shape one of the world's largest consumer products companies. He began with the company in 1963. In 1974, he became general manager of Procter & Gamble Italia, and in 1980, he became group vice president. In 1984, he was elected to the company's board of directors and, in 1986, became president. In the early 1990s, he led Procter & Gamble's expansion into Eastern and Central Europe and Greater China. Mr. Pepper was named chairman and chief executive in 1995. He retired from Procter & Gamble in 2002, and retired as chairman of the executive committee of the board in 2003. Following his service to Procter & Gamble, he served for two years as vice president for Finance and Administration at Yale University, his alma mater.

Mr. Pepper recently became chief executive officer of the National Underground Railroad Freedom Center in Cincinnati. This role is especially fitting for him, since he has been instrumental in the creation of the Freedom Center and co-chair of its development effort.

Mr. Pepper has also dedicated his time, energy and leadership to improving education for our children. He has served as a hands-on leader for school reform, pushing schools across the socioeconomic spectrum to set higher standards. He was also a driving force, along with his wife, Francie, in the creation of the Cincinnati Youth Collaborative, a nationally recognized program that provides youth employment, mentoring and tutoring for those in need. He currently serves as the Collaborative's vice chair.

In 1994, Mr. Pepper chaired Cincinnati's United Way campaign, and has served on numerous local and national boards, including the American Society of Corporate Executives, the Partnership for a Drug-Free America, the Partnership for Public Service and the National Campaign to Prevent Teen Pregnancy, the National Alliance of Business, Xavier University, the American Chamber of Commerce in Brussels, the Cincinnati Symphony Orchestra and the Cincinnati Art Museum.

Mr. Pepper and his wife, Francie, have three sons and one daughter, and reside in the Cincinnati suburb of Wyoming.

All of us in the Cincinnati area congratulate John Pepper on being named a Great Living Cincinnatian.

HONORING DORIS WAHL

HON. LINDA T. SÁNCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Ms. LINDA T. SÁNCHEZ of California. Mr. Speaker, I rise today to recognize Mrs. Doris Wahl's 50 years community service and HIV/AIDS advocacy in Whittier, CA. Doris and her husband Wally Wahl, moved to Whittier 50 years ago where they raised four beautiful children, Michael, Margie, Christopher and Paul. For over 20 years, Doris was an active PTA member serving as president and chairwoman of several District Advisory Committees.

Over the years, Doris's community involvement extended to local government where she served as commissioner of Parks and Recreation for the city of Whittier and served twice as its chairwoman. Doris also served as president of the Whittier League of Women Voters, promoting civic participation in government and the political process.

On August 26, 1989, Doris lost her son Christopher due to complications with AIDS. Doris's loss and intimate involvement with the disease motivated her to found the Whittier Rio Hondo AIDS Project, WRHAP, 2 years later. What she learned during her son's illness and in subsequent years was that AIDS is not a disease solely driven by a virus but also by fear, loneliness and depression. It is for this reason that WRHAP provided a compassionate support group for those suffering with AIDS. Doris realized the true scope of the local epidemic when the support group grew to over 30 members after only 3 months. In 1993, 2 years later, WRHAP was incorporated as a nonprofit organization.

Since opening its doors, WRHAP has served thousands of people living with AIDS and provided HIV prevention information to over 12,000 youth. WRHAP currently serves over 100 persons living with HIV/AIDS, conducts over 1,200 outreach contacts per year, and provides over 500 confidential HIV tests.

Under Doris's leadership, WRHAP has become a one-stop resource for people with AIDS. WRHAP's clients receive case management assistance, mental health care, and support group therapy. Through collaboration with other agencies, WRHAP's clients can also obtain outpatient medical and dental care.

In August 2004, Doris founded the Christopher Wahl Youth Center in Whittier as a safe haven and HIV prevention resource for youth.

Doris has become a nationally recognized figure in advocating for appropriate services for people with AIDS, and she co-founded the Southern California HIV/AIDS Advocacy Coalition in 1998. Doris was twice selected as

Woman of the Year, once by the California State Assembly, once by the California State Senate and received a Special Congressional Recognition in honor of Women's History Month.

Mr. Speaker and distinguished colleagues, please join me in honoring Doris Wahl for her many years of service to the community and for her many years of HIV/AIDS advocacy. Let us wish her and her family the very best in retirement.

THANKING MARYBETH PETERS FOR 40 YEARS OF SERVICE

HON. VERNON J. EHLERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. EHLERS. Mr. Speaker, I rise to bring to the attention of my colleagues the distinguished career of Marybeth Peters, the United States Register of Copyrights, and to congratulate her as she commemorates 40 years of service to our Government and to the American people.

Marybeth Peters became the Register of Copyrights on August 7, 1994, the 50th person to hold that office since the appointment of the first Register of Copyrights, Thorvald Solberg, in 1897. The mission of the Copyright Office is to promote creativity by administering and sustaining an effective national copyright system. The Copyright Office administers the Copyright Act, Title 17 U.S.C.; provides policy and legal assistance to the Congress, the executive branch and courts; and provides copyright-related information and education to the public.

As chairman of the House Administration Committee and a member of the Joint Committee on the Library, I want to extend my thanks for Ms. Peters' leadership at the Copyright Office, which is a vital component of the Library of Congress. The Library is the custodian of the mint record of American creativity largely due to copyright deposits of books, music, films, photographs, and other materials that reflect our creative society. The Americana collections of the Library—millions of which are available on the Library's Web site through its American Memory digital collections—have been assembled largely through our Nation's copyright system. Last year alone, the Copyright Office forwarded more than 1 million items to the Library for its collections. I want to extend deepest thanks on behalf of the Joint Committee on the Library to Ms. Peters for her stewardship of the Copyright Office as Register and her long years of service to Congress and the American people.

Prior to her appointment as Register of Copyrights, Ms. Peters served as Policy Planning Advisor to the Register from 1983 to 1994. She has also served as Acting General Counsel of the Copyright Office and as chief of both the Examining and Information and Reference divisions. Ms. Peters is a frequent speaker on copyright issues. She is the author of the General Guide to the Copyright Act of 1976 and is recognized worldwide as a preeminent authority on intellectual property matters.

Mr. Speaker, Marybeth Peters can certainly be proud of her long and distinguished career in Government service. We are proud of her leadership and her service to the Copyright Office and to the Nation.

IN MEMORY OF EDWARD L. MASRY

HON. BRAD SHERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. SHERMAN. Mr. Speaker, during his 40-year career as an attorney in California, Edward L. Masry fought courageously not only for his clients but also for all people of the United States. As a strong advocate for the environment and open space, Mr. Masry worked to preserve our community's most precious resources. His contributions to the Conejo Valley, the State of California, and the country will never be forgotten.

Sadly, Mr. Masry died on December 6, 2005. Today, I am pleased to pay tribute to him. Mr. Masry moved to southern California in 1940. He graduated from Van Nuys High School in 1950 and then attended Valley Junior College. He never received a bachelor's degree, opting instead to enlist in the U.S. Army in 1952, during the Korean conflict. After serving our country, he was honorably discharged with the rank of corporal and was soon accepted at Loyola Law School in Los Angeles. He graduated with a Juris Doctorate in 1960.

Soon after graduation Mr. Masry began his law career, and in 1975 moved his law offices to the San Fernando Valley. He gained expertise and a national reputation in numerous areas of the law, including criminal defense, business litigation, entertainment, the first amendment, and toxic torts. His success as a litigator earned him numerous awards, including the esteemed Justice Armand Arabian Law & Media Award in 2000 and the Academy of Justice Award from the Trial Lawyers for Public Justice in 2001.

Mr. Speaker, Mr. Masry became best known for his work on cases involving toxic environmental contamination. In the early 1990's, his firm, renamed Masry & Vititoe in 1982, argued for the people of Hinkley, California in the landmark case of Anderson v. Pacific Gas & Electric. Mr. Masry won what was at the time the biggest settlement for a civil class action lawsuit. This case was made into a movie, Erin Brockovich, which extolled the success of Mr. Masry as a lawyer and a leader who fought for the rights of the people in California.

Ed Masry was a friend and ally of mine and other local environmental advocates. His involvement with local environmental organizations was instrumental in protecting the Santa Monica Mountains National Recreational Area, as well as other parks and open spaces in Los Angeles and Ventura Counties. I was proud to present him with a Certificate of Special Congressional Recognition in honor of his receiving the Environmental Hero Award from the Environmental Defense Center in 2002. He continued his outstanding work for environmental justice by serving as the CEO and President of Save the World Air, Inc., a company dedicated to improving air quality.

In addition, Ed Masry served two terms as city councilman and mayor of Thousand Oaks. During his tenure he fought to implement his slow-growth platform to protect open space in the Conejo Valley.

Mr. Speaker, I pay tribute to Ed Masry's spirit, perseverance and chutzpah. He fought valiantly and successfully for the residents of the Conejo Valley. His legacy will continue to have a profound effect on his Valley, his State and his Nation.

PAYING TRIBUTE TO LARRY WALL

HON. THOMAS G. TANCREDO

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. TANCREDO. Mr. Speaker, I rise today to recognize a man who has been a great asset to the health care community in Colorado. After 31 years with the Colorado Health and Hospital Association where he served as president for 21 of those years Mr. Larry Wall is moving on to undertake new challenges.

During his tenure as president of CHA, Larry helped to increase the association's stature and reputation as the primary source of credible information about hospitals in Colorado. In addition, Mr. Wall worked to reaffirm CHA's commitment to public health and expand its community based role.

Over the past 31 years Colorado health care systems have seen vast changes. During Larry's tenure, he has been a part of changes that have made Colorado a leader in public accountability. In fact, while Wall served at CHA, Colorado hospitals became the first in the nation to make mortality data for individual hospitals public. Contributions such as this demonstrate how valuable an asset Mr. Wall is to the Colorado health care community. I wish the best to Mr. Wall in his future endeavors.

IN HONOR AND REMEMBRANCE OF CARL. T. BRANCATELLI

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. KUCINICH. Mr. Speaker, I rise today in honor and remembrance of Carl T. Brancatelli, United States Veteran, loving husband to the late Mary Brancatelli; dear father, grandfather, great-grandfather, and friend to many as well as a successful entrepreneur.

Mr, Brancatelli was born and raised in Cleveland, the son of Italian immigrants. His parents instilled within him a strong sense of family, faith, and community. He gave these gifts from his parents to his own children—giving them a clear example of the significance of hard work, integrity, kindness, and giving to others. Mr. Brancatelli served our nation as a United States Marine and was stationed in Korea during the 1950's.

For many years, Mr. Brancatelli worked as a bus driver with the former Cleveland Transit System. His expertise in the mechanical trades led him to a long career as a Master Mechanic. Equipped with a keen business sense, Mr. Brancatelli also operated several successful small business ventures throughout his life, even after retirement. As owner of the Shanty Inn Tavern on Harvard Avenue, Mr. Brancatelli regularly sponsored community baseball teams.

Mr. Speaker, please join me in honor and remembrance of Carl T. Brancatelli, whose kindness, energy and compassion for others will be greatly missed by everyone who knew him well, especially his family and friends. I extend my deepest condolences to his children, Robert, Wanda, James, Tina, Carl, and Tony; to his grandchildren, great-grandchildren, and also to his extended family and friends. Mr. Brancatelli lived his life with great joy, energy and with a loving focus on his family and friends, and he will live on within their hearts and memories forever.

TRIBUTE TO FRED CUSIMANO

HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. HIGGINS. Mr. Speaker, I rise today to honor the life of Mr. Fred Cusimano, a life long resident of Chautauqua County and a truly remarkable man.

COUNTY REMEMBERS FRED CUSIMANO

(By Manley J. Anderson)

Friends and associates of the late Fred J. Cusimano of 190 Linwood Ave., Jamestown, who died Monday morning in the WCA Hospital emergency room have expressed their thoughts about him.

''He was a man for all seasons,'' said Joseph Trusso Jr., longtime friend, fellow Democrat and veteran member of the Chautauqua County Legislature. ''He worked on an oil rig, he owned a gas station, he was a tree farmer. We planted Christmas trees. I helped him plant some of those trees.''

Cusimano had a lengthy career in the voting machine industry, first as sales manager of Voting Machine Service Inc. owned by the T.H. Huhn Agency. He also worked as sales representative for the former Automatic Voting Machine Company from 1960–1990, and in the later part of his career was named vice-president of Automatic Voting Machine. He had also worked for the Voting Machine Service Center in Gerry, until his retirement in 1992.

Voting machines weren't Cusimano's only foray into politics, however. Trusso said Cusimano was respected by both local Republicans and Democrats while being invited to President John F. Kennedy's 1960 inauguration.

''He worked for Automatic Voting Machine and became vice president,'' Trusso said. ''He was a member of the Board of Supervisors when there were only about seven of them. He was par excellence about elections. He knew everything about election law and wrote most of the election laws in New York state. He was a strong Democrat who believed in the democratic way and he wished at times we could go back to it. Fred's predecessors were all Republicans. You can call him a man for all seasons. You can call him a Renaissance man. He advised the city's Democratic and Republican mayors. He worked very hard for the parks in the county. He had a trail named after him.''

Trusso also noted Cusimano's dedication to the Bemus Point rest stop and Chautauqua Lake overlook even when he wasn't feeling well.

''You never see a Fred Cusimano come along very often,'' Trusso said. ''He's a great loss to the city, the county and the state and especially to the Democrats. This man should and will be honored. He devoted a good part of his life to the parks of Chautauqua County. He also helped Allegany State Park. He was a member of the CCC (Civilian Conservation Corps) that helped build it. He was in the Army before and after the draft and before and after the war (World War II) for about five years.''

Trusso said that at their traditional breakfast meeting Tuesday he brought a toast to the little restaurant where the faithful gathered with an empty chair for Cusimano who was remembered by his surviving comrades.

Trusso concluded with, ''I owe him a lot. I don't see anyone who can take his place. What a wonderful person.''

He was influential in returning the City of Jamestown from a ''non-partisan'' to the ''party'' system for local elections. He was a past member of the Jamestown Area Chamber of Commerce and served on its Governmental Affairs Committee and its Greater Jamestown Industrial Development Committee. Cusimano was a past member of the city Planning Commission and served as chairman of the county Economic Development Commission. He also served several years on the Advisory Council to the state Legislature's Joint Legislative Committee on Election Law, and for many years served as a consultant and honorary member to the Election Commissioners Association of New York State.

''He was considered the father of the Chautauqua County Parks System,'' said Anthony M. Teresi, a longtime Cusimano friend and former county legislator. ''He was very active with the parks until the end. The West Side Trail was named for him. He helped everyone who asked for help and it was good help. With me, he was a good and loyal friend who helped me a lot with some of the county issues when I was a legislator. When he believed in something he pursued it until it was done. I consider him the brother I never had. I miss him dearly.''

John C. Cheney of Belleview, Bemus Point, a longtime member and former chairman of Chautauqua County Parks Commission, said of Cusimano, ''He was with us for years. He was one of the founders of it. He's a real loss. We've named one of the trails after him. He had a lot to do with getting those trails organized and started.''

Fred was a man who fully understood how to live to its fullest and that Mr. Speaker is why I rise to honor him today.

THE GRACE ALICE CAMPBELL FOUNDATION

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. FRANK of Massachusetts. Mr. Speaker, this week is Congenital Heart Defects, CHD, Awareness Week. Across America, over 1 million families face the challenges and hardships of raising children with congenital heart defects. Roughly 1 in 125 children are born with 1 of approximately 35 different congenital heart defects in the United States. Some of these are treatable with medications while others require surgeries or even transplants. Heart defects are the No. 1 birth defect in the United States, affecting 32,000 babies in the United States every year. They are also the leading cause of birth defect related deaths worldwide during the first year of life, and while genetics or environmental factors are assumed to be the cause for congenital heart defects, it will take more research to help uncover their cause.

The Grace Alice Campbell Foundation, founded by her parents Brenda and Chris Campbell of Mansfield, MA, which is in my district, has been established to raise public awareness of these birth defects, assist in the treatment of these children, and raise research funds to help doctors discover the cause of congenital heart defects and find a cure. Grace Alice was born on September 4, 2003, with Hypoplastic Left Heart Syndrome, and by the time she was 5 months old, she had already had two open-heart surgeries. Now as a toddler, Grace Alice's perseverance is a wonderful example of love and courage for others every day. The foundation, launched by her parents, serves as a support group for the families of those affected, encouraging these families to celebrate life, remember loved ones lost, and to honor dedicated health professionals.

I extend my congratulations and express my admiration to the Grace Alice Campbell Foundation for its hard work on behalf of those affected by congenital heart defects and their families. I also ask that, because of the resolve of the Campbell family as well as many others across the country, the article, ''Heart Buddies,'' by Deborah Knight Snyder in the Norton Mirror, published on Friday, February 3, 2006, documenting the courage and struggle of these families, be printed here.

HEART BUDDIES

(By Deborah Knight Snyder)

One in every 100 babies is born with a heart defect.

February 7–14 is Congenital Heart Defects (CHD) Awareness Week, and a group of Massachusetts mothers agrees word needs to get out about the many children living with CHDs. For these mothers, that awareness is simply a way of life, because their children were born with heart defects.

''People know more about conditions like Down's Syndrome and spina bifida than they do about heart defects, when heart defects are actually the number one birth defect in the United States,'' said Lyn McPhail of Braintree during a recent support group meeting in Mansfield for mothers of children with CHDs.

Increased consciousness will hopefully lead to more help and, ultimately, to more funding, she said. There are approximately 35 different types of congenital—meaning present at birth—heart defects.

McPhail is the mother of 15-month-old Cameron, who was diagnosed with a CHD when he was just 1½ days old.

Cameron has had two heart valve operations already and still needs a valve replacement. The quandary, his mother explains, is what to do next. There is a small mechanical valve available for children who are at least 2 years old, but that valve will become too small as he grows and would ultimately require yet another operation. However, she said, there is clinical testing currently underway in Canada and Europe which could produce better options.

''You're just racing against time,'' she said.

McPhail is a member of Heart Buddies, a group of mothers and kids from all over the Boston area who get together every month at each other's homes to lend and provide support. The mothers initially met through literature from Children's Hospital and through Little Hearts, Inc., a Connecticut-based organization which lends support to families of kids with CHDs.

The children—who outwardly appear to be healthy, chubby babies and toddlers—play, while the mothers talk about their experiences.

The mothers—who sound like cardiologists to the untrained ear—discuss the children's progress and their setbacks, and about new medicines and treatments which could help their kids.

When the mothers are together, they share a special bond and code of understanding.

Parents of kids who are ''heart healthy''—a term the mothers use to describe children without a CHD—just can't comprehend their daily lives.

''It's nice to able to talk and not have to explain everything,'' said Brenda Campbell of Mansfield, whose daughter, Grace, now 29 months old, was born with a congenital heart defect.

''We can ask each other 'does she look blue to you?' That's our life now,'' Campbell said.

A bluish color could be an indicator that the child is not getting enough oxygen, and is a possible precursor to these parents' worst fear: that their child is going into congestive heart failure.

''That's certainly a daily worry,'' Lyn McPhail said.

Many of the mothers got their diagnoses while they were still pregnant, while others received the news—which they all called ''devastating''—when their babies were just one or two days old.

Grace Campbell was born without a left ventricle in her heart. She had her first surgery when she was just six days old and her second surgery at 5½ months.

''They put in totally different plumbing to help her right ventricle do all the work,'' Brenda Campbell explained.

The Campbells have taken a proactive approach by organizing the Mansfield based ''Grace's Run,'' which annually raises money for families with children with CHDs and for Children's Hospital.

Zachary Duong of Wilmington was born on the same day as Grace, and his mother, Sheila, met Brenda Campbell in the hospital. Zachary is now 2 years old. He was diagnosed with his CHD the day he was born and was rushed to Children's Hospital, where he spent the first three months of his life.

Megan Lea of Mansfield, now 18 months old, was born with a very rare set of CHDs. She has a condition known as Ebstein's anomaly, an abnormality in the tricuspid valve. She also has cardiomyopathy, a disease of the heart muscle that can cause it to lose its pumping strength. With cardiomyopathy, doctors have told the Leas that about one-third of the kids get better, one-third stay the same, and one-third get worse, so Megan's parents have no choice but to wait that one out.

There is a possibility that she will need a heart transplant at some point. She will also probably need valve surgery for the Ebstein's anomaly. Right now doctors are trying to manage her conditions with medications, and she is currently on four different heart drugs. Megan was on oxygen for the first 10 months of her life but is now breathing well on her own.

''The progress they're making is unbelievable, but it's scary because we don't know what their future is,'' Ellie Lea said. ''Her cardiologist said that Megan looks a lot better than expected. We just take it one day at a time.''

''The mother's group is good, because we understand each other,'' she continued. ''Friends who aren't 'heart moms' ask, 'So, is she all fixed?' ''

''I hate it when people ask that!'' exclaimed Delys Poynton of Braintree, the mother of 19-month-old Amy, who was born with Hypoplastic Left Heart Syndrome (HLHP). Kids with HLHP undergo a total of three operations—known as the Norton procedure, after the doctor who discovered it—and then hope for the best. Like some of her friends in Heart Buddies, Amy has undergone two of those three operations already.

''These little kids have already experienced things most people never have to experience in their whole lives,'' Delys Poynton said. ''They get so used to seeing doctors, they get stranger fatigue'' which affects the way they react to other people.

Ellie Lea recalled taking Megan to a hospital to visit a friend, and Megan ''freaked out'' as soon as she got into the hospital. Though just a baby, Megan understood exactly where she was, and she wasn't happy about it.

There's a name for the babies' reaction: ''white coat syndrome.'' The children are so used to being poked and prodded by doctors that they develop an aversion to them.

Also, Delys Poynton said, many of the CHD kids develop eating problems.

''When you have tubes up your nose for so long, you don't want anything in your mouth,'' she said.

Liz Bogyo of Chelmsford is the mother of 14-month-old twins: Allison, who is heart healthy, and Andrew, who was born with a CHD. Andrew was diagnosed when Liz was 17 weeks pregnant.

She recalled the trauma and exhaustion of having a brand new baby at home, Allison—''who we didn't even get a chance to know'' because she and her husband were spending so much time at the hospital with Andrew.

Andrew has undergone two operations and will have to have one more. If that one goes well, he has an 85 percent chance of survival, his doctors have said.

Like the other families, the Bogyos said they take each day at a time and hope for the best.

Ruth Kennedy of North Reading found out when she was 19 weeks pregnant that her son, Ewan, now 2 years old, had a CHD. She received an initial diagnosis of just ''heart defect'' with no additional details and recalls ''just sobbing'' as she walked past the other women at Mass General who were waiting to get their ultrasounds. Ewan has had two operations with another one coming up.

''Long-term, they can't tell you what to expect. No one survived before. You just have to take it day by day and be happy with what you have,'' Ruth Kennedy said.

Because of the advances they've made in the last 20 years, there is no existing group of adults who would have had access to the medical care these babies are now receiving, the mothers said. Consequently, there is no real information available on what kind of future awaits these children. Their parents have been told by the children's doctors not to expect Olympic athletes, but to hope for a normal life. Still, no one knows for sure. The situation has given the mothers a different outlook on life.

''It's like a poem I heard about,'' Lyn McPhail said. The poem is all about planning for a trip to Italy, and anticipating being in Italy, but when you arrive at your destination, you're actually in Holland. You deal with being in Holland, she said, ''but the dream you had of going to Italy is still very real.''

''You just appreciate every little thing all the more. You're so grateful for the good things,'' said Ellie Lea. ''It's a very humbling experience.''

REV. HERBERT THOMPSON HONORED AS A GREAT LIVING CINCINNATIAN

HON. JEAN SCHMIDT

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mrs. SCHMIDT. Mr. Speaker, I rise today to honor the Right Reverend Herbert Thompson, Jr., a bishop, mentor, human rights advocate and community leader, who will be formally honored as a Great Living Cincinnatian on February 16 by the Greater Cincinnati Chamber of Commerce.

The Chamber has bestowed this award on distinguished members of the community annually since 1967. Recipients of this prestigious award are chosen on the basis of professional achievement; community service; leadership; compassion; and vision. Past honorees have included Neil Armstrong, Dr. Albert Sabin and Charles Scripps.

Rev. Thompson was born and raised in New York, where his character was shaped by the hard-working and diverse community of Harlem during the 1940s and 1950s. After serving in the United States Air Force from 1952–1956, he enrolled at Lincoln University in Pennsylvania, where he graduated cum laude in 1962.

After a profound religious experience prompted him to serve, he enrolled at The General Theological Seminary, where he completed his seminary work and earned his master of divinity degree. He received his doctorate of ministry from The United Theological Seminary in Dayton, Ohio.

Ordained into the priesthood in 1965, Rev. Thompson served various churches and communities in New York until 1988, when he was elected Bishop Coadjutor of the Diocese of Southern Ohio. In 1992, he was consecrated as the eighth Bishop of Southern Ohio, and the first African-American elected to serve the Diocese of Southern Ohio in this role. He was only the fourth African-American diocese bishop in the history of the Episcopal Church.

Although he has lived in Cincinnati only since 1988, Rev. Thompson has had an enormous and lasting impact on our community. For example, in 1993, he organized a comprehensive ''Summit on Racism'' to ease racial tensions within the city. He also helped to push forward the concept for the National Underground Railroad Freedom Center.

Throughout his ministry, he has lived by these words: ''To reconcile, to heal, to liberate, to serve.'' Rev. Thompson recently retired from the Diocese of Southern Ohio, but continues to be actively involved in the community.

Rev. Thompson has dedicated his time and energy to many organizations, including serving as chair of the Presiding Bishop's Fund for World Relief and co-founder of Global Episcopal Ministries. He has also served on the boards of St. Augustine College, Bexley Hall Seminary, General Theological Seminary, Kenyon College, Kanuga Conference Center, Cincinnati Symphony Orchestra, Cincinnati Ballet, Cincinnati Opera and the Freedom Center. Among his many awards and honors include the Arts Consortium of Cincinnati's Martin Luther King Jr. Dreamkeeper award.

Rev. Thompson has three children and one grandchild.

All of us in the Cincinnati area congratulate Rev. Thompson on being named a Great Living Cincinnatian.

HONORING C. THOMAS KEEGEL

HON. LINDA T. SÁNCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Ms. LINDA T. SÁNCHEZ of California. Mr. Speaker, I rise today to recognize Mr. C. Thomas Keegel for his 45 years as a committed member of the International Brotherhood of Teamsters.

Mr. C. Thomas Keegel has been a Teamster since 1959, when he got his first trucking job and became a member of Teamsters Local 544 in Minneapolis, Minnesota. From steward to his current position of General Secretary-Treasurer, Keegel has served as an elected Teamster officer for three decades.

Keegel's skills as the union's chief financial officer were honed in the Minneapolis-St. Paul area. He built an area pension fund from $3 million in assets to a $220 million powerhouse for Teamster retirees. That pension fund now offers a top benefit of $55,200 per year and excellent health coverage.

Since taking office on March 19, 1999, Keegel has instituted sweeping reforms in every area of the Union's finances. He has balanced the budget for the first time in more than a decade, hired skilled auditors and accountants, developed programs to extend these reforms to Teamsters Local Unions, Joint Councils, Divisions and Conferences and has undertaken the task of strengthening the Union's treasury and Strike Fund.

Keegel has taken a leading role in enforcing the Hoffa administration's commitment to running a clean union. As General Secretary-Treasurer, he instituted legal actions to recover money stolen from the Union treasury by the prior administration. He created safeguards to ensure that no such embezzlement ever occurs again. Keegel lent his energy, expertise, and enthusiasm to the continuation of the administration's comprehensive anti-corruption program.

As General Secretary-Treasurer, Keegel aims to lift up his Teamster sisters and brothers to even greater heights through his work as their fiscal watchdog and the guardian of their hard-earned dues money.

Mr. Speaker and distinguished colleagues, please join me in honoring Mr. C. Thomas Keegel for ensuring the International Brotherhood of Teamsters' continued financial stability and accountability.

IN HONOR AND RECOGNITION OF MARTIN E. VITTARDI

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. KUCINICH. Mr. Speaker, I rise today in honor and recognition of Martin E. (Marty) Vittardi, devoted family man, public servant, community leader and dedicated volunteer. The leaders and members of the Parma Area Chamber of Commerce recently named him as the recipient of the 2005 Individual Pride Award for his committed and compassionate volunteerism in raising funds and raising community awareness on behalf of the American Cancer Society.

Marty's journey of public service began nearly thirty years ago, while a student at John Carroll University, where he served as a Congressional Assistant to then United States Congressman Ronald Mottl. After graduating at the top of his class with a bachelor's degree in political science, he accepted the position of Deputy Clerk with the Cuyahoga County Court. He then served for eight years as a Legislative Representative for the Seafarers Union, where he garnered vital insight into the political processes that took him from our local community to Capitol Hill.

Marty has been entrusted with the faith and confidence of Parma residents and with members of the Cuyahoga County Democratic Party since the early eighties, as voters have consistently supported him in various City and County elected roles. In 1982, Marty was elected as the Cuyahoga County Democratic Executive Committeeman. That same year, he was elected to represent residents of Ward 3 in the City of Parma and was elected to the position of Ward 5 Democratic Leader.

In 1991, Marty was elected for a six-year term as the Clerk of Court for the City of Parma Municipal Court. He was re-elected to a second term in 2003. In addition to his professional endeavors, Marty has been a tireless volunteer and champion of numerous volunteer causes, and has been an active volunteer in many roles, including chairing school levy campaigns; raising funds for the Byers Field Foundation and Veterans Memorial; co-chairing fundraising drives for the American Cancer Society; and active leadership roles in several civic organizations, including the Parma Elks and the Parma Area Chamber of Commerce. Additionally, Marty is the founder and current chairman of the Community Leadership Group, comprised of elected officials, business owners and community activists whose mission is to foster positive change within all levels of the Parma community through the power of a unified commitment, shared vision and collective focus.

Marty's leadership, achievement, and most vital of all, his integrity and genuine concern for others, is a united legacy that co-exists with, and is strengthened by, the integrity, dedication, professional and personal excellence and shared vision of his partner in life—his wife, Lynn M. Vittardi.

With family as the cornerstone of their lives, Marty and Lynn have instilled a deep sense of giving back to the community and service to others within the hearts of their own children, now grown. Marty and Lynn's united focus on their parents, siblings, and above all, their children, Allison, Jessica and Mark, has never wavered and continues to be the center of their lives. Their children have followed a path of professional excellence and service to others, from the examples set by Marty and Lynn. Allison, her husband Nick and Jessica and her husband, Dominick, are education professionals. Their son Mark is in college, majoring in political science.

Mr. Speaker and colleagues, please join me in honor and recognition of Martin E. Vittardi, for his unwavering dedication, integrity and outstanding public service, especially his annual volunteer efforts with the American Cancer Society. Marty's energy, warmth and significant service continues to offer a light of hope and the promise for a better tomorrow within the City of Parma and throughout our entire community.

IN TRIBUTE TO ALAN AND ROMI SKOBIN

HON. BRAD SHERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. SHERMAN. Mr. Speaker, I rise today to pay tribute to Alan and Romi Skobin for their civic and philanthropic service to Los Angeles and the city of San Fernando and, particularly, their good work for the residents of my district in the San Fernando Valley.

On March 26, 2006, Alan and Romi Skobin are being honored by the executives of the Los Angeles Jewish Home for the Aging for their outstanding involvement with the organization. Their care for the elderly residents of the home demonstrates to all of us the importance of taking care of our parents and grandparents—this country's most important national treasures.

Mr. Speaker, Alan and Romi have a record of community and civic service that spans more than 30 years. Alan, a graduate of California State University, Northridge, has been a longstanding business leader in the San Fernando Valley. Currently he serves as vice president and general counsel of Galpin Motors, Inc. and is a member of the executive committee and board of directors.

He has also served as a commissioner with the Los Angeles Police Department since 2003. In this capacity, he has focused on the Community Based Policing program along with many other issues. His work for the city and the Los Angeles Police Department truly affects each Angelino personally.

Alan is a founding director and executive committee member of the Sheriffs Youth Foundation of Los Angeles County, which funds education and intervention programs for at-risk youth. Alan, a two-time cancer and brain tumor survivor, is also involved with Padres Contra El Cancer, a nonprofit organization that improves the quality of life for children with cancer.

Romi Skobin truly exemplifies the American dream. Her inspirational story began when she came to the United States as a refugee from Cuba in 1969. Romi also received her education locally, at Los Angeles Valley College, and began her career in public service when she joined the San Fernando Police Department in 1974. She currently serves as the records/system administrator, the highest ranking civilian position in the SFPD, and is the city of San Fernando's most senior employee.

Romi has also played an important role in Alan's success by raising their two successful children, Jeff and Jennifer, thereby allowing Alan to attend law school and participate in numerous civic activities.

Mr. Speaker, Alan and Romi Skobin are integral parts of the San Fernando Valley community and I wish to congratulate them wholeheartedly on being honored by the executives of the Los Angeles Jewish Home for the Aging.

THANKING ROSA CHEN FOR HER SERVICE TO THE HOUSE

HON. VERNON J. EHLERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. EHLERS. Mr. Speaker, on the occasion of her retirement in February 2006, I rise to thank Ms. Rosa Chen for 16 years of outstanding service to the U.S. House of Representatives.

Rosa began her career at the House working as a senior programmer/analyst. In that capacity, Rosa has served this great institution for the last 16 years as a valuable employee at House Information Resources, HIR, within the Office of the Chief Administrative Officer. Rosa has made significant contributions in the development of the Office Systems Management, OSM, application. The OSM application has been used by the CAO to control equipment inventory. Most recently, Rosa has played a significant technical support role on the Fixed Assets and Inventory Management System, FAIMS, where she was responsible for Oracle Developer reports customer support, and assisted with barcode function implementation for FAIMS physical inventory.

On behalf of the entire House community, I extend congratulations to Rosa for her many years of dedication and outstanding contributions to the U.S. House of Representatives. We wish Rosa many wonderful years in fulfilling her retirement dreams.

PAYING TRIBUTE TO COURTNEY ZABLOCKI

HON. THOMAS G. TANCREDO

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. TANCREDO. Mr. Speaker, I rise today to pay tribute to a talented young woman from Highlands Ranch, CO, Ms. Courtney Zablocki.

Courtney will proudly represent these United States of America in the 20th Winter Olympiad currently underway in Torino, Italy. Courtney will be competing as a slider in the women's luge events during this Olympiad.

Courtney has been training as a slider for the past 13 years. She will be competing in her second Winter Games. As a member of the United States Olympic women's luge team in Salt Lake City, Courtney finished 13th. In the final World Cup event before the Olympics Courtney finished in a promising fifth position.

Mr. Speaker, I rise to wish Courtney Zablocki a safe, successful and enjoyable Winter Olympics as she represents our country in Italy.

IN HONOR OF THE 2006 OHIO BUSINESS WOMEN'S CONFERENCE AND EXPO

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. KUCINICH. Mr. Speaker, please join me in honor and recognition of the 2006 Ohio Business Women's Conference and Expo, held this year at Cleveland's Cleveland Renaissance Hotel & Conference Center.

The Conference & Expo is a collaborative effort, presented by the Hispanic Chamber of Commerce for Ohio, the Small Business Administration, the Urban League, the Northeast Ohio Minority Business Council (NOMBC), the National Association of Women Business Owners (NAWBO) and a coalition of Chambers of Commerce throughout Ohio. The event promises to attract hundreds of women business owners and numerous exhibitors.

The organizers of the Conference & Expo are focused on promoting women's business ventures and fostering vital connections of support where women entrepreneurs can find resources to expand and improve their business goals. Additionally, the Conference and Expo will provide a forum where women business owners can display their services and products to Americas leading corporations and public agencies dedicated to doing business with women-owned businesses.

Mr. Speaker, please join me in honor and recognition of the 2006 Ohio Business Women's Conference and Expo, a collaborative venture that promises to bolster the success of women business owners throughout our region. The event, while reflecting the continued struggle of women and minorities to attain economic equality and opportunity, also highlights the reality that through continued support and collaboration, the road to economic security and the attainment of professional dreams will be open to all women, clearing a path on which the next generation of women entrepreneurs will follow.

HONORING HADLEY A. WEINBERG

HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. HIGGINS. Mr. Speaker, I rise today to honor Hadley A. Weinberg of Bemus Point, New York for being named by the Consumers' Research Council of America to its list of best financial planners throughout the United States.

Mr. Weinberg a partner at Weinberg Financial Group, Financial Education Resources and Chautauqua 401K with a total of eight affiliates at offices in Jamestown and Buffalo. He has served thousands of clients offering financial services from wealth management to retirement plans and is involved with numerous community organizations.

The criteria employed by the Consumers' Research Council complies its best financial planners list using criteria it deems valuable in determining its top professionals. This criteria includes experience, training, professional associations and financial certifications. All criteria Mr. Weinberg has accomplished all of this in his 23 years of service to the industry.

Mr. Weinberg has displayed extreme excellence in the field of financial planning, that is why, Mr. Speaker, I rise to honor him today.

U.S. BUDGET CUTS WORRY HOSPITALS

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. FRANK of Massachusetts. Mr. Speaker, in the February 8 issue of the Sun Chronicle, published in Attleboro, Massachusetts, there is a very good article about the reaction of hospitals to the President's proposal to change the Medicare law so that future spending would be less on Medicare than it otherwise would be.

In particular, the article quotes Linda Shyavitz, who is the president and CEO of Sturdy Memorial Hospital, an excellent medical facility that serves a very important and diverse population in the city of Attleboro.

Reading the article, including the comments of Ms. Shyavitz, reinforced my view that these proposed changes that the President has put forward are ill advised and would do social damage. I think it is important for Members to understand what people who are charged with important responsibilities think about these proposed reductions in future spending patterns that the President has called for, and because Ms. Shyavitz is an extremely well-qualified and thoughtful administrator of a very important medical facility, I was particularly pleased to have this chance to share her views with our colleagues.

[From the Sun Chronicle, Feb. 8, 2006]

U.S. BUDGET CUTS WORRY HOSPITALS

(By Gloria LaBounty)

ATTLEBORO.—Hospital administrators are keeping a wary eye on Congress as it plows through the Bush administration's's proposed cuts in Medicare.

''I think hospitals all over the country will be fighting this,'' said Linda Shyavitz, president and chief executive officer of Sturdy Memorial Hospital in Attleboro.

According to initial reports, Bush's new $2.7 trillion budget plan would mean a loss in Massachusetts of $758 million in Medicaid funds.

It would also mean a reduction of $213 million in Medicare payments to health-care providers over five years.

The Medicaid impact is still vague, however, because the state is redesigning its program, the Massachusetts Hospital Association says.

The Medicare piece already has hospitals concerned.

Although information so far has been presented in broad terms and details are still days away, Shyavitz said indications are that the proposal could mean a reduction to Sturdy of $575,000 per in Medicare payments.

All elderly patients would still be cared for at Sturdy, but the hospital would get less reimbursement for the care it provides. Shyavitz said.

Asked how the hospital would compensate for the loss in revenue, Shyavitz said it would be premature to speculate because the information has just come out and the president's intentions are still being absorbed.

But she said what hospitals will do in the short term is urge members of Congress to reject the cuts and not support the budget.

Paul Wingle, senior director of communications for the state hospital association or MHA, said the Medicare cuts would put a financial strain on hospitals, and more of them would serve patients at a loss, or at a very thin margin.

''Hospitals would have to scramble to make up the loss,'' he said, and some might do that through cutbacks, or through attempts to make up the revenue elsewhere.

That in turn creates pressure for rate increases.

Shyavitz said hospitals cannot simply raise rates, and would have to negotiate increases with health insurance companies. But she said many hospitals will want to do that if the cuts materialize.

Shyavitz said she is confident that Massachusetts congressmen and senators, including Sen. John Kerry and Sen. Edward Kennedy, and U.S. Reps. James McGovern and Barney Frank. will oppose the cuts.

Kennedy has already spoken out by telling the Associated Press that Bush's budget proposal ''shortchanges our competitiveness, shortchanges our opportunity, and shortchanges our future.''

NEIL BORTZ HONORED AS A GREAT LIVING CINCINNATIAN

HON. JEAN SCHMIDT

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mrs. SCHMIDT. Mr. Speaker, I rise today to honor Neil Bortz, a residential and commercial developer, community leader, philanthropist, and visionary, who will be formally honored as a Great Living Cincinnatian on February 16 by the Greater Cincinnati Chamber of Commerce.

The Chamber has bestowed this award on distinguished members of the community annually since 1967. Recipients of this prestigious award are chosen on the basis of professional achievement; community service; leadership; compassion; and vision. Past honorees have included Neil Armstrong, Dr. Albert Sabin and Charles Scripps.

Mr. Bortz built his career on an uphill challenge: launching the Mount Adams renaissance in the early 1960s as a founding partner in Towne Properties before going on to develop properties across Cincinnati, Dayton, Lexington and Florida. He has made countless improvements to our community and raised the quality of life for many in our region.

In addition to sparking the rebirth of the picturesque, hilltop neighborhood of Cincinnati's Mount Adams, Mr. Bortz also helped lead the housing renaissance in downtown Cincinnati with several award-winning residential developments. His most recent projects include residential properties along the Ohio River. Mr. Bortz has also made an impact on our area by creating great places to live, work and shop in the Cincinnati suburbs.

Mr. Bortz has been active in many arts, civic and philanthropic activities, including serving as founding chair of the Walnut Hills High School Alumni Foundation, which recently completed a new Arts & Sciences wing. Other boards include Cincinnati Art Museum, Cincinnati Equity Fund, National Conference of Christians and Jews, Reds Hall of Fame, Advisory Board to the Cincinnati Park Board, Jewish Federation of Cincinnati, Playhouse in the Park, the Harvard Club of Cincinnati, the Greater Cincinnati Convention and Visitors Bureau and Cincinnati Country Day School. Among his many honors include the first University of Cincinnati Distinguished Service Award, Cincinnati Region Entrepreneur of the Year, and National Conference of Christian and Jews Outstanding Citizen Award.

Mr. Bortz earned his Master of Business Administration from Harvard University. He has three sons, all of whom work with him at Towne Properties, two stepchildren, and six grandchildren.

All of us in the Greater Cincinnati area congratulate Mr. Bortz on being named a Great Living Cincinnatian.

HONORING JAMES P. HOFFA

HON. LINDA T. SÁNCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Ms. LINDA T. SÁNCHEZ of California. Mr. Speaker, I rise today to recognize Mr. James P. Hoffa for his strong leadership and commitment to working families.

As the only son of James R. Hoffa, former General President of the International Brotherhood of Teamsters, Mr. Hoffa grew up on picket lines and in union meetings. James P. Hoffa became a Teamster member himself on his 18th birthday when his father swore him in. As a young Teamster, Hoffa worked as a laborer in Detroit and Alaska, loading and unloading freight from ships, driving trucks and buses and operating heavy equipment.

At Michigan State University, Hoffa played football for legendary Coach Duffy Daugherty and graduated with a degree in Economics. He went on to receive his Law degree from the University of Michigan, and worked as a Teamster attorney from 1968 through 1993. From 1993 to 1998, Hoffa worked at Michigan Joint Council 43.

In 1999 Hoffa was elected General President of the International Brotherhood of Teamsters. Under his leadership, Teamsters are winning industry-leading contracts, engaging in contract enforcement and organizing thousands of new members.

The Union's renewed commitment to political action includes DRIVING America's Future, a new initiative that encourages and supports Teamster members running for political office. This effort will ensure even more Teamster influence in state and national government.

James P. Hoffa has spent a lifetime preparing for the challenge of running the Teamsters Union. He knows, first-hand, what Teamsters can accomplish when they work together. He is determined to lead a Union that is a credit to its proud history.

Mr. Speaker and distinguished colleagues, please join me in honoring Mr. James P. Hoffa for his life's work in building better lives for our families, our communities and our country.

IN HONOR AND REMEMBRANCE OF CHRISTOPHER PENN

HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. KUCINICH. Mr. Speaker, I rise today in honor and remembrance of Christopher Penn, cherished son, brother, brother-in-law, uncle and friend. Mr. Penn's insightful cinematic performances reflected the human condition with subtle power, in a style that ranged from comedic and sublime to rage and despair. His brilliant character portrayals resonated with moviegoers worldwide, connecting us all in our shared humanity.

Although not often cast as the leading man, Mr. Penn's beautifully understated performances consistently lent grace and authenticity to every role he played. From his endearing performance as an insecure teenager in Footloose, to his colorful and unforgettable performances in Reservoir Dogs, True Romance, The Funeral, Pale Rider and Mulholland Falls, Mr. Penn's personal integrity and depth of character clearly radiated onscreen.

Mr. Penn began his film career as a child actor in the 1970's. His performances in more than forty films captured the hearts of moviegoers and earned the respect and admiration of both colleagues and critics. In 1996, Mr. Penn won a Venice Film Festival Award for Best Supporting Actor for his performance in the ''The Funeral.'' He also was nominated for an Independent Spirit Award and a Genie Award.

Mr. Speaker, please join me in honor and remembrance of Christopher Penn, whose young life was framed by family, friends and his exceptional artistic dedication. I offer my deepest condolences to his mother and father, Leo and Eileen; to his brothers, Michael and Sean; to his sisters-in-law, Aimee and Robin; and to his many extended family members and friends. Mr. Penn's gentle spirit and kind heart will live on forever within the hearts of his family and friends, and he will be remembered always by his adoring audience.

RECOGNIZING LOCAL SOLDIERS FOR THEIR SERVICE TO THIS NATION

HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. HIGGINS. Mr. Speaker, I stand here today to express gratitude to a number of soldiers from Western New York who have recently completed a tour of duty where they fought heroically on behalf of the United States of America.

In particular, I would like to recognize SGT Benn, SSG Benson, SGT Carr, SFC Collins, MAJ Dukes, SSG Hendricks, SSG Jindra, SGT Kulesz, SSG LaBuda, SSG Lemay, SFC Liberatore, SFC Press, SSG Printup, SPC Santiago and SFC Schuler, just a few of our local heroes who selflessly put their lives on the line to protect and improve the lives of those in this country and others worldwide.

These decorated men and women have demonstrated supreme courage and commitment through their call to duty and fight for liberty. Their valiant efforts are the reason why we continue to be the ''land of the free and the home of the brave.''

Mr. Speaker, on behalf of the residents of the 27th Congressional District and all Americans I wish to extend my sincerest appreciation to these courageous and noble soldiers. Their service and sacrifices help protect the safety and freedoms that make this Nation great.

DR. MYRTIS POWELL HONORED AS A GREAT LIVING CINCINNATIAN

HON. JEAN SCHMIDT

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mrs. SCHMIDT. Mr. Speaker, I rise today to honor Myrtis Powell, Ph.D., an educator, civic leader and community activist, who will be formally honored as a Great Living Cincinnatian on February 16 by the Greater Cincinnati Chamber of Commerce.

The Chamber has bestowed this award on distinguished members of the community annually since 1967. Recipients of this prestigious award are chosen on the basis of professional achievement; community service; leadership; compassion; and vision. Past honorees have included Neil Armstrong, Dr. Albert Sabin and Charles Scripps.

The eldest of 14 children, Dr. Powell was born in Evergreen, Alabama, where she earned her high school degree when she was just 16 years old. With a quest for knowledge and a passion for learning, Dr. Powell's life has been defined by her distinguished career in education.

Dr. Powell moved to Cincinnati in 1955 to live with her aunt. While working full time in various secretarial and clerical positions, she climbed the ladder of higher education by taking evening and part-time classes at the University of Cincinnati. In 1969, she earned a bachelor's degree in Administrative Management; in 1974, she received a master's degree in Sociology; and in 1978, earned a doctorate in Sociology and Higher Education Administration. Dr. Powell also holds a certificate in Executive Management from the Harvard Business School.

Throughout her life, Dr. Powell has blazed a trail for women and African-Americans. She is the first African-American to be an associate dean at the University of Cincinnati; the first African-American to hold an upper management position at Miami University, where during her tenure she improved the student affairs office and increased the minority community on campus; and the first African-American to serve as a program officer at the Edna McConnell Clark Foundation in New York City.

She recently retired from her post as President and CEO of the Cincinnati Youth Collaborative, an organization that provides youth employment, mentoring, and tutoring for those in need.

Dr. Powell remains active in the community, and serves on the boards of Mayerson Academy, Bethesda Hospital Inc., Union Central Life, the Center for Holocaust and Humanity Education, Art Links, CET, and the Greater Cincinnati Foundation. She has received many honors, including designation as a Cincinnati Enquirer Woman of the Year, Talbot House Community Service Award, Glorying the Lion Awards from the Urban League, Miami's Alumni Association A.K. Morris Award, the YWCA Career Achievement Award, the Beacon of Light Award from Lighthouse Youth Services, and the Joseph A. Hall Award from the United Way and Community Chest.

Dr. Powell resides in the Cincinnati suburb of Amberly. Her late husband, Lavatus Powell Jr., was a vice president at Procter & Gamble and a community leader. She has one daughter, three stepchildren and five grandchildren.

All of us in the Cincinnati area congratulate Dr. Myrtis Powell on being named a Great Living Cincinnatian.

PERSONAL EXPLANATION

HON. BILL SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. SHUSTER. Mr. Speaker, On Wednesday, February 8, 2006 on the Motion to Instruct Conferees regarding the Tax Relief Extension Reconciliation Act (H.R. 4297) I meant to vote "No" on the motion but inadvertently voted "Yes."

CELEBRATING THE ANNIVERSARY OF THE "BLUE & GOLD" WITH CUB SCOUT PACK 890

HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. HIGGINS. Mr. Speaker, it is with great pleasure that I recognize the young men from Cub Scout Pack 890 from Woodlawn, New York as they celebrate the traditions and contributions of the Boy Scouts of America on this, the 76th anniversary of Cub Scouting.

Since 1910 Cub Scouts have embraced their motto "Do Your Best" and promoted the values of: citizenship, compassion, cooperation, courage, faith, health, honesty, perseverance, positive attitude, resourcefulness, respect, and responsibility among its membership.

Today we have more than 885,000 Cub Scouts across America, learning valuable life lessons through the scouting program, who will be the next generation of leaders.

On Sunday, February 12, 2006 Pack 890 will celebrate the Anniversary of Scouting with a "Blue & Gold" dinner; blue representing truth, spirituality, steadfast loyalty and the sky above and gold which stands for warm sunlight, good cheer and happiness.

Mr. Speaker, thank you for the opportunity to recognize Cub Scout Pack 890, whose members have learned at a very young age the importance of teamwork and giving back to one's community. We should be proud knowing they are this Nation's future.

HONORING THE COMMUNITY OF CHICAGO'S KOREA TOWN

HON. RAHM EMANUEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. EMANUEL. Mr. Speaker, I rise today in recognition of the achievements of the Korea Town area of Chicago's 5th Congressional District.

Chicago is home to many culturally and ethnically based communities, and Korea Town is one of the most thriving and influential areas in our city. Anchored on Lawrence Avenue, local businesses both serve and showcase the Korean community and its heritage. The residents of this neighborhood have played a large role in its recent revitalization, boosting civic pride as the neighborhood has flourished.

Korea Town is home to many Korean restaurants, merchants, and bars popular among both residents of and visitors to Chicago. The area also serves as the hub for Chicago's communication among the Korean-American community, as it boasts Korean television and radio stations, newspaper and magazine headquarters, and other businesses that cater to the growing number of Koreans and Korean-Americans in Chicago.

Recently, the Illinois Department of Transportation put up a designation marker on Chicago's John F. Kennedy Expressway to show the way to Korea Town. This sign will lead visitors to a symbol of over 40 years of hard work of the Korean American community, as well as the many successes of immigrant communities in Chicago and across the country.

Korea Town is one of the neighborhoods that make Chicago great, boasting some of the city's wonderful opportunities for dining, shopping and family-friendly recreation. Last year, both the Chicago City Council and the Illinois General Assembly passed resolutions honoring the cultural heritage of Korea Town and the contributions of Chicago's Korean community, and I am proud to represent Korea Town and many Korean-Americans in the U.S. House of Representatives.

Mr. Speaker, I ask you to join me in recognition of the rich cultural heritage of Chicago's Korea Town, and honor the many contributions of Chicago's Korean-American community.

PERSONAL EXPLANATION

HON. LOIS CAPPS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mrs. CAPPS. Mr. Speaker, I was not able to be present for the following rollcall votes and would like the record to reflect that I would have voted as follows:

Rollcall No. 5—"yes."
Rollcall No. 6—"yes."
Rollcall No. 7—"yes."

PERSONAL EXPLANATION

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Ms. WOOLSEY. Mr. Speaker, I was unavoidably detained and therefore unable to vote on rollcall votes 5, 6, and 7. Had I been present, I would have voted "aye" on rollcall vote 5, "aye" on rollcall vote 6 and "aye" on rollcall vote 7.

SERGEANT FIRST CLASS JOHN D. MORTON

HON. BEN CHANDLER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. CHANDLER. Mr. Speaker, I rise today to honor an American hero. SFC John D. Morton made the ultimate sacrifice when he gave his life in Afghanistan while supporting Operation Enduring Freedom. John was not only a courageous soldier, but a dearly loved father, brother, son and friend. It is with heartfelt sadness and my deepest sympathies that I stand before you and pay homage to a true defender of freedom.

As a senior at Powell County High School, SFC John Morton felt the call of duty and enlisted in the United States Army. His service to our country sent him all over the world—Somalia, Haiti, Iraq and Afghanistan. He was assigned to the 74th Infantry Detachment (Long Range Surveillance), 173rd Airborne Brigade based in Vicenza, Italy.

On December 15, 2005, John's patrol was on a mission in the mountainous area around Kandahar, Afghanistan when they were confronted by Taliban fighters. John suffered a fatal wound to the chest. On December 28, 2005, SFC John Morton was laid to rest at Arlington National Cemetery.

John had a strong commitment to his country and to the uniform that he wore. He believed in his mission in Afghanistan and in the war in Iraq. Along with being an American soldier, John was a beloved father and husband. It is with grief, sadness and humility that I thank John's parents and two sisters. I also wish to thank John's wife, Sarah, and his three children Joshua, Scarlette and Olivia for making the ultimate sacrifice.

John's death is a great loss to the state of Kentucky, to our country, but most of all, to the entire Morton family. I know in my heart that SFC John Morton will always be remembered as an American hero.

PROTESTS AT MILITARY FUNERALS

HON. LANE EVANS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. EVANS. Mr. Speaker, approximately 138,000 troops are serving in Iraq and hundreds of thousands more are stationed at bases all over the world. These men and women bravely volunteered to serve their country and fight to preserve the democratic ideals we as Americans hold dear. It is because of them and the sacrifices they make, I rise today to bring attention to a very serious issue.

On a rainy November day in my district, a group of protesters gathered at the funeral of SGT Kyle Wehrly—the first resident of Galesburg, IL to die in Iraq. During the funeral, they shouted cruel, hateful words at the mourners. Upon hearing the protesters might show up at the funeral, a group of students from Knox College in Galesburg organized to silently stand in front of the protesters, raising their umbrellas to block the hateful words and placards from the family members and friends of Sergeant Wehrly.

In response to the emotionally charged and widespread attention this incident and other similar protests brought to the State, Illinois Lieutenant Governor, Pat Quinn, proposed a new law preventing protests at funeral services throughout the State. The Let Them Rest in Peace Act prohibits protests within a 300-foot zone around any funeral or memorial in Illinois from 30 minutes before a service until 30 minutes after. ''No grieving military family should be subjected to vile epithets and signs at the funeral service of their loved one who has made the ultimate sacrifice for our country,'' Quinn said in a recent press release. ''This legislation strikes an important balance between the First Amendment religious rights of families to bury their dead with reverence and the expression rights of those seeking to harass mourners at a funeral service.''

I wholeheartedly support free speech and the right of every American to exercise that right. I also strongly believe the rights of families privately mourning the loss of loved ones are violated and the contributions of our fallen military heroes are belittled when funerals are targeted for picketing and other public demonstrations. Picketing of funerals only cause emotional disturbance and distress to grieving families, which is why I support the Lieutenant Governor's proposal. The Let Them Rest in Peace Act allows family members to peacefully mourn while preserving free speech. Under the Lieutenant Governor's law, people can still protest, they just have to do it from 300 feet away.

I commend the students of Knox College for the decency they showed the family and friends of Sergeant Wehrly by peacefully and silently creating a barrier between them and the hateful, painful words of the protesters. I hope their actions help bring further attention to this issue so we can better honor our men and women in uniform, while continuing to uphold our treasured first amendment rights.

TRIBUTE TO A TRUE AMERICAN HERO, DURWARD LEE ''SWEDE'' REYMAN

HON. MARILYN N. MUSGRAVE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mrs. MUSGRAVE. Mr. Speaker, I rise today to honor a true American hero, Durward Lee ''Swede'' Reyman. Swede quit high school a week after the attack on Pearl Harbor in 1941, at the age of 18. He volunteered to join the Army Air Corps to protect and defend the country he dearly loves.

After serving in various locations in the United States he was trained for Arctic Search and Rescue and was sent to serve 1 year in northern Quebec, Canada, where he was responsible for driving sled dogs. Upon returning to the States he volunteered for the paratroops and was assigned to the Army Parachute Infantry. He completed jump training in February of 1945 in Fort Benning, GA. Swede was then sent to the Pacific as part of the 11th Airborne, 188th Parachute Infantry Regiment, 3rd Battalion where he made a combat jump on Luzon Island in the Philippines. Swede made a total of seven jumps during his time in the military.

Following the drop of atomic bombs in Japan in 1945, Swede's unit was the first to set foot in the country of Japan. They served as the Honor Guard for GEN Douglas MacArthur during his arrival in Japan.

Following the war, Swede returned home and married his sweetheart Hope, and together they raised four sons, D.L. Junior, William Craig, James Mark, and Jeffrey Charles. Jeffery served 4 years in the United States Air Force.

Swede has been actively involved in ceremonies marking the anniversaries of World War II events. He went to France for the 50th anniversary of D-Day in June 1994 and made a jump with several other WWII survivors. Additionally he made jumps in Russia and Australia in 1995 in ceremonies commemorating the 50th anniversary of V-EDay.

Swede's favorite phrase that he says to himself daily is ''They gave their tomorrows for our todays.'' He doesn't know who to attribute this quote to, but he states that it always makes him think of the cemeteries full of veterans who died and were buried far from home. They had bravely fought and died for our freedoms.

Today I am proud to honor Swede for his courage, patriotism, and service to our Nation. He helped protect our democracy and kept our homeland safe by placing his life on the line. Swede truly is the embodiment of all the values that have molded America into the great Nation it is today.

Mr. Speaker, we maintain the blessings of our freedoms only because we have citizens like Swede Reyman who are willing to fight to defend them for us. It is for these reasons Swede deserves the very highest praise and deep appreciation from the residents of Colorado and from this esteemed body.

HONORING PETER M. AYLWARD

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. RADANOVICH. Mr. Speaker I rise today to honor a great soldier, a great husband, a great father and a great American—soon-to-be BG Peter M. Aylward.

This Friday, February 17, 2006, my good friend COL Peter Aylward will be promoted to the rank of brigadier general. Peter is currently serving as the joint staff and deputy director for Anti-Terrorism, Force Protection and Homeland Defense. Peter has served our country in many ways including being a member of the White House Task Force for Disaster Reduction and Tsunami Warning and Planning and led the DOD Pandemic Influenza Task Force for the Assistant Secretary of Defense for Homeland Defense.

As 1 of 11 children, Peter is a Massachusetts native who began his illustrious military career in 1976 when he enlisted in the 1/26 Cavalry Squadron as a reconnaissance specialist. Peter earned multiple degrees from the University of Massachusetts, Lowell, a masters from the Marine Corp University and a master's degree from the National Defense University. He has served in a variety of command and staff assignments and won multiple honors and medals including the Defense Superior Service Medal, Legion of Merit, Defense

Meritorious Service Medal, the Meritorious Service Medal with three oak leaf clusters, the Joint Service Commendation Medal with one oak leaf cluster, the Army Commendation Medal with one silver and one bronze oak leaf clusters, the Joint Service Achievement Medal with one oak leaf cluster, the Army Achievement Medal with one oak leaf cluster and many other awards.

Mr. Speaker, we are fortunate to have such a great and dedicated man protecting our country. It is truly an honor to publicly salute BG Peter M. Aylward on the House floor today and bestow our heartfelt thanks for his tireless efforts on behalf of all Americans. I thank Peter, his wife Sandra and their sons, James and Jeremy, for all the time they have given up as a family to make sure our country is safe. We sleep easier because of Peter's commitment and dedication, and I congratulate him on his recent promotion.

TRIBUTE TO GRAYCE BODGEN ARNOLD

HON. RAÚL M. GRIJALVA

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. GRIJALVA. Mr. Speaker, Grayce Bodgen Arnold was originally from Philadelphia, PA, and arrived in Arizona through her husband, John Patton Arnold, who had been commissioned by Popular Mechanics and the Triple A Automotive Association to publish the first motor tourist guide of Mexico in the mid 1950's. The family, then including their first two children, moved to Nogales, AZ. The family later moved to settle in Tucson, where their third child, Janie, was born.

Throughout this time Grayce had been developing her cooking and artistic talent. While she lived in Doylestown, PA, her neighbor Sara Lee was a constant presence in Grayce's kitchen, sampling her cooking. At the same time she was also working on her artistic talent, she worked with famed Tucson artist Ted DeGrazia at his studio. In addition to her artistic and cooking talents, she also developed her business skills.

Through the years, her business ventures brought her in contact with many people, including film stars Faye Dunaway and Joanna Cassidy, and then Governor George W. Bush. Also it was at this time that her designs for Patagonia's first three postcards came out, displaying her civic involvement to promote Patagonia as a tourist destination.

In 1976, Grayce's son, Dr. John David Arnold, bought the Miner's Old Home in Patagonia, which was built in 1905. At the time, the house was not in good condition, but was remodeled to be made fit for living, and is where Grayce lived until the end of her life. This is also where Grayce Gift and Candle Shop operated from for almost three decades. Grayce's artistic talents are displayed in her shop, which is more than a shop, instead it is more like part museum and art gallery. Grayce's artistic collections include her award winning sand cast candle dioramas, creative masks and one of her greatest sculptures, her rendition of the Tarahumara man squatting in contemplation in traditional dress.

Grayce was inspiring; she was so full of life, physically active and ran her own business until the age of 97. She would be the first to tell you that age is irrelevant, after all, while in her sixties she belly danced, remarried and launched her artistic career. She always told her children, "be creative, never stop dreaming, and help others." She was an amazing woman who will be remembered to those who loved her and to the many whose lives she touched.

HONORING CAPTAIN KEVIN C. MURRAY

HON. DAVID WU

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. WU. Mr. Speaker, I rise today to honor CAPT Kevin C. Murray, who lost his life while performing his duties as a Columbia River bar pilot on the night of January 9, 2006.

Where the Columbia River meets the Pacific Ocean is spectacularly beautiful, yet it is also the worst river bar passage in North America. Columbia River bar pilots have steered vessels in the lower Columbia across the treacherous bar since 1846, making it one of the oldest businesses in the Pacific Northwest. This shallow bar has claimed some 2,000 vessels and 700 lives since the early 19th century.

During a transfer back to the pilot boat *Chinook*, in heavy winter seas, Captain Murray, 50, a resident of Ilwaco, WA, and Boothbay, ME, was thrown into the ocean waters. Despite the valiant efforts of his crew, Captain Murray succumbed to the frigid ocean temperatures. He is survived by his wife, Lori Stetson Murray, and his mother, Phyllis Murray, of Boothbay Harbor, ME.

Captain Murray was a seasoned, experience scholar of the seas. He began his career working on towing vessels, towing semi-submersible oil rigs in and out of the Gulf of Mexico. He later captained a 700-foot oil tanker, the *Blue Ridge*, and held an unlimited master's license allowing him to captain any size vessel in any waters in the world. He had extensive experience in the waters from Alaska to San Francisco, resulting in his recruitment by the Columbia River Bar Pilots in 2004. Fellow Columbia River bar pilots remember Captain Murray as a wonderful person, a strong, silent type, with a quiet, hidden sense of humor.

I extend my heartfelt condolences to Lori, his wife; Phyllis, his mother; and all of his family and friends. This tragic drowning, the first loss of a Columbia River bar pilot since 1973, highlights the danger that these brave pilots face daily in navigating the Columbia River bar, also known as the "graveyard of the Pacific". The bar pilots navigate cruise ships, U.S. Navy vessels, foreign vessels and cargo vessels, inbound and outbound on the Columbia River through the bar. Their skills and work are crucial aspects of the economic health of the deepwater ports of Oregon and Washington and the livelihood of the Pacific Northwest.

Mr. Speaker, I rise not only to honor Captain Murray, but to honor all of his fellow bar pilots on the Columbia River, who stand as their own class of heroes of the sea.

TRIBUTE TO REVEREND DR. C.W. NEWSOME

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. GEORGE MILLER of California. Mr. Speaker, it was with overwhelming sadness that I learned of the passing of The Reverend Dr. C.W. Newsome last week. For more than 40 years my friend and mentor Rev. Charles Newsome served as a moral compass for our community. For more than 40 years he was our spiritual rock and for more than 40 years he was our seeker of justice. There was no question in his mind or ours why God put him on this earth. Rev. Charles Newsome came to us to lead the way in the struggle for economic and social justice and to heal the scars of racism on our country and our community. And he did. With strength and trust given to him by the people he served, he fought for the rights of all people to seek opportunity and to be free from bigotry. He understood that there was no other way for us to build a lasting integrated and strong community. Year after year our friend led the efforts for better housing, schools, jobs, and health care for everyone. So very often he took his church, North Richmond Missionary Baptist Church, and its members into the forefront of these battles. Rev. Newsome knew the strength of the church depended on its involvement with the daily needs of its members and our community. Over these many years I have enjoyed our conversations, treasured his friendship, and highly valued his counsel on a wide variety of issues.

Reverend Newsome was born on June 15, 1924, in Brenham, Texas. Prior to his commitment to the faith ministry, he served valiantly as a U.S. Marine, in the Segregated Corps, fighting against Nazi fascism in the European Theater of World War II. An injury forced him to leave the service and he eventually came to Richmond, continuing to support our country's effort by working in the shipyards. His participation in shipbuilding and that of the countless African Americans who migrated west during the war, led Richmond to become one of the leading industrial hubs of the world. Today his legacy and that of all of the men and women who built our country's warships has been memorialized as Rosie the Riveter National Historic Park.

With an insatiable appetite for learning, Reverend Newsome attended Contra Costa College for his AA Degree, the University of California Berkeley for his undergraduate work, Bishop College in Dallas to study theology, and received his Doctorate from Reeds Christian College—Western Theology Seminary in Los Angeles. Following the completion of his studies, he began his life's work. Rev. Newsome's ministry has included Organizing Pastor of Holy Jerusalem Missionary Baptist Church in Richmond, and heading the Community Baptist Church in Santa Rosa, California. In 1966 he took on the pastoral duties at North Richmond Baptist Missionary Church. Building on his congregation's stature in the community as the first "Negro Baptist Church of Contra Costa County", Rev. Newsome continued to break new ground in the name of social justice. He led laborers to fight for equality in the workplace and led families to fight for safety in our schools and on our streets.

It was just two years ago that I came to this Well to mark Reverend Newsome's retirement after 38 extraordinary years as Pastor of North Richmond Missionary Baptist Church. This congregation under his leadership has become a beacon of hope in a community struggling against issues of social and economic injustice.

To Reverend Newsome's wife, Alice, his daughters Patricia Cooper and Redonda Newsome, and his son, Reverend Charles Newsome, I extend my heartfelt condolences. Their loss is shared not only by those who knew Reverend Newsome but by all who have been touched by the work he has done. We will be forever grateful for his skill, strength and courage as he sought to make our community and our country a better place for all of us. We are so grateful to his family and his church for sharing him with us for so many years. We celebrate his life without sorrow because we know God has much need of him.

"What does the Lord require of us—to do justice, to love kindness and to walk humbly with thy God"—Micah 6.

HONORING MEREDITH KIESEL

HON. STEVE ISRAEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. ISRAEL. Mr. Speaker, I rise today to honor the accomplishment of Meredith Kiesel, a 7th grader from Northport, NY, who won first place in the World Hunger Essay Contest. Ms. Kiesel understands our country's need for a plan to eliminate hunger and food insecurity.

SHOULD FOOD BE A BASIC HUMAN RIGHT?

(By Meredith Kiesel)

I think that food should be a basic human right. In our society we have human rights. Some of these rights include freedom of speech, education, the right to vote, to think freely, and to practice and believe in any religion. These rights make our country great and strong. Food is used to give us energy, and to keep us focused on what we are doing. When a person misses a meal they become very tired and hungry.

Every person who has food can contribute to local food pantries and to food drives. If every person contributed, many people would have food. If a local grocery store donated extra food to a food drive or a shelter it would help people who cannot afford food. People who cannot get a job suffer because they do not have money to buy food. If food was a human right these people could get food to support themselves and their families.

Many people who cannot afford food do not have enough energy to do ordinary things. Kids who do not have enough food in their bodies cannot study and learn and cannot do sports or activities that are in their school. They cannot do it because they do not have enough energy. Even with eight hours they will not have the energy without food. If food was a human right they could go out for sports teams or play in their local neighborhood parks and study and become successful.

Food is very important for our bodies and minds. It helps us to think and do regular activities. Without proper nutrients our bodies cannot function properly. These are very important reasons as to why food is very important. The whole world should have food as a basic human right. It would help make the world a happier and healthier place to live.

HONORING FARRAGUT HIGH SCHOOL FOOTBALL COACH EDDIE COURTNEY UPON RECEIVING THE INAUGURAL COURTNEY COURAGE AWARD

HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. DUNCAN. Mr. Speaker, on January 18th of this year, Farragut High School Head Football Coach Eddie Courtney was named the first recipient of the Eddie Courtney Courage Award named in his honor.

This ceremony took place at the end of a grueling and testing season for Coach Courtney and his Admiral football team. Coach Courtney was diagnosed with Hodgkin's disease last spring and despite months of radiation and chemotherapy, he guided the Admirals to the Class 5A quarterfinals and an 11–3 record. Throughout his intensive treatment, he never missed a team function, including summer conditioning workouts, cutting the grass and lining the field before games and scrimmages.

Mr. Speaker, I ask the readers of the CONGRESSIONAL RECORD and my fellow colleagues to join me in honoring the courage, strength and leadership of Farragut High School Head Football Coach Eddie Courtney. I also include the following news article printed in the Knoxville News-Sentinel.

[From the Knoxville News-Sentinel, Jan. 19, 2006]

COURTNEY AWARD STANDS FOR COURAGE

(By Drew Edwards)

Farragut High School football coach Eddie Courtney was named the first recipient and namesake of the Courage Award at the PrepXtra football awards banquet Wednesday night in the Wolf Kaplan Center inside Neyland Stadium.

Courtney was diagnosed with Hodgkin's disease last spring and guided the Admirals to the Class 5A quarterfinals and an 11–3 record. Throughout months of radiation and chemotherapy, the 52-year-old coach never missed a team function, including summer conditioning workouts.

He continued to perform his other duties, including cutting the grass and lining the field.

''It started with (my faith) and having great friends,'' Courtney said. ''And I'm here because of the game of football. As a player, it was always just suck-it-up and go.''

Farragut linebacker Nick Reveiz said Courtney's attitude rubbed off on the team.

''He's a man, and that's the true definition of a man,'' Reveiz told the News Sentinel in November. ''He takes what life gives him. He doesn't whine about anything. That's one person that no matter what comes his way, no matter how unfair it is, no matter what happens, he's not going to complain about anything. He's going to take what's given and make the best out of it.''

Courtney finished his radiation treatments last month and will visit doctors once every two months for the next year.

The Eddie Courtney Courage Award will be given each year to a player, coach or contributor to local high school football who has shown the spirit to face fear or danger with confidence, resolution and dignity.

HONORING JOAN CARR ON RECEIVING THE ATHENA AWARD

HON. THADDEUS G. McCOTTER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. McCOTTER. Mr. Speaker, I rise today to acknowledge and honor Joan Carr, who is the recipient of the ATHENA award, which honors outstanding women for their leadership.

Since her retirement from the nursing profession, Joan has selflessly served as a volunteer for WWCSD Health & Welfare Advisory for the Wayne Westland School District Family Resource Center. She has led numerous community projects, including the Red Wagon Literacy Project, Kindergarten Backpack Project and Literacy Family Fun Night. Dedicated to her community, she has tirelessly worked to identify the needs of families within the Wayne Westland School District, and is considered a mentor and role model to women in her community.

Mr. Speaker, Joan Carr has forged a legacy of commitment and dedication to helping families in the Cities of Wayne and Westland. I ask my colleagues to join me today in honoring Joan, and I congratulate her upon receiving this honor.

HONORING THE WOODVILLE FIGHTING EAGLES 2A BASEBALL TEXAS STATE CHAMPIONS

HON. KEVIN BRADY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. BRADY of Texas. Mr. Speaker, I rise today to honor the Woodville High School Fighting Eagles on their 2005 2A Texas State Baseball Championship. Woodville, Texas, is a wonderful community in Tyler County and a proud part of the Eighth Congressional District. For any community in America a state championship is quite an accomplishment and one worth honoring.

While the young men and their coaches worked their way through each level of competition, everyone in the community rallied behind the team driving all over the state to cheer them on to a State Championship victory.

Team starting pitcher Casey Beck was named most valuable player at the State Championship Game. The team clinched the championship with a victory over Holliday High School located near Wichita Falls, Texas, by a score of 2 to 1. In a story that belongs in a climatic Hollywood sports movie, Beck, after throwing 134 pitches in his team's semifinal victory the day before was called in as a relief pitcher in the last two innings of the championship game.

The Austin American Statesman quoted Beck as saying "My arm was really weak. When I was warming up between innings, I had nothing. Coach came over and asked me if I had one inning left, and I told them I'd give it my all. Then that became two innings."

Mr. Speaker, there is something else that makes the people of Tyler County and the City of Woodville stand out. These families and

businesses first opened their homes to Hurricane Katrina victims, then to Rita evacuees from other areas of the state. Following their awesome display of compassion and generosity, Hurricane Rita with 150 mph winds, unexpectedly made Woodville a direct target.

In light of the recent Gulf Coast hurricane season, and specifically Hurricane Rita that devastated Tyler County and its surrounding communities, the team's victory has helped keep this tight knit community even stronger.

Casey Beck's performance in the championship game represents the attitude and "get it done" spirit of the people of Tyler County. Regardless of how tired they are they are going to give it one or two more innings down the stretch, face down one hurricane and then another.

The team was coached on to victory by Head Coach Neil Hennigan and Varsity Assistant Coaches Joe Wilroy, Beau Burnett and Reggie Williams. The members of the championship team included: Casey Beck, Braeden Riley, Reese Winters, Jordan O'Neal, Zack Rigby, Daniel Spivey, Jess Conner, Trevor Rainey, Aaron Hicks, Evan Fortenberry, Logan Alec, Justin Kirkpatrick, Allen Mitchum, Jacoby Williams, Josh Kirkpatrick, Chad Prince, Joel Gentz, Brian MacGinnis, Paul Price, Cullen Williams, and Jack Hickman.

These young men and their coaches have together accomplished so much and made a community and region so proud. Mr. Speaker, I hope the House of Representatives will join me in honoring the Fighting Eagles and the community they represent.

HONORING THE LIFE AND ACCOMPLISHMENTS OF MRS. CORETTA SCOTT KING

SPEECH OF

HON. C.A. DUTCH RUPPERSBERGER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 1, 2006

Mr. RUPPERSBERGER. Mr. Speaker, as we celebrate the start of Black History Month with recognizing the many, many great deeds of African Americans, we also mourn the loss of an icon for people of all races—Mrs. Coretta Scott King. Mrs. King was one of our most influential black woman leaders in the world today.

The "first lady" of the civil rights movement was born Coretta Scott in Heiberger, Alabama. She was raised on the family farm of her parents where she was exposed to the injustices of a segregated society.

Mrs. King excelled at her studies, particularly music, and was valedictorian of her graduating class at Lincoln High School. She graduated in 1945 and received a scholarship to Antioch College in Yellow Springs, Ohio.

As an undergraduate, she took an active interest in the civil rights movement; she joined the Antioch chapter of the NAACP, and the college's Race Relations and Civil Liberties Committees. She graduated from Antioch with a B.A. in music and education and won a scholarship to study concert singing at New England Conservatory of Music in Boston, Massachusetts.

In Boston she met a young theology student, Martin Luther King, Jr., and her life was changed forever.

Mr. Speaker, Mrs. King has been described as quiet, steady, and courageous and while all of that may be true let it be noted to add steadfast and certainly noble.

Mrs. King was a serious thinker, a committed activist, a talented musician and an outspoken woman whose influence and activism extended well beyond the career of her famous husband.

Mrs. King undoubtedly became a symbol of racial equality for all Americans. For a woman of her stature, rearing four little children when there was civil unrest, and to have suffered the loss of her husband sent a clear message to this Nation that the movement was too powerful to stop and must go on.

Just like the late Mrs. Jacqueline Kennedy, Mrs. Coretta Scott King showed us how to meet personal crisis with courage, and then how to transcend crisis with victory.

Although, I had never had the pleasure of meeting Mrs. King, I too share her husband's vision of peace and brotherhood as a steady theme that should be heard all across this Nation.

Mr. Speaker, history has a way of placing women like Coretta Scott King in the shadows of their powerful husbands but it is time we remember them as more than civil-rights-movement wives and widows.

I once heard someone say that behind every good man stands a good woman, but I say to you and to this Nation that beside every great man stands an even greater woman.

Mr. Speaker, her's was a remarkable life, and along the way she helped improve the lives of millions. While we mourn her lose, we must celebrate her legacy—now recognized with that of her husband.

INTRODUCTION OF THE GIFT OF LIFE CONGRESSIONAL MEDAL ACT OF 2006

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. STARK. Mr. Speaker, I rise today to introduce the "Gift of Life Congressional Medal Act of 2006." This legislation creates a Congressional commemorative medal for organ donors and their families, recognizing the brave and selfless act of organ donation. I want to thank Senator FRIST, a heart and lung transplant surgeon himself, for introducing companion legislation in the Senate.

There is a serious shortage of available and suitable organs for donation. Over 90,000 people are currently waiting for an organ transplant; over 2,200 of these are children under age 18. Over 30,000 new patients are added to the waiting list each year. Because of low donor rates, in 2004 alone over 6,150 people died for lack of a suitable organ. An estimated 12,000 people die each year that meet the criteria for organ donation. Less than half actually become organ donors. Recognition of these gifts of life would publicize the critical need to increase organ donation.

Physicians can now successfully transplant kidneys, lungs, pancreases, intestine, livers, and hearts with considerable success. But, without expanded efforts to increase organ donation, the supply of suitable organs will continue to lag behind the need. Incentive programs and public education are critical to maintaining and increasing the number of organs donated each year.

Health and Human Services, HHS, has already implemented initiatives to raise the public awareness of this vital act of giving life. The Gift of Life Congressional Medal Act is a great opportunity for us to work with HHS to draw attention to this life-saving issue. It sends a clear message that donating one's organs is an act that should receive the profound respect of our Nation.

The Gift of Life Congressional Medal Act establishes a nonprofit fund to be used to design, produce, and distribute a Congressional commemorative medal to organ donors or to a surviving family member. Enactment of this legislation would have no cost to the Federal Government. The Treasury Department would provide a small initial loan for start-up purposes, which would be fully repaid. Subsequently, the program would be self-sufficient through charitable donations.

This is non-controversial, non-partisan legislation to increase the rate of organ donation. I ask my colleagues to help bring an end to transplant waiting lists and recognize the enormous faith and courage displayed by organ donors and their families. This bill honors these brave acts, while publicizing the critical need for increased organ donation. I urge swift passage of the Gift of Life Congressional Medal Act.

COMMEMORATION OF THE VISIT OF THE BLACKWATER COMMUNITY SCHOOL DELEGATION TO WASHINGTON, DC, FEBRUARY 14, 2006

HON. RAÚL M. GRIJALVA

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. GRIJALVA. Mr. Speaker, I rise today to recognize a delegation from my district visiting our Nation's Capital. This delegation represents the Blackwater Community School on the Gila River Indian Reservation, who belong to the Akimel O'Otham.

I would like to acknowledge Henry Pino, president of the Blackwater Community School Board; board member Francisco Osife; board secretary Peggy Winchester; and the superintendent and principal of the school, Jacquelyn Power. Through the talent and commitment of these individuals, the students of Blackwater are in great hands. Blackwater Community School has a motto—"Quality Education Begins Here." It was evident in our discussion today that these educators and administrators live up to such an inspiring motto every day.

Blackwater Community School was built in 1939, it was the first operated by the Bureau of Indian Affairs in Arizona, and still educates children and families in its historic, refurbished buildings. The children are in grades kindergarten through second, and a charter expanded the student enrollment to third and fourth grades.

Blackwater has led the way as the highest performing school determined by federal and state officials. Most recently, the National Indian School Board Association honored the school with its coveted 4Cs Award.

The school also has one of the most successful family literacy programs in the nation that educates pre-school children and their parents together. The program is called Family and Child Education (FACE), the FACE program at Blackwater has earned an enviable reputation as a proud member of the National Adult Education Honor Society.

I would like to offer my congratulations to the distinguished delegation from Blackwater Community School for the tremendous job that they are doing on the Gila River Indian Reservation.

CONGRATULATIONS TO FATHER EVAGORAS CONSTANTINIDES

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. VISCLOSKY. Mr. Speaker, it is with great sincerity and admiration that I wish to congratulate Father Evagoras Constantinides on the 50th Anniversary of his ordination into the Holy Priesthood. Father Constantinides will be recognized at a banquet in his honor at the Saints Constantine and Helen Greek Orthodox Cathedral on Sunday, February 26, 2006, which will also be a celebration of the 60th Wedding Anniversary of Father Evagoras and his wife, Presvytera Mary.

Father Constantinides was born in Lapithos, Cyprus in 1918 and was educated in his village through his second year of high school, where he graduated with the Gold Medal Award for academic excellence. He entered Athens College in 1932, where he was accepted on a yearly scholarship with the school's science section. Father Constantinides had no trouble maintaining his scholarship for six years, and he graduated with honors while receiving the Delta Public Speaking Prize and the English Language Prize. This dedication and commitment to his studies exemplifies the hard work on which Father Constantinides prides himself.

After finishing college in Greece, Father Constantinides traveled to the United States to continue his studies and broaden his experiences. In 1938, he enrolled at Fenn College, which is now Cleveland State University, where he studied civil engineering. During his four years at the University, he served as a Greek teacher and as the Hellenic Board of Education Secretary for the Greek Orthodox Community of the Annunciation of Cleveland, Ohio. Although he enjoyed his time in Cleveland, his final year was interrupted by World War II. As a British subject, Father Constantinides entered the Canadian Army as a private in the fall of 1942. After completing his basic training, he was enrolled in the officer training program, from which he graduated as a 2nd Lieutenant in the Engineer Corps with proficiency in explosives, mines, and demolitions. His outstanding ability as a military officer, coupled with his excellent intellect, allowed Father Constantinides the opportunity to work for the United States Central Intelligence Group translating Japanese documents and the Greek Constitution into English.

After being discharged in 1947, Father Constantinides returned to the United States and began extensively studying theology. On March 11, 1956, Father Constantinides was ordained into the priesthood, and on September 1, 1969, he was appointed pastor of the Saints Constantine and Helen parish in Gary, Indiana. Since arriving in Northwest Indiana, the graciousness and generosity of Father Constantinides has touched many lives. In 1971, Father Constantinides was instrumental in the construction of the Hellenic Cultural Center in Merrillville, Indiana, as well as in the design and construction of the Saints Constantine and Helen Cathedral, one of the ten largest Orthodox churches in the Americas, in 1975. During his years of service, Father Constantinides has also become deeply involved in the work of Hospice of the Calumet Area.

In addition to the many contributions within his own parish, Father Constantinides has committed himself to improving the community, the nation, and the world. To name just a few of the appointments and accolades bestowed upon Father Constantinides throughout his years of service, he was honored with the office of Protopresbyter in 1972, and he served as the Treasurer and member of the National Presbyters Council from 1970–1974, and again from 1980–1982. He received the Greek Orthodox Archdiocese of North and South America Service Award and Gold Cross in 1976 for his struggles and lobbying activities for the liberation of invaded Cyprus. Father Constantinides has shared his immense wisdom and faith in various countries, including Russia, Kenya, Uganda, and India. Remarkably, Father Constantinides has even found time to author four Sunday school books for children and has translated six Orthodox Service books from Greek to English.

Since his retirement in June 1995, Father Constantinides has devoted his time to the Orthodox Christian Mission Center through writing, lecturing, and substituting at churches in the Chicago Diocese, but he has also been able to devote much of his time to his loving wife, Mary, and their four children. Presvytera Mary has stood by her husband's side for the past 60 years. I am sure Father Constantinides would agree that the unwavering support of his loving wife has been a major factor in the many achievements he has reached in his lifetime. Father Evagoras and Presvytera Mary are a shining example of true dedication to their vows and each other.

Mr. Speaker, at this time I ask that you and my other distinguished colleagues join me in thanking Father Evagoras Constantinides for his contributions to the members of his parish, the citizens of Northwest Indiana, and his fifty years of service to people throughout the world. I also ask that you join me in congratulating Father Evagoras and Presvytera Mary Constantinides on their 60th wedding anniversary. Their love for each other and for all mankind is truly an inspiration to us all, and I am proud to be their representative in Congress.

HONORING DR. PAUL LICHTMAN

HON. CAROLYN McCARTHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mrs. McCARTHY. Mr. Speaker, I rise today to honor Dr. Paul Lichtman, a science teacher from Uniondale High School. Teaching is one of the most honorable and important professions a person could choose. Dr. Lichtman is at the top of his profession, which his students have always known, and others realize as well. He has been honored by the New York State Assembly, the Nassau County Legislature, the Town of Hempstead Supervisor and the Town Board, and recently was named the Siemens Foundation's top mentor among those who helped 1,600 high school students enter its 2005 national competition. In typical Dr. Lichtman style, he has donated the $15,000 that comes with the award to purchase more equipment for the school's research room.

Dr. Lichtman earned his Pharm.D. in 1990, specializing in toxicology and worked for several years as a manufacturing pharmacist. He was a science research coordinator and teacher at Massapequa High School and Hillcrest High School prior to making his way to Uniondale.

Dr. Lichtman's program is one of only in three in the nation, other than in some magnet schools, where students do most of their research in a school lab rather than at a hospital or university. In just six short years, Dr. Lichtman has increased the number of research students from zero to over 80. His students, mostly minorities, have long credited Dr. Lichtman not just for his encouragement and mentoring in the classroom but also for teaching life lessons that can be used and applied throughout their lives.

The students develop a full research proposal by conducting a complete literature search and designing the methodology, which is then approved by Dr. Lichtman. Students implement the projects in the school's research lab, present their results at science competitions and propose and carry out further studies. The students' projects have resulted in practical applications that have been implemented, such as reduction of storm water runoff contaminants. Many of his students have been nominated for science awards and have placed in various science fairs and competitions, which is a testament to Dr. Lichtman.

Mr. Speaker, I applaud Dr. Lichtman, and all of our teachers, for their wonderful work, and their contribution to our leaders of tomorrow.

IN HONOR OF JOSEPH STROUD

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. FARR. Mr. Speaker, I rise today to congratulate Joseph Stroud, a Californian poet that has received the prestigious Witter Bynner fellowship award. The fellowship, funded by the Witter Bynner Foundation for Poetry, was developed in 1972 to promote the art of poetry and encourage grants that illuminate the positive effects that poetry has on society. As part of the fellowship, the two recipients are asked to organize a local poetry event as well as attend a poetry reading at the Library of Congress. Stroud has contributed tremendously to the art, and it is fitting that we mention him today.

He began his distinguished career as a professor of poetry and English at Cabrillo College in 1969 and for 35 years inspired the minds of many young and eager writers. Yet

it was not until late that his literary prowess exploded on the cultural scene with the publication of his third book of poetry Below Cold Mountain. Stroud, who resides in Santa Cruz, California and Shay Creek in the Sierra Nevada, has also been active in the social diffusion of poetry locally while co-hosting KUSP's "Poetry Show".

Stroud's work encompasses various typologies of poetry from short-line form to lyrical prose and rhymes. His work takes readers with him on his travels and describes topics ranging from landscapes to commonplace objects in the finest detail or the greatest abstraction.

Stroud has completed works of great social and cultural importance and it is important that we recognize him for his contribution to the arts. Together with the Witter Bynner Foundation and members of the United States Congress, I welcome Mr. Stroud to our nation's capital and join in congratulating him for his success and thank him for his contributions to American literature.

COMMENDING THE LAUNCH OF SAEMSORI

HON. JAMES A. LEACH

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. LEACH. Mr. Speaker, I want to take this opportunity to congratulate the Eugene Bell Foundation, the Korean American Coalition of the Midwest, and other involved churches, community leaders and organizations on the occasion of their launch of the Saemsori initiative last week. By seeking to promote reunion between Korean-Americans and their family members in North Korea, it is a project with potential ramifications that are both personal and global.

As Members of this body are well aware, there currently exist many challenging issues between the United States and North Korea. In the current context, the most reasonable place to begin seeking a more positive dynamic is in the field of people-to-people relation. And the most natural and urgent way to seek those improvements is to pursue the reunion of Korean families. Although detailed statistics are not available, an estimated quarter of the 1.5 to 2 million strong Korean-American community have familial and historical ties to the North. The pains of separation are felt acutely by many Americans.

One of the most unique aspects of our Nation is that we are a society of immigrants with ties to many parts of the world. Traditionally, second and third generation American citizens have taken the lead in advising Congress and the executive branch on ways and means of forging closer, more mutually beneficial relations with their ancestral homelands, and in focusing American concern on the circumstances and challenges facing their former countrymen. In our unique, citizen-centered democracy, leadership on initiatives eventually undertaken by any administration often comes from outside government.

For this reason, I believe that the launch of Saemsori is an appropriate occasion to reflect on the singular role that Korean-American churches, civic organizations, and business leaders are playing in the way that the United States relates to the entire Korean peninsula, both North and South. Those who pursue reunion for the sake of their families are reflecting basic American values and rendering a service to the imperative of peaceful relations between peoples of the world.

HONORING CHARLES C. PHILLIPS

HON. JO ANN DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mrs. JO ANN DAVIS of Virginia. Mr. Speaker, I rise today to remember the life of one of my distinguished constituents, Charles Clifford Phillips of Newport News, Virginia. Born in January of 1921, Charlie grew up in Friendship, South Carolina, where he, like many rural Americans of that time, worked on his father's farm. Anxious to see the world and to serve his country, he left South Carolina at the age of 17 and joined the Army Air Corps. After the entry of the United States into World War II, Charlie was sent to the Pacific Theater as a bomber turret gunner in the famous Red Raiders Bomber Group (22d Bomb Group, 2d Squadron). Like so many others of his generation, he asked no questions and he made no complaints. He fought and won a war that guaranteed the security of every American and hundreds of millions of others.

With his job done abroad, he returned to America to begin a new life and new family. He met the love of his life, Buena Mae Spurling, in a restaurant in Maryville, Tennessee. They eventually moved to Newport News, Virginia in 1955, where he joined the C&O Railroad and worked until his retirement 28 years later. He and his beloved wife of 60 years built a family of upstanding, hardworking Americans who carry his love of country and his belief in God.

This country lost a great American on December 23, 2005, just 2 days before Christmas and 2 weeks before his 85th birthday. Charlie closed his eyes for the last time surrounded by his family. I am told that he left this world as he lived in it, with dignity and honor.

I extend to the family of Charles Clifford Phillips my deepest sympathy and my prayers during this difficult time. I am sure you are so very proud of him. It is obvious through his service to our country during World War II and his love for his family, that he was truly a great man.

I would also like to enter into the RECORD the obituary of Charles C. Phillips.

OBITUARY OF CHARLES C. PHILLIPS

NEWPORT NEWS.—Mr. Charles C. Phillips, 84, a native of Marion, S.C., a resident of Newport News since 1955, went home to be with the Lord on Dec. 23, 2005. He was a Christian and Veteran of WWII, serving in the U.S. Army Air Corps, 22 Bomb Group (BG), 2nd Squadron, ''Robinson's Red Raiders'' in the Pacific Theatre. The 22 BG originated out of Langley Air Field in 1941 and was deployed to the Pacific one day after Pearl Harbor. He received several decorations and the unit had several Presidential citations, participating in numerous campaigns as a bomber turret gunner. Mr. Phillips retired from C&O Railroad after 28 years of service. He was the son of the late Chalmers Corcellus and Susan Wall Phillips of S.C. He was preceded in death by his brothers, Marvin, Zach and Wallace Phillips, and sister, Margaret Wagner Worrell. Survivors include his wife of 60 years, Buena Mae Phillips (whom he loved most in the world); two daughters, Margaret ''Cookie'' Tyndall and Michelle Kellam, and husband, Chris; two sons, Charles C. Phillips Jr. and wife, Patricia, and William L. Phillips; one sister, Geraldine Graham of Florence, S.C.; eight grandchildren; five great-grandchildren and numerous nieces and nephews whom he held very dear. He was provided loving care in his remaining days by his loving family, most notably his son-in-law G. Christopher Kellam and his grandson Caleb J. Kellam. Funeral services will be held at 11 a.m. Saturday, Dec. 31, in the World Outreach Worship Center, 1233 Shields Road, Newport News, VA 23608–2062, with Pastor Bob Collins officiating. The family suggests that memorials may be made to the World Outreach Worship Center.

HONORING JACK FARIS

HON. MARSHA BLACKBURN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mrs. BLACKBURN. Mr. Speaker, America was built by entrepreneurs. We wouldn't be the powerhouse we are without the millions of people who had an idea, grew that idea, and turned that idea into a business. In America small business owners create the most jobs and drive economic growth.

Today I want to honor someone who has fought for those entrepreneurs. As president and CEO of the National Federation of Independent Business, Jack Faris has been a tireless advocate on behalf of small business owners. He understands the pressures facing our entrepreneurs and he has fought to be certain America doesn't stifle the freedom that gives so many the opportunity to go out and build a business. Jack Faris believes in dreaming big dreams and turning those into reality.

Jack knows our prosperity and our freedom are tied to a thriving small business community and he's never shied away from making certain policymakers understand that fact.

Even though Jack is retiring as president and CEO of the NFIB, we know he'll continue to support our small businesses. We thank him for his work on behalf of such a worthy cause.

HONORING AMY JARED AND HER DEDICATION TO THE ARTS

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. GORDON. Mr. Speaker, I rise today to honor Amy Jared for her dedication to art education. Amy, a native of Cookeville, Tennessee, developed an art outreach program that was recently honored with the Nation's highest award for community arts programs.

As Art Education Manager at the Philadelphia Museum of Art, Amy developed a Latino Outreach Program that was named one of 15 finalists in the 2005 Coming Up Taller Awards. Since 1998, the awards have recognized the

Nation's outstanding community arts and humanities programs. The Coming Up Taller Awards are a project of the President's Committee on the Arts and the Humanities in partnership with the Institute of Museum and Library Services, the National Endowment for the Arts and the National Endowment for the Humanities.

During her time with the Philadelphia Museum of Art, Amy also initiated all of the studio-based outreach programs with Philadelphia's public schools, expanded the museum's afterschool studio art classes and developed weekend art classes. In 1998, her art education programs received an Award of Excellence in Programming from the American Association of Museums. For five consecutive years, her children's studio programs were honored with a Best of Philly award.

Amy recently left the museum to return to teaching art in schools. I have no doubt that she will do an outstanding job. Her students certainly will be fortunate to have such a talented and engaging teacher.

I congratulate Amy for being recognized as a Coming Up Taller Award finalist, and I wish her all the best in her future endeavors.

INTRODUCTION OF THE ROYALTY RELIEF FOR AMERICAN CONSUMERS ACT OF 2006

HON. EDWARD J. MARKEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. MARKEY. Mr. Speaker, the American people expect their leaders to articulate a vision and a comprehensive strategy for America's energy future. They expect us to be focused on reducing the high energy costs to American consumers and completely eliminating our dependence on expensive and volatile Middle Eastern oil. In contrast, several weeks ago the New York Times released an investigative report revealing that payments made by energy companies are not keeping up with the skyrocketing cost of energy. Today, the Times, revealed that big oil companies stand to receive future royalty giveaways from the Bush administration of nearly $7 billion. This royalty relief for Exxon Mobil, BP, and Chevron Texaco comes at a time when consumers are paying record high energy prices.

It is time to start providing royalty relief to the American public, and to end it for multinational energy companies that just made more profit in one year than any industry in modern history.

Today, Representatives MALONEY, MILLER, WAXMAN, EMANUEL, INSLEE, PALLONE, GRIJALVA and I are introducing the "Royalty Relief for American Consumers Act of 2006" to ensure that the taxpayers will receive the billions of dollars in royalty payments they are owed by the big oil companies as payment to drill on public land. Our legislation would prohibit royalty relief on any future oil and gas leases, call for a renegotiation of current leases, and prohibit the purchasing of new leases by those companies that refuse to renegotiate.

Oil companies pay a fraction of the value of the oil and gas produced on federal land as a royalty to the Federal Government. However, on Valentine's Day, we have learned of yet another sweetheart deal that the administration is giving to big oil. Across the country, Americans can't afford roses and chocolates because they are getting squeezed at the pump for every last nickel and dime they have—meanwhile the Bush administration is giving its sweethearts in the oil industry $7 billion that rightfully belongs to America's taxpayers.

In the 1990's and again last year, the Republican Congress voted to suspend royalty payments by oil and gas companies for oil and gas produced in Federal waters in the Gulf of Mexico.

Now, the President's own budget directs the Department of the Interior to allow companies to pump nearly $65 billion worth of oil and natural gas without paying royalties. Apparently the administration doesn't feel that the record profits being reported by Exxon Mobil and the other big oil companies are high enough. The Bush policy of subsidizing wealthy oil companies has proven to be wildly effective in boosting oil company profits, but it continues to harm American consumers. It is time for this administration to stop letting oil companies make the greatest profits we have ever seen in the history of the world while not paying their bills to the American public.

The "Royalty Relief for American Consumers Act of 2006" will ensure that the American taxpayers receive the money they are owed by the oil companies in the future. Our legislation will help reverse the Bush administration's policy to "Leave No Oil Company Behind" and instead provide relief to the American consumers who are currently footing the bill.

TRIBUTE TO YOGGI RILEY

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. BERMAN. Mr. Speaker, I rise to pay tribute to my long time friend, Yoggi Riley, in recognition of her February 3, 2006, retirement from the U.S. Postal Service. Ms. Riley had a long and distinguished career with the Postal Service—almost 38 years. She proved herself a leader through her tireless work with the Postal Workers Union. Throughout her career she helped improve the lives of countless other postal workers through her union service.

In September 1967, Yoggi began working at the Post Office Department as a special delivery messenger. After witnessing the hardships experienced by the postal workers on the picket lines during the 1970 New York postal workers strike, which spread throughout the country, she joined the San Fernando Valley Area Local Branch of the American Postal Workers Union, APWU. This decision not only changed her life, but because of her tenacity as a union leader, it ultimately impacted the lives of many others. While her desire to help fight for and protect the rights of her fellow employees was kindled by that strike, it has continued to burn brightly throughout her career.

Yoggi's exceptional leadership as a union representative became apparent during the 1970s. In 1979, she was elected President of the local union and ultimately served two terms. During her tenure, the quality of service and the reputation of the local union increased markedly. Although she turned over the reins of leadership to spend more time with her family, whenever the union needed her she rose to the occasion. When organized labor fell on hard times and employees were required to work longer hours for less pay, the local union sought out Yoggi's help. She returned as Office Manager, and served as Secretary and then as Treasurer.

Her leadership was tested in the mid-nineties when postal management attempted to change the definition of a special delivery messenger and in the process deprive workers of their right to be represented by the union of their choice. During this crisis, she sprang into action, helped confront management, and enlisted the support of the national union. She then entered into a test case to resolve the issue through arbitration. Acting in concert with the national union, an agreement was reached with management that all messengers would remain, as stated in the law, in their union of choice. This was a great victory for postal workers.

Yoggi settled into a job as Mailing Requirement Clerk advising postal customers about the best way to make and prepare their mailings. In 2001, the Postal Service recognized Yoggi with its Diversity Award, an honor justly deserved. Although she has now retired from the UPS, Yoggi has not retired from her quest to help postal workers. In recognition of her passion and ability to help postal workers, the APWU has asked Yoggi to conduct seminars on retirement and to help other workers appropriately prepare for that transition. Not surprisingly, she has taken on this challenge with zeal and will, no doubt, continue to make a tremendous impact.

Yoggi is a very special woman. In addition to all she has done on behalf of postal workers, she has also devoted herself to raising a family. She is married to Lester Riley and they have two children and six grandchildren. The time and energy she gave to coaching children's baseball and t-ball was so well known that the community renamed the playing field across from her home after her.

Mr. Speaker, I ask my colleagues to join me in saluting Yoggi Riley, congratulating her on her retirement, and wishing her success in all her future endeavors.

TRIBUTE TO BARBARA SUDLER HORNBY

HON. DIANA DeGETTE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Ms. DEGETTE. Mr. Speaker, I would like to recognize the wonderful life and exceptional accomplishments of a remarkable woman. This distinguished citizen possessed an impressive record of civic leadership and invaluable service, Her achievements in preserving the heritage of Colorado merit our recognition and gratitude, It is to commend this eminent citizen that I rise to honor Barbara Sudler Hornby.

When we think about the enduring legacy of Denver and Colorado, we think of Barbara Hornby. Her life was an affirmation of our heritage and its importance to future generations.

When we celebrate her life, we celebrate not only the history and edifices she worked so diligently to protect, but the stewardship and conservation of our common cultural heritage,

Barbara Hornby was born in Hawaii to U.S. Naval Commander Leo Welch and Barbara Petrikin Welch in 1925. She graduated from the University of Colorado in 1944 and during the remainder of the Second World War, she worked at Ft. Logan, Buckley Field and did research for the University of Denver. Six years later, she married Denver architect James Sudler II and while working in his architectural firm, developed the skills that would serve her well in future endeavors. Following the death of Mr. Sudler, she married former Denver Post senior editor Bill Hornby who shared both her life and her work.

Barbara Hornby served as the executive director of Historic Denver and later as both director and president of the Colorado Historical Society. She supervised the development of the four-million dollar Georgetown Loop Historic Mining and Railroad Park. She served on the Denver Landmark Commission, was vice chairwoman and trustee of the Colorado Historical Foundation and was Colorado's Historic Preservation Officer. In 1995, Colorado Preservation Inc. honored her with the Dana Crawford Award and in 2000, the University of Colorado honored her as Outstanding Alumnus of the Year.

Barbara's accomplishments affirm that she was indeed the keeper of our sense of place. Through Barbara, we learned to savor the richness, diversity and legacy of our forbearers, She knew that preserving our history gives us roots and an understanding of who we are as Coloradans. She raised awareness of our unique heritage and taught us to take responsibility for preservation. She reminded us to respect our historic edifices and recognize that they are living monuments for future generations. We owe a tremendous debt of gratitude to Barbara for the care in which she protected and preserved our heritage. William Faulkner said, "The Past is never dead. It is not even past." When we consider the life and accomplishments of Barbara Hornby, we see that the past is not dead, that it enriches the present and gives foundation to the future.

Our thoughts and our prayers are with Barbara's children, James Sudler III and Eleanor Sudler and her husband Bill Hornby. Please join me in celebrating the life of Barbara Sudler Hornby, as distinguished citizen. The strong leadership she exhibited during her life continues to enrich our culture and sustain our heritage as Coloradans and Americans.

PERSONAL EXPLANATION

HON. BARBARA LEE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Ms. LEE. Mr. Speaker, on Wednesday, February 8, 2006, due to urgent personal matters I missed roll call votes nos. 5, 6, and 7. Had I been present, I would have voted "aye" on H. Res. 670, H. Res. 657, and the Rangel motion to instruct on H.R. 4297.

IN RECOGNITION OF GRENADA'S 32 YEARS OF INDEPENDENCE

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. RANGEL. Mr. Speaker, I rise today to recognize Grenada's 32 years of independence and to enter into the RECORD an article published by Caribnews chronicling historic challenges faced by the country. I congratulate Grenadians in their native country, the United States and abroad on their perseverance to celebrate how far their great nation has come. Thirty-two years ago, on a momentous February 7, the beautiful country of Grenada achieved its independence from Great Britain.

Since its independence, Grenada—comprised of the islands of Grenada, Carriacou and Petit Martihas—has continued to flourish as a nation. As the first of the Windward and Leeward islands to declare its independence, Grenada obtained its autonomy under the Grenada United Labour Party government of late Prime Minister Sir Eric Matthew Gairy. Since the early days of independence, Grenada has struggled to find its voice. Despite violent power struggles and a U.S.-led invasion, the people of Grenada have overcome strife in order to forge ahead with their parliamentary democracy.

Today, Grenada stands as a spectacular island with lush mountains, crystal waterfalls, golden beaches and fragrant spice trees that give the island its epithet "Isle of Spice". It is also a vital trade partner, with significant global exports such as nutmeg, mace, cocoa, bananas, vegetables, and fish. But most importantly what is treasured most by Americans is not Grenada's landscape or exports but the Grenadians, who we regard with much esteem as our friends.

Thirty-two years ago this month, Grenada did not only put into motion independence, but national development and progress as well. Mr. Speaker, please join me in wishing Grenada continued political and social advancement on this very special day marking their 32nd anniversary of self-rule.

[From the Caribnews, Feb. 7, 2006]

GRENADA WILL RISE AGAIN

(By Michael D. Roberts)

For the Caribbean island nation of Grenada, Carriacou and Petite Martinique the devastation wrought by two powerful hurricanes has turned back what progress was being made under the Keith Mitchell Administration. And the undulating nature of activities of national development has also been a major challenge even before Hurricanes Ivan and Emily.

It has been like constantly taking three steps forward and one backwards in an eerie dance led by the caprices of the international global market and the negative effects of run-away capitalism. Indeed, the much touted benefits of market globalization have served up its own peculiar and erratic brand of progress now and stagnation then. Grenada, Carriacou and Petite Martinique now finds itself in serious economic straights brought on by brutal and devastating "acts of God."

Indeed, these past 32 years have been challenging ones for the 120 square mile tri-island Caribbean nation. And as the nation of some 90,000 people plunge into the uncertainties of a brand new and rapidly redefined world stage, new challenges lie ahead in less than ideal socio-economic circumstances. For one thing the jury is still out on the gains and achievements of the Grenadian economy, since 1984, as it relates to the improvement of the quality of life of all the people. If the mainspring of Grenadian progress, since its independence from Britain on February 7, 1974, is the country's command over the forces of production, then its history to date is one of sporadic and uneven development mixed with episodes of retrogression.

From the dominance of British-imposed slavery and colonialism Grenada painfully moved towards full political independence during the militant epoch of the 1960s and 1970s. Granted independence under less than favorable conditions the country took charge of its own destiny replacing the colonial master with local elected officials whose experience in governance was learned from and at institutions set up by their former masters. In this context therefore Grenadian structural forms of today—government, parliament and judiciary—were and are a caricature of British Westminster democracy that has failed to adequately provide for institutions and instruments of equality within the society.

It was these spawned social, political and economic disparities that let to the rise and eventual fall of the regime of Sir Eric Matthew Gairy [from 1950 to 1979] and the subsequent triumph—and demise—of the Grenada Revolution (1979–1983). During the 29-year Gairy Regime, Grenada exhibited limited growth and development, with perhaps the sole measure of its progress being the newfound political consciousness of a hitherto cowed and oppressed people.

It was Gairy who bucked the ruling status quo of an alliance in the towns of a mulatto upper class, a growing merchant stratum, and a landed British gentry, oftentimes absent from the island. But what started as a populist movement and progressive anti-colonial struggle degenerated into home-gown depostism by the early 1970s as Sir Eric cemented a strangle hold on all parts of Grenadian society.

With each year since indepedence—granted during serious internal unrest and political turmoil—the Gairy Regime became more and more oppressive, and it was out of these socio-economic and political conditions that the Grenada Revolution of March 13, 1979 materialized. This break in the evolutionary chain of political and economic development ushered in a brief period of unprecedented economic growth and development. The basis for this was the ruling New Jewel Movement's suspension of the stultifying and archaic British-model constitution, an economic program of planned development based on three pillars—the public, private and cooperative sectors—a grass-roots type of participatory democracy, and an overall policy of national development based along non-capitalist lines.

But successful though the Revolution was, in economic and political terms, it quickly imploded, self-destructed due to a combination of immaturity, intolerance to dissenting view, and a failure to understand that the political and ideological direction of the Revolution did not sit well with a people long accustomed, or conditioned to accepting the flawed Westminster model of democratic development as the only way. The one-man one vote position was therefore central to the core of the Grenadian view of democratic rule.

Still, even the most strident detractors of the Grenada Revolution would agree that the period 1979–1983 saw unparalleled economic growth and development that has not been equaled or duplicated up to this day. In fact

it is safe to conclude that the reversal of the gains of the Grenada Revolution, that began with the interim Government of 1983, and continued with the election of the old Herbert Blaize New National Party (NNP) in 1984, ushered in the modern period of Grenadian retrogression.

Kathy McAfee in her celebrated book ''Storm Signals—Structural Adjustment and Development Alternatives in the Caribbean'' (Oxfam America 1991), in a chapter entitled ''Grenada: Development by Conquest,'' argues that ''by the fall of 1988, after five years of US stewardship, almost none of the developmental goals set by the US had been met. Grenada was deeper in debt than at any time in the nation's past. AID-sponsored efforts to balance the government's budget had failed. The country's tax system, after being thoroughly re-designed by US consultants, had largely collapsed. AID was withholding promised grants to Grenada's government in an effort to force it to comply with structural adjustment conditionalities.'' McAfee says that unemployment was at an all-time high, some 30 percent, and agricultural productivity continued its long-term decline, while Grenada's manufacturing sector remained small and stagnant.

In 2006 nobody disagrees that agriculture, Grenada's economic backbone, is in serious trouble and that production for export has taken a big hit. Moreover, the World Trade Organization (WTO) ruling removing the protected status for Caribbean bananas in the European market has caused more headaches for the country. Added to this by the year 2000 the task of completely destroying all the hard-won gains of the people during the Grenada Revolution was now completed.

Here are a few examples of some of the structures and other economic and social programs that are now extinct that have set Grenada back for many years. The National Transportation Service (NTS) is no more, the Marketing and National Importing Board (MNIB) is a shell of its former self. Post-Revolutionary governments allowed about six (6) fully equipped modern fishing trawlers to rot and sink to the bottom of the St. George's sea rather than utilize them. Grenada no longer exports eggplants and other crops to European markets; the country's agro-processing plant that canned fruit juices for export under the Revolution is no more, as is the fish processing plant that began to produce dry salted fish for export. The coffee processing plant in Grenville is now extinct. Only the Grenada International Airport remains because this structure, woefully under-utllized, cannot be easily physically dismantled.

But what solution did these post 1983 govenments propose for Grenada's socio-economic developmnent? The answer for many of them was privatization. This process continues today. According to a leading expert on privatization in the Caribbean, Jamaica's Richard L. Bernal, with the overthrow of the Maurice Bishop Government in 1983, the new Government in Grenada committed itself to privatization. ''By 1992, in response to a weak fiscal situation, Grenada had begun a ''self-imposed'' three-year structural adjustment program in which privatization of State Owned Enterprises was an integral component. In that year, 90 percent of the shares of the National Commercial Bank were sold, with the majority shares going to the Republic Bank of Trinidad and Tobago, and 10 percent to Grenadians and others from the Eastern Caribbean,'' [''Privatization in the English-speaking Caribbean: An Assessment''] (the Center for Strategic and International Studies) October 22, 1999].

In the same publication, Bernal noted that ''. . . rapid and extensive divestment without a proper framework can lead to disastrous results . . . It is also important to ensure that there is a proper context in which privatization can take place. A competent executing agency with a qualified staff is needed, together with the appropriate regulatory framework and the necessary safety nets to protect displaced workers.''

So me of these ''disastrous results'' have visited Grenada since the start of the program, in particular the perception by the public that governments have been just selling off, national assets to raise money. Indeed, there is little to show for privatization. There are also sound arguments that while privatization brings a bag of mixed blessings, in the Grenada context there was and is no competent and experienced monitoring authority to oversee the divestment of state assets. The upshot is that as a panacea for Grenada's economic ills the jury is still out on the privatization program.

And yet the ruling New National Party (NNP) government led by Dr. Keith Mitchell cannot be slighted for not demonstrating some measure of boldness when it comes to policy decisions and hard political issues. Buffeted and hindered by a hostile world economic climate the Government has tried to push the Grenadian economy forward with an admixture of privatization, international aid (hitherto to 2004 mostly from Taiwan), re-focussing on tourism, and physical infrastructural development. This program will be one of the key challenges to the government in the coming years as Hurricanes Ivan and Emily was almost responsible for putting the Grenada government into receivership.

Overall, if one was to characterize the progress and development of Grenada, Carriacou and Petite Martinique these past 32 years, one would have to conclude that it has been a period of turbulence mixed with brief periods of respite, tranquility and development. These past 32 years have seen every form of political upheaval and some of the ugliest forms of repression and brutality. It is a history that has divided Grenadians and continues to drive a fundamental wedge in any movement towards national unity and reconciliation.

For example: the events of October 19, 1983 that saw the execution of popular Prime Minister Maurice Bishop and some members of his Cabinet, that led to the subsequent invasion on Grenada on October 25, 1983, is still the salt in the wound for most Grenadians. There is no closure as yet and this will be yet another challenge going forward.

But if unity has been illusive thus far, and economic problems further aggravate and create political alliances and divisions, then any commentary on the merits, achievements, and future of Grenada's independence would lead one to the conclusion that independence is a pipe dream. Right? Wrong. While economic independence is not yet a reality, political independence is a fact of life in Grenada. Indeed, without wanting to sound cynical, the mistakes made during the 32 years of Grenadian independence were made by the, Grenadian people and their leaders. And nobody ever said that national development, progress and independence would be a cakewalk.

In fact, national development is painful, especially so for a small, agriculturally dependent nation that will never reach critical mass. But these pains are necessary if the country must move forward because the school of hard knocks is where experience is gained, and is perhaps the best teacher on the issue of progress and retrogression—the twin sisters of development. And Grenada's small size is both a blessing and a curse. Its size makes for presumably an easier and more efficient governmental structure and management. With fiscal prudence popular shared services can reach the vast majority of the people and greatly improve the quality of life.

RELATING TO CONSIDERATION OF S. 1932, DEFICIT REDUCTION ACT OF 2005

HON. LUCILLE ROYBAL-ALLARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Ms. ROYBAL-ALLARD. Mr. Speaker, I rise today in strong opposition to House Resolution 653, the Budget Reconciliation Spending Cuts Act. There are many reasons to vote against the bill today, including the massive cuts to critical programs, such as Medicare, Medicaid, and child support enforcement. But the unconscionable cuts to student aid are reason enough to vote against this bill.

Education has always been—and continues to be—the great equalizer in this country. Student loans in particular have helped to level the playing field for thousands of worthy students who cannot afford the high cost of a college education.

For that reason, it is shocking and disappointing that over 30 percent of the cuts in this bill are to student aid programs that help our kids afford a college education. To pass this bill, and cut funding for essential education programs, is to forsake our commitment to our children's future and to the future of our country.

Skyrocketing student loan interest rates and fees, including a new 1 percent ''insurance fee'' on college loans will make it even harder for many parents to send their children to college and on the road to a better and more prosperous life.

Mr. Speaker, the passage of this bill will shatter the dreams of thousands of students whose only hope for a college education is through the support of federal financial aid.

And it will weaken our country's future, because we will be denied the talents and contributions of these students, whose skills we need to compete in our highly skilled global economy. If we are to remain the greatest and most powerful nation in the world, we must educate and develop the talents of all our children.

Adding to the tragic consequences of this bill is that the cuts to Medicare, Medicaid, child support enforcement, and student aid do nothing to reduce the shocking 3.4 trillion dollars deficit. The President's cuts to these critical programs are simply for the purpose of giving more tax cuts to the wealthiest 1 percent of our country.

Mr. Speaker, H. Res. 653 is an ill-conceived and misguided bill that endangers the future of our children and the future of our country. I urge my colleagues to vote against this bill.

PAYING TRIBUTE TO PVT. JOSHUA MICHAEL MORBERG, KILLED WHILE SERVING HIS COUNTRY IN IRAQ

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. PORTER. Mr. Speaker, I rise today to honor the memory of Army Pvt. Joshua Michael Morberg, who was killed on Tuesday, December 27th 2005, at the age of 20, while serving in Iraq. I recognize him today for his dedicated service to this country for the cause of freedom in a global community.

Pvt. Joshua Morberg came from a long line of military veterans. His grandfather had been in World War II and Korea and he had many other family members who have served in every military branch.

As a child Joshua was described as ''curious'', always asking questions and desiring to gain more knowledge. His uncle stated that he could never own a radio because Josh would always take it apart and never quite put it back together again. Growing up he learned to play the violin and in high school he learned to speak Japanese.

Ever since he was a little boy Joshua wanted to be a soldier. So, in 2004, he graduated early from Washoe High School to join the military. Joshua had only been in Iraq for a few weeks. On Tuesday, December 27th, while on duty in Baghdad, another patrol came under attack. Despite the clear danger, Joshua led the effort to help his fellow soldiers. Tragically, Joshua was killed, along with another soldier, when an improvised explosive device was detonated.

For his brave service and individual act of courage Joshua was awarded a Bronze Star Medal with Valor device, the Purple Heart and a Good Conduct Medal.

Joshua is survived by his parents, sister Grayce and ''The Rat Pack'', who had been his lifelong friends.

Mr. Speaker, I appreciate the opportunity I have today, to recognize and honor Pvt. Joshua Morberg in front of my colleagues on the floor of the House.

COMMEMORATION OF BOB MARLEY'S BIRTHDAY

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. RANGEL. Mr. Speaker, I rise to remember once again the timeless reggae musician Bob Marley and to enter into the RECORD an eloquent CARIBNEWS commentary by Michael Roberts commemorating what would have been the singer's 61st birthday February 6 had he not died in 1981 of cancer.

As Roberts mentions in his editorial, Marley's musical genius generated from his hopes of empowerment and political uplifting for his Jamaican people. ''Marley was a staunch advocate of conscious lyrics and he urged Black people to think positive and do positive things,'' Roberts explains. Not only was Marley a lyricist and a leader but he was an international ambassador advocating for the solidarity of the Caribbean. ''His music and lyrics advocated a kind of Black-centered Christianity which would 'free our minds'. Thus Marley, although born in Jamaica, was a citizen of the Caribbean and Third World,'' Roberts writes.

Mr. Speaker, please join me again in remembering the legacy of Bob Marley during Black History Month.

[From the CARIBNEWS, Feb. 6, 2006]

CELEBRATING THE 61TH EARTH DAY OF REGGAE SUPERSTAR ROBERT MARLEY

(By Michael D. Roberts)

Black Ambassador, musical innovator, and gifted with visionary talents, Bob Marley's music today speaks volumes about a man whose every word and sentence was written with the emancipation of his people in mind. And in his own way he identified the problems and offered solutions to them. That is why the music of the supreme Rastaman endures to this day. Indeed, the greatness of Bob Marley is that his popularity and staying quality outlasts all the present crop of reggae artistes.

This Black History Month Marley would have turned 61 years—had he lived. And we can only speculate as to what music he would have concocted in that fertile and creative mind of his as he ''trod down Babylon.'' To my mind the supreme Rastaman still sings getting better with each passing day. In the dancehalls of Brooklyn, the Caribbean basements of Canada, or the open tropical spaces of the Caribbean, Bob Marley's timeless music lives on. His works continue to give new hope to the world's oppressed and solace to the downtrodden as he urges Black people to ''Get up, Stand up, Stand up for your rights.''

A versatile entertainer, he was singer, songwriter, expert guitarist and above all a pragmatic rastaman. Robert Nesta Marley was born in St. Ann, Jamaica, on February 6, 1945. He died May 11, 1981. Bob Marley, as he is popularly known the world over, was the individual most responsible for taking reggae out of Jamaica and making it international.

With uncanny vision Marley altered indigenous traditional Jamaican roots music making it more acceptable to the international market and consumer. Curiously, before he would win over his critics, and Jamaica music purists, Marley came under heavy fire, in those early days because it was felt that he was prostituting the roots reggae music.

Along with his group the Wailers, that he formed in 1964, and which included two other great reggae leaders in their own right—Peter Tosh and Bunny Livingston, known worldwide as Bunny Wailer—Bob Marley was the great popularizer of reggae. It was he and the Wailers who infused this ''island music'' with American pop and rock, making it attractive to all music consumers and which gave it its enduring, lasting, ''always fresh'' quality.

But even when Marley sung so-called lovey-dovey ballads and drew the ire of the ''rude boys'' of Jamaica's slums and garrison communities, his message was inherently and basically political: he preached an end to racial oppression and urged Blacks to be proud of their heritage. So in his own right Marley was a Third World music pioneer who eventually turned into a superstar.

Marley was a staunch advocate of conscious lyrics and he urged Black people to think positive and do positive things. Nowadays it is fashionable to hear gurus of self-help working their spiel about positive thoughts. You would think that they had listened to the Great Rastaman. Like Malcolm X and Marcus Mosiah Garvey, Bob Marley was acutely aware of the necessity to deal firmly with situations that demanded strong action. That did not mean that he advocated unbridled, confrontational violence but he understood that the poor and oppressed had a duty to resist these things which were part of ''Babylon.''

It is perhaps this prophetic quality that has made Robert Nesta Marley a Third World legend and reggae's only superstar. So as we celebrate the anniversary of his birth on February 6, we must remember his passing and pay respect to his works. He was, undoubtedly, Jamaica's most outstanding ambassador and one who yearned for all the people of the Caribbean to come together.

His music and lyrics advocated a kind of Black-centered Christianity which would ''free our minds.'' Thus Marley, although born in Jamaica, was a citizen of the Caribbean and Third World. He transcended the narrow borders of nations moving with his pulsating music to the world community of man.

But Marley was not merely satisfied to simply fight for deliverance from ''Babylon'' in the Western Hemisphere through his music and powerful lyrics. He preached resistance to all forms of oppression. His songs of protest and of agitation composed after exposure to the inequalities prevalent in Jamaican and Caribbean society have been adopted by people in many countries struggling for, what his talented compatriot, Peter Tosh and fellow Wailer, called ''equal rights and justice.''

Marley's contribution to Jamaican and world musical culture still stands out as a monumental achievement of human endeavor. It was he more than anyone else who took the indigenous musical art form of a Caribbean island, framed and packaged it to suit international tastes, and then sold it to the world. Today the world still sings ''these songs of freedom,'' as the Dreadlocked One demanded.

Let us always remember that his music and his works were aimed, in the fashion of another great Jamaican, Marcus Mosiah Garvey, at liberating his race. Marley's tenure on this earth was a potent reminder that Black people are still not yet free. His creative genius accomplished what most international politicians dream of achieving and he did it by being just—Bob Marley, humble and sincere.

There is something for everybody in the works of Bob Marley. Some folks love him for his upbeat, uptempo music like ''One Love'' Jamaica's national song; others like his spiritual side found in such works as ''Redemption Song'' and ''Three Little Birds.'' And still there are many who cling to the masterful works of protest music in songs like ''Bad Card'' and ''Ambush In The Night.''

No matter what people remember Bob Marley for, his works ''Idureth for Iver.'' So ''get up, stand up, stand up for your rights,'' and listen to the Supreme Rastaman who trod into Babylon ''inna this generation''—Triumphantly.

Considered today reggae classics, Marley's music never ceases to refresh and reinvigorate each and every time that it is played. Indeed, it is his music's staying power that keeps alive the image and spirit of Bob Marley as fans from all walks of life, and social standing—from the townships of Soweto in South Africa to the plush, affluent homesteads of Beverly Hills—celebrate his 61st earth day.

HONORING SANDY GERMANY

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. KILDEE. Mr. Speaker, I ask the House of Representatives to join me today in recognizing Sandy Germany the National President of the Veterans of Foreign Wars Ladies Auxiliary. The Curtis-Wolverton Post Veterans of Foreign Wars Post 3243 Ladies Auxiliary is welcoming Mrs. Germany to their facility on February 22 in Fenton, Michigan. This is an official visit to the State of Michigan by Mrs. Germany.

Sandy Germany was elected to her position at the 92nd National Convention of the Ladies Auxiliary of the Veterans of Foreign Wars in August 2005. Reflecting the beliefs of the Ladies Auxiliary she underscored the need to remember the sacrifices of the men and women that have fought to preserve our freedom. This belief is an underpinning of the Ladies Auxiliary as they work to preserve the memory of our courageous Army, Navy, Marine Corps, and Air Force.

Sandy Germany is a life member of the Kichler-Pippen Auxiliary Post 5658. She is eligible to be a member through her brother, her father and her son. Her son, Curtis, is currently serving with the U.S. Army in Korea and Iraq. She has served in many positions with the Ladies Auxiliary in addition to being employed as the Town Clerk in Elberta, Alabama. She is a mother and grandmother, giving of her time, as a Life Member, to the VFW National Home for Children. Sandy also belongs to the American Legion Auxiliary and the Military Order of the Cooties Auxiliary.

Mr. Speaker, I ask the House of Representatives to join me in recognizing the life and service of Sandy Germany. I commend her for her commitment to helping our service personnel and for working to preserve the ideals that set our Nation apart from all others.

PAYING TRIBUTE TO HENRY PRENDES, KILLED IN THE LINE OF DUTY

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. PORTER. Mr. Speaker, I rise today to honor a great American, Sergeant Henry Prendes of the Las Vegas Metropolitan Police Department, who was killed in the line of duty on Wednesday February 1, 2006. Sgt. Prendes was shot as he approached the front door of a house in southwest Las Vegas, while responding to a 911 call, at the age of thirty seven.

Sgt. Henry Prendes joined the Las Vegas Metropolitan Police Department on February 26, 1991. He spent his first years patrolling the east Las Vegas neighborhood surrounding Charleston and Lamb Boulevards and was quickly promoted to Field Training Officer. On January 2, 1999, after working one year for the narcotics office as a detective, Henry Prendes was promoted to Sergeant. As a Sergeant he worked for the Crimes against Youth and Family Department, and later as Patrol Sergeant in the South West Area Command.

Sgt. Prendes was a native of Nevada and graduated from Las Vegas High School where he was Vice President of his senior class and captain of the football team. He is survived by his wife Dawn and two daughters from a previous marriage, Kylee and Brooke. Sgt. Prendes, along with his family, was a devoutly religious man. He engaged in bible study at home with his wife and mentored children in his spare time. Before he died, he was in the process of building a 17 acre youth camp in Montana called, Creation Camp Jesus.

Sgt. Henry Prendes could be described as everyone's friend, always having a smile on his face, and always helping those in need. Some help people because they are police officers, but Henry was a police officer to help people.

Mr. Speaker, I am grateful to honor the memory of Sgt. Henry Prendes.

IN RECOGNITION OF THE DANCE THEATRE OF HARLEM

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. RANGEL. Mr. Speaker, I rise today to express how content I was to see President Bush recognize the national treasure that is the Dance Theatre of Harlem at a dinner and performance Monday, February 6 at the White House and to enter into the RECORD a Washington Post article dated Wednesday, February 8 commemorating the event.

In a tribute to the theatre which stands today as the first black classical ballet company, and its esteemed founder Arthur Mitchell, President Bush and many others were able to be exposed to the cultural jewel I am honored to have situated in my Congressional district.

The Dance Theatre of Harlem, founded in 1968, is a leading arts and cultural institution dedicated to the advancement and cultural enrichment of youth from diverse backgrounds. Since its founding, it has brought modern and intrepid new forms of artistic expression to audiences throughout New York City and the world—embodying the beauty of the American spirit.

Even as the performing company enjoyed international acclaim, being the first U.S. ballet company to perform in Russia and then performing in South Africa, the theatre has strengthened its roots in Harlem. Currently the school enrolls some 700 students per year in community, pre-professional and professional programs and offers courses in various dance forms ranging from ballet and tap to modern-, jazz- and African dance, and even Irish step dancing. With its exceptional dancers, dazzling choreography, and cultural pride, the Dance Theatre of Harlem continues to be a beacon for all communities.

Mr. Speaker, again please join me in saluting the Dance Theatre of Harlem and expressing my gratitude to President Bush for recognizing its contributions.

[From the Washington Post, Feb. 8, 2006]

EN POINTE AT THE WHITE HOUSE

WITH A FETE FOR FOUNDER ARTHUR MITCHELL, THE BUSHES GIVE A LIFT TO DANCE THEATRE OF HARLEM

(By Sarah Kaufman)

There were ballerinas and cavaliers, Broadway singers and a country crooner, but it took the Rev. Al Green to really get the party started at the White House on Monday night.

The soul man turned soul saver worked his magic on the East Room crowd, gathered to honor the Dance Theatre of Harlem and its famed founder, Arthur Mitchell.

''I-I-I-I, I'm so in love with you,'' Green rasped in his signature falsetto, arcing back like a bow about to launch its arrow.

Of course, there were many in the audience of 80 or so who could sing Green's enduring hit ''Let's Stay Together'' in their sleep. But was one of them President Bush? Green put him to the test.

''Ooh, loving you forever,'' Green purred, ''is what I—'' Suddenly, he thrust the microphone right up to the lips of the surprised president, who recovered enough to mouth something back.

Whatever it was could not be heard, but Green was more than satisfied.

''He said 'Nee-eee-eeed!' '' squealed the amazed hitmaster, hitting even higher notes than he'd been singing. ''He did! He said 'Neeeeed!' '' After laughter and applause for the president's grace note, the set then became a singalong—was that Karl Rove joining in?—and then a dance-along, after Mitchell, a former star of the New York City Ballet, pulled Laura Bush up onstage.

President Bush, apparently pumped up after parrying to Green's thrust, followed suit, taking with him Shirley Massey, wife of Walter Massey, president of Morehouse College.

''We got the president up onstage!'' exclaimed Mitchell afterward. Not a man who ordinarily likes to share the spotlight, Mitchell nevertheless gave Bush points for effort, if not for style. ''He did really well,'' Mitchell said. ''He was tapping his foot, and . . . moving. You know.''

Mitchell is no stranger to the White House—he says he has been invited there by every president since John F. Kennedy. He's been there so often he knew many of the waiters by name. But this night was different. The dinner and performance by members of the Dance Theatre of Harlem and others were the work of entrepreneur and philanthropist Catherine Reynolds, chairwoman of the board of the predominantly black ballet company. The show will air this summer on PBS.

''What better place to showcase Dance Theatre of Harlem during Black History Month than the White House?'' she said. ''It's a ballet company in the midst of Harlem—that in and of itself is so American.''

The presidential affair, she said, sprang from a conversation she had a few months ago with Laura Bush about the ailing company, on hiatus for the past year and a half because of rising debt.

Reynolds said the first lady asked, '' 'How can I help?' '' Reynolds had her answer ready, and the result was a cozy little black-tie dinner in Mitchell's honor, with the guests seated at intimate round tables mounded with roses. Among the invited: Attorney General Alberto Gonzales, undoubtedly relieved to be anywhere but in the Senate hot seat where he'd spent the day; donors and arts officials such as the Ford Foundation's Susan Berresford, Kennedy Center President Michael Kaiser and Lonnie Bunch, founding director of the National Museum of African American History and Culture; and a contingent of the black elite, such as ''60 Minutes'' correspondent Ed Bradley and Spelman College President Beverly Daniel Tatum.

The menu favored creamy comfort foods: puree of parsnip soup, cheesy grits and spinach alongside roast kobe beef, a yellow pepper and avocado terrine, and whipped-cream-dolloped lemon custard cakes with coconut ice cream and a blackberry-ginger sauce,

thick as syrup. It was not fare for the calorie-conscious. But there weren't many of those to be seen, anyway; the dancers were off warming up for the performance that was to follow.

Filing into the East Room after dinner, we found ourselves chatting with Andrew Card, Bush's chief of staff, who seemed eager to show his own artsy side.

''I hit a crossroads when I was a senior in high school,'' Card said, describing a choice he faced between accepting a scholarship to the Hartt School of Music (on the strength of his trumpet playing) in West Hartford, Conn., or a Navy ROTC scholarship at the University of South Carolina.

Guess which one he chose.

Still, he said, ''I believe in the arts very strongly. Every once in a while I get the trumpet out. Of course, my wife wants me to play it in the closet.''

It being Monday night, and close to 9 by this time—fans of Fox's ''24'' know how sacrosanct that hour is—we pressed Card on another issue: Did he ever tune in to the Kiefer Sutherland thriller, which recently revealed that the chief of staff of the show's president is a murderous villain of presidency-destroying dimension?

Card's eyebrows shot up merrily. ''I hear the chief of staff is kind of a bad guy. Didn't he drug the first lady?'' Yep, and Card's TV counterpart also conspired to engineer a nerve gas leak to incriminate a terrorist organization to prove it had weapons of mass destruction.

Card backed up in mock horror. ''I'm not him,'' he said emphatically, eyes wide, waving his arms in front of himself to ward off any notion of a link to reality. ''I didn't do that.'' And then he was gone, spurred by a desperate need to catch up with his wife.

Addressing the audience, Mitchell pointed out his company's oft-reported origins, that it was the assassination of Martin Luther King Jr. in 1968 that inspired him to found a classical ballet company of African American dancers—which is, all these years later, still a unique institution.

Left unsaid was what it would mean for black ballet dancers if such a company could not survive. In fact, none of the speeches mentioned Dance Theatre of Harlem's having come so close to financial ruin, or the fact that its laid-off dancers' unemployment claims ran out long ago.

Bush, seated with his wife in the front row and within a few feet of the small stage, smiled throughout the show, which included children as well as professionals. Hands clasped in his lap, he kept up a steady piston action with one knee—an intriguing tic, yet what did it mean? Restlessness? Excitement? A dream of mashing the pedals on a mountain bike?

Harolyn Blackwell, Audra McDonald and LeAnn Rimes each sang solos as well as songs that accompanied more dancing. It was all very classy, very polite, if somewhat restrained.

Enter Al Green, the great uncorker, who got throats to open and hands to clap—some on the beat, quite a few off—and got the president to join in the dance.

''The whole evening was so relaxed,'' Mitchell enthused afterward. ''That was a major miracle.''

Speaking of miracles, Mitchell stated his favored outcome: ''I hope this opens the door, that dance becomes a line item in the federal budget so we can take the arts all across America.''

A different miracle may be a bit closer to actually coming to pass. When she became board chairman and vowed to get the troupe back on its feet, Reynolds told The Washington Post that ''failure is not an option.'' So how close to success—and public performances—is the company now?

''We're close,'' she said. ''We'll probably be making an announcement in the summer.''

HONORING WILLIAM AND DOROTHY ZEHNDER

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. KILDEE. Mr. Speaker, on February 17, the Saginaw County Convention and Visitors Bureau will present its Pinnacle Award to William ''Tiny'' and Dorothy Zehnder for their remarkable contributions to the convention and tourist industry in Saginaw County. The Zehnder family has had a positive impact on Frankenmuth, Michigan, and changed the area forever. Theirs is one of the great American success stories, replete with foresight, courage, and hard work.

In 1950, the Zehnder family purchased the Fischer Hotel, and William Zehnder became the manager. Dorothy Zehnder became the kitchen manager, a role she continues today. At that time, the Zehnder family had 21 years of experience running their own restaurant across the street from the Fischer Hotel. After a series of improvements to the Fischer Hotel culminating in a major renovation in the late 1950s, the Fischer Hotel was renamed the Frankenmuth Bavarian Inn. The décor and architecture of the Bavarian Inn started the transformation of Frankenmuth into ''Michigan's Little Bavaria.'' The weeklong opening celebration held in 1959 proved to be very popular and has turned into the annual Frankenmuth Bavarian Festival. The addition of the Glockenspiel and Wooden Bridge has enhanced the character of Frankenmuth's downtown area.

Dorothy developed most of the recipes served in the restaurant. The restaurant can accommodate 1200 diners at one time, and annually over 750,000 pounds of chicken is served to its guests. Dorothy plays a vital role in ensuring the food is prepared correctly and served promptly. Many local Frankenmuth leaders started their work life in the Bavarian Inn kitchen under Dorothy's tutelage. Today the Frankenmuth Bavarian Inn is one of the top ten family-owned restaurants in America.

In addition to the restaurant, their holdings include Bavarian Inn Lodge, Frankenmuth River Place, Castle Shops, Freeway Fritz, Frankenmuth Motel, and several gift shops on Main Street. The Zehnders employ over 1,000 people and serve one million visitors each year making Frankenmuth a top tourist destination.

Tiny Zehnder's vision for the Frankenmuth community has made it a great place for families to gather, live, and work. The Zehnders buy locally and utilize Michigan commodities. They are always looking for ways to improve their business and their community. They have passed on their skills and work ethic to their children. The Bavarian Inn enterprise is a multi-generational operation with their children and grandchildren managing and working in various capacities. Tiny and Dorothy Zehnder are an inspiration to everyone and excellent role models for our youth. I ask the House of Representatives to rise with me and applaud the outstanding success of the Zehnders and congratulate them as they are honored by the Saginaw community.

HONORING MR. ROCKY SANTILLI FOR HIS CROWNING AS 2006 KING OF BASEBALLTOWN

HON. TIM HOLDEN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. HOLDEN. Mr. Speaker, I rise today to honor Mr. Rocky Santilli of Leesport Township in Berks County, Pennsylvania, for his 2,000+ career wins as a fast-pitch softball manager, and his naming as the 2006 King of Baseballtown.

Mr. Santilli started his managerial career in 1959 with the Leesport-based Rising Sun Sunners, and has since amassed over 2,000 victories along with dozens of trophies and honors. With Santilli at the helm, the Sunners captured three Amateur Softball Association (ASA) national titles, a number of gold medals at the Olympic Festival, and a share of the International Softball Federation (ISF) Men's World Fast Pitch Championship.

Due to his impressive record with the Sunners, Mr. Santilli was honored with the opportunity to pilot the United States softball team four times at the Pan Am games. The U.S brought home silver medals in all four games, finishing just behind Canada.

In 1991, Rocky Santilli was inducted into the ISF Hall of Fame on behalf of his remarkable career. Two years later he was enshrined in the ASA National Hall of Honor and the Pennsylvania Sports Hall of Fame. In 1998 Mr. Santilli returned to coaching and led the Schuylkill Valley High School girls' softball squad to a 64–67 record over 7 years. In 2004, Rocky Santilli retired as a legend.

Mr. Speaker, I had the privilege of meeting Rocky several years ago through Sheriff John H. Kramer, and it is an honor today to recognize such a talented and accomplished man who has brought pride and inspiration to the people of my district. I ask you and my other distinguished colleagues to join me in congratulating Mr. Rocky Santilli on his 2006 King of Baseballtown award, recognizing his remarkable career in softball, and thanking him for the many contributions he has made toward the well-being of the citizens of Pennsylvania.

IN RECOGNITION OF GEORGE SMALL'S SERVICE TO THE UNITED STATES ARMY

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. PORTER. Mr. Speaker, I rise today to recognize the contributions of a great American, George Small. I honor him today for his service to our great Nation in the United States Army during World War II.

Mr. Small entered active duty from the Army Reserves as a 2nd Lieutenant on April 25, 1941. After receiving training at the Army's Chemical Warfare School, he became Base Chemical Officer in Albuquerque, New Mexico. From Albuquerque, Mr. Small was transferred to Clark Airbase until he was ordered to Bataan in the Philippines on December 24, 1941.

Mr. Small was assigned to the 31st Infantry until the surrender of Bataan on April 9, 1942.

Prior to the 31st Infantry's surrender, Mr. Small was suffering from malaria and malnutrition caused by the malaria. He was released just 3 days before he began what would become known to history as the Bataan Death March. Although weak, Mr. Small survived the death march and the 17-day journey in the infamous "Hell Ships" to Japan.

While being held by the Japanese, Mr. Small's weight declined to approximately 98 pounds. He was held as a Japanese Prisoner of War for 3 years and 5 months until his liberation on September 10, 1945.

Mr. Small was awarded the American Defense Service Medal with one Bronze Star, an American Campaign Medal, the Asiatic Pacific Campaign Medal with two Bronze Stars, the Distinguished Unit Badge with two Oak Leaf Clusters, the Combat Infantry Badge, the Philippine Liberation Ribbon with one Bronze Star, the World War II Victory Medal, and the POW Medal for his meritorious service.

Mr. Small was discharged from the Army on November 26, 1946 and decided to stay in the Army Reserves until his retirement as a Major on March 1, 1968. Mr. Small will celebrate his 98th birthday on February 24, 2006. Mr. Small's will to survive and dedication to the United States Army is a testament to his character, and it is an honor to recognize him today.

Mr. Speaker, it is with great pride and heartfelt gratitude that I salute a great American hero, George Small, for his service and dedication to our great Nation.

SHORTCHANGING OUR TROOPS: RUMSFELD SPENDS BILLIONS TO FIGHT FICTIVE SUPERPOWERS

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. RANGEL. Mr. Speaker, I rise to introduce into the RECORD the editorial entitled "Still Shortchanging the Troops" which appeared on February 10, 2006, in the New York Times. The military industrial complex is in your face America, front and center, rewarding corporate America, contractors and Halliburton, but shortchanging the troops.

The New York Times in its lead editorial on February 10, 2006, made a scathing criticism of Secretary Donald Rumsfeld's recently revealed Defense Department budget. As the Times put it: "It's amazing how Donald Rumsfeld's Defense Spending plan can produce a $439 billion and still skimp on the one thing the American Military desperately needs: expanded ground forces so the weakened and cannibalized Army" can meet the needs of Iraq without hurting its ability to respond to other threats.

I do not believe more ground troops are needed in Iraq. I think this editorial is referencing the fact that the troops fighting in Iraq are returning two, three and four times and have borne more than their fair share of President Bush's Iraq war. I support Congressman MURTHA's position that our ground troops in Iraq have become the targets in Iraq; the one unifying idea for all the splintered factions fighting a civil war there is that Americans must get out of their country. However, there is much I do agree with in the editorial.

I agree that it is a disgrace to spend only a small part of its 7 percent budget increase for increase of pay and recruitment bonuses while a "large chunk of this nearly $30 billion goes to more new weapons and postponing overdue cuts in wasteful Air Force and Navy projects unrelated to fighting terrorism. This highlights as nothing else can the disconnect with what Secretary Rumsfeld says he cares about and what he really cares about.

When the Secretary of Defense is at a press conference or a briefing, he consistently talks about this war and the brave men and women sacrificing in Iraq to keep us safe. He and President Bush have repeatedly expressed the view that we are fighting the terrorists "over there, so we don't have to fight them over here." Support the troops has become the rallying call for those who blindly accept platitudes in place of plans and rhetoric instead of substantive answers to the many legitimate questions being asked by millions of US. citizens. Secretary Rumsfeld misses no opportunity to label Americans who do not give unquestioning support to the President's war as unpatriotic and worse giving support to terrorists and harming our troops in Iraq.

It is quite obvious to me that neither President Bush nor Secretary Rumsfeld support our troops in Afghanistan and Iraq. The President precipitously sent our troops into battle on false information and with no plan for the peace. Iraq has become a haven for terrorists and is currently in a civil war in which our troops are caught with nowhere to go. Secretary Rumsfe1d sent them into combat without the necessary armored trucks and tanks and without the necessary body armor. Even from the beginning of the war, there were stories about parents having to buy their sons and daughters armor and of parents collecting used bullet proof vests from policemen. Even after Rumsfeld was asked when he would get his armor, Rumsfeld had nothing but the most unsettling reply. You go to war with the Army you have, not the Army you wish you had. No, Secretary Rumsfeld, you go to war with a properly equipped army and an exit plan to get the troops out of harm's way when the mission is accomplished.

Even after this incident, when Secretary Rumsfeld was questioned by Members of Congress about the lack of proper armor, the troops did not receive what they needed. A recently released report from the Navy and Military pathologist showed that 80 percent of deaths from torso injuries could have been prevented if the troops had had the proper body armor. The Navy had ordered the armor. As of January 7, the Army had not. This indicates a neglect of the troops, not support for the troops.

I am also glad that the Times repeats a truth well worth repeating and one I hope the country will finally understand and will not only demand Secretary Rumsfeld's resignation but hold him responsible for the many unnecessary deaths in Iraq caused by his refusal to listen to his own senior generals.

According to the Times and according to my belief and that of many of my Democratic colleagues: "The prospects of Iraq might have been very different today if Mr. Rumsfeld had listened to some of his own senior generals and occupation officials and authorized significantly larger ground forces from the beginning. The early looting might have been contained before it shattered political confidence and vital infrastructure. The insurgency might never have gotten such a head start. . . . But the obstinate ideologues in Mr. Rumsfeld's Pentagon have never accepted the fact that the reality of Iraq did not fit their assumptions. The budget and the four-year plan released with it read almost as if the current conflict had never happened and could never happen again."

The budget priorities reveal Mr. Rumsfeld's utter disdain for our troops and an almost unbelievable disconnect from what is actually happening in Iraq. In his speech before the National Press Club on February 3, 2006, Secretary Rumsfeld reiterated his view of the war Americans now face, a war he calls a "generational war." This is the war both he and the President have variously described as the war on fascist Islamic fundamentalists; or against al Qaeda terrorists, or ideologues determined to replace our American values with the values of those who hate freedom and hate our way of life.

A very important point made by the Times editorial and the one I want to particularly emphasize is the complete disconnect between the Pentagon budget and spending plan set out and explained to the National Press Club on February 3, 2006, and what Mr. Rumsfeld is spending on in 2007. The President and Mr. Rumsfeld have told the Nation it will be fighting for the next 30 years or perhaps forever a long war against an army we can't see because it does not represent a nation state; it may not wear a uniform; it could be in any country at any time. But, as the Times points out: "Instead of reallocating resources toward the real threat America faces, the military services continue to pour their money into fighting fictive superpowers in the wild blue yonder and on and below the seven seas. Pentagon budgeters showed themselves so pathetically unable to restrain spending on expensive ships and planes that they actually cut back, rather than increased the overall size of the Army over the next few years to pay for it.

It would cost about $4 billion to $5 billion a year to give the Army 30,000 more troops, the minimum it needs to check its alarming slide. Instead the Pentagon chose to begin the construction of two unneeded new stealth destroyers, which will end up costing $2 billion to $3 billion each.

It also decided to splurge on a new nuclear attack submarine for $2.6 billion and to shell out $5.5 billion for separate Navy and Air Force versions of new stealth fighter jets, plus another $5.5 billion for yet a third version that either can use. In all the Pentagon is asking for $84 billion to buy weapons systems—twice what it got in 1996—and $73 billion more for research and development.

This budget would be wasteful even under a worst-case assumption that had a second superpower arising within the life span of these weapons, turning hostile to America and arming itself to the teeth with the most advanced weapons. There's still unnecessary spending that could be used to repair the Army, which has been ground down at least as much by Pentagon miserliness as by Iraqi insurgents.

The citizens of this country, all of them care about the troops. Disagreeing with the President's policies or lack of them does not mean an American does not care about the troops. I would argue those questioning the President

care more about the troops than the President. In the same way, Secretary Rumsfeld, preparing for wars with fictive superpowers while still ignoring the very real need of the troops in Iraq, reveals a chilling lack of concern for the troops.

[From the Washington Post, Feb. 3, 2006]

ARMY PLEDGES NO CUTBACKS IN NATIONAL GUARD

(By Ann Scott Tyson)

Facing pressure from both parties in Congress and state National Guard leaders, the Army yesterday committed to keeping the National Guard's authorized manpower at 350,000 and promised to fund it up to that level.

''If they recruit 350,000, the funding's there. Their authorization remains 350,000,'' Gen. Peter Schoomaker, the Army's chief of staff, said at a Pentagon news conference yesterday.

Because of recruiting shortfalls, the Guard has about 333,000 soldiers on the rolls, but Guard leaders say they are confident of reaching the goal of 350,000 this year. ''We are on a glide path to get to 350,000,'' said Lt. Gen. Clyde Vaughn, director of the Army National Guard, who appeared at the briefing with Schoomaker.

The Army had proposed cutting the budgeted Guard strength by about 17,000 positions, in part by replacing six combat brigades that each have 3,500 to 4,000 slots with brigade headquarters that have only a few hundred, said Maj. Gen. Roger P. Lempke, president of the Adjutants General Association of the United States.

The National Guard, which represents about 38 percent of the U.S. military's force structure, has served heavily in Iraq, deploying seven combat brigades as well as headquarters and other units with tens of thousands of troops since the war began. Last fall, it surged 50,000 troops to respond to hurricanes Katrina and Rita.

''There's a very strong sense out there among our political leadership that the Guard should not be reduced in any way right now,'' Lempke said yesterday. ''We don't know where the war is going. We're very heavily deployed'' and the suggested cuts ''didn't set well,'' said Lempke, whose association represents the senior leaders of the Army and Air National Guard in the 54 states, territories and the District of Columbia.

A bipartisan group of 75 U.S. senators yesterday sent Defense Secretary Donald H. Rumsfeld a letter stating they ''strongly oppose'' reported proposals by the Pentagon to cut National Guard force levels.

''We respectfully oppose proposals to cut the end-strength of the National Guard,'' said the letter from Sen. Chrstopher S. Bond (R–Mo.) and Sen. Patrick J. Leahy (D–Vt.), co-chairs of the Senate's National Guard Caucus. The letter signed by 73 other senators.

Lempke said he welcomed the Army's commitment to keep end strength at 350,000, which he said will help ensure budget money is allocated for the necessary training and recruitment.

Schoomaker said the Army would progress with a plan to cut the number of National Guard combat brigades from 34 to 28, but reiterated a plan to replace them with six support brigades. One reason for the reduction in combat brigades, he said, was that many of the units were not fully manned or equipped, a situation worsened when soldiers and gear were shifted to units deploying for Iraq—a process the Army calls ''cross-leveling.''

''We've used 34 brigades all over the world, and we've had to cross-level big time since 9/11 to make that happen,'' Vaughn said.

The Army plan calls for ensuring the 28 remaining combat brigades will be fully manned, trained and equipped to be ready to deploy, Schoomaker said. Toward this goal, the Army has budgeted about $21 billion from 2005 to 2011 to modernize equipment for the National Guard, which he said was a fourfold increase over funding levels in 1999.

''This is a tremendous investment,'' Schoomaker said. ''This is not taking things down; this is building wholeness up.''

[From the New York Times, Feb. 10, 2006]

STILL SHORTCHANGING THE TROOPS

It's amazing how Donald Rumsfeld's Defense Department can produce a $439 billion spending plan and still skimp on the one thing the American military desperately needs: expanded ground forces so the weakened and cannibalized Army can meet the requirements of Iraq without hurting its ability to respond to other threats.

While the Pentagon intends to increase pay and recruitment bonuses, no part of its nearly 7 percent budget increase is aimed at raising overall troop strength. Instead, a large chunk of this nearly $30 billion bonanza goes to buying more new weapons and postponing overdue cuts in wasteful Air Force and Navy projects unrelated to fighting terrorism.

The prospects for Iraq might be very different today if Mr. Rumsfeld had listened to some of his own senior generals and occupation officials and authorized significantly larger ground forces from the beginning. The early looting might have been contained before it shattered political confidence and vital infrastructure. The insurgency might never have gotten such a head start. The incineration tactics of Falluja and the Abu Ghraib nightmare might have been avoided. And the Army's downward spiral of readiness, recruitment and morale might never have begun. But the obstinate ideologues in Mr. Rumsfeld's Pentagon have never accepted the fact that the reality of Iraq did not fit their assumptions. The budget and the four-year plan released with it read almost as if the current conflict had never happened and could never happen again.

Instead of reallocating resources toward the real threats America faces, the military services continue to pour their money into fighting fictive superpowers in the wild blue yonder and on and below the seven seas. Pentagon budgeters showed themselves so pathetically unable to restrain spending on expensive ships and planes that they actually cut back, rather than increased, the overall size of the Army over the next few years to pay for it.

It would cost about $4 billion to $5 billion a year to give the Army 30,000 more troops, the minimum it needs to check its alarming slide. Instead the Pentagon chose to begin the construction of two unneeded new stealth destroyers, which will end up costing $2 billion to $3 billion each.

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This budget would be wasteful even under a worst-case assumption that had a second superpower arising within the lifespan of these weapons, turning hostile to America and arming itself to the teeth with the most advanced weapons. There's still unnecessary spending that could be used to repair the Army, which has been ground down at least as much by Pentagon miserliness as by Iraqi insurgents.

The military contractors are doing just fine. It's the troops in Iraq who need help from Washington.

IN RECOGNITION OF DR. RICHARD P. McCORMICK

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. PALLONE. Mr. Speaker, I rise to pay tribute to Dr. Richard P. McCormick, professor, dean, and historian of Rutgers—the State University of New Jersey, as well as president of the New Jersey Historical Society, who passed away on January 16, 2006. Having faithfully served the University and the State of New Jersey for over six decades, Dr. McCormick died after an extended illness at the age of 89.

Born December 14, 1916, in Queens, New York, Richard Patrick McCormick moved to Tenafly, New Jersey, and attended Rutgers College, graduating with a bachelor's degree in 1938. In 1940, he earned a master's degree in history from Rutgers Graduate School–New Brunswick and then received his doctorate in 1948 from the University of Pennsylvania.

After teaching in the history department for three years, Dr. McCormick was appointed the Rutgers University Historian in 1948, at which time he developed a full-year course on New Jersey's history. A prolific writer, Dr. McCormick was awarded the biennial book prize from the American Association for State and Local History in 1968 for his work ''Rutgers, a Bicentennial History.'' He remained at Rutgers where he chaired the history department from 1966 to 1969, chaired the Rutgers College Coeducational Committee in 1971, and served as dean of Rutgers College from 1974 to 1977.

Following his retirement in 1982, Dr. McCormick remained active on campus and was awarded an honorary doctor of letters degree by the University, a rare distinction for faculty members. In 1990, he was inducted into the Rutgers Hall of Distinguished Alumni, and in 2002, the American Historical Association granted Dr. McCormick the Award for Scholarly Distinction for lifetime achievement. Additionally, this past fall, the Rutgers College Educational Opportunity Fund created the Richard P. McCormick Social Justice Award in recognition of his 1969 efforts to address African-American issues at the school, despite protests on three of the University's campuses. These honors, among others, depict a man of great worth who will surely be missed.

Dr. McCormick is survived by his wife of 60 years, Katheryne Levis McCormick, as well as their daughter, Dorothy Boulia; son, the current president of Rutgers, Richard L. McCormick; and three grandchildren.

Mr. Speaker, it is my pleasure to commemorate Dr. McCormick and to thank his family for the countless contributions that he made to the community and the State of New Jersey. His dedication to education, history, and activism will not be forgotten.

RECOGNIZING MR. ADAM BROWN OF BOILING SPRINGS, PENNSYLVANIA

HON. TODD RUSSELL PLATTS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. PLATTS. Mr. Speaker, I rise today to recognize the patriotic essay on military service by one of my young constituents, Mr. Adam Brown of Boiling Springs, Pennsylvania.

Adam's essay entitled, "Narratives of Soldiery," was submitted for publication by Mr. Larry Babitts, a twice-wounded, two-war combat veteran and commander of the Military Order of the Purple Heart, Capitol City—West Shore Chapter 11, Boiling Springs, Pennsylvania. In his essay, Adam pays tribute to the courageous service and sacrifice of those men and women in uniform who selflessly guard our individual freedoms and liberties here at home and throughout the world.

Mr. Speaker, I am pleased to submit Adam's essay for publication in the CONGRESSIONAL RECORD, at Mr. Babbits' request. Adam's essay reminds all Americans that it is our solemn national duty to support our fellow citizens who volunteer to forfeit their own security to defend and preserve the rights and liberties that make our Nation the world's pinnacle of freedom. In Adam's words, "there is no greater gift than serving your country."

NARRATIVES OF SOLDIERY

(By Adam Brown)

Hang your head in shame, those who think themselves too good for service, for there is no man who may say it with truth. Those who find themselves in wealth's company and belittle the soldier, hold your self-righteous tongues in the presence of men greater than yourselves. Before your mercurial words lash on the backs of the men who fight, remember this; the dream that you live was delivered by those men whom you belittled. For a rich man who thinks himself too valuable for soldiery is worth less than the vagabond who answers his nation's call.

All men of a free nation are indebted to nation that grants them that freedom. And the soldier, violent so as his acts may be, is the vessel with which those freedoms are delivered. Go Curser of the warrior, exercise your freedoms; speak what you will, worship what you will, and congregate where you will, but rest your head at night with an uneasy conscience. For when your nation looked for your service in time of war, you lowered your head, so as not to be recognized, so let your head stay lowered in dishonor. Wise is the common man who recognizes his debt, and pays it with his service, for there is no greater gift than serving your country.

Common man, you may walk the roads of your country knowing one absolute truth, every time you fought on our behalf, every time you killed out of orders, and every time you held a dying brother, you earned your rights. Every American gets them, but you, oh noble veteran, have earned them in a way the nay-sayer will never. And his riches can never buy what you have earned. Keep this knowledge sacred, that in paying the debt to your country, all others now owe that debt to you. You now owe no man, only God.

Common man of soldiery, what you have done will be forever with you, both your valiance and your nightmares. For every soldier remembers, be it right or wrong, taking life. So when you wake in your bed with cold sweat, find comfort; find comfort in the fact that the actions that give you nightmares, have also brought you honor. And search for a small measure of peace. In a world that was fair, no one would ask you to be strong again, because you have shown enough strength for your entire lifetime. But, alas, this world lacks perfection, and you are never rid of what is asked of you.

Though it isn't fair, still you must be strong, strong for your family, and your community. Do not search for recognition for what you have done; it will come of itself. It seems impossible to find enough toughness in oneself to remain the pillar of strength for so many, but you can do it, and you must do it. People will look to you as the military, be it invited or not. So your actions reflect on the military, the entire military, regardless of your branch, it is for this reason you must still be strong. Though you may not think it, you will find inner strength to hold up all that you need to.

You who retreats from honor's light, again you are addressed. When a soldier enters your presence, dare you not to criticize or even meet eyes with him. For you did cower, and no self-justification will nullify that fact. You have the luxury of speaking ill of the nation, and its leader. Carry with you any politics you may, speak ill of your government if you see fit, for that is the first liberty we took upon creating our country, but see the line between the government, and the soldier. For that line is a canyon for which there is no compare, And if you truly think ill of your government, do not impose upon a soldier, your dissatisfaction. For if not for him you would hail: a British crown, a Mexican president, a slave holder, a German Furher, a Japanese Emperor, a Korean Dictator, a Russian Czar, or an Arab Sheik. This list is long and the common soldier did fight and prevail over all these. So you have no place to quarrel with such a noble man. Keep in mind, the soldier is merely the sword of his people, to do what they wish. One does not blame the sword for who it cuts down, or why it cuts, the sword only does what its wielder commands. Yet forget not your duty, to speak against the government if it should become tyrannical, because you are bound by honor to see the sword not abused.

Some men measure success in gold and things of beauty; I pity these men. Some measure success in popularity, these men too, I pity. For success is nothing more than accomplishing something correctly, every man has done this, and every man has failed at this. Men place too much importance on success, and in doing so have neglected the most important of all virtues, honor. But what is honor? Honor cannot be tasted, seen, or heard, but felt; not just by he who is honorable, but everyone around him as well. Honor is standing defiantly in the face of that which is wrong and stating with a stem voice and clenched fists, "This is not right, and I will not let this stand." Those words will emanate to the heavens and rally the angels' cheers. Those words will shake hell to hysteria and send demons fleeing in fear.

Take a moment, Common Man of the Soldier, and find simple comfort in the fact that not all turn a blind eye to what you have done. For what you carry with you; you are honored.

PAYING TRIBUTE TO JO ELLE HURNS OF THE LAUGHLIN CHAMBER OF COMMERCE

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. PORTER. Mr. Speaker, I rise today to honor Jo Elle Hurns, an outstanding individual who has given nine years of invaluable service to the Laughlin Chamber of Commerce.

Before joining the Laughlin Chamber of Commerce, Jo Elle Hurns worked for twenty years in the Colorado River Communities, her first five years as a reporter. In 1990, she went to work as Marketing Director for Don Laughlin.

In 1997, Jo Elle Hurns became the Executive Director of the Laughlin Chamber of Commerce. In this position, she began by assisting the community with economic development plans for the region, including creating a consensus among nine different jurisdictions to fund the $28 million reconstruction of Needles Highway. Her efforts in lobbying at local, state and federal levels for major infrastructure improvements in Laughlin included trails, successful multi-million dollar grant attainment and the sale of federal lands for further residential and commercial growth. Due to her heartfelt commitment to raise funds and develop programs for dozens of social service agencies including the Colorado River United Way, she greatly influenced the effectiveness of many organizations in giving service to the area.

Jo Elle Hurns was also very involved in serving the community. From 1995 to 2000 she was on the Laughlin Town Board, and in 2005 and 2006 she was a member of the Nevada Alliance for the Boys and Girls Club. She received the Spirit of the Colorado River Award in 2001, and for the past six years has been the Distinguished Woman of Southern Nevada.

Mr. Speaker, I am grateful for the opportunity to honor Jo Elle Hurns for her service to Laughlin and the State of Nevada.

H.R. 4744, TO DESIGNATE THE DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC IN TULSA OKLAHOMA AS THE ERNEST CHILDERS DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC

HON. JOHN SULLIVAN

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. SULLIVAN. Mr. Speaker, this evening, I introduced H.R. 4744, legislation to designate the Department of Veterans Affairs (VA) Outpatient Clinic in Tulsa, Oklahoma as the Ernest Childers VA Outpatient Clinic to honor one of our nation's finest military heroes.

Ernest Childers holds the distinction of being the first Native American to receive the Congressional Medal of Honor for his heroic action in 1943 at the battle of Oliveto, Italy, when he charged German machine gun nests against machine gun fire. Although suffering a broken foot in the assault, Childers ordered covering fire and advanced up a hill, single-handedly killing two snipers, silencing two machine gun nests and capturing an enemy mortar observer. His courageous action helped American troops win the battle and save the lives of American soldiers. Childers was also awarded the Purple Heart and the Bronze Star for his actions.

Born in Broken Arrow, Oklahoma, Childers, enlisted in the Oklahoma National Guard in 1937 to earn extra money while attending the

Chilocco Indian School in north-central Oklahoma. While stationed at Fort Sill in Oklahoma, he was deployed to Africa to fight in World War II. Childers retired from the Army in 1965 as a Lieutenant Colonel but remained very active in the Tulsa community serving Indian youth, which led to the naming of a middle school in Broken Arrow, Oklahoma in his honor in 1985.

As a proud Creek Indian, in 1966, Childers was honored by the Tulsa Chapter of the Council of American Indians as ''Oklahoma's most outstanding Indian.'' Of his military service in World War II, Childers once said, ''The American Indian has only one country to defend, and when you're picked on, the American Indian never turns his back.'' A fitting quote from a man who exemplified courage under fire and dedication to defending our nation.

Until his death on March 17, 2005, Childers was Oklahoma's last Congressional Medal of Honor recipient still living in the state. I am proud to introduce this legislation to honor his life and legacy. We were honored to have him grace us with his model character, defend us with his bravery, and leave us all with a life well-lived.

IN MEMORY OF ELIZABETH DAILEY

HON. JO ANN DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mrs. JO ANN DAVIS of Virginia. Mr. Speaker, I rise today to express my sorrow for the loss of Stafford County Treasurer Elizabeth Dailey, who recently passed away at the young age of 47. A leader in the community, Elizabeth was a person who sincerely cared about the citizens of Stafford, and worked to make life easier for them. In her tenure as Treasurer since 1993, Elizabeth provided Stafford with service, giving citizens individual assistance with complicated tax and financial issues. As Treasurer, she was an innovative leader and a true public servant. As a colleague, she was regarded as a trusted friend. Everyday, she was a loving wife and mother.

Elizabeth Dailey will truly be missed. I express my utmost condolences to her friends and family, and in a special way, would like to thank Elizabeth's husband Donald and daughter Nicole for sharing this very special lady with the citizens of Stafford County.

CELEBRATING BLACK HISTORY MONTH

HON. HILDA L. SOLIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Ms. SOLIS. Mr. Speaker, I rise to join our Nation in honoring the many great contributions of the African American Community by celebrating Black History Month.

Overcoming enormous obstacles and racial barriers, the African American community has made vast contributions to all aspects of American society—music, literature, sports, education, science, business, and politics. We must remember not only our outstanding heroes such as Dr. Martin Luther King Jr., Frederick Douglass, former Congresswoman Shirley Chisholm, Rosa Parks, and Coretta Scott King, this month, but also the extraordinary lives of everyday African Americans who have helped build our great Nation.

I want to particularly honor the lives of two exceptional women who we lost recently: Rosa Parks and Mrs. Coretta Scott King. Their lives and their work for civil rights reflect the struggle and contributions that African Americans have made to our society. Their actions set America on a course of inclusion and tolerance, which continues to benefit us everyday. We must follow their steps and build upon their great accomplishments for equality and justice.

During this month and throughout the year, I encourage those living in California's 32nd Congressional District and around the country to take the time to honor the African American community by learning about its vast accomplishments and rich culture.

HONORING THE LIFE OF MR. DONALD COLEMAN

HON. JIM COSTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. COSTA. Mr. Speaker, I rise today to celebrate the life of Donald Coleman, reporter for the California newspaper, The Fresno Bee.

Donald Coleman was a gentleman, a fine reporter and truly a person with a passion for life. For those of us who had the good fortune to know him or work with him there is now a very empty space. Personally, I will miss the times that Don and I shared together in the Tower District where he would humorously point out the flaws and shortcomings we all experience in life.

As we reflect upon a life well lived, we should rededicate ourselves to caring and helping those less fortunate than ourselves. And in that sense, Don was a good role model for all of us. Donald Coleman cared deeply about his family, his friends and the people who live in our Valley. His passion for people was an inspiration for all of us to try harder the next day. I know after seeing Don I always tried harder the next day. Ralph Waldo Emerson once said, ''The only way to have a friend is to be one.'' I want to thank you, Donald Coleman, for having been a friend to those of us, who had the good fortune to know you.

The following is a wonderful description of the life and times of Donald Coleman that appeared in the Fresno Bee:

Donald Coleman, the face of The Fresno Bee for many in far-flung rural communities and a fixture in Fresno's Tower District, died of an apparent heart attack Tuesday morning. He was 57.

''We are deeply saddened by the sudden death of reporter Donald Coleman. His good cheer and graciousness were well known throughout many departments here, and he had scores of friends in the community as well. We will not only miss Don as a journalist, but also as a friend,'' said Charlie Waters, executive editor of The Fresno Bee.

Funeral arrangements are pending.

Mr. Coleman's Mercedes rolled into flowerpots in front of the downtown Starbucks on Kern Street at 11:37 a.m. Police said they found him unconscious in the front seat.

His job was covering the rural communities surrounding the city of Fresno.

''He had a lot of concern with what was happening in these small, poorer farming communities. His heart was out here, and he personally was out here. He would visit. He would write our stories,'' said Joseph Amador, a former Mendota mayor. Colleagues recalled his extraordinary compassion, which he sometimes masked with impish cantankerousness.

Every December, Mr. Coleman unfurled his ''Bah Humbug'' sign, a banner passed on to him years ago by a cigar-chomping, old-time reporter. But every August, he threw a Christmas party, complete with a tree. The price of admission was a donation for the food banks in a season when people often forget to donate.

He showed up to tutor first-graders at Kirk Elementary School even if it was his day off. Tuesday mornings were his regular visiting day.

Mr. Coleman came to journalism later in life, one of the older students to graduate with a journalism degree from California State University, Fresno, in 1988, the year he started working at The Bee. Earlier in life, he was a college football player, a seminary student, a banker, a law student and an airline employee.

He was at times The Bee's only black news reporter.

''We discussed racial issues many times, and I learned a great deal from him. In many ways, I think he was a pioneer,'' said Jim Tucker, host of ''Valley Press'' and one of Mr. Coleman's journalism professors.

Outside of work, Mr. Coleman was the consummate man about town, friend to everyone, especially in the Tower District.

''He was the unofficial secretary of state. He knew everyone, and everyone knew him: hairstylists, lawyers, bartenders, professors, artists, poseurs and idiots. Don was wonderful to everyone. The word that comes to mind is sweet. He was the most decent guy. I don't know why he put up with all of us,'' said longtime friend Andrew Simmons.

He was passionate about travel and family—he carried a picture of his grandmother in his wallet. He bought lottery tickets, planning his Jamaican escape. Bee colleagues on Tuesday recalled his running shtick when the jackpots were high.

''It's my last day,'' he'd say. ''Do you want to say goodbye?''

75TH ANNIVERSARY OF THE OTTAWA NATIONAL FOREST

HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. STUPAK. Mr. Speaker, I rise today to honor a northern Michigan natural phenomenon that will be celebrating its 75th Anniversary of restoring the natural beauty and resources of Michigan's Upper Peninsula (U.P.). This year the Ottawa National Forest will celebrate 75 years of service but an endless impact on the vibrant habitat.

During the early 1900's, loggers flocked to Michigan's western U.P. to take advantage of what seemed to be an endless supply of pine trees. Used for fuel, paper products and the timber necessary to build cities like Detroit and Chicago, the once lush, vast forests were gutted and left as a desolate wasteland by the late 1920's.

In 1931 the fate of that land would change forever when President Herbert Hoover signed

a proclamation establishing the Ottawa National Forest as a means of reviving the barren forest. Seventy-five years later, the restoration of the Ottawa National Forest has been described as a true success story.

Now managed for multiple uses, the Ottawa National Forest provides many products and services based on its mission of caring for the land and serving people. The Ottawa National Forest also provides a great economic impact to the region. It supplies local communities both with wood products as well as jobs. Additionally, the Ottawa National Forest is an incredible draw for tourism with such recreational activities as hiking, camping, fishing, hunting, boating and snowmobiling to name a few.

Mr. Speaker, the success of the Ottawa National Forest in revitalizing the cherished natural resource of Michigan's western Upper Peninsula pine forests is a shining example of how effective a mission carried out over time and the implementation of sensible management practices can make such a significant impact in the world.

I ask the United States House of Representatives to join me in congratulating the Ottawa National Forest employees from past and present on 75 years of living the proud tradition of the Forest Service mission and wish them all the best in the future toward another successful 75 years.

MR. BENJAMIN SOLOMON, LETTER TO THE EDITOR OF THE NEW YORK TIMES

HON. JANICE D. SCHAKOWSKY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Ms. SCHAKOWSKY. Mr. Speaker, I rise today to bring to the attention of my colleagues a letter that was published in the November 8th edition of the New York Times. The letter was composed by my constituent—Mr. Benjamin Solomon of Evanston, Illinois. Mr. Solomon writes about the critical importance of openness in government, the serious nature of war, and the importance of honoring our nation's veterans. I hope that the words of Mr. Solomon, who is a veteran of World War II, are taken into serious consideration.

[From the New York Times, Nov. 8, 2005]

KILLED, THEN EXPLOITED

To the Editor:

''The Mysterious Death of Pat Tillman,'' by Frank Rich (column, Nov. 6), left me sick at heart. I am a World War II veteran in my later 80's who still thinks of his tent mates who were lost to enemy action.

Pat Tillman, the Arizona Cardinals defensive back who volunteered for the Army, was killed last year in Afghanistan, apparently by friendly fire. The cynical exploitation of his death and the lies surrounding it are a betrayal of this brave soldier and his family, of all the others who made the same sacrifice in Iraq, and of the ideals of decency we claim for our nation.

The thought that the responsible high-level officials in the Pentagon and the White House are still in power frightens me.

BENJAMIN SOLOMON,
Evanston, Ill., Nov. 6, 2005.

HONORING BILL FERGUSON

HON. JOHN T. SALAZAR

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. SALAZAR. Mr. Speaker, I rise today to honor one of my constituents and a personal friend, Bill Ferguson. Bill Ferguson, or ''Fergie'' as friends like to call him has had a long and distinguished career as a rancher and public servant in Ouray County, Colorado.

Bill Ferguson was raised in Colorado. In the late 1970s he settled in the town of Ridgway. While Bill worked hard as a carpenter and his wife Liza as a waitress, they were able to save enough money to start their own business. The Park Nursery Garden Center soon became the premier native nursery in the area. Fergie also established a 120 acre ranch where he and Liza continue to raise 80–100 head of cattle per year. Both his ranch and his nursery are a great asset to the county and reflect Bill's life long ethic of caring for the land he was part of.

In the 1990's, Bill was instrumental in developing a Geographical Information System program that eventually became the Southwest Data Center. The Center is still a vital tool for land use planning and management for Ouray County, surrounding governments and local citizens in Southwest Colorado.

In 1999, Bill was appointed to the Ouray Board of County Commissioners and won reelection in November of 2000. Bill fought hard for the best interest of his community through the end of his term in 2005. He worked to protect Ouray County's financial interest, preserve the open government process and helped restore the people's faith in government. As a county commissioner, Bill was noted for being the primary force behind legislation to designate Ouray County as a ''Right to Farm'' community, preserving the rights of farmers and ranchers to conduct their business without interference.

A water rights' owner, Bill was appointed by Ouray County for two terms to sit on the Colorado River Conservation District Board of Directors, which is the oldest and most prestigious water conservation district in Colorado. As Ouray County's representative to the Colorado River District, Bill worked on land and water conservation projects for conservations trusts. According to fellow board members, Bill was always the best joke teller—a tough title to earn on a water district board, which is typically filled with amateur comedians. Bill also served on the Colorado River Water Users Association developing GIS-based maps for educational purposes.

With such a long list of accomplishments, it is easy to see that Bill is a leader in every sense of the word, but especially when it comes to water. Bill always has helped lead the fight to protect Western Slope water. I was honored to fight alongside him on many crucial battles to defend our rural way of life.

I have been proud to know and work with Bill Ferguson on issues that are important to the Western Slope of Colorado. He has been a great personal friend, colleague and mentor on many water issues and I am honored to represent him in Congress.

GOLD FOR GREENSBORO'S JOEY CHEEK

HON. HOWARD COBLE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. COBLE. Mr. Speaker, when someone thinks sports and the Sixth District of North Carolina, most thoughts turn toward basketball, baseball and auto racing. I think it is safe to say that not many people would immediately leap to speed skating on ice. That's no longer the case, however, thanks to Joey Cheek of Greensboro. The Sixth District is now the speed skating capital of the world because Joey Cheek captured the gold medal in the Winter Olympics in Turin, Italy, by winning the 500 meter long-track speed skating event.

Proving he is a true champion in every sense of the word, immediately after he won the gold medal, Joey Cheek announced he was donating the $25,000 he won from the U.S. Olympic Committee to refugee relief efforts in Africa. As reported in today's edition of the Greensboro News & Record, Joey said his thoughts are turning back to North Carolina. ''I am really excited about going home,'' the News & Record reported. ''Honestly, it doesn't even feel real. I'm so thrilled and so happy. But it doesn't seem to make sense. It's like it happened to someone else, and I'm just happy to sort of receive the good will for it. I'm just really excited and looking forward to the next couple of days to maybe realizing I'm an Olympic champion, will be forever, which is the coolest part of it.''

Cheek is scheduled to compete in the 1,000 and 1,500 meter events next. In fact, the 1,000 meter race is considered to be Joey's strongest event, so there may be more Olympic hardware coming his way. Four years ago, he won the bronze medal in the Salt Lake City Olympics in the 1,000 meter race, so this gold medal is not at all surprising to those who follow the sport. Joey Cheek has been a skater since he was eight years old and used to skate in roller rinks in Greensboro. At 15, he switched to the ice and it's been a straight line to the winner's podium in Turin.

Joey's mother is in Turin to witness family history first-hand, while his father is following from his home office in Winston-Salem. Once all of the racing is completed, Joey hopes to return to Greensboro where he plans to obtain a law degree and practice law in North Carolina. Whatever he decides to do, as he has shown both on and off the ice in Italy, Joey Cheek will be a champion and the Sixth District of North Carolina is proud to call him one of our own.

UT SOUTHWESTERN, MEDICAL CENTER AND BAYLOR HEALTH CARE SYSTEM–DALLAS

HON. EDDIE BERNICE JOHNSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today to salute UT Southwestern Hospital and Baylor Health Care System, Dallas for their ranking in the top 5 percent of hospitals in the United States. Over

the years, both medical centers experienced phenomenal growth, fueled by people with an extraordinary vision. UT Southwestern Hospital and Baylor Health Care System received high grades for quality patient outcomes, clinical excellence, patient safety, and women's health in a survey of 5,122 nonfederal hospitals in the United States, conducted by Health Grades Inc. UT Southwestern Medical Center is the seventh-largest hospital in Dallas-Fort Worth providing inpatient hospital care to more than 90,000 people and oversees approximately 2 million outpatient visits. Annually, UT Southwestern Medical Center delivers more than 18,800 babies and provides $282 million in unreimbursed professional service in Dallas and surrounding counties. Baylor Health Care System, established in 1903 as Texas Baptist Memorial Sanitarium, is the first health care system to provide supplemental newborn screening for more than 30 inherited metabolic diseases. Baylor provides exemplary health care with over 2,554 beds, 15,000 employees, and 3,300 physicians.

I am confident that UT Southwestern Medical Center and Baylor Health Care System will continue to provide exemplary hospital care to the North Texas community and surround areas and remain at the pinnacle of Medical institutions committed to providing compassionate health care. On behalf of the thousands of Greater Dallas Metroplex residents who have benefited from UT Southwestern Medical Center and Baylor Health Care System, I congratulate them for their contribution for improving the health of the community through high quality patient care and commitment to clinical excellence.

COMMENDING MR. EDUARDO ''LALO'' GUERRERO

HON. RAÚL M. GRIJALVA

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. GRIJALVA. Mr. Speaker, I rise today on Arizona's 94th birthday to commend one of Arizona's most talented sons, Mr. Eduardo ''Lalo'' Guerrero, ''the Father of Chicano Music.''

From the beginning of his career when his first group, Los Carlistas, represented Arizona at the New York World's Fair of 1939 until his death last March, Lalo Guerrero symbolized the best of American and Latino culture. Born December 24, 1916 in Barrio Viejo, the oldest neighborhood of Tucson, Arizona, Mr. Guerrero sang songs that spoke directly to the Chicano people of the southwest throughout the course of his 60-year career.

The child of immigrants, Mr. Guerrero attributed his musical talent to his mother Concepción, who taught him to play the guitar. He has been quoted modestly, ''I only wrote and sang about what I was.'' By doing so, Mr. Guerrero became a voice for people who rarely were shown in mainstream culture, a fact he sang about in his famous song ''No Chicanos on TV.''

No other Chicano artist has come close to writing and recording more great songs in virtually every genre of Latin music, including salsa, norteña, banda, rancheras, boleros, corridos, cumbias, mambos, cha chas, socially relevant songs, swing, rock & roll and blues. In addition to being a world-class singer, he also created children's music, comedy songs and parodies.

Mr. Guerrero stood beside other great leaders in the community, among them César E. Chávez and Ruben Salazar, writing corridos about the struggles and importance of social protest. Celebrating his bicultural roots, the music pioneer and activist was the first to record bilingual songs, becoming a symbol of hope and strength to his people.

Mr. Guerrero is credited by such artists as Carlos Santana, Linda Ronstadt, and Los Lobos for opening the door for Latino musicians.

In 1996, Mr. Guerrero was awarded the National Medal of the Arts by President and Mrs. Clinton. In 1980, the Smithsonian Institution declared him a ''National Folk Treasure'' and he received a National Heritage Fellowship from the National Endowment for the Arts in 1991.

Mr. Guerrero was inducted into the Tejano Hall of Fame and was honored with Lifetime Achievement Awards from the Mexican Cultural Institute representing the Mexican Government, Luis Valdez's The Teatro Campesino and Ricardo Montalban's Nosotros Organization among other prestigious groups. Los Angeles and his adopted home of Palm Springs, California have declared ''Lalo Guerrero Day'' in those cities and proclamations have been awarded from numerous other cities and organizations.

Mr. Guerrero is an American original. He is a son of this Nation, a Nation of diverse people, cultures and music. Lalo Guerrero exemplifies the richness of our country and the hope of all people. His story is a gift to us all.

HONORING DR. HENRY L. COOK, SR.

HON. SANFORD D. BISHOP

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. BISHOP of Georgia. Mr. Speaker, this President's Day marks the nineteenth annual Black History Observance in Columbus, Georgia, but it also affords us the opportunity to recognize Dr. Henry L. Cook, Jr., who has chaired the event since 1988.

For 35 years Dr. Cook has practiced dentistry in Columbus. A graduate of Tuskegee University and Meharry Medical College, he has defined excellence in his field and continues to serve on the Georgia Board of Dentistry, the Georgia Dental Association and the Georgia Medicaid Advisory Committee, among other boards and organizations.

Yet beyond his chosen profession, Dr. Cook has used his life in service to others and his community. A veteran of the United States Air Force, he has received countless distinguished service awards for his work. He has served as Chairman of the Board of the Minority Assistance Corporation, the Columbus Technical College, the Columbus Technical Foundation, the Columbus Business Development Center and the A.J. McClung YMCA and has served on the Muscogee Board of Education, the Metro Board of Health and the Columbus Chamber of Commerce.

As chairman of the Annual Black History Committee, Dr. Cook has cemented the legacy of African Americans into the history of Columbus, Georgia. Under his guidance, the Annual Black History Observance, which was started by the late former Congressman Richard Ray to improve his relationship with the African-American community, has grown into a celebration of Black history that pays tribute to the individuals, organizations and institutions that have made lasting contributions to the history of Black Americans.

Dr. Cook is married to the former Mamie Richmond and has three children, Dr. Cathy L. Cook, Dr. Henry L. Cook, II and Ms. Rosa Zanders. His extraordinary legacy in dentistry continues through Cathy and Henry II, who continue the family dental practice.

This Monday, I will have the honor of presenting Dr. Henry L. Cook, Sr. with the Legacy Leadership Award and Congressman JOHN LEWIS, a true American hero and history maker, will be the featured guest speaker. However, here in this hallowed hall, I rise on behalf of the people of the Second Congressional District and the State of Georgia to honor the extraordinary contributions that Dr. Cook has made to the African-American community, the City of Columbus, the State of Georgia and our great Country. His service is a model for all and we are grateful.

TRIBUTE TO MS. AURELIA GREENE

HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. SERRANO. Mr. Speaker, it is with great pleasure that I rise during this month dedicated to the celebration of African Americans who have made great contributions to the world, to pay tribute to New York Assemblywoman Aurelia Greene. Aurelia is a dedicated public servant who has worked tirelessly to uplift and empower her constituents.

A native of the Bronx, Aurelia is a graduate of Livingston College at Rutgers University, where she majored in community development. For the past 24 years she has served as Assemblywoman for the 77th Assembly District, effectively using her urban planning skills to negotiate on behalf of her constituents for affordable housing, quality education, employment opportunities, affordable healthcare, senior services, and improved transportation and infrastructure.

As a member of the State Assembly, Aurelia is known for her strong work ethic and robust legislative agenda. She authored legislation, which became law in 2002, prohibiting predatory lending practices in relation to high cost home loans. In addition, she was instrumental in ensuring the passage of the Apprenticeship bill, which provided funds for supplemental and related instruction to apprentices registered by the New York State Department of Labor. And in 1994, she was awarded a gold helmet by the New York State Head Injury Association for her bicycle helmet legislation.

As a result of her competence as a legislator and considerable personal charm, Aurelia has been successful in rising through the ranks of the New York State Assembly. She previously served as Deputy Majority Leader and is the first woman to chair the Assembly Standing Committee on Banks. In addition, she recently became the first African American

to serve as Speaker Pro Tempore in the State Assembly.

Mr. Speaker, earlier this week we said a final goodbye to Mrs. Coretta Scott King, a woman of great resolve and patience, who helped to change the world. Today we honor a woman who stands on her shoulders. Working tirelessly to change the world in her own right, Ms. Greene is the hope and dream of countless men and women of African descent who silently contributed to the pages of history. As a result of the efforts of the likes of Mrs. King and Rosa Parks, Aurelia's contributions to this nation have not gone unnoticed.

For her unyielding spirit, and willingness to serve others, I ask that my colleagues join me in paying tribute to Ms. Aurelia Greene and in honoring the great women upon whose shoulders she stands.

TRIBUTE TO MS. PAULA J. MARTIN

HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. SERRANO. Mr. Speaker, it is with great pleasure that I rise during this month, dedicated to the celebration of African Americans who have made great contributions to the world, to pay tribute to Ms. Paula J. Martin, a woman who has worked vigorously to ensure the less fortunate of her community have the necessary skills to succeed in life.

Paula serves as the Executive Director of the Harlem Center for Education (HCE), a community based non-profit organization located in East Harlem, New York. Among its programs, HCE counts two federal TRIO Talent Search projects and one Educational Opportunity Center Project. Paula has been involved in TRIO programs for over 32 years.

During the 20 years she has served as Executive Director of HCE, the organization has grown from an operational budget of $137,000 to one that is currently over $1,000,000. Her unique ability to secure timely grants has allowed the Harlem Center for Education to grow and reach more deserving young people and adults.

Like most of the students with whom she works, Paula is a first generation college student. A graduate of Hunter College High School, she went on to receive a bachelor's degree from Syracuse University and a master's degree in developmental psychology from Columbia University. This achievement alone is worthy of praise; but Paula did not stop there. She decided to dedicate her entire professional career to empowering individuals who shared her life struggles, thus helping to ensure that the cycle of poverty is broken.

Booker T . Washington once said: ''Success is to be measured not so much by the position that one has reached in life as by the obstacles which he has overcome.'' Indeed, Paula has overcome great obstacles to achieve the position that she now holds and would surely be considered a great success by Washington's standards. However, what impresses me the most about this incredible woman is that she was not satisfied with achieving success for herself. Like Washington, she has worked tirelessly to pull others up from the depths of despair, providing them with opportunities to find success in their own lives.

Mr. Speaker, this country owes much of its greatness to the countless men and women of color who silently contributed to the pages of history. Today, I ask that my colleagues join me in saluting them for their efforts and in paying tribute to the great leaders who stand upon their shoulders, such as Ms. Paula J. Martin.

TRIBUTE TO MR. DENNIS TERRY

HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. SERRANO. Mr. Speaker, it is with great pleasure that I rise during this month dedicated to the celebration of African Americans who have made great contributions to the world, to pay tribute to Mr. Dennis Terry, an individual who has worked throughout his life to fortify the bonds that unite the people of the Bronx in order to help them find success.

Born in North Carolina, Dennis has been a Bronx resident since 1969. He is a graduate of Howard University in Washington, DC. Dennis is a retired manager from Lilco (now known as Keyspan) and is currently engaged in part-time consulting.

The extensive involvement of Dennis in the community and civic life of his borough and city is reflected in his numerous organizational affiliations. These affiliations include: Mid-Bronx Senior Citizen's Council (chairperson); Concourse Day Care Center (member); and HAC Family Services (member). Dennis' past affiliations include: Bronx Lebanon Hospital Center (former chairperson); The Bronx Health Link (former chairperson); SOBRO (member, Executive Committee); The New York Urban League (member and former chairman of the Bronx Advisory Board); Community Planning Board 4 (former chairman); and the Mayor's Community Planning Board 4 Task Force.

Throughout his lifetime of community involvement, Dennis has sought to construct collaborative platforms and organizational networks that maximize the strength of the Bronx's multi-ethnic, multi-cultural, and religious diversity. Dennis' efforts have enabled the institutions that he has been affiliated with, and in many cases led, to define, develop, and deliver much needed services. He has focused his public service in the areas of senior and child care, healthcare, housing, employment, and economic development.

Mr. Speaker, Dr. King once stated that ''All men are caught in an inescapable network of mutuality.'' This is a statement that Dennis understands all too well. The Bronx is a melting pot of ethnic and religious groups, none of which can survive without the help of another. Fortunately, the Bronx is home to individuals like Dennis Terry, a man of vision and understanding who has helped tear down the walls that so often divide us. He has forced us to see the great potential we can unleash when we work together.

He stands on the shoulders of giants, yet he himself has become a giant, espousing a philosophy of tolerance and understanding in order to uplift his fellow citizens. For his selfless attitude and unyielding spirit, I ask that my colleagues join me in honoring Mr. Dennis Terry and the giants upon whose shoulders he stands.

TRIBUTE TO MS. GLORIA DENARD

HON. JOSÉ E. SERRANO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, February 14, 2006

Mr. SERRANO. Mr. Speaker, it is with great pleasure that I rise during this month dedicated to the celebration of African Americans who have made great contributions to the world, to pay tribute to Ms. Gloria Denard, an accomplished musician who has helped to improve the quality of life for the people of her community.

Born into a family of musicians and raised in the Bedford-Stuyvesant neighborhood of Brooklyn, Gloria was destined to be a great musician herself. Under the tutelage of her mother, she began her musical training at the tender age of three. Later in life, she studied at Julliard where she concentrated on classical music and majored in voice with a piano minor.

After Julliard, Gloria married and moved to East Harlem. She performed nationally and internationally, including stints in Italy, Bermuda, Greenland and Canada.

Although she enjoyed great success as a musician, Gloria was consumed by the desire to improve the quality of life of the people in her community. To that end, she established Manna House Workshops to serve the social and cultural needs of her talented neighbors. Gloria, who by this time had two children, worked without salary and maintained a staff of six teachers. In 1970 she decided to purchase a five story building and establish the current home of Manna House Workshops. After 38 years of service, Manna House Workshops continues to serve as a bright beacon of hope in its community, providing training in music and dance to all who enter their doors.

In 1980, Gloria conceived Music for Entertainment Education and Enlightenment (MEEE), a jazz concert series featuring emerging and professional artists presented in the Manna Mini Theatre. In addition, she has maintained her own vocal career and has released two CDs including ''Come Feel the Things You Cannot Touch'' and ''Two for Jazz''. An additional CD will be released in March of this year. She also produces and hosts a cable show every month entitled ''The Best Kept Secret'' on the Manhattan Neighborhood Network.

Mr. Speaker, it is impossible to discuss the contributions of African Americans to the history of the world and not mention the great influence they have had upon music. Often great beauty comes from great pain and suffering. It was this sacred art that helped so many find light in times of darkness and peace in times of stifling oppression. From gospel to blues to jazz, and most recently, hip hop, African Americans have not only provided the world with new forms of entertainment, but have found a way to provide insight into their struggles and aspirations. A student of this art, Gloria teaches music to the next generation, hoping to instill in them a sense of self confidence and pride so that they may one day share their gifts with the world.

For her beautiful voice and spirit, and her willingness to help others find their own voice, I ask that my colleagues join me in paying tribute to Ms. Gloria Denard, and the countless African Americans who came before her and enabled her to find her own voice.

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S1135–S1320

Measures Introduced: Nine bills and two resolutions were introduced, as follows: S. 2278–2286, and S. Res. 371–372. **Page S1175**

Measures Passed:

American Jewish History Month: Committee on the Judiciary was discharged from further consideration of H. Con. Res. 315, urging the President to issue a proclamation for the observance of an American Jewish History Month, and the resolution was then agreed to. **Page S1320**

Caribbean-American Heritage Month: Committee on the Judiciary was discharged from further consideration of H. Con. Res. 71, expressing the sense of Congress that there should be established a Caribbean-American Heritage Month, and the resolution was then agreed to. **Page S1320**

Fairness in Asbestos Injury Resolution Act: Senate continued consideration of S. 852, to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure.

Pages S1140–69

Pending:

Frist Motion to reconsider the vote by which the motion to waive (listed below) was rejected.

Page S1169

During consideration of this measure today, Senate also took the following action:

By 58 yeas to 41 nays (Vote No. 21), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate rejected the Specter motion to waive section 407, limitation on long-term spending proposals, of H. Con. Res. 95, the concurrent resolution on the budget for fiscal year 2006, with respect to the bill and Frist (for Specter/Leahy) Amendment No. 2746 (listed above). Subsequently, the Ensign point of order against the bill is sustained, pursuant to section 312(f) of the Congressional Budget Act, the bill is recommitted to the Committee on the Judiciary; provided further, that the vote on the motion to invoke cloture on Frist (for Specter/Leahy) Amendment No. 2746, and the vote on the motion to invoke cloture on the bill were vitiated. **Pages S1168–69**

USA PATRIOT Act Additional Reauthorizing Amendments Act—Cloture Motion: Senate began consideration of the motion to proceed to consideration of S. 2271, to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services. **Pages S1169–70**

A motion was entered to close further debate on the motion to proceed to consideration of the bill and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Thursday, February 16, 2006.

Page S1169

A unanimous-consent agreement was reached providing for further consideration of the motion to proceed to consideration of the bill at approximately 10 a.m., on Wednesday, February 15, 2006.

Page S1320

Tax Relief Extension Reconciliation Act—Motions To Instruct Conferees: Senate completed consideration of the message of the House of Representatives to accompany H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006, after taking action on the following motions to instruct conferees proposed thereto: **Pages S1135–40**

Adopted:

By 53 yeas to 47 nays (Vote No. 16), Grassley Motion to Instruct Conferees to insist that the final conference report include the ''hold-harmless'' relief from the individual alternative minimum tax in 2006 (sections 106 and 107 of the amendment passed by the Senate) to protect middle class families and includes an extension of lower tax rates on capital gains and dividends (based on section 203 of the bill passed by the House of Representatives) to protect tax cuts for middle class families. **Page S1137**

DeWine Motion to Instruct Conferees to insist that the final conference report accept the veterans' mortgage bonds expansion provisions contained in

section 303 of the bill as passed by the House of Representatives with such revisions as are necessary to provide veterans in all 50 States with access to lower-rate mortgages. **Page S1138**

Wyden Motion to Instruct Conferees to insist that the final conference report include a provision that repeals accelerated depreciation for geologic and geophysical costs for oil and gas exploration by the 5 major oil companies. **Page S1138**

Grassley (for Talent/Snow/Lincoln) Motion to Instruct Conferees to insist that the final conference report include a permanent extension of the modifications to the child tax credit made by the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Jobs and Growth Tax Relief Reconciliation Act of 2003. **Page S1138**

By 75 yeas to 25 nays (Vote No. 19), Grassley (for Hutchison) Motion to Instruct Conferees to insist that the final conference report include a permanent extension of the election to deduct State and local general sales taxes (based on section 105 of the amendment passed by the Senate). **Page S1139**

Rejected:

By 47 yeas to 53 nays (Vote No. 17), Kennedy Motion to Instruct Conferees to reject the extension of the capital gains and dividends rate reduction contained in section 203 of the bill as passed by the House of Representatives. **Page S1137**

By 45 yeas to 55 nays (Vote No. 18), Reed Motion to Instruct Conferees to insist that the final conference report include funding to strengthen America's military contained in title VI of the Senate amendment instead of any extension of the tax cuts for capital gains and dividends, which does not expire until 2009, contained in section 203 of the bill as passed by the House of Representatives. **Page S1138**

By 46 yeas to 54 nays (Vote No. 20), Lautenberg Motion to Instruct Conferees to insist that the final conference report does not increase the national debt of the United States. **Page S1139**

Withdrawn:

Obama Motion to Instruct Conferees to insist that the final conference report include tax relief for the most vulnerable members of our society, including the low-income victims of Hurricane Katrina and children in families that are too poor to benefit fully from the refundable child tax credit. **Pages S1136, S1138**

Hatch Motion to Instruct Conferees to insist that the final conference report include a permanent extension of the credit for increasing research activities (based on section 108 of the amendment passed by the Senate), in order to improve American competitiveness. **Pages S1136, S1138**

Reid (for Menendez) Motion to Instruct Conferees to insist that the final conference report include the Senate passed "hold-harmless" relief from the individual alternative minimum tax (AMT) in 2006, and does not include the extension of lower tax rates on capital gains and dividends. **Pages S1136, S1138**

Stabenow Motion to Instruct Conferees to insist that the final conference report include a permanent extension of the credit for increasing research activities, and to reject any extension of the tax rate for capital gains and dividends which does not expire until 2009. **Pages S1136, S1138**

Grassley (for Lott) Motion to Instruct Conferees to insist that the final conference report include the repeal of the individual alternative minimum tax (based on sections 106 and 107 of the amendment passed by the Senate). **Pages S1136, S1138**

Grassley (for Santorum) Motion to Instruct Conferees to insist that the final conference report include a permanent extension of the above-the-line deduction for tuition and fees (based on section 103 of the amendment passed by the Senate). **Pages S1136, S1138**

Grassley Motion to Instruct Conferees to insist that the final conference report ensure that in 2009 and 2010, the international competitiveness of the United States in attracting capital investment, and therefore job creation, is not weakened further by a higher combined corporate and individual income tax rate on corporate and capital income as a result of a higher dividend tax rate. **Pages S1136, S1138**

Schumer Motion to Instruct Conferees to insist that the final conference report include the Senate-passed provision to extend the above-the-line deduction for tuition and fees through December 31, 2009 (section 103), before it includes the House-passed extension of lower tax rates on capital gains and dividends (section 203), given budget constraints, noting that a conference report which maintains the tuition deduction will provide needed tax relief to more than 4,000,000 American families each year that are struggling to keep pace with rising tuition costs. **Pages S1136, S1138**

The Chair was authorized to appoint the following conferees on the part of the Senate: Senators Grassley, Kyl, and Baucus. **Page S1139**

Message From the President: Senate received the following message from the President of the United States:

Transmitting, pursuant to law, a report prepared by the National Science Board entitled "Science and Engineering Indicators—2006"; which was referred to the Committee on Commerce, Science, and Transportation. (PM–40) **Page S1173**

Nominations Received: Senate received the following nominations:

Jon T. Rymer, of Tennessee, to be Inspector General, Federal Deposit Insurance Corporation.

Jerome A. Holmes, of Oklahoma, to be United State District Judge for the Northern District of Oklahoma.

Milan D. Smith, Jr., of California, to be United States Circuit Judge for the Ninth Circuit.

Frank D. Whitney, of North Carolina, to be United States District Judge for the Western District of North Carolina. **Page S1320**

Executive Communications: **Pages S1173–75**

Additional Cosponsors: **Pages S1175–76**

Statements on Introduced Bills/Resolutions: **Pages S1176–80**

Additional Statements: **Pages S1172–73**

Amendments Submitted: **Pages S1180–S1319**

Notices of Hearings/Meetings: **Page S1319**

Authorities for Committees to Meet: **Pages S1319–20**

Record Votes: Six record votes were taken today. (Total—21) **Pages S1137, S1138, S1139, S1168–69**

Adjournment: Senate convened at 9:45 a.m., and adjourned at 7:19 p.m., until 9:30 a.m., on Wednesday, February 15, 2006. (For Senate's program, see the remarks of the Majority Leader in today's Record on page S1320.)

Committee Meetings

(Committees not listed did not meet)

DEFENSE AUTHORIZATION

Committee on Armed Services: Committee concluded a hearing to examine the defense authorization request for fiscal year 2007 and the future years defense program, after receiving testimony from Frances J. Harvey, Secretary, and General Peter J. Schoomaker, USA, Chief of Staff, both of the United States Army; and Lieutenant General H. Steven Blum, Chief of the National Guard Bureau.

NOMINATIONS

Committee on Banking, Housing, and Urban Affairs: Committee concluded a hearing to examine the nominations of Randall S. Kroszner, of New Jersey, and Kevin M. Warsh, of New York, who was introduced by Senator Schumer, each to be a Member of the Board of Governors of the Federal Reserve System, and Edward P. Lazear, of California, to be a Member of the Council of Economic Advisers, after the nominees testified and answered questions in their own behalf.

BROADBAND

Committee on Commerce, Science, and Transportation: Committee concluded a hearing to examine issues of municipal broadband and the role of Federal, State and local government in the digital world, after receiving testimony from Robert K. Sahr, South Dakota Public Utilities Commission, Pierre; Dianne Munns, Iowa Utilities Board, on behalf of the National Association of Regulatory Utility Commissioners, and John R. Perkins, National Association of State Utility Consumer Advocates, both of Des Moines, Iowa; Michael F. Altschul, CTIA—The Wireless Association, and Donald B. Berrryman, Earthlink, Inc., both of Washington, D.C.; Douglas A. Boone, Premier Communications, Sioux City, Iowa; and Dianah L. Neff, Philadelphia Chief Information Officer, Philadelphia, Pennsylvania.

CANADIAN SOFTWOOD LUMBER

Committee on Commerce, Science, and Transportation: Subcommittee on Trade, Tourism, and Economic Development concluded a hearing to examine the economic impacts of the Canadian softwood lumber dispute on U.S. industries, focusing on the Administration's efforts to negotiate a settlement to the longstanding trade dispute regarding softwood lumber from Canada, after receiving testimony from Franklin L. Lavin, Under Secretary of Commerce for International Trade; Susan Schwab, Deputy United States Trade Representative, Office of the United States Trade Representative; Steve Swanson, The Swanson Group, Glendale, Oregon, on behalf of the Coalition for Fair Lumber Imports; Bill Kluting, Western Council of Industrial Workers, Monmouth, Oregon; and Barry Rutenberg, Barry Rutenberg Homes, Gainesville, Florida, on behalf of the National Association of Home Builders.

OLDER AMERICANS ACT

Committee on Health, Education, Labor, and Pensions: Subcommittee on Retirement Security and Aging met to discuss the reauthorization of the Older Americans Act, receiving testimony from Jo Reed, AARP, Howard Bedlin, National Council on Aging, Laura Howard, National Association of Nutrition and Aging Service Programs, Patrick Flood, National Association of State Union on Aging, Sany Markwood, National Association of Area Agencies on Aging, Karyne Jones, National Caucus and Center on Black Aged, Inc., Bob Blancato, Matz, Blancato and Associates, Inc., on behalf of the Elder Justice Coalition, Barbara B. Kennelly, Leadership Council of Aging Organizations, and George J. Kourpias, Alliance for Retired Americans, all of

Washington, D.C.; Enid A. Borden, Meals on Wheels Association of America, Alexandria, Virginia; Suzanne Mintz, National Family Caregivers Association, Kensington, Maryland; Clayton S. Fong, National Asian Pacific Center on Aging, Seattle, Washington; and Carmela G. Lacayo, National Association for Hispanic Elderly, Pasadena, California.

Subcommittee expects to discuss this and related issues again.

BUDGET: INDIAN PROGRAMS

Committee on Indian Affairs: Committee concluded an oversight hearing to examine the President's proposed budget request for fiscal year 2007 for Indian programs, after receiving testimony from James Cason, Associate Deputy Secretary, and Ross Swimmer, Special Trustee for American Indians, both of the Department of the Interior; Charles W. Grim, Assistant Surgeon General, Director, Indian Health Service, Department of Health and Human Services; Darla Marburger, Deputy Assistant Secretary for Policy, Office of Elementary and Secondary Education, and Tom Corwin, Director of Division of Elementary and Secondary Vocational Analysis, both of the Department of Education; Orlando J. Cabrera, Assistant Secretary, Office of Public and Indian Housing, Department of Housing and Urban Development; Regina B. Schofield, Assistant Attorney General, Office of Justice Programs, Department of Justice; Joseph A. Garcia, National Congress of American Indians, Kathleen Kitcheyan, National Indian Health Board, Cheryl Parish and Gary Gordon, both of National American Indian Housing Council, and Gary L. Edwards, National Native American Law Enforcement Association, all of Washington, D.C.; and Ryan Wilson, National Indian Education Association, Alexandria, Virginia.

House of Representatives

Chamber Action

Public Bills and Resolutions Introduced: 14 public bills, H.R. 4740–4753; and 7 resolutions, H. Con. Res. 339–340 and H. Res. 673–677 were introduced. **Pages H272–73**

Additional Cosponsors: **Pages H274–75**

Reports Filed: Reports were filed on Friday, February 10th, as follows:

H. Res. 593, directing the Secretary of State, the Secretary of Defense, the Secretary of Homeland Security, and the Attorney General, and requesting the President, to provide certain information to the House of Representatives relating to extraordinary rendition of certain foreign persons, adversely (H. Rept. 109–374);

H. Res. 624, requesting the President of the United States and directing the Secretary of State to provide to the House of Representatives certain documents in their possession relating to United States policies under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Geneva Conventions, adversely (H. Rept. 109–375); and

H. Res. 642, requesting the President and directing the Secretary of State to provide to the House of Representatives certain documents in their possession relating to the Secretary of State's trip to Europe in December 2005, adversely (H. Rept. 109–376). **Page H272**

Speaker: Read a letter from the Speaker wherein he appointed Representative Issa to act as Speaker Pro Tempore for today. **Page H227**

Message From the Clerk: Read a letter from the Clerk notifying the House that she received a message from the President on Monday, February 13, containing the Economic Report of the President. **Pages H229–30**

Presidential Message: Read a message from the President wherein he transmitted the 2006 Economic Report of the President—referred to the Joint Economic Committee and ordered printed (H. Doc. 109–78). **Page H230**

Commission Appointment: Read a letter from the Committee on Ways and Means Ranking Minority Member, Mr. Rangel, whereby he appointed to the National Surface Transportation Infrastructure Financing Commission the following individuals: Mr. Elliot (Lee) Sander, Director of the Rudin Center for Transportation Policy and Management at New York University, and Senior Vice President and Director of Strategic Development at DMJM Harris, of New York City, New York; and Mr. Craig Lentzsch, CEO of Coach USA and KBUS Holdings, of Dallas, Texas. **Page H231**

Suspensions: The House agreed to suspend the rules and pass the following measures:

Expressing the Sense of Congress regarding the contribution of the USO to the morale and welfare

of our servicemen and women of our armed forces and their families: H. Con. Res. 322, amended, to express the Sense of Congress regarding the contribution of the USO to the morale and welfare of our servicemen and women of our armed forces and their families, by a yea-and-nay vote of 407 yeas with none voting ''nay'', Roll No. 8;

Pages H231–32 H238–39

Agreed to amend the title so as to read: ''Expressing the appreciation of Congress for the contributions of the United Service Organizations, Incorporated (the USO), to the morale and welfare of the members of the Armed Forces and their families.''.

Page H239

Supporting the goals and ideals of a Day of Hearts, Congenital Heart Defect Day in order to increase awareness about congenital heart defects: H. Res. 629, to support the goals and ideals of a Day of Hearts, Congenital Heart Defect Day in order to increase awareness about congenital heart defects;

Pages H234–36

Designating the facility of the United States Postal Service located at 320 High Street in Clinton, Massachusetts, as the ''Raymond J. Salmon Post Office'': H.R. 4152, to designate the facility of the United States Postal Service located at 320 High Street in Clinton, Massachusetts, as the ''Raymond J. Salmon Post Office''; and **Pages H236–237**

Designating the facility of the United States Postal Service located at 57 Rolfe Square in Cranston, Rhode Island, shall be known and designated as the ''Holly A. Charette Post Office'': S. 1989, to designate the facility of the United States Postal Service located at 57 Rolfe Square in Cranston, Rhode Island, shall be known and designated as the ''Holly A. Charette Post Office'', by a yea-and-nay vote of 408 yeas with none voting ''nay'', Roll No. 9;—clearing the measure for the President.

Pages H237–40

Recess: The House recessed at 3:10 p.m. and reconvened at 6:30 p.m. **Page H238**

Presidential Message: Read a message from the President wherein he transmitted a report prepared by the National Science Board entitled, ''Science and Engineering Indicators—2006'';—referred to the Committee on Science. **Page H238**

Senate Message: Messages received from the Senate by the Clerk and subsequently presented to the House today appear on pages H238 and H245.

Senate Referrals: S. 2166 was referred to the Committee on House Administration and S. 2275 was held at the desk. **Page H231**

Quorum Calls—Votes: Two yea-and-nay votes developed during the proceedings of today and appear on pages H239 and H239–40. There were no quorum calls.

Adjournment: The House met at 2 p.m. and adjourned at 11:55 p.m.

Committee Meetings

MEMBERS' DAY

Committee on the Budget: Held a hearing on Members' Day. Testimony was heard from Representatives Neugebauer, King of Iowa, Ehlers, Holt, McMorris, Hinojosa, Tiahrt, Young of Alaska, Regula, Fossella, McGovern, Capito, Carson, Bass, Bishop of New York, Kelly, Kucinich, Miller of North Carolina, Kennedy of Minnesota, Brown-Waite of Florida, Salazar, Hayes, Fitzpatrick of Pennsylvania, and Mica.

POST 9/11—NATIONAL SECURITY WHISTLEBLOWERS

Committee on Government Reform: Subcommittee on National Security, Emerging Threats, and International Relations held a hearing entitled ''National Security Whistleblowers in the post-9/11 Era: Lost in a Labyrinth and Facing Subtle Retaliation.'' Testimony was heard from James McVay, Deputy Special Counsel, Office of Special Counsel; Glenn A. Fine, Inspector General, Department of Justice; Gregory H. Friedman, Inspector General, Department of Energy; Thomas Gimble, Acting Inspector General, Department of Defense; and public witnesses.

RESOLUTION—SUPPORTING REPUBLIC OF BELARUS EFFORTS FOR DEMOCRACY

Committee on International Relations: Subcommittee on Europe and Emerging Threats approved for full Committee action the following resolutions: H. Res. 673, Expressing support for the efforts of the people of the Republic of Belarus to establish a full democracy, the rule of law, and respect for human rights and urging the Government of Belarus to conduct a free and fair presidential election on March 19, 2006; and H. Res. 578, Concerning the government of Romania's ban on intercountry adoptions and the welfare of orphaned or abandoned children in Romania.

CHINESE INFLUENCE ON U.S. FOREIGN POLICY

Committee on International Relations: Subcommittee on Oversight and Investigations held a hearing on Chinese Influence on U.S. Foreign Policy through U.S. Educational Institutions, Multilateral Organizations and Corporate America. Testimony was heard from public witnesses.

VA EDUCATION AND TRAINING BUDGET

Committee on Veterans' Affairs: Subcommittee on Economic Opportunity held an oversight hearing on the VA's Fiscal Year 2007 budget request for the education, vocational rehabilitation, and loan guaranty programs. Testimony was heard from Ron Aument, Deputy Under Secretary, Benefits, Department of Veterans Affairs; and representatives of veterans organizations.

VETERANS HEALTH ADMINISTRATION BUDGET

Committee on Veterans' Affairs: Subcommittee on Health held an oversight hearing on the Department of Veterans Affairs Fiscal Year 2007 budget request for the Veterans Health Administration. Testimony was heard from Jonathan B. Perlin, M.D., Under Secretary, Health, Department of Veterans Affairs; and representatives of veterans organizations.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, *p. D88)*

H.R. 4519, to amend the Public Health Service Act to extend funding for the operation of State high risk health insurance pools. Signed on February 10, 2006. (Public Law 109–172)

COMMITTEE MEETINGS FOR WEDNESDAY, FEBRUARY 15, 2006

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Appropriations: Subcommittee on Legislative Branch, to resume hearings to examine the progress of construction on the Capitol Visitor Center, 10:30 a.m., SD–138.

Committee on Armed Services: to hold hearings to examine the nominations of Preston M. Geren, of Texas, to be Under Secretary of the Army, Michael L. Dominguez, of Virginia, to be Deputy Under Secretary of Defense for Personnel and Readiness, James I. Finley, of Minnesota, to be Deputy Under Secretary of Defense for Acquisition and Technology, and Thomas P. D'Agostino, of Maryland, to be Deputy Administrator for Defense Programs, National Nuclear Security Administration, 9:30 a.m., SD–106.

Committee on Banking, Housing, and Urban Affairs: to hold hearings to examine rebuilding needs in Hurricane Katrina-impacted areas, 10 a.m., SD–538.

Committee on the Budget: to hold hearings to examine understanding the causes and solutions to addressing the Federal tax gap, 10 a.m., SD–608.

Committee on Commerce, Science, and Transportation: to hold hearings to examine video franchising, 10 a.m., SD–562.

Full Committee, to hold hearings to examine developments in nanotechnology, 2:30 p.m., SD–562.

Committee on Energy and Natural Resources: to hold hearings to examine S. 2197, to improve the global competitiveness of the United States in science and energy technology, to strengthen basic research programs at the Department of Energy, and to provide support for mathematics and science education at all levels through the resources available through the Department of Energy, including at the National Laboratories, 10:30 a.m., SD–366.

Subcommittee on Public Lands and Forests, to hold hearings to review the progress made on the development of interim and long-term plans for use of fire retardant aircraft in Federal wildfire suppression operations, 2:30 p.m., SD–366.

Committee on Environment and Public Works: business meeting to consider the nominations of Terrence L. Bracy, of Virginia, to be a Member of the Board of Trustees of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Dennis Bottorff, Susan Richardson Williams, and William B. Sansom, all of Tennessee, Robert M. Duncan, of Kentucky, Howard A. Thrailkill, of Alabama, and Donald R. DePriest, of Mississippi, each to be a Member of the Board of Directors of the Tennessee Valley Authority, 9:30 a.m., SD–628.

Full Committee, to hold hearings to examine the President's proposed budget request for fiscal year 2007 for EPA, 9:35 a.m., SD–628.

Committee on Foreign Relations: to hold hearings to examine the President's proposed budget request for fiscal year 2007 for foreign affairs; and, if a quorum is present, consider and vote on the nominations of Claudia A. McMurray, of Virginia, to be Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, Bradford R. Higgins, of Connecticut, to be Assistant Secretary for Resource Management and Chief Financial Officer, Department of State, Jackie Wolcott Sanders, of Virginia, to be U.S. Alternate Representative for Special Political Affairs in the United Nations, with the rank of Ambassador, and to be U.S. Alternate Representative to the Sessions of the General Assembly of the United Nations during her tenure of service as U.S. Alternate Representative for Special Political Affairs in the United Nations, Janet Ann Sanderson, of Arizona, to be Ambassador to the Republic of Haiti, Bernadette Mary Allen, of Maryland, to be Ambassador to the Republic of Niger, Patricia Newton Moller, of Arkansas, to be Ambassador to the Republic of Burundi, Steven Alan Browning, of Texas, to be Ambassador to the Republic of Uganda, Robert Weisberg, of Maryland, to be Ambassador to the Republic of Congo, Michael W. Michalak, of Michigan, for the rank of Ambassador during his tenure of service as United States Senior Official to the Asia-Pacific Economic Cooperation Forum, Janice L. Jacobs, of Virginia, to be Ambassador to the Republic of Senegal, and to serve concurrently and without additional compensation as Ambassador to the Republic of Guinea-Bissau, Jeanine E. Jackson, of Wyoming, to be Ambassador to Burkina Faso, James D. McGee, of Florida, to

serve concurrently and without additional compensation as Ambassador to the Union of Comoros; Kristie A. Kenney, of Virginia, to be Ambassador to the Republic of the Philippines, Gary A. Grappo, of Virginia, to be Ambassador to the Sultanate of Oman, Patricia A. Butenis, of Virginia, to be Ambassador to the People's Republic of Bangladesh, Donald T. Bliss, of Maryland, for the rank of Ambassador during his tenure of service as Representative of the United States of America on the Council of the International Civil Aviation Organization, Ben S. Bernanke, to be United States Alternate Governor of the International Monetary Fund, International Monetary Fund; and 2 Foreign Service Officer promotion lists received in the Senate on December 13 and December 14, 2005, respectively, 9:45 a.m., SH–216.

Committee on Health, Education, Labor, and Pensions: Subcommittee on Employment and Workplace Safety, to hold hearings to examine communication and mine safety technology issues, 10 a.m., SD–430.

Committee on Homeland Security and Governmental Affairs: to continue hearings to examine Hurricane Katrina response issues, focusing on the Homeland Security Department's preparation and response, 11:15 a.m., SD–342.

Committee on the Judiciary: to hold hearings to examine the nominations of Stephen G. Larson, to be United States District Judge for the Central District of California, Jack Zouhary, to be United States District Judge for the Northern District of Ohio, and John F. Clark, of Virginia, to be Director of the United States Marshals Service, Department of Justice, 10 a.m., SD–226.

Select Committee on Intelligence: to receive a closed briefing regarding certain intelligence matters, 2:30 p.m., SH–219.

House

Committee on Appropriations, Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, on USDA, 9:30 a.m., 2362 Rayburn.

Subcommittee on Homeland Security, on DHS Management and Operations, 2:30 p.m., 2359 Rayburn.

Subcommittee on Interior, Environment, and Related Agencies, an oversight hearing on Woodrow Wilson International Center for Scholars, 10 a.m., B–308 Rayburn.

Subcommittee on Military Quality of Life, Veterans Affairs, and Related Agencies, on DOD Budget Overview, 10 a.m., H–143 Capitol, and on Quality of Life—Senior Enlisted, 1:30 p.m., 2358 Rayburn.

Committee on Armed Services, hearing on the Fiscal Year 2007 National Defense Authorization budget request from the Department of the Army, 10 a.m., 2118 Rayburn.

Subcommittee on Strategic Forces and the Subcommittee on Terrorism, Unconventional Threats and Capabilities, joint hearing on the Able Danger program, 2:30 p.m., 2118 Rayburn.

Committee on the Budget, hearing on Domestic Entitlements and the Federal Budget, 2 p.m., 210 Cannon.

Committee on Energy and Commerce, hearing entitled ''The Administration's FY '07 Health Care Priorities,'' 2 p.m., 2123 Rayburn.

Subcommittee on Commerce, Trade, and Consumer Protection, hearing entitled ''The Law and Economics of Interchange Fees,'' 10 a.m., 2123 Rayburn.

Committee on Financial Services, hearing to receive the Federal Reserve Board's semiannual monetary policy report, 10 a.m., 2128 Rayburn.

Committee on Government Reform, Subcommittee on Energy and Resources, hearing entitled ''Meythol Bromide: Are U.S. Interests Being Served by the Critical User Exemption Process?'' 2 p.m., 2203 Rayburn.

Subcommittee on Federalism and the Census, hearing entitled ''Living in America: Is Our Public Housing System Up to the Challenges of the 21st Century?'' 2 p.m., 2247 Rayburn.

Committee on Homeland Security, Subcommittee on Economic Security, Infrastructure Protection and Cybersecurity, hearing entitled ''The President's Fiscal Year Budget: Coast Guard Programs Impacting Maritime Border Security,'' 5 p.m., 311 Cannon.

Subcommittee on Emergency Preparedness, Science, and Technology, hearing entitled ''The State of Interoperable Communications: Perspectives from the Field,'' 10 a.m., 311 Cannon.

Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, hearing entitled ''The President's Proposed FY07 Budget for the Department of Homeland Security: The Office of Intelligence and Analysis,'' 2:30 p.m., 311 Cannon.

Committee on International Relations, Subcommittee on Africa, Global Human Rights and International Operations and the Subcommittee on Asia and the Pacific, hearing entitled ''The Internet in China: A Tool for Freedom or Suppression?'' 10 a.m., 2172 Rayburn.

Committee on the Judiciary, to mark up the following measures: H. Res. 643, Directing the Attorney General to submit to the House of Representatives all documents in the possession of the Attorney General relating to warrantless electronic surveillance of telephone conversations and electronic communications of persons in the United States conducted by the National Security Agency; H. Res. 644, Requesting the President and directing the Attorney General to transmit to the House of Representatives not later than 14 days after the date of the adoption of this resolution documents in the possession of those officials relating to the authorization of electronic surveillance of citizens of the United States without court approved warrants; H.R. 2829, Office of National Drug Control Policy Reauthorization Act of 2005; H.R. 3505, Financial Services Regulatory Relief Act of 2005; H. Con. Res. 316, Raising awareness and encouraging prevention of stalking by establishing January 2006 as ''National Stalking Awareness Month;'' H. Res. 357, Honoring Justice Sandra Day O'Connor; and H.R. 4709, Law Enforcement and Phone Privacy Protection Act of 2006, 10 a.m., 2141 Rayburn.

Subcommittee on Crime, Terrorism, and Homeland Security, to mark up H.R. 1704, Second Chance Act of 2005; followed by an oversight hearing of the Bureau of

Alcohol, Tobacco, Firearms and Explosives (BATFE) Part 1: Gun Show Enforcement, 4 p.m., 2141 Rayburn.

Committee on Resources, Subcommittee on National Parks, oversight hearing entitled ''The National Park Service 2006 Draft Management Policies and proposed changes to Director's Order 21,'' 2 p.m., 1324 Longworth.

Committee on Science, hearing on An Overview of the Federal R&D Budget for Fiscal Year 2007, 10 a.m., 2318 Rayburn.

Committee on Transportation and Infrastructure, Subcommittee on Aviation, oversight hearing on Commercial Jet Fuel Supply: Impact and Cost on the U.S. Airline Industry, 10 a.m., 2167 Rayburn.

Subcommittee on Highways, Transit and Pipelines, oversight hearing on How the FY 2007 Budget Proposal Impacts SAFETEA LU, 2 p.m., 2167 Rayburn.

Committee on Veterans' Affairs, hearing on annual legislative agenda, views and priorities for veterans organizations, 10:30 a.m., 334 Cannon.

Committee on Ways and Means, to continue hearings on President Bush's Budget proposals for fiscal year 2007; and to consider Draft Views and Estimates for submission to the Committee on the Budget; 10:30 a.m., and to hold a hearing on President Bush's trade agenda, 1:30 p.m., 1100 Longworth.

Permanent Select Committee on Intelligence, Subcommittee on Oversight, executive, Briefing on The Intelligence Value of Interrogation, 12 p.m., H–405 Capitol.

Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, to approve the Select Committee Report, 2 p.m., 2154 Rayburn.

Next Meeting of the SENATE

9:30 a.m., Wednesday, February 15

Senate Chamber

Program for Wednesday: After the transaction of any morning business (not to extend beyond 30 minutes), Senate will continue consideration of the motion to proceed to consideration of S. 2271, USA PATRIOT Act Additional Reauthorizing Amendment Act.

Next Meeting of the HOUSE OF REPRESENTATIVES

10 a.m., Wednesday, February 15

House Chamber

Program for Wednesday: Consideration of suspensions: (1) H. Con. Res. 300—Paying tribute to Shirley Horn in recognition of her many achievements and contributions to the world of jazz and American culture; (2) S. 2275—National Flood Insurance Program Enhanced Borrowing Authority Act of 2006; and (3) S. Con. Res. 79—A concurrent resolution expressing the sense of Congress that no United States assistance should be provided directly to the Palestinian Authority if any representative political party holding a majority of parliamentary seats within the Palestinian Authority maintains a position calling for the destruction of Israel.

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