Con. Res. 87, a concurrent resolution congratulating the Republic of Latvia on the 90th anniversary of its declaration of independence.

S. RES. 551

At the request of Mr. THUNE, his name was added as a cosponsor of S. Res. 551, a resolution celebrating 75 years of successful State-based alcohol regulation.

At the request of Mr. BARRASSO, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. Res. 551, supra.

S. RES. 627

At the request of Mr. NELSON of Florida, the names of the Senator from Oregon (Mr. SMITH), the Senator from New York (Mrs. CLINTON) and the Senator from Indiana (Mr. BAYH) were added as cosponsors of S. Res. 627, a resolution welcoming home Keith Stansell, Thomas Howes, and Marc Gonsalves, three citizens of the United States who were held hostage for over five years by the Revolutionary Armed Forces of Colombia (FARC) after their plane crashed on February 13, 2003.

S. RES. 630

At the request of Mr. SANDERS, his name was added as a cosponsor of S. Res. 630, a resolution recognizing the importance of connecting foster youth to the workforce through internship programs, and encouraging employers to increase employment of former foster youth.

S. RES. 632

At the request of Mr. FEINGOLD, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. Res. 632, a resolution calling on the Governments of the People's Republic of China and the international community to use the upcoming Olympic Games as an opportunity to push for the parties to the conflicts in Sudan, Chad, and the Central African Republic to cease hostilities and revive efforts toward a peaceful resolution of their national and regional conflicts.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. SNOWE (for herself and Mr. CONRAD):

S. 3371. A bill to amend the Internal Revenue Code of 1986 to simplify the deduction for use of a portion of a residence as a home office by providing an optional standard home office deduction; to the Committee on Finance.

Ms. SNOWE. Mr. President, today I rise to introduce legislation to offer a drastically simplified alternative for home-based businesses to benefit from the home office tax deduction. The U.S. Small Business Administration's, SBA's, Office of Advocacy designated reforming the home office tax deduction as one of its top ten Regulatory Review and Reform initiatives for 2008. By establishing an optional home office deduction, the Home Office Tax Deduction Simplification and Improvement Act of 2008 would take a strong step toward making our tax laws easier to understand. I thank Senator Conrad for joining me to introduce this critical bill.

As Ranking Member of the Senate Committee on Small Business and Entrepreneurship, I continually hear from small enterprises across Maine and this nation about the necessity of tax relief and reform. Despite the fact that small firms are our economy's real job creators, the current tax system places an entirely unreasonable burden on them as they struggle to satisfy their tax obligations.

Notably, according to the Office of Management and Budget's Office of Information and Regulatory Affairs, the American public spends approximately 9 billion hours each year to complete government-mandated forms and paperwork. A staggering 80 percent of this time is consumed by completing tax forms. What's even more troubling is that companies that employ fewer than 20 employees spend nearly $1,304 per employee in tax compliance costs, an amount that is nearly 67 percent more than larger firms.

Turning to the legislation I am offering today, the Internal Revenue Code presently offers qualified individuals a home office tax deduction if they use a portion of their home as a principal place of business or as a space to meet with their patients or clients. That said, although recent research from the SBA indicates that roughly 53 percent of America's small businesses are home-based, few of these firms take advantage of the home office tax deduction. The reason is simple: reporting the deduction is complicated.

A 2006 survey conducted by the National Federation of Independent Business, NFIB, Research Foundation found that approximately 33 percent of small-employer taxpayers try to comprehend the tax rules governing the home office tax deduction, but only about half of those respondents believe that they actually have a good understanding of the rules. As Dewey Martin, a Certified Public Accountant from my home State of Maine, so aptly said in recent testimony before the Senate Finance Committee, ''Many small business owners avoid the deduction because of the complications and the fear of a potential audit.''

With a morass of paperwork attributable to the home office deduction, the time-consuming process of navigating the tangled web of rules and regulations makes it unsurprising that so many small business owners forego the home office deduction. So to encourage the use of the home office tax deduction, the bill we are introducing today would establish an optional, easy-to-use incentive.

Turning to specifics, our bill would direct the Secretary of the Treasury to establish a method for determining a deduction that consists of multiplying an applicable standard rate by the square footage of the type of property being used as a home office. The proposal would also require the IRS to separately state the amounts allocated to several types of expenses in order to reduce the burden on the taxpayer. It is vital that the IRS clearly identify the amounts of the deduction devoted to real estate taxes, mortgage interest, and depreciation so that taxpayers do not duplicate them on Schedule A. Finally, the bill makes two changes designed to ease the administration of the deduction: First, to reflect an economy in which many business owners conduct business or consult with customers through the Internet or over the phone versus face-to-face, our legislation takes these entrepreneurs into account by allowing the home office deduction to be taken if the taxpayer uses the home to meet or deal with clients regardless of whether the clients are physically present. Second, our bill would allow for de minimis use of business space for personal activities so that taxpayers would not lose their ability to claim the deduction if they make a personal call or pay a bill online.

I would be remiss not to note that the bill we are introducing today is the result of the dedicated efforts of various groups and organizations, which have worked with Senator Conrad and me on a consensus approach to improve the current law home office tax deduction. In particular, it is significant to note that the IRS Taxpayer Advocate Service strongly backs this bill. In fact, the National Taxpayer Advocate, Nina E. Olson, sent my office the following statement regarding our legislation: ''In my 2007 Annual Report to Congress, I made a similar proposal to simplify the home office business deduction. I am pleased that Senator Snowe and Conrad's proposed bill reflects the gist of my legislative recommendation. Reducing the burdensome substantiation requirements for employees and self-employed taxpayers who incur modest home office costs would make the home office business deduction simpler and more accessible to them.''

My office also received an endorsement of the bill from the National Federation of Independent Business. Dan Danner, the organization's Executive Director, said the following: ''Currently only a small percentage of home-based businesses in the U.S. take advantage of the home-office deduction because calculating the deduction is unnecessarily complicated. NFIB small business owners have advocated for a simpler, standard home-office deduction for years. The Snowe-Conrad legislation gives home-based businesses the option to deduct a legitimate business expense with minimum hassle. This commonsense change to the tax code will reduce tax complexity and help many home-based businesses take advantage of this deduction.'' Additionally, the SBA's Office of Advocacy added: ''The SBA Office of Advocacy reviewed the legislation and supports it.''

In closing, according to the SBA's Office of Advocacy, America's home-

based sole proprietors generate $102 billion in revenue annually. With this in mind, it is absolutely critical to endow these small firms with as much relief from burdensome tax constraints as possible so that they can focus their efforts on developing the products and services of the future, as well as creating new jobs. The confusion over the home office business tax deduction, in my estimation, can be easily solved by passing this legislation. I urge all Senators to consider the benefits this bill will provide to thousands of small business owners, and I look forward to working with my colleagues to enact it in a timely manner.

Mr. President, 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. 3371

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 ''Home Office Tax Deduction Simplification and Improvement Act of 2008''.

SEC. 2. OPTIONAL STANDARD HOME OFFICE DEDUCTION.

(a) IN GENERAL.—Subsection (c) of section 280A of the Internal Revenue Code of 1986 (relating to exceptions for certain business or rental use; limitation on deductions for such use) is amended by adding at the end the following new paragraph:

''(7) ELECTION OF STANDARD HOME OFFICE DEDUCTION.—

''(A) IN GENERAL.—In the case of an individual who is allowed a deduction for the use of a portion of a dwelling unit as a business by reason of paragraph (1), (2), or (4), notwithstanding the limitations of paragraph (5), if such individual elects the application of this paragraph for the taxable year with respect to such dwelling unit, such individual shall be allowed a deduction equal to the standard home office deduction for the taxable year in lieu of the deductions otherwise allowable under this chapter for such taxable year by reason of paragraph (1), (2), or (4).

''(B) STANDARD HOME OFFICE DEDUCTION.—

''(i) IN GENERAL.—For purposes of this paragraph, the standard home office deduction is an amount equal to the product of—

''(I) the applicable home office standard rate, and

''(II) the square footage of the portion of the dwelling unit to which paragraph (1), (2), or (4) applies.

''(ii) APPLICABLE HOME OFFICE STANDARD RATE.—For purposes of this subparagraph, the term 'applicable home office standard rate' means the rate applicable to the taxpayer's category of business, as determined and published by the Secretary for the 3 categories of businesses described in paragraphs (1), (2), and (4) for the taxable year.

''(iii) MAXIMUM SQUARE FOOTAGE TAKEN INTO ACCOUNT.—The Secretary shall determine and publish annually the maximum square footage that may be taken into account under clause (i)(II) for each of the 3 categories of businesses described in paragraphs (1), (2), and (4) for the taxable year.

''(C) EFFECT OF ELECTION.—

''(i) GENERAL RULE.—Except as provided in clause (ii), any election under this paragraph, once made by the taxpayer with respect to any dwelling unit, shall continue to apply with respect to such dwelling unit for each succeeding taxable year.

''(ii) ONE-TIME ELECTION PER DWELLING UNIT.—A taxpayer who elects the application of this paragraph in a taxable year with respect to any dwelling unit may revoke such application in a subsequent taxable year. After so revoking, the taxpayer may not elect the application of this paragraph with respect to such dwelling unit in any subsequent taxable year.

''(D) DENIAL OF DOUBLE BENEFIT.—

''(i) IN GENERAL.—Except as provided in clause (ii), in the case of a taxpayer who elects the application of this paragraph for the taxable year, no other deduction or credit shall be allowed under this subtitle for such taxable year for any amount attributable to the portion of a dwelling unit taken into account under this paragraph.

''(ii) EXCEPTION FOR DISASTER LOSSES.—A taxpayer who elects the application of this paragraph in any taxable year may take into account any disaster loss described in section 165(i) as a loss under section 165 for the applicable taxable year, in addition to the standard home office deduction under this paragraph for such taxable year.

''(E) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph.''.

(b) MODIFICATION OF HOME OFFICE BUSINESS USE RULES.—

(1) PLACE OF MEETING.—Subparagraph (B) of section 280A(c)(1) of the Internal Revenue Code of 1986 is amended to read as follows:

''(B) as a place of business which is used by the taxpayer in meeting or dealing with patients, clients, or customers in the normal course of the taxpayer's trade or business, or''.

(2) DE MINIMIS PERSONAL USE.—Paragraph (1) of section 280A(c) of such Code is amended by striking ''for the convenience of his employer'' and inserting ''for the convenience of such employee's employer. A portion of a dwelling unit shall not fail to be deemed as exclusively used for business for purposes of this paragraph solely because a de minimis amount of non-business activity may be carried out in such portion''.

(c) REPORTING OF EXPENSES RELATING TO HOME OFFICE DEDUCTION.—Within 60 days after the date of the enactment of this Act, the Secretary of the Treasury shall ensure that all forms and schedules used to calculate or report itemized deductions and profits or losses from business or farming state separately amounts attributable to real estate taxes, mortgage interest, and depreciation for purposes of the deductions allowable under paragraphs (1), (2), (4), and (7) of section 280A(c) of the Internal Revenue Code of 1986.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

By Mrs. MURRAY (for herself and Ms. CANTWELL):

S. 3373. A bill to reauthorize and expand the Northwest Straits Marine Conservation Initiative Act to promote the protection of the resources of the Northwest Straits, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mrs. MURRAY. Mr. President, I rise today to introduce the Northwest Straits Marine Conservation Initiative Act. This bill will reauthorize the Northwest Straits Marine Conservation Initiative, which promotes the protection and restoration of the marine waters, habitats, and species of the Northwest Straits region of Puget Sound in Washington State in order to achieve ecosystem health and sustainable resource use.

The Northwest Straits region makes up 60 percent of the Puget Sound's shoreline and includes the marine waters, nearshore areas, and shorelines of the Strait of Juan de Fuca and of Puget Sound from the Canadian border to the southern end of Snohomish County. This region represents a unique resource of enormous environmental and economic value to the people of the United States and, in particular, of the region surrounding the Northwest Straits. However, in the last several decades, habitat health, water quality, and populations of commercially and culturally valuable species found in the Northwest Straits have sharply declined. During the 20th century, extensive development, a legacy of lost or abandoned fishing gear, land conversion, loss of native sea grass, and invasive species have destroyed once intact native habitats in its ecosystem.

In 1997, I partnered with former Congressman Jack Metcalf and brought opposing stakeholders together to create an advisory commission to address regional and local issues in the marine environment. Many were skeptical of our efforts, but our work created an innovate model for restoring and protecting marine habitats. As a result, the Northwest Straits Initiative was created to provide funding to help citizens design and carry out marine conservation projects driven by local priorities and informed by science and the Initiative's goals and benchmarks.

The Northwest Straits Initiative is composed of volunteer-based marine resources committees in 7 counties, as well as over 100 members representing residents, tribes, businesses, fishermen, boaters, and scientists. It has logged thousands of volunteer hours and completed hundreds of projects, demonstrating that citizen involvement in marine resource conservation and restoration is powerful, effective, and necessary. And the program has accomplished a lot: thousands of derelict crab pots and fishing nets have been removed, miles of forage fish spawning habitat have been surveyed, hundreds of thousands of native Olympia oysters have been planted, marine stewardship areas have been designated, nearly 1,000 tons of creosote wood has been removed, and dozens of stewardship and public outreach programs have been completed.

The authorization of the Northwest Straits Marine Conservation Initiative will ensure the continuation of this successful and innovative regional approach to marine resource restoration and protection.

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

S. 3374. A bill to establish a commission on veterans and members of the Armed Forces with post traumatic

stress disorder, traumatic brain injury, or other mental health disorders, to enhance the capacity of mental health providers to assist such veterans and members, and for other purposes; to the Committee on Veterans' Affairs.

Mr. SMITH. Mr. President, I rise today with my colleague Senator RON WYDEN to introduce a bill that will help improve the lives of our veterans who are suffering from a mental illness. The Healing Our Nation's Heroes Act of 2008 is an important bill and I look forward to its passage. Senator WYDEN has been an ally for me in the struggle to ensure veterans, particularly those who are struggling with a mental illness, get the care that they need. It is an honor for me to work him to ensure our Nation's heroes are not forgotten.

Our work together on this bill began last summer when I called a Special Committee on Aging field hearing at the Portland Veterans Affairs Medical Center in our home state of Oregon. At that hearing, Senator WYDEN and I heard the testimony of officials from the Department of Veterans Affairs, VA, as well as local leaders who operate programs that support our veterans' mental and physical health needs. I also held roundtables in my state on the issue and a follow-up hearing in Washington, DC in October, 2007 to further examine the scope of the issues and barriers facing our veterans in need of care. At this hearing, we were fortunate to have former Senator and World War II veteran Bob Dole testify. Senator Dole is a decorated war hero who has fought for decades to ensure that our servicemembers and veterans have the proper supports they need. His insight and knowledge of the issues facing our veterans, both young and old, were instrumental in helping us to draft this legislation. Without the input of countless people who told us of the problems faced by their loved ones and their own struggles with the current system, we could not have made this bill possible.

In our Nation today, we have nearly 24 million veterans, about 40 percent of whom are age 65 and older. The Veterans Health Administration serves about 5.5 million of them each year and employs 247,000 employees to attend to their care. I draw attention to these numbers to emphasize not only the scale of the system—and therefore the noted difficulties in meeting all needs at all times—but also to reiterate that there are a large number of veterans to whom we owe an enormous debt.

Unfortunately, we are not doing well enough by our veterans. We know that nationally 23 percent of all homeless persons are veterans. In Portland, Oregon, that number could be as high as 30 percent. They suffer disproportionately from poor health, including mental health and substance abuse challenges. We are fortunate to have wonderful community-based groups, such as the Central City Concern in Portland, working to help those who are homeless to get the help and support they need; but we must do more.

As was reported at the hearing I held in October of 2007, Dr. Kaplan from Portland State University found that veterans in our nation are at twice the risk of suicide as non-veterans. With the number and needs of veterans ever-increasing in our nation, we must ensure that our mental health infrastructure is prepared to handle their unique needs.

What we now refer to as post-traumatic stress disorder, PTSD, once was described as ''soldier's heart'' in the Civil War, ''shell shock'' in World War I, and ''combat fatigue'' in World War II. Whatever the name, they are serious mental illnesses and deserve equal attention and care as a physical wound. A system must be in place to help our veterans as they adjust back to life with their families and within their communities.

So many of our veterans from previous conflicts in Korea, Vietnam and around the globe in World War II, needed similar programs once they returned home. Yet, I fear that we did not do enough to help them. With proper and early support systems in place, we can work to prevent the more serious and chronic mental health issues that come from a lack of intervention.

There is no greater obligation than caring for those who have served this country with their military service. We would be remiss if we did not ensure that the health care provided to our heroes in arms is the finest medicine has to offer. A lack of culturally sensitive mental health professionals, an inability to reach rural areas, stigma related to mental illness within the military, bureaucratic run-arounds and long waiting times are just a few of the problems that we hear about—both in the news and directly from constituents. These are problems that must be addressed and can only be addressed if we all work together to find solutions.

As our country faces new waves of veterans with mental health illnesses, many of whose issues arise from combat stress, we must ensure that we learn from the lessons of the past. We must ensure that they are cared for, and we must not leave behind those who fought for our nation in previous generations.

This bill has three important parts that will improve mental health services to our veterans. First, it will establish a commission charged with oversight of outreach and services offered to veterans and members of the Armed Forces with post traumatic stress disorder and other disorders that affect mental health. This commission will be a long-term body that will ensure that our veterans have the support that they need. They will report to Congress, make recommendations to the Departments of Veterans Affairs and Defense, and look for innovative ways that the two bodies can work together to better ensure our servicemembers have the proper supports while they are in the Armed Forces, during their time of transition back to their communities, and as they live their lives as veterans in their communities.

This bill also will establish the Heroes-to-Healers Program, which we have created to build on the successes of the Troops-to-Teachers Program. In addition to the wonderful work that the Troops-to-Teachers program does in training former servicemembers to work in high-need school districts, the Heroes-to-Healers Program will train former servicemembers to become a part of the mental health workforce. We know that major complaints from servicemembers and veterans working to gain needed mental health services are the wait times for care that they experience due to lack of available staff and their desire to work with professionals who understand, first-hand, the difficult things that they have seen and type of experiences they have had serving overseas in combat zones. Through this program, participants will receive financial support to gain the training and licensing they need to become a mental health professional, while ensuring there is a minimum amount of time that they will then serve their fellow veterans in their new profession.

To further help recruitment and retention efforts for mental health service providers, the third part of this bill will provide a new grant program to state and local mental health agencies, as well as non-profit organizations to establish, expand or enhance mental health provider recruitment and retention efforts. These efforts will be targeted at supporting mid-career professionals who are looking to work in the mental health profession.

We know that we must do a better job of helping our veterans. We can do better at ensuring they can remain stable in their communities, that they can live healthy lives and that they can prosper as persons to whom we owe a great deal of gratitude and compassion.

I look forward to working with my colleagues to ensure its passage. I urge my colleagues on both sides of the aisle to support this bill.

Mr. President, 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. 3374

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 ''Healing Our Nation's Heroes Act of 2008''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Since October 2001, approximately 1,640,000 members of the Armed Forces have been deployed as part of Operation Enduring Freedom or Operation Iraqi Freedom.

(2) 300,000 members of the Armed Forces are suffering from major depression or post traumatic stress because of service in Operation Enduring Freedom or Operation Iraqi Freedom.

(3) 320,000 of the members of the Armed Forces who served in Operation Enduring Freedom or Operation Iraqi Freedom, or 19 percent of such members, have received brain injuries from such service.

(4) Only 43 percent of members of the Armed Forces with a probable traumatic brain injury have reported receiving a medical evaluation for their head injury.

(5) Records of the Department of Veterans Affairs show that 120,000 members of the Armed Forces who are no longer on active duty have been diagnosed with mental health problems, approximately half of whom suffer from post traumatic stress disorder (PTSD).

(6) In the last year, only 53 percent of those members of the Armed Forces with post traumatic stress disorder or depression have sought professional help from a mental health care provider.

(7) Rates of post traumatic stress disorder and depression are highest among members of the Armed Forces who are women or members of the Reserves.

(8) Efforts to improve access to quality mental health care are integral to supporting and treating both active duty members of the Armed Forces and veterans.

(9) Without quality mental health care, members of the Armed Forces and veterans may experience lower work productivity, which negatively affects their physical health, mental health, and family and social relationships.

(10) Cultural and personal stigmas are factors that contribute to low rates of veterans of Operation Enduring Freedom and Operation Iraqi Freedom who seek mental health care from qualified mental health care providers.

(11) The capacity of mental health care providers and access to such providers must be improved to meet the needs of members of the Armed Forces who are returning from deployment in Operation Enduring Freedom or Operation Iraqi Freedom.

(12) Community-based providers of mental health care are invaluable assets in addressing the needs of such members and should not be overlooked.

(13) Coordination of care among government agencies as well as nongovernmental agencies is integral to the successful treatment of members of the Armed Forces returning from deployment.

SEC. 3. COMMISSION ON VETERANS AND MEMBERS OF THE ARMED FORCES WITH POST TRAUMATIC STRESS DISORDER, TRAUMATIC BRAIN INJURY, OR OTHER MENTAL HEALTH DISORDERS CAUSED BY SERVICE IN THE ARMED FORCES.

(a) ESTABLISHMENT OF COMMISSION.—There is established a commission on veterans and members of the Armed Forces with post traumatic stress disorder (PTSD), traumatic brain injury, or other mental health disorders caused by service in the Armed Forces.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The commission shall be composed of a chair and members appointed jointly by the Secretary of Veterans Affairs and the Secretary of Defense, including not less than one of each of the following:

(A) Members of the Armed Forces on active duty.

(B) Veterans who are retired from the Armed Forces.

(C) Employees of the Department of Veterans Affairs.

(D) Employees of the Department of Defense.

(E) Recognized medical or scientific authorities in fields relevant to the commission, including psychiatry and medical care.

(F) Mental health professionals who are not physicians.

(G) Veterans who have undergone treatment for post traumatic stress disorder, traumatic brain injury, or other mental health disorders.

(2) CONSIDERATION OF RECOMMENDATIONS.—In appointing members of the commission, the Secretary of Veterans Affairs and the Secretary of Defense shall consult with nongovernmental organizations that represent veterans, members of the Armed Forces, and families of such veterans and members.

(c) DUTIES.—

(1) IN GENERAL.—The commission shall—

(A) oversee the monitoring and treatment of veterans and members of the Armed Forces with post traumatic stress disorder, traumatic brain injury, or other mental health disorders caused by service in the Armed Forces; and

(B) conduct a thorough study of all matters relating to the long-term adverse consequences of such disorders for such veterans and members, including an analysis of—

(i) the information gathered from rescreening data obtained from post deployment interviews; and

(ii) treatments that have been shown to be effective in the treatment of post traumatic stress disorder, traumatic brain injury, or other mental health disorders caused by service in the Armed Forces.

(2) RECOMMENDATIONS.—The commission shall develop recommendations on the development of initiatives—

(A) to mitigate the adverse consequences studied under paragraph (1)(B); and

(B) to reduce cultural stigmas associated with treatment of post traumatic stress disorder, traumatic brain injury, or other mental health disorders of veterans and members of the Armed Forces.

(3) ANNUAL REPORTS.—Not later than September 30 each year, the commission shall submit to the appropriate committees of Congress a report containing the following:

(A) A detailed statement of the findings and conclusions of the commission as a result of its activities under paragraph (1).

(B) The recommendations of the commission developed under paragraph (2).

(d) POWERS OF THE COMMISSION.—

(1) SITE VISITS.—The commission may visit locations where veterans and members of the Armed Forces with post traumatic stress disorder, traumatic brain injury, or other mental health disorders caused by service in the Armed Forces receive treatment for such disorders to carry out the oversight and monitoring required by subsection (c)(1)(A).

(2) INFORMATION FROM FEDERAL AGENCIES.—The commission may secure directly from any Federal department or agency such information as the commission considers necessary to carry out the provisions of this Act. Upon request of the chair of the commission, the head of such department or agency shall furnish such information to the commission.

(e) TERMINATION.—The commission shall be terminated at the joint discretion of the Secretary of Defense and the Secretary of Veterans Affairs.

(f) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Armed Services and the Committee on Veterans' Affairs of the Senate; and

(2) the Committee on Armed Services and the Committee on Veterans' Affairs of the House of Representatives.

SEC. 4. HEROES-TO-HEALERS PROGRAM.

(a) IN GENERAL.—Part III of title 38, United States Code, is amended by adding at the end the following:

''CHAPTER 44—HEROES-TO-HEALERS PROGRAM

''Sec.
''4400. Purposes.
''4401. Definitions.
''4402. Authorization of Heroes-to-Healers Program.
''4403. Recruitment and selection of Program participants.
''4404. Participation agreement and financial assistance.
''4405. Participation by States.
''4406. Reporting requirements.
''4407. Authorization of appropriations.

''§ 4400. Purposes

''The purposes of this chapter are—

''(1) to encourage veterans and members of the Armed Forces separating from the Armed Forces—

''(A) to obtain certification or licensing as mental health care providers; and

''(B) to obtain employment with Federal, State, and local agencies and nongovernmental organizations that provide mental health care to members of the Armed Forces, veterans, or the families of such members or veterans; and

''(2) to enhance the capacity of such agencies and organizations to provide such care, by increasing the number of individuals seeking employment for the provision of such care.

''§ 4401. Definitions

''In this chapter:

''(1) The term 'mental health care provider', with respect to an individual, means a psychiatrist, psychologist, social worker, psychiatric nurse, mental health counselor, or marriage and family therapist.

''(2) The term 'Program' means the Heroes-to-Healers Program authorized by section 4402 of this title and described in this chapter.

''§ 4402. Authorization of Heroes-to-Healers Program

''(a) PURPOSE.—The purpose of this section is to authorize—

''(1) the Heroes-to-Healers Program; and

''(2) a mechanism for the funding and administration of such program.

''(b) PROGRAM AUTHORIZED.—(1) The Secretary may carry out a program—

''(A) to assist eligible individuals described in section 4403 of this title in obtaining certification or licensing (as prescribed for under applicable State law) as mental health care providers; and

''(B) to facilitate the employment of such individuals, by Federal, State, and local agencies and nongovernmental organizations that provide mental health care to members of the Armed Forces, veterans, or the families of such members or veterans, to provide such care.

''(2) The program authorized by paragraph (1) and described in this chapter shall be known as the 'Heroes-to-Healers Program'.

''(c) ADMINISTRATION OF PROGRAM.—The Secretary shall administer the Program in consultation with the Secretary of Defense.

''(d) INFORMATION REGARDING PROGRAM.—The Secretary shall provide to the Secretary of Defense information regarding the Program and applications for participation in the Program, for distribution as part of preseparation counseling provided under section 1142 of title 10 to members of the Armed Forces described in section 4403 of this title.

''(e) PLACEMENT ASSISTANCE AND REFERRAL SERVICES.—The Secretary may, with the agreement of the Secretary of Defense, provide placement assistance and referral services to individuals who meet the criteria described in section 4403 of this title.

''§ 4403. Recruitment and selection of Program participants

''(a) ELIGIBLE INDIVIDUALS.—The following individuals are eligible for selection to participate in the Program:

''(1) Any individual who—

''(A) was a member of the Armed Forces and becomes entitled to retired or retainer pay in the manner provided in title 10 or title 14; or

''(B) has an approved date of retirement from service in the Armed Forces.

''(2) Any individual who—

''(A)(i) is separated or released from active duty in the Armed Forces after two or more years of continuous active duty in the Armed Forces immediately before the separation or release; or

''(ii) has completed a total of at least—

''(I) three years of active duty service in the Armed Forces;

''(II) three years of service computed under section 12732 of title 10; or

''(III) three years of any combination of such service; and

''(B) executes a reserve commitment agreement for a period of not less than 3 years under subsection (e)(2).

''(3) Any individual who is retired or separated for physical disability under chapter 61 of title 10.

''(b) SUBMISSION OF APPLICATIONS.—(1) Selection of eligible individuals to participate in the Program shall be made on the basis of applications submitted to the Secretary within the time periods specified in paragraph (2). An application shall be in such form and contain such information as the Secretary may require.

''(2) An application of an individual shall be considered to be submitted on a timely basis under paragraph (1) if the application is submitted not later than five years after the date on which the individual is retired, separated, or released from active duty in the Armed Forces, as the case may be.

''(c) SELECTION CRITERIA.—(1) The Secretary shall prescribe the criteria to be used to select eligible individuals to participate in the Program.

''(2) An individual is eligible to participate in the Program only if the individual's last period of service in the Armed Forces was honorable, as characterized by the Secretary concerned. An individual selected to participate in the Program before the retirement of the individual or the separation or release of the individual from active duty in the Armed Forces may continue to participate in the Program after the retirement, separation, or release only if the individual's last period of service is characterized as honorable by the Secretary concerned.

''(d) SELECTION PRIORITIES.—In selecting eligible individuals to receive assistance under the Program, the Secretary shall give priority to individuals who engaged in combat while serving in the Armed Forces.

''(e) OTHER CONDITIONS ON SELECTION.—(1) The Secretary may not select an eligible individual to participate in the Program under this section and receive financial assistance under section 4404 of this title unless the Secretary has sufficient appropriations for the Program available at the time of the selection to satisfy the obligations to be incurred by the United States under section 4404 of this title with respect to the individual.

''(2) The Secretary may not select an eligible individual described in subsection (a)(2)(A) to participate in the Program under this section and receive financial assistance under section 4404 of this title unless—

''(A) the Secretary notifies the Secretary concerned and the individual that the Secretary has reserved a full stipend or bonus under section 4404 of this title for the individual; and

''(B) the individual executes a written agreement with the Secretary concerned to serve as a member of the Selected Reserve of a reserve component of the Armed Forces for a period of not less than three years (in addition to any other reserve commitment the individual may have).

''§ 4404. Participation agreement and financial assistance

''(a) PARTICIPATION AGREEMENT.—(1) An eligible individual selected to participate in the Program under section 4403 of this title and receive financial assistance under this section shall be required to enter into an agreement with the Secretary in which the individual agrees—

''(A) within such time as the Secretary may require, to obtain certification or licensing as a mental health care provider; and

''(B) to accept an offer of full-time employment as a mental health care provider for not less than five years with a Federal, State, or local agency or nongovernmental organization that provides mental health care to members of the Armed Forces, veterans, or the families of such members or veterans.

''(2) The Secretary may waive the five-year commitment described in paragraph (1)(B) for a participant if the Secretary determines such waiver to be appropriate. If the Secretary provides the waiver, the participant shall not be considered to be in violation of the agreement and shall not be required to provide reimbursement under subsection (f), for failure to meet the five-year commitment.

''(3) The Secretary shall encourage eligible individuals to seek employment with mental health care providers located more than 75 miles from a Department medical center.

''(b) VIOLATION OF PARTICIPATION AGREEMENT; EXCEPTIONS.—A participant in the Program shall not be considered to be in violation of the participation agreement entered into under subsection (a) during any period in which the participant—

''(1) is pursuing a full-time course of study related to the field of mental health care at an institution of higher education;

''(2) is serving on active duty as a member of the Armed Forces;

''(3) is temporarily totally disabled for a period of time not to exceed three years as established by sworn affidavit of a qualified physician;

''(4) is unable to secure employment for a period not to exceed 12 months by reason of the care required by a spouse who is disabled;

''(5) is a mental health care provider who is seeking and unable to find full-time employment as a mental health care provider in a Federal, State, or local agency or nongovernmental organization that provides mental health care to members of the Armed Forces, veterans, or the families of such members or veterans for a single period not to exceed 27 months; or

''(6) satisfies the provisions of additional reimbursement exceptions that may be prescribed by the Secretary.

''(c) STIPEND FOR PARTICIPANTS.—(1) Subject to paragraph (2), the Secretary may pay to a participant in the Program selected under section 4403 of this title a stipend in an amount of not more than $5,000 per year of participation in the Program.

''(2) The total number of stipends that may be paid under paragraph (1) in any fiscal year may not exceed 2,500.

''(d) BONUS FOR PARTICIPANTS.—(1) Subject to paragraph (2), the Secretary of Education may, in lieu of paying a stipend under subsection (c), pay a bonus of up to $10,000 to a participant in the Program selected under section 4403 of this title who agrees in the participation agreement under subsection (a) to become a mental health care provider and to accept full-time employment as a mental health care provider for not less than five years in a Federal, State, or local agency or nongovernmental organization that provides mental health care to members of the Armed Forces, veterans, or the families of such members or veterans.

''(2) The total number of bonuses that may be paid under paragraph (1) in any fiscal year may not exceed 2,000.

''(e) TREATMENT OF STIPEND AND BONUS.—A stipend or bonus paid under this section to a participant in the Program shall not be taken into account in determining the eligibility of the participant for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

''(f) REIMBURSEMENT UNDER CERTAIN CIRCUMSTANCES.—(1) A participant in the Program who is paid a stipend or bonus under this section shall be required to repay the stipend or bonus under the following circumstances:

''(A) The participant fails to obtain mental health care provider certification or licensing, to become a mental health care provider, or to obtain employment as a mental health care as required by the participation agreement under subsection (a).

''(B) The participant voluntarily leaves, or is terminated for cause from, employment as a mental health care provider during the five years of required service in violation of the participation agreement.

''(C) The participant executed a written agreement with the Secretary concerned under section 4403(e)(2) of this title to serve as a member of a reserve component of the Armed Forces for a period of three years and fails to complete the required term of service.

''(2) A participant required to reimburse the Secretary for a stipend or bonus paid to the participant under this section shall pay an amount that bears the same ratio to the amount of the stipend or bonus as the unserved portion of required service bears to the five years of required service. Any amount owed by the participant shall bear interest at the rate equal to the highest rate being paid by the United States on the day on which the reimbursement is determined to be due for securities having maturities of 90 days or less and such interest shall accrue from the day on which the participant is first notified of the amount due.

''(3) The obligation to reimburse the Secretary under this subsection is, for all purposes, a debt owing the United States. A discharge in bankruptcy under title 11 shall not release a participant from the obligation to reimburse the Secretary under this subsection.

''(4) A participant shall be excused from reimbursement under this subsection if the participant becomes permanently totally disabled as established by sworn affidavit of a qualified physician. The Secretary may also waive the reimbursement in cases of extreme hardship to the participant, as determined by the Secretary.

''(g) RELATIONSHIP TO EDUCATIONAL ASSISTANCE UNDER TITLES 10 AND 38.—The receipt by a participant in the Program of a stipend or bonus under this section shall not reduce or otherwise affect the entitlement of the participant to any benefits under chapters 30, 31, 33, or 35 of this title or chapters 1606 or 1607 of title 10.

''§ 4405. Participation by States

''(a) DISCHARGE OF STATE ACTIVITIES THROUGH CONSORTIA OF STATES.—The Secretary may permit States participating in the Program to carry out activities authorized for such States under the Program through one or more consortia of such States.

''(b) ASSISTANCE TO STATES.—(1) Subject to paragraph (2), the Secretary may make grants to States participating in the Program, or to consortia of such States, in order to permit such States or consortia of States to operate offices for purposes of recruiting eligible individuals for participation in the Program and facilitating the employment of participants in the Program as a mental health care provider.

''(2) The total amount of grants made under paragraph (1) in any fiscal year may not exceed $5,000,000.

''§ 4406. Reporting requirements

''(a) ANNUAL REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this chapter and annually thereafter, the Secretary shall, in consultation with the Secretary of Defense, the Secretary of Homeland Security, and the Comptroller General of the United States, submit to Congress a report on the effectiveness of the Program in the recruitment and retention of qualified personnel by Federal, State, and local agencies and nongovernmental organizations that provide mental health care to members of the Armed Forces, veterans, or the families of such members or veterans.

''(b) ELEMENTS OF REPORT.—The report submitted under subsection (a) shall include information on the following:

''(1) The number of participants in the Program.

''(2) The types of positions in which the participants are employed.

''(3) The populations served by the participants.

''(4) The agencies and organizations in which the participants are employed as mental health care providers.

''(5) The types of agencies and organizations with which the participants are employed.

''(6) The geographic distribution of the agencies and organizations with which participants are employed.

''(7) The rates of retention of the participants by the Federal, State, and local agencies and nongovernmental organizations employing the participants.

''(8) Such other matters as the Secretary considers to be appropriate.

''§ 4407. Authorization of appropriations

''There are authorized to be appropriated to the Secretary to carry out the provisions of this chapter $10,000,000 for fiscal year 2009 and each fiscal year thereafter.''.

(b) CLERICAL AMENDMENTS.—The tables of chapters at the beginning of title 38, United States Code, and at the beginning of part III of such title, are each amended by inserting after the item relating to chapter 43 the following new item:

''44. Heroes-to-Healers Program ..... 4400.''.

SEC. 5. GRANT PROGRAM TO ENCOURAGE STATE AND LOCAL MENTAL HEALTH AGENCIES TO ESTABLISH, EXPAND, OR ENHANCE MENTAL HEALTH PROVIDER RECRUITMENT AND RETENTION EFFORTS.

(a) PURPOSES.—It is the purpose of this section to establish a program to recruit and retain highly qualified mid-career professionals and recent graduates of an institution of higher education, as psychiatrists, psychologists, social workers, psychiatric nurses, mental health counselors, or marriage and family therapists.

(b) DEFINITIONS.—In this section:

(1) ELIGIBLE ENTITY.—The term ''eligible entity'' means an entity described in subsection (c)(2).

(2) ELIGIBLE PARTICIPANT.—The term ''eligible participant'' means—

(A) an individual with substantial, demonstrable career experience; or

(B) an individual who has graduated from an institution of higher education not more than 3 years prior to applying to an eligible entity to become to be a mental health provider under this section.

(3) MENTAL HEALTH PROVIDER.—The term ''mental health provider'' means a psychiatrist, psychologist, social worker, psychiatric nurse, mental health counselor, marriage or family therapist, or any other provider determined appropriate by the Secretary.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(c) GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary may, in consultation with the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs, establish a program to award grants, on a competitive basis, to eligible entities to encourage State and local mental health agencies or other entities to establish, expand, or enhance mental health provider recruitment and retention efforts. The Secretary may establish tiered grant award amounts based on criteria including specific need for highly qualified mental health providers by profession within a high demand area, geographic location, and existing compensation rates.

(2) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this section, an entity shall be—

(A) a State health agency;

(B) a high-need local health agency;

(C) a for-profit or nonprofit organization that has a proven record of effectively recruiting and retaining highly qualified mental health providers, that has entered into a partnership with a high-need local health agency or with a State health agency;

(D) an institution of higher education that has entered into a partnership with a high-need local health agency or with a State health agency;

(E) a regional consortium of State health agencies; or

(F) a consortium of high-need local health agencies.

(3) PRIORITY.—In awarding a grant under this subsection, the Secretary shall give priority to a partnership or consortium that includes a high-need State agency or local health agency.

(4) APPLICATION.—

(A) IN GENERAL.—To be eligible to receive a grant under this section, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(B) CONTENTS.—An application submitted under subparagraph (A) shall include a description of—

(i) one or more target recruitment groups on which the applicant will focus its recruitment efforts under the grant;

(ii) the characteristics of each such target group that—

(I) demonstrate the knowledge and experience of the group's members; and

(II) demonstrate that the members are eligible to achieve the purposes of this section;

(iii) the manner in which the applicant will use funds received under the grant to develop a cadre of mental health providers, or other programs to recruit and retain highly qualified midcareer professionals, recent college graduates, and recent graduate school graduates, as highly qualified mental health providers, in high-need military or veterans communities, or as part of entities providing care to military or veterans in medical facilities;

(iv) the manner in which the program carried out under the grant will comply with relevant State laws related to mental health provider certification or licensing and facilitate the certification or licensing of such mental health providers;

(v) the manner in which activities under the grant will increase the number of highly qualified mental health providers, in high-need Federal, State and local agencies (in urban or rural areas), and in high-need mental health professions, in the jurisdiction served by the applicant; and

(vi) the manner in which the applicant will collaborate, as needed, with other institutions, agencies, or organizations to recruit (particularly through activities that have proven effective in retaining highly qualified mental health providers), train, place, support, and provide mental health induction programs to eligible participants under this section, including providing evidence of the commitment of the institutions, agencies, or organizations to the applicant's programs.

(5) DURATION OF GRANT.—The Secretary may award grants under this subsection for periods of 5 years. At the end of the 5-year period for such a grant, the grant recipient may apply for an additional grant under this section.

(6) EQUITABLE DISTRIBUTION.—To the extent practicable, the Secretary shall ensure an equitable geographic distribution of grants under this subsection among the regions of the United States.

(7) USE OF FUNDS.—

(A) IN GENERAL.—An entity shall use amounts received under a grant under this subsection to develop a cadre of mental health providers in order to establish, expand, or enhance mental health provider recruitment and retention programs for highly qualified mid-career professionals, and recent graduates of an institution of higher education, who are eligible participants.

(B) AUTHORIZED ACTIVITIES.—A program carried out under subparagraph (A) shall include 2 or more of the following activities:

(i) To provide scholarships, stipends, bonuses, and other financial incentives, that are linked to participation in activities that have proven effective in retaining mental health providers in high-need areas operated by Federal, State and local health agencies, to all eligible participants, in an amount that shall not be less than $5,000, nor more than $20,000, per participant.

(ii) To carry out pre- and post-placement induction or support activities that have proven effective in recruiting and retaining mental health providers, such as—

(I) mentoring;

(II) providing internships;

(III) providing high-quality, preservice coursework; and

(IV) providing high-quality, sustained in-service professional development.

(iii) To make payments to pay the costs associated with accepting mental health providers under this section from among eligible participants or to provide financial incentives to prospective mental health providers who are eligible participants.

(iv) To collaborate with institutions of higher education in the development and implementation of programs to facilitate mental health provider recruitment (including credentialing and licensing) and mental health retention programs.

(v) To carry out other programs, projects, and activities that are designed and have proven to be effective in recruiting and retaining mental health providers, and that the Secretary determines to be appropriate.

(vi) To develop long-term mental health provider recruitment and retention strategies, including developing—

(I) a national, statewide or regionwide clearinghouse for the recruitment and placement of mental health providers;

(II) reciprocity agreements between or among States for the certification or licensing of mental health providers; or

(III) other long-term teacher recruitment and retention strategies.

(C) EFFECTIVE PROGRAMS.—An entity shall use amounts received under a grant under this subsection only for programs that have proven to be effective in both recruiting and retaining mental health providers (as determined by the Secretary).

(8) REQUIREMENTS.—

(A) TARGETING.—An entity that receives a grant under this subsection shall ensure that participants in the program carried out under the grant who are recruited with funds made available under the grant are placed in high-need areas operated by high-need Federal, State, and local health agencies. In placing such participants in mental health facilities, such entity shall give priority to facilities that are located in—

(i) rural under served areas; or

(ii) urban areas with high percentages of individuals who are members of the Armed Forces or veterans.

(B) SUPPLEMENT, NOT SUPPLANT.—Amounts made available under this section shall be used to supplement, and not supplant, State and local public funds expended for mental health provider recruitment and retention programs.

(C) PARTNERSHIPS AND CONSORTIA OF LOCAL HEALTH AGENCIES.—In the case of a partnership established by a Federal, State, or local health agency to carry out a program under this section, or a consortium of such agencies established to carry out such a program, the Federal, State, or local health agency or consortium shall not be eligible to receive funds through a State program under this section.

(9) PERIOD OF SERVICE.—A participant in a program under this subsection who receives training through the program shall serve at a high-need medical facility or an agency operated by a high-need Federal, State, or local health agency for a term of not less than 3 years.

(10) REPAYMENT.—The Secretary shall establish such requirements as the Secretary determines to be appropriate to ensure that a participant in a program under this section who receives a stipend or other financial incentive as provided for in paragraph (7)(B)(i), but who fails to complete their service obligation under paragraph (9), repays all or a portion of such stipend or other incentive.

(11) ADMINISTRATIVE FUNDS.—An entity that receives a grant under this subsection shall not use more than 5 percent of the funds made available under the grant for the administration of a program under this subsection.

(12) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary in each fiscal year to carry out this subsection.

(d) EVALUATION AND ACCOUNTABILITY FOR RECRUITING AND RETAINING MENTAL HEALTH PROVIDERS.—

(1) EVALUATION.—An entity that receives a grant under this section shall—

(A) within 30 days of the end of the 3rd year of the grant period, conduct an interim evaluation of the program funded under the grant; and

(B) within 30 days of the end of the 5th year of the grant period, conduct a final evaluation of the program funded under the grant.

(2) CONTENTS.—In conducting an evaluation under paragraph (1), an entity shall describe the extent to which State and local agencies that received funds through the grant have met the goals relating to mental health provider recruitment and retention described in the application submitted by the entity under paragraph (4).

(3) REPORTS.—An entity that receives a grant under this Act shall prepare and submit to the Secretary and the appropriate committees of Congress, an interim and final report that contains the results of the interim and final evaluations carried out under subparagraphs (A) and (B) of paragraph (1), respectively.

(4) REVOCATION.—If the Secretary determines that the recipient of a grant under this section has not made substantial progress in meeting the goals and the objectives of the grant by the end of the 3rd year of the grant period, the Secretary shall—

(A) revoke any payments made for the 4th year of the grant period; and

(B) not make any payment for the 5th year of the grant period.

Mr. WYDEN. Mr. President, over the past 7 years, hundreds of thousands of members of our armed forces have gone to war and returned home alive, but suffering. Advances in protective equipment and improvements made in battlefield care mean that fewer troops than ever before suffer from obvious physical wounds. But many more of these service members have returned with less obvious injuries—invisible injuries like post-traumatic stress disorder or traumatic brain injury.

Our armed forces have seen a surge in diagnosed cases of post-traumatic stress disorder and traumatic brain injury, commonly known as PTSD and TBI. And soldiers in the National Guard and Reserves are much more likely to suffer from PTSD and depression when they return from battle, a fact that is very important in Oregon where almost all of our servicemembers serve in the Guard and Reserves.

While no less real and no less serious than physical wounds of war, PTSD and TBI require a specialized kind of diagnosis and treatment. Unfortunately, only half of the soldiers and veterans who suffer from PTSD or TBI are receiving care for their wounds, according to a RAND Corporation study.

To help our service men and women suffering from PTSD, TBI and other mental health conditions, we are introducing a bill today that's designed to address some of the overwhelming difficulties faced by many of our nation's warriors. This bill, the ''Healing Our Nation's Heroes Act of 2008,'' has within it provisions to help improve mental health care, and access to care, for service members who suffer from the invisible wounds of war.

First, this legislation would create a standing commission to study and oversee mental health treatment of our veterans. This commission would make recommendations on methods to improve mental health care and, just as importantly, overcome the cultural stigma attached to seeking help for mental health disorders. As an ongoing body, this commission will continue to help guide Congress and the agencies for years, instead of just making recommendations and disappearing.

Secondly, the bill would create a ''Heroes-to-Healers Program'' which would provide financial incentives for veterans and members of the armed forces who are separating or retiring to obtain certification or licensing as mental health providers. It also encourages them to seek employment with organizations that provide mental health care to members of the armed forces, veterans and their families.

One of the more heartbreaking truths surrounding PTSD is that service members are often reluctant to seek help from mental health professionals who don't share their experiences. This reluctance creates the sort of self-isolation that leads to increased risk of suicide.

By increasing the number of veterans working as mental health providers, this bill will allow more servicemembers and veterans to get treatment from those who truly understand what combat is like.

Our bill would also create a grant program to help state and local mental health agencies recruit and retain mental health professionals. Some service members and veterans don't feel comfortable seeking mental health care from the Department of Defense or VA. But mental health agencies are already being stretched thin, especially in rural areas. This legislation will provide help in recruiting and retaining the mental health providers our wounded heroes so desperately need.

Surviving the trauma of combat shouldn't sentence our forces to a lifetime of mental and emotional pain. They paid the price bravely for serving our country in battle. This bill will help them move beyond the invisible scars of the battlefield and rebuild their lives at home.

By Mr. WYDEN (for himself, Ms. COLLINS, and Mr. DODD):

S. 3375. A bill to prohibit the introduction or delivery for introduction into interstate commerce of novelty lighters, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. WYDEN. Mr. President, today, I, along with my colleagues Senator COLLINS from Maine and Senator DODD from Connecticut, am introducing the Protect Children From Dangerous Lighters Act, a ban on novelty lighters. Novelty lighters, also known as toy-like lighters, are cigarette lighters that look like small children's toys or regular household items.

These lighters are dangerous and have terrible consequences. Because they are so well disguised as toys, novelty lighters have children literally playing with fire.

The results can be deadly: In Oregon, two boys were playing with a novelty lighter disguised as a toy dolphin and accidentally started a serious fire. One boy died and the other now has permanent brain damage. Also in Oregon, a mother suffered third degree burns on her foot when her child was playing with a novelty lighter disguised as a small toy Christmas tree and set a bed on fire.

Tragic accidents like these happen all over the country. In North Carolina, a boy sustained second degree

burns after playing with a novelty lighter that looked like a toy cell phone. One of the most tragic incidents occurred in Arkansas, where a 2-year-old and a 15-month-old child died in a fire they accidentally started playing with a novelty lighter shaped like a toy motorcycle.

These injuries and deaths demand we take action and remove these dangerous lighters from shelves everywhere.

If we don't protect children from novelty lighters, we are condemning them to play life-threatening Russian roulette every time they pick up what they think is a toy.

A ban on novelty lighters would require the Consumer Product Safety Commission to treat novelty lighters as a banned hazardous substance. That means novelty lighters will not be manufactured, imported, sold, or given away as promotional gifts anywhere in this country. Passing this bill is the only way we can guarantee that novelty lighters will be kept out of the hands of children. It's our best tool to prevent injuries like those that have already brought tragedy to too many families.

A number of states and cities have taken it upon themselves to take action to ban these deadly lighters. Maine and Tennessee passed novelty lighter ban legislation and similar bans are being introduced in many other states, including Oregon. We should expand and support these efforts to protect children in all states.

A Federal ban on novelty lighters has widespread nationwide support. Along with the Oregon Fire Marshal, the National Association of Fire Marshals supports a Federal ban on these lighters and has been active in promoting public awareness on this issue. Even the cigarette lighter industry, represented by the Lighter Association, supports a ban on novelty lighters. We also have support from the Congressional Fire Institute, Safe Kids USA, Consumer Federation of America and the Consumer's Union.

The more people learn about novelty lighters, the more support there is to ban them.

I urge my colleagues to act now and help kids across America avoid the senseless deaths and serious injuries they suffer when they mistake novelty lighters for toys.

Hazardous tools containing flammable fuel should not be dressed up in packages that are particularly attractive to children. Kids need our help to protect them from the treacherous ''wolf in sheep's clothing'' of novelty lighters.

I urge all my colleagues to support the Protect Children from Dangerous Lighters Act.

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

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

S. 3375

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 ''Protect Children from Dangerous Lighters Act of 2008''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Lighters are inherently dangerous products containing flammable fuel.

(2) If lighters are used incorrectly or used by children, dangerous and damaging consequences may result.

(3) Novelty lighters are easily mistaken by children and adults as children's toys or as common household items.

(4) Novelty lighters have been the cause of many personal injuries to children and adults and property damage throughout the United States.

SEC. 3. NOVELTY LIGHTER DEFINED.

In this Act, the term ''novelty lighter'' means a device typically used for the igniting or lighting of cigarettes, cigars, or pipes that has a toy-like appearance, has entertaining audio or visual effects, or resembles in any way in form or function an item that is commonly recognized as appealing, attractive, or intended for use by children of 10 years of age or younger, including such a device that takes toy-like physical forms, including toy animals, cartoon characters, cars, boats, airplanes, common household items, weapons, cell phones, batteries, food, beverages, musical instruments, and watches.

SEC. 4. BAN ON NOVELTY LIGHTERS.

(a) BANNED HAZARDOUS SUBSTANCE.—A novelty lighter shall be treated as a banned hazardous substance as defined in section 2 of the Federal Hazardous Substances Act (15 U.S.C. 1261) and the prohibitions set out in section 4 of such Act (15 U.S.C. 1263) shall apply to novelty lighters.

(b) APPLICATION.—Subsection (a) applies to a novelty lighter—

(1) manufactured on or after January 1, 1980; and

(2) that is not considered by the Consumer Product Safety Commission to be an antique or an item with significant artistic value.

Ms. COLLINS. Mr. President, I rise to join my friend Senator WYDEN in introducing a bill that will ban the sale of certain novelty lighters that children can mistake for toys, often with tragic consequences for themselves and their families.

In Arkansas last year, two boys, ages 15 months and 2 years, died when the toddler accidentally started a fire with a lighter shaped like a motorcycle. In Oregon, a fire started with a dolphin-shaped lighter left one child dead and another brain-damaged. A North Carolina 6-year-old boy was badly burned by a lighter shaped like a cell phone.

Sadly, the U.S. Fire Administration has other stories of the hazards presented by novelty lighters. When you learn that one looks like a rubber duck toy—and quacks—you can imagine the potential for harm.

As a co-chair of the Congressional Fire Services Caucus, I am proud to note that this spring, my home State of Maine became the first State to outlaw the sale of novelty lighters.

My State's pioneering law stems from a tragic 2007 incident in a Livermore, Maine, grocery store. While his mother was buying sandwiches, six-year-old Shane St. Pierre picked up what appeared to be a toy flashlight in the form of a baseball bat. When he flicked the switch, a flame shot out and burned his face. Shane's dad, Norm St. Pierre, a fire chief in nearby West Paris, began advocating for the novelty-lighter ban that became Maine law in March 2008.

The Maine State Fire Marshal's office supported that legislation, and a national ban has the support of the Congressional Fire Services Institute's National Advisory Committee, the National State Fire Marshals Association, and the National Volunteer Fire Council.

The bill is straightforward. It treats novelty lighters manufactured after January 1, 1980, as banned hazardous substances unless the Consumer Product Safety Commission determines a particular lighter has antique or significant artistic value. Otherwise, sale of lighters with toy-like appearance, special audio or visual features, or other attributes that would appeal to children under 10 would be banned.

The novelty lighters targeted in this legislation serve no functional need. But they are liable to attract the notice and curiosity of children, whose play can too easily turn into a scene of horror and death. The sale of lighters that look like animals, cartoon characters, food, toys, or other objects is simply irresponsible and an invitation to tragedy.

I urge all of my colleagues to join me in supporting this simple measure that can save children from disfigurement and death.

By Mr. COLEMAN (for himself, Ms. COLLINS, and Mr. LIEBERMAN):

S. 3377. A bill to amend title 46, United States Code, to waive the biometric transportation security card requirement for certain small business merchant mariners, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. COLEMAN. Mr. President, Minnesota is the land of over 10,000 lakes and nearly as many fishing guides. We even have a Fishing Hall of Fame in Baxter where many of our legendary guides are enshrined—names like Al and Ron Lindner, Babe Winkleman, Gary Roach and many others. In fact tonight there is a banquet honoring the Hall. The craft of the fishing guide is to understand fish and to share their knowledge and the sport with many of us who don't possess their skills.

When I travel my state I meet with folks from all walks of life who have dealings with the federal government and last summer I was in the city of Baudette, a small community on the Rainy River on the northern border of Minnesota. I had the chance to speak with a fishing guide who told me about a new federal regulation with which he had to comply. As you can imagine, I was amazed when he told me that he

was being required to get a Transportation Worker Identification Credential—or TWIC—in order to stay in business as a fishing guide. Now I understand that folks who do business on the water should be able to exhibit seamanship and operate a safe watercraft. But, my guides and I are having a hard time understanding why a guy whose briefcase is a bucket of minnows and his workday starts when he backs his boat into the lake should be required to submit to the same security screening as operators and workers in our major ports.

To address this issue, I am introducing the Small Marine Business and Fishing Guide Relief Act. I want to thank Senator COLLINS and Senator LIEBERMAN for joining me as original cosponsors of this legislation. Our bill is very straightforward—it will exempt mariners from needing a TWIC if they are not required to submit a vessel security plan for their boat to the Coast Guard. This group of mariners includes fishing guides, charter captains and other small recreational boaters.

I want to be clear these mariners will still be required to have a Coast Guard license. Security should not be jeopardized by eliminating the TWIC requirement because the Coast Guard conducts significant background checks when mariners apply for a Coast Guard license. These background checks review crimes against people, property, public safety, the environment and examine whether the applicant has prior drug offenses or committed a crime against national security.

These folks already pay a minimum of $140 for their Coast Guard licenses which are good for five years. Given these factors, asking these operators to pay over $100 more for another credential—especially with the recent downturn in the economy and the cost of gas—is an unnecessary burden that doesn't make sense.

Additionally, our legislation calls for a report to examine the feasibility of identifying which small boat operators already purchased a TWIC but will not need it once this legislation is signed into law. Once this is done, refunds or credits could be issued towards license renewals for these folks.

The TWIC program is an important tool to ensure the safety of our nation's ports, but common sense tells us that a fishing dock on Lake of the Woods or Rainy River is vastly different from the major ports around the country that receive thousands of cargo containers per day. Simply put, we need to make sure our local fishing guides and other small marine operators are not being subjected to excessive government regulation and this legislation will provide that relief.

A similar TWIC exemption passed the House on April 24 as part of the Coast Guard Reauthorization Act and I encourage my Senate colleagues to pass this legislation as well before we adjourn for the year.

Mr. President, 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. 3377

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Small Marine Business and Fishing Guide Relief Act of 2008''.

SEC. 2. WAIVER OF BIOMETRIC TRANSPORTATION SECURITY CARD REQUIREMENT FOR CERTAIN SMALL BUSINESS MERCHANT MARINERS.

(a) IN GENERAL.—Section 70105 (b)(2) of title 46, United States Code, is amended—

(1) in subparagraph (B), by inserting ''and serving under the authority of such license, certificate of registry, or merchant mariners document on a vessel for which the owner or operator of such vessel is required to submit a vessel security plan under section 70103(c) of this title'' before the semicolon;

(2) by striking subparagraph (D); and

(3) by redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), respectively.

(b) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report that contains the following:

(1) A list of the locations that provide service to individuals seeking to obtain or renew a license, certificate of registry, or merchant mariners document under part E of subtitle II of title 46, United States Code.

(2) An assessment of the feasibility of accepting applications for licenses, certificates of registry, and merchant mariner documents described in paragraph (1) and any applicant biometrics required therefor at the Transportation Worker Identification Credential enrollment facilities or mobile enrollment centers of the Department of Homeland Security.

(3) An assessment of the administrative feasibility of verifying that an individual has obtained a biometric transportation security card issued under section 70105 of title 46, United States Code, and is serving under the authority of a license, certificate of registry, or merchant mariners document described in paragraph (1) on a vessel for which the owner or operator of such vessel is not required to submit a vessel security plan under section 70103(e) of such title to provide such individual a refund of any fees paid by such individual to obtain such biometric transportation security card.

(4) An assessment of the administrative feasibility of verifying that an individual has obtained a biometric transportation security card described in paragraph (3) and is serving under the authority of a license, certificate of registry, or merchant mariners document described in paragraph (1) on a vessel described in paragraph (3) to provide such individual a credit towards the renewal of such license, certificate of registry, or merchant mariners document that is equal to the amount of fees paid by such individual for such biometric transportation security card.

Ms. COLLINS. Mr. President, I am pleased to be an original cosponsor of the Small Marine Business and Fishing Guide Relief Act that Senator COLEMAN is introducing today. This legislation will provide much-needed relief to charter boat captains and other operators of small marine businesses in Maine by exempting them from having to obtain a Transportation Worker Identification Credential, or TWIC, which costs $132.50 for each employee.

Under current law, any individual who holds a Coast Guard license, as most charter boat captains do, must also obtain a TWIC. The purpose of the requirement was to ensure that port operators and the Coast Guard could inspect a tamper-resistant identification document to verify the identity of those who have access to secure areas of ports and large vessels.

Charter boat captains, however, do not have secure areas on their boats and usually do not need unescorted access to port facilities. Therefore, they have no need for a TWIC. For these small businesses, requiring them to obtain a TWIC essentially amounts to an unnecessary and costly government regulation.

Many small businesses are struggling in these lean economic times, particularly with high marine fuel prices and tourists who have less to spend their discretionary income on charter tours in the Gulf of Maine. With these businesses' declining profit margins, they cannot afford an additional $132 identification card for their employees.

Even with this exemption, charter captains with a Coast Guard license will have undergone an extensive background check for the same crimes that are reviewed when an individual applies for a TWIC. So waiving the TWIC requirement for them would not reduce the background information available for review before these individuals are licensed as charter captains.

To be sure, the Transportation Worker Identification Credential will play a critical role in our Nation's maritime security by limiting access to secure areas of ports and large vessels. It must ''be implemented, however, in a manner that does not unnecessarily and unproductively impede legitimate business operations.

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

S. 3381. A bill to authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop water infrastructure in the Rio Grande Basin, and to approve the settlement of the water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, Tesuque, and Taos; to the Committee on Indian Affairs.

Mr. DOMENICI. Mr. President, during the previous session I introduced legislation to address the funding of Indian water rights claims that are of utmost importance in the west, and in particular, within the State of New Mexico. Since that time many parties have met for countless hours in New Mexico and here in Washington to address how these claims could be resolved and finally settled. Rather than spend countless hours in litigation, these groups have sat down and worked through these issues in a very productive manner.

As a result, today I am pleased to come before you to introduce, on behalf of myself and Senator BINGAMAN, the Aamodt and Taos Pueblo Indian Water Rights Settlement Act of 2008. This legislation will resolve these longstanding Indian water rights claims within New Mexico and authorize a source of Federal funding to resolve them.

The Aamodt litigation in New Mexico was filed in 1966 and is the longest-standing litigation in the Federal judiciary system. The hard work that each party put into the settlement process demonstrates that negotiated settlements, with multiple parties working together, can best determine how to allocate scarce water supplies among diverse parties in a way that does not curtail existing uses. This bill will result in additional economic development and improved health benefits within these communities.

The resolution of these claims will not only improve the lives of many within these communities by providing a safe and reliable water supply, but will also improve the ability of New Mexico to effectively undertake water rights planning in the near and long-term future.

As I have stated before, the costs of not settling these claims in New Mexico are dire. The legislation before us will ensure that our obligations to these communities are met and that they will have safe and reliable water systems.

Mr. President, 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. 3381

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

SECTION 1. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Table of contents.

TITLE I—AAMODT LITIGATION SETTLEMENT ACT

Sec. 101. Short title.
Sec. 102. Definitions.

Subtitle A—Pojoaque Basin Regional Water System

Sec. 111. Authorization of Regional Water System.
Sec. 112. Operating Agreement.
Sec. 113. Acquisition of Pueblo water supply for the Regional Water System.
Sec. 114. Delivery and allocation of Regional Water System capacity and water.
Sec. 115. Aamodt Settlement Pueblos' Fund.
Sec. 116. Environmental compliance.
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Subtitle B—Pojoaque Basin Indian Water Rights Settlement

Sec. 121. Settlement Agreement and contract approval.
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TITLE II—TAOS PUEBLO INDIAN WATER RIGHTS SETTLEMENT ACT

Sec. 201. Short title.
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Sec. 204. Pueblo rights.
Sec. 205. Pueblo water infrastructure and watershed enhancement.
Sec. 206. Taos Pueblo Water Development Fund.
Sec. 207. Marketing.
Sec. 208. Mutual-benefit projects.
Sec. 209. San Juan-Chama Project contracts.
Sec. 210. Authorizations, ratifications, confirmations, and conditions precedent.
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TITLE I—AAMODT LITIGATION SETTLEMENT ACT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Aamodt Litigation Settlement Act''.

SEC. 102. DEFINITIONS.

In this title:

(1) ACRE-FEET.—The term ''acre-feet'' means acre-feet of water per year.

(2) AAMODT CASE.—The term ''Aamodt Case'' means the civil action entitled State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al., No. 66 CV 6639 MV/LCS (D.N.M.).

(3) AUTHORITY.—The term ''Authority'' means the Pojoaque Basin Regional Water Authority described in section 9.5 of the Settlement Agreement or an alternate entity acceptable to the Pueblos and the County to operate and maintain the diversion and treatment facilities, certain transmission pipelines, and other facilities of the Regional Water System.

(4) BISHOP'S LODGE EXTENSION.—The term ''Bishop's Lodge Extension'' has the meaning given the term in the Engineering Report.

(5) CITY.—The term ''City'' means the city of Santa Fe, New Mexico.

(6) COST-SHARING AND SYSTEM INTEGRATION AGREEMENT.—The term ''Cost-Sharing and System Integration Agreement'' means the agreement executed by the United States, the State, the Pueblos, the County, and the City that—

(A) describes the location, capacity, and management (including the distribution of water to customers) of the Regional Water System; and

(B) allocates the costs of the Regional Water System with respect to—

(i) the construction, operation, maintenance, and repair of the Regional Water System;

(ii) rights-of-way for the Regional Water System; and

(iii) the acquisition of water rights.

(7) COUNTY.—The term ''County'' means Santa Fe County, New Mexico.

(8) COUNTY DISTRIBUTION SYSTEM.—The term ''County Distribution System'' means the portion of the Regional Water System that serves water customers on non-Pueblo land in the Pojoaque Basin.

(9) COUNTY WATER UTILITY.—The term ''County Water Utility'' means the water utility organized by the County to—

(A) receive water distributed by the Authority; and

(B) provide the water received under subparagraph (A) to customers on non-Pueblo land in the Pojoaque Basin.

(10) ENGINEERING REPORT.—The term ''Engineering Report'' means the report entitled ''Pojoaque Regional Water System Engineering Report'' and dated April 2007 and any amendments thereto.

(11) FUND.—The term ''Fund'' means the Aamodt Settlement Pueblos' Fund established by section 115(a).

(12) OPERATING AGREEMENT.—The term ''Operating Agreement'' means the agreement between the Pueblos and the County executed under section 112(a).

(13) OPERATIONS, MAINTENANCE, AND REPLACEMENT COSTS.—

(A) IN GENERAL.—The term ''operations, maintenance, and replacement costs'' means all costs for the operation of the Regional Water System that are necessary for the safe, efficient, and continued functioning of the Regional Water System to produce the benefits described in the Settlement Agreement.

(B) EXCLUSION.—The term ''operations, maintenance, and replacement costs'' does not include construction costs or costs related to construction design and planning.

(14) POJOAQUE BASIN.—

(A) IN GENERAL.—The term ''Pojoaque Basin'' means the geographic area limited by a surface water divide (which can be drawn on a topographic map), within which area rainfall and runoff flow into arroyos, drainages, and named tributaries that eventually drain to—

(i) the Rio Pojoaque; or

(ii) the 2 unnamed arroyos immediately south; and

(iii) 2 arroyos (including the Arroyo Alamo) that are north of the confluence of the Rio Pojoaque and the Rio Grande.

(B) INCLUSION.—The term ''Pojoaque Basin'' includes the San Ildefonso Eastern Reservation recognized by section 8 of Public Law 87–231 (75 Stat. 505).

(15) PUEBLO.—The term ''Pueblo'' means each of the pueblos of Nambe, Pojoaque, San Ildefonso, or Tesuque.

(16) PUEBLOS.—The term ''Pueblos'' means collectively the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

(17) PUEBLO LAND.—The term ''Pueblo land'' means any real property that is—

(A) held by the United States in trust for a Pueblo within the Pojoaque Basin;

(B)(i) owned by a Pueblo within the Pojoaque Basin before the date on which a court approves the Settlement Agreement; or

(ii) acquired by a Pueblo on or after the date on which a court approves the Settlement Agreement, if the real property is located—

(I) within the exterior boundaries of the Pueblo, as recognized and conformed by a patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter V); or

(II) within the exterior boundaries of any territory set aside for the Pueblo by law, executive order, or court decree;

(C) owned by a Pueblo or held by the United States in trust for the benefit of a Pueblo outside the Pojoaque Basin that is located within the exterior boundaries of the Pueblo as recognized and confirmed by a patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter V); or

(D) within the exterior boundaries of any real property located outside the Pojoaque Basin set aside for a Pueblo by law, executive order, or court decree, if the land is within or contiguous to land held by the United States in trust for the Pueblo as of January 1, 2005.

(18) PUEBLO WATER FACILITY.—

(A) IN GENERAL.—The term ''Pueblo Water Facility'' means—

(i) a portion of the Regional Water System that serves only water customers on Pueblo land; and

(ii) portions of a Pueblo water system in existence on the date of enactment of this Act that serve water customers on non-Pueblo land, also in existence on the date of enactment of this Act, or their successors, that are—

(I) depicted in the final project design, as modified by the drawings reflecting the completed Regional Water System; and

(II) described in the Operating Agreement.

(B) INCLUSIONS.—The term ''Pueblo Water Facility'' includes—

(i) the barrier dam and infiltration project on the Rio Pojoaque described in the Engineering Report; and

(ii) the Tesuque Pueblo infiltration pond described in the Engineering Report.

(19) REGIONAL WATER SYSTEM.—

(A) IN GENERAL.—The term ''Regional Water System'' means the Regional Water System described in section 111(a).

(B) EXCLUSIONS.—The term ''Regional Water System'' does not include the County or Pueblo water supply delivered through the Regional Water System.

(20) SAN JUAN-CHAMA PROJECT.—The term ''San Juan-Chama Project'' means the Project authorized by section 8 of the Act of June 13, 1962 (76 Stat. 96, 97) and the Act of April 11, 1956 (70 Stat. 105).

(21) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(22) SETTLEMENT AGREEMENT.—The term ''Settlement Agreement'' means the stipulated and binding agreement among the State, the Pueblos, the United States, the County, and the City dated January 19, 2006, and signed by all of the government parties to the Settlement Agreement (other than the United States) on May 3, 2006 and as amended in conformity with this Act.

(23) STATE.—The term ''State'' means the State of New Mexico.

Subtitle A—Pojoaque Basin Regional Water System

SEC. 111. AUTHORIZATION OF REGIONAL WATER SYSTEM.

(a) IN GENERAL.—The Secretary, acting through the Commissioner of Reclamation, shall plan, design, and construct a regional water system in accordance with the Settlement Agreement, to be known as the ''Regional Water System''—

(1) to divert and distribute water to the Pueblos and to the County Water Utility, in accordance with the Engineering Report; and

(2) that consists of—

(A) surface water diversion facilities at San Ildefonso Pueblo on the Rio Grande; and

(B) any treatment, transmission, storage and distribution facilities and wellfields for the County Distribution System and Pueblo Water Facilities that are necessary to supply a minimum of 4,000 acre-feet of water within the Pojoaque Basin, in accordance with the Engineering Report.

(b) FINAL PROJECT DESIGN.—The Secretary shall issue a final project design within 90 days of completion of the environmental compliance described in section 116 for the Regional Water System that—

(1) is consistent with the Engineering Report; and

(2) includes a description of any Pueblo Water Facilities.

(c) ACQUISITION OF LAND; WATER RIGHTS.—

(1) ACQUISITION OF LAND.—Upon request, and in exchange for the funding which shall be provided in section 117(c), the Pueblos shall consent to the grant of such easements and rights-of-way as may be necessary for the construction of the Regional Water System at no cost to the Secretary. To the extent that the State or County own easements or rights-of-way that may be used for construction of the Regional Water System, the State or County shall provide that land or interest in land as necessary for construction at no cost to the Secretary. The Secretary shall acquire any other land or interest in land that is necessary for the construction of the Regional Water System with the exception of the Bishop's Lodge Extension.

(2) WATER RIGHTS.—The Secretary shall not condemn water rights for purposes of the Regional Water System.

(d) CONDITIONS FOR CONSTRUCTION.—

(1) IN GENERAL.—The Secretary shall not begin construction of the Regional Water System facilities until the date on which—

(A) the Secretary executes—

(i) the Settlement Agreement; and

(ii) the Cost-Sharing and System Integration Agreement; and

(B) the State and the County have entered into an agreement with the Secretary to contribute the non-Federal share of the costs of the construction in accordance with the Cost-Sharing and System Integration Agreement.

(e) APPLICABLE LAW.—The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall not apply to the design and construction of the Regional Water System.

(f) CONSTRUCTION COSTS.—

(1) PUEBLO WATER FACILITIES.—The costs of constructing the Pueblo Water Facilities, as determined by the final project design and the Engineering Report—

(A) shall be at full Federal expense subject to the amount authorized in section 117(a)(1); and

(B) shall be nonreimbursable to the United States.

(2) COUNTY DISTRIBUTION SYSTEM.—The costs of constructing the County Distribution System shall be at State and local expense.

(g) STATE AND LOCAL CAPITAL OBLIGATIONS.—The State and local capital obligations for the Regional Water System described in the Cost-Sharing and System Integration Agreement shall be satisfied on the payment of the State and local capital obligations described in the Cost-Sharing and System Integration Agreement.

(h) CONVEYANCE OF REGIONAL WATER SYSTEM FACILITIES.—

(1) IN GENERAL.—Subject to paragraph (2), on completion of the construction of the Regional Water System (other than the Bishop's Lodge Extension if construction of the Bishop's Lodge Extension is deferred pursuant to the Cost-Sharing and System Integration Agreement), the Secretary, in accordance with the Operating Agreement, shall convey to—

(A) each Pueblo the portion of any Pueblo Water Facility that is located within the boundaries of the Pueblo, including any land or interest in land located within the boundaries of the Pueblo that is acquired by the United States for the construction of the Pueblo Water Facility;

(B) the County the County Distribution System, including any land or interest in land acquired by the United States for the construction of the County Distribution System; and

(C) the Authority any portions of the Regional Water System that remain after making the conveyances under subparagraphs (A) and (B), including any land or interest in land acquired by the United States for the construction of the portions of the Regional Water System.

(2) CONDITIONS FOR CONVEYANCE.—The Secretary shall not convey any portion of the Regional Water System facilities under paragraph (1) until the date on which—

(A) construction of the Regional Water System (other than the Bishop's Lodge Extension if construction of the Bishop's Lodge Extension is deferred pursuant to the Cost-Sharing and System Integration Agreement) is complete; and

(B) the Operating Agreement is executed in accordance with section 112.

(3) SUBSEQUENT CONVEYANCE.—On conveyance by the Secretary under paragraph (1), the Pueblos, the County, and the Authority shall not reconvey any portion of the Regional Water System conveyed to the Pueblos, the County, and the Authority, respectively, unless the reconveyance is authorized by an Act of Congress enacted after the date of enactment of this Act.

(4) INTEREST OF THE UNITED STATES.—On conveyance of a portion of the Regional Water System under paragraph (1), the United States shall have no further right, title, or interest in and to the portion of the Regional Water System conveyed.

(5) ADDITIONAL CONSTRUCTION.—On conveyance of a portion of the Regional Water System under paragraph (1), the Pueblos, County, or the Authority, as applicable, may, at the expense of the Pueblos, County, or the Authority, construct any additional infrastructure that is necessary to fully use the water delivered by the Regional Water System.

(6) LIABILITY.—

(A) IN GENERAL.—Effective on the date of conveyance of any land or facility under this section, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the land and facilities conveyed, other than damages caused by acts of negligence by the United States, or by employees or agents of the United States, prior to the date of conveyance.

(B) TORT CLAIMS.—Nothing in this section increases the liability of the United States beyond the liability provided in chapter 171 of title 28, United States Code (commonly known as the ''Federal Tort Claims Act'').

(7) EFFECT.—Nothing in any transfer of ownership provided or any conveyance thereto as provided in this section shall extinguish the right of any Pueblo, the County, or the Regional Water Authority to the continuous use and benefit of each easement or right of way for the use, operation, maintenance, repair, and replacement of Pueblo Water Facilities, the County Distribution System or the Regional Water System or for wastewater purposes as provided in the Cost-Sharing and System Integration Agreement.

SEC. 112. OPERATING AGREEMENT.

(a) IN GENERAL.—The Pueblos and the County shall submit to the Secretary an executed Operating Agreement for the Regional Water System that is consistent with this Act, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement not later than 180 days after the later of—

(1) the date of completion of environmental compliance and permitting; or

(2) the date of issuance of a final project design for the Regional Water System under section 111(b).

(b) APPROVAL.—Not later than 180 days after receipt of the operating agreement described in subsection (a), the Secretary shall approve the Operating Agreement upon determination that the Operating Agreement is consistent with this Act, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement.

(c) CONTENTS.—The Operating Agreement shall include—

(1) provisions consistent with the Settlement Agreement and the Cost-Sharing and System Integration Agreement and necessary to implement the intended benefits of the Regional Water System described in those documents;

(2) provisions for—

(A) the distribution of water conveyed through the Regional Water System, including a delineation of—

(i) distribution lines for the County Distribution System;

(ii) distribution lines for the Pueblo Water Facilities; and

(iii) distribution lines that serve both—

(I) the County Distribution System; and

(II) the Pueblo Water Facilities;

(B) the allocation of the Regional Water System capacity;

(C) the terms of use of unused water capacity in the Regional Water System;

(D) the construction of additional infrastructure and the acquisition of associated rights-of-way or easements necessary to enable any of the Pueblos or the County to fully use water allocated to the Pueblos or the County from the Regional Water System, including provisions addressing when the construction of such additional infrastructure requires approval by the Authority;

(E) the allocation and payment of annual operation, maintenance, and replacement costs for the Regional Water System, including the portions of the Regional Water System that are used to treat, transmit, and distribute water to both the Pueblo Water Facilities and the County Water Utility;

(F) the operation of wellfields located on Pueblo land;

(G) the transfer of any water rights necessary to provide the Pueblo water supply described in section 113(a);

(H) the operation of the Regional Water System with respect to the water supply, including the allocation of the water supply in accordance with section 3.1.8.4.2 of the Settlement Agreement so that, in the event of a shortage of supply to the Regional Water System, the supply to each of the Pueblos' and to the County's distribution system shall be reduced on a prorata basis, in proportion to each distribution system's most current annual use; and

(I) dispute resolution; and

(3) provisions for operating and maintaining the Regional Water System facilities before and after conveyance under section 111(h), including provisions to—

(A) ensure that—

(i) the operation of, and the diversion and conveyance of water by, the Regional Water System is in accordance with the Settlement Agreement;

(ii) the wells in the Regional Water System are used in conjunction with the surface water supply of the Regional Water System to ensure a reliable firm supply of water to all users of the Regional Water System, consistent with the intent of the Settlement Agreement that surface supplies will be used to the maximum extent feasible;

(iii) the respective obligations regarding delivery, payment, operation, and management are enforceable; and

(iv) the County has the right to serve any new water users located on non-Pueblo land in the Pojoaque Basin; and

(B) allow for any aquifer storage and recovery projects that are approved by the Office of the New Mexico State Engineer.

(d) EFFECT.—Nothing in this title precludes the Operating Agreement from authorizing phased or interim operations if the Regional Water System is constructed in phases.

SEC. 113. ACQUISITION OF PUEBLO WATER SUPPLY FOR THE REGIONAL WATER SYSTEM.

(a) IN GENERAL.—For the purpose of providing a reliable firm supply of water from the Regional Water System for the Pueblos in accordance with the Settlement Agreement, the Secretary, on behalf of the Pueblos, shall—

(1) acquire water rights to—

(A) 302 acre-feet of Nambe reserved water described in section 2.6.2 of the Settlement Agreement pursuant to section 117(c)(1)(C); and

(B) 1141 acre-feet from water acquired by the County for water rights commonly referred to as ''Top of the World'' rights in the Aamodt case;

(2) make available 1079 acre-feet to the Pueblos pursuant to a contract entered into among the Pueblos and the Secretary in accordance with section 11 of the Act of June 13, 1962 (76 Stat. 96, 97) (San Juan-Chama Project Act) under water rights held by the Secretary; and

(3) by application to the State Engineer, obtain approval to divert the water acquired and made available under paragraphs (1) and (2) at the points of diversion for the Regional Water System, consistent with the Settlement Agreement and the Cost-Sharing and System Integration Agreement.

(b) FORFEITURE.—The nonuse of the water supply secured by the Secretary for the Pueblos under subsection (a) shall in no event result in forfeiture, abandonment, relinquishment, or other loss thereof.

(c) TRUST.—The Pueblo water supply secured under subsection (a) shall be held by the United States in trust for the Pueblos.

(d) CONTRACT FOR SAN JUAN-CHAMA PROJECT WATER SUPPLY.—With respect to the contract for the water supply required by subsection (a)(2), such San Juan-Chama Project contract shall be pursuant to the following terms:

(1) WAIVERS.—Notwithstanding the provisions of the Act of June 13, 1962 (76 Stat, 96, 97) or any other provision of law—

(A) the Secretary shall waive the entirety of the Pueblos' share of the construction costs for the San Juan-Chama Project, and pursuant to that waiver, the Pueblos' share of all construction costs for the San Juan-Chama Project, inclusive of both principal and interest, due from 1972 to the execution of the contract required by subsection (a)(2), shall be nonreimbursable;

(B) the Secretary's waiver of each Pueblo's share of the construction costs for the San Juan-Chama Project will not result in an increase in the pro rata shares of other San Juan-Chama Project water contractors, but such costs shall be absorbed by the United States Treasury or otherwise appropriated to the Department of the Interior; and

(C) the costs associated with any water made available from the San Juan-Chama Project which were determined nonreimbursable and nonreturnable pursuant to Pub. L. No. 88-293, 78 Stat. 171 (March 26, 1964) shall remain nonreimbursable and nonreturnable.

(2) TERMINATION.—The contract shall provide that it shall terminate only upon the following conditions—

(A) failure of the United States District Court for the District of New Mexico to enter a final decree for the Aamodt case by December 15, 2012 or within the time period of any extension of that deadline granted by the court; or

(B) entry of an order by the United States District Court for the District of New Mexico voiding the final decree and Settlement Agreement for the Aamodt case pursuant to section 10.3 of the Settlement Agreement.

(e) LIMITATION.—The Secretary shall use the water supply secured under subsection (a) only for the purposes described in the Settlement Agreement.

(f) FULFILLMENT OF WATER SUPPLY ACQUISITION OBLIGATIONS.—Compliance with subsections (a) through (e) shall satisfy any and all obligations of the Secretary to acquire or secure a water supply for the Pueblos pursuant to the Settlement Agreement.

(g) RIGHTS OF PUEBLOS IN SETTLEMENT AGREEMENT UNAFFECTED.—Notwithstanding the provisions of subsections (a) through (f), the Pueblos, the County or the Regional Water Authority may acquire any additional water rights to ensure all parties to the Settlement Agreement receive the full allocation of water provided by the Settlement Agreement and nothing in this Act amends or modifies the quantities of water allocated to the Pueblos thereunder.

SEC. 114. DELIVERY AND ALLOCATION OF REGIONAL WATER SYSTEM CAPACITY AND WATER.

(a) ALLOCATION OF REGIONAL WATER SYSTEM CAPACITY.—

(1) IN GENERAL.—The Regional Water System shall have the capacity to divert from the Rio Grande a quantity of water sufficient to provide—

(A) 4,000 acre-feet of consumptive use of water; and

(B) the requisite peaking capacity described in—

(i) the Engineering Report; and

(ii) the final project design.

(2) ALLOCATION TO THE PUEBLOS AND COUNTY WATER UTILITY.—Of the capacity described in paragraph (1)—

(A) there shall be allocated to the Pueblos—

(i) sufficient capacity for the conveyance of 2,500 acre-feet consumptive use; and

(ii) the requisite peaking capacity for the quantity of water described in clause (i); and

(B) there shall be allocated to the County Water Utility—

(i) sufficient capacity for the conveyance of 1,500 acre-feet consumptive use; and

(ii) the requisite peaking capacity for the quantity of water described in clause (i).

(3) APPLICABLE LAW.—Water shall be allocated to the Pueblos and the County Water Utility under this subsection in accordance with—

(A) this title;

(B) the Settlement Agreement; and

(C) the Operating Agreement.

(b) DELIVERY OF REGIONAL WATER SYSTEM WATER.—The Authority shall deliver water from the Regional Water System—

(1) to the Pueblos water in a quantity sufficient to allow full consumptive use of up to 2,500 acre-feet rights by the Pueblos in accordance with—

(A) the Settlement Agreement;

(B) the Operating Agreement; and

(C) this Title; and

(2) to the County water in a quantity sufficient to allow full consumptive use of up to 1,500 acre-feet per year of water rights by the County Water Utility in accordance with—

(A) the Settlement Agreement;

(B) the Operating Agreement; and

(C) this title.

(c) ADDITIONAL USE OF ALLOCATION QUANTITY AND UNUSED CAPACITY.—The Regional Water System may be used to—

(1) provide for use of return flow credits to allow for full consumptive use of the water allocated in the Settlement Agreement to each of the Pueblos and to the County; and

(2) convey water allocated to one of the Pueblos or the County Water Utility for the benefit of another Pueblo or the County Water Utility or allow use of unused capacity by each other through the Regional Water System in accordance with an intergovernmental agreement between the Pueblos, or between a Pueblo and County Water Utility, as applicable, if—

(A) such intergovernmental agreements are consistent with the Operating Agreement, the Settlement Agreement and this Act;

(B) capacity is available without reducing water delivery to any Pueblo or the County Water Utility in accordance with the Settlement Agreement, unless the County Water Utility or Pueblo contracts for a reduction in water delivery or Regional Water System capacity;

(C) the Pueblo or County Water Utility contracting for use of the unused capacity or water has the right to use the water under applicable law; and

(D) any agreement for the use of unused capacity or water provides for payment of

the operation, maintenance, and replacement costs associated with the use of capacity or water.

SEC. 115. AAMODT SETTLEMENT PUEBLOS' FUND.

(a) ESTABLISHMENT OF THE AAMODT SETTLEMENT PUEBLOS' FUND.—There is established in the Treasury of the United States a fund, to be known as the ''Aamodt Settlement Pueblos' Fund,'' consisting of—

(1) such amounts as are made available to the Fund under section 117(c); and

(2) any interest earned from investment of amounts in the Fund under subsection (b).

(b) MANAGEMENT OF THE FUND.—The Secretary shall manage the Fund, invest amounts in the Fund, and make amounts available from the Fund for distribution to the Pueblos in accordance with—

(1) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.); and

(2) this title.

(c) INVESTMENT OF THE FUND.—The Secretary shall invest amounts in the Fund in accordance with—

(1) the Act of April 1, 1880 (25 U.S.C. 161);

(2) the first section of the Act of June 24, 1938 (25 U.S.C. 162a); and

(3) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(d) TRIBAL MANAGEMENT PLAN.—

(1) IN GENERAL.—A Pueblo may withdraw all or part of the Pueblo's portion of the Fund on approval by the Secretary of a tribal management plan as described in the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(2) REQUIREMENTS.—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan shall require that a Pueblo spend any amounts withdrawn from the Fund in accordance with the purposes described in section 117(c).

(3) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any amounts withdrawn from the Fund under an approved tribal management plan are used in accordance with this title.

(4) LIABILITY.—If a Pueblo or the Pueblos exercise the right to withdraw amounts from the Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the amounts withdrawn.

(5) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Pueblos shall submit to the Secretary for approval an expenditure plan for any portion of the amounts in the Fund that the Pueblos do not withdraw under this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, amounts remaining in the Fund will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this title, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement.

(D) ANNUAL REPORT.—The Pueblos shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(6) NO PER CAPITA PAYMENTS.—No part of the principal of the Fund, or the interest or income accruing on the principal shall be distributed to any member of a Pueblo on a per capita basis.

(7) AVAILABILITY OF AMOUNTS FROM THE FUND.—

(A) APPROVAL OF SETTLEMENT AGREEMENT.—Amounts made available under subparagraphs (A) and (C) of section 117(c)(1) shall be available for expenditure or withdrawal only after the date on which the United States District Court for the District of New Mexico issues an order approving the Settlement Agreement.

(B) COMPLETION OF CERTAIN PORTIONS OF REGIONAL WATER SYSTEM.—Amounts made available under section 117(c)(1)(B) shall be available for expenditure or withdrawal only after those portions of the Regional Water System described in section 1.5.24 of the Settlement Agreement have been declared substantially complete by the Secretary.

(C) FAILURE TO FULFILL CONDITIONS PRECEDENT.—If the conditions precedent in section 123 have not been fulfilled by June 30, 2016, the United States shall be entitled to set off any funds expended or withdrawn from the amounts appropriated pursuant to section 117(c), together with any interest accrued, against any claims asserted by the Pueblos against the United States relating to the water rights in the Pojoaque Basin.

SEC. 116. ENVIRONMENTAL COMPLIANCE.

(a) IN GENERAL.—In carrying out this subtitle, the Secretary shall comply with each law of the Federal Government relating to the protection of the environment, including—

(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(b) NATIONAL ENVIRONMENTAL POLICY ACT.—Nothing in this title affects the outcome of any analysis conducted by the Secretary or any other Federal official under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

SEC. 117. AUTHORIZATION OF APPROPRIATIONS.

(a) REGIONAL WATER SYSTEM.—

(1) IN GENERAL.—Subject to paragraph (4), there is authorized to be appropriated to the Secretary for the planning, design, and construction of the Regional Water System and the conduct of environmental compliance activities under section 116 a total of $106,400,000 between fiscal years 2009 and 2021.

(2) PRIORITY OF FUNDING.—Of the amounts authorized under paragraph (1), the Secretary shall give priority to funding—

(A) the construction of the San Ildefonso portion of the Regional Water System, consisting of—

(i) the surface water diversion, treatment, and transmission facilities at San Ildefonso Pueblo; and

(ii) the San Ildefonso Pueblo portion of the Pueblo Water Facilities; and

(B) that part of the Regional Water System providing 475 acre-feet to Pojoaque Pueblo pursuant to section 2.2 of the Settlement Agreement.

(3) ADJUSTMENT.—The amount authorized under paragraph (1) shall be adjusted annually to account for increases in construction costs since October 1, 2006, as determined using applicable engineering cost indices.

(4) LIMITATIONS.—

(A) IN GENERAL.—No amounts shall be made available under paragraph (1) for the construction of the Regional Water System until the date on which the United States District Court for the District of New Mexico issues an order approving the Settlement Agreement.

(B) RECORD OF DECISION.—No amounts made available under paragraph (1) shall be expended unless the record of decision issued by the Secretary after completion of an environmental impact statement provides for a preferred alternative that is in substantial compliance with the proposed Regional Water System, as defined in the Engineering Report.

(b) ACQUISITION OF WATER RIGHTS.—There is authorized to be appropriated to the Secretary funds for the acquisition of the water rights under section 113(a)(1)(B)—

(1) in the amount of $5,400,000.00 if such acquisition is completed by December 31, 2009; and

(2) the amount authorized under paragraph (b)(1) shall be adjusted according to the CPI Urban Index commencing January 1, 2010.

(c) AAMODT SETTLEMENT PUEBLOS' FUND.—

(1) IN GENERAL.—There is authorized to be appropriated to the Fund the following amounts for the period of fiscal years 2009 through 2021:

(A) $8,000,000, which shall be allocated to the Pueblos, in accordance with section 2.7.1 of the Settlement Agreement, for the rehabilitation, improvement, operation, maintenance, and replacement of the agricultural delivery facilities, waste water systems, and other water-related infrastructure of the applicable Pueblo. The amount authorized herein shall be adjusted according to the CPI Urban Index commencing October 1, 2006.

(B) $37,500,000, which shall be allocated to an account, to be established not later than January 1, 2016, to assist the Pueblos in paying the Pueblos' share of the cost of operating, maintaining, and replacing the Pueblo Water Facilities and the Regional Water System.

(C) $5,000,000 and any interest thereon, which shall be allocated to the Pueblo of Nambé for the acquisition of the Nambé reserved water rights in accordance with section 113(a)(1)(A). The amount authorized herein shall be adjusted according to the CPI Urban Index commencing January 1, 2011. The funds provided under this section may be used by the Pueblo of Nambé only for the acquisition of land, other real property interests, or economic development.

(2) OPERATION, MAINTENANCE, AND REPLACEMENT COSTS.—

(A) IN GENERAL.—Prior to conveyance of the Regional Water System pursuant to section 111, the Secretary shall pay any operation, maintenance or replacement costs associated with the Pueblo Water Facilities or the Regional Water System up to an amount that does not exceed $5,000,000, which is authorized to be appropriated to the Secretary.

(B) OBLIGATION OF THE FEDERAL GOVERNMENT AFTER COMPLETION.—Except as provided in section 113(a)(4)(B), after construction of the Regional Water System is completed and the amounts required to be deposited in the account have been deposited under this section the Federal Government shall have no obligation to pay for the operation, maintenance, and replacement costs of the Regional Water System.

Subtitle B—Pojoaque Basin Indian Water Rights Settlement

SEC. 121. SETTLEMENT AGREEMENT AND CONTRACT APPROVAL.

(a) APPROVAL.—To the extent the Settlement Agreement and the Cost-Sharing and System Integration Agreement do not conflict with this title, the Settlement Agreement and the Cost-Sharing and System Integration Agreement (including any amendments to the Settlement Agreement and the Cost-Sharing and System Integration Agreement that are executed to make the Settlement Agreement or the Cost-Sharing and System Integration Agreement consistent with this title) are authorized, ratified, and confirmed.

(b) EXECUTION.—To the extent the Settlement Agreement and the Cost-Sharing and System Integration Agreement do not conflict with this title, the Secretary shall execute the Settlement Agreement and the Cost-Sharing and System Integration Agreement (including any amendments that are

necessary to make the Settlement Agreement or the Cost-Sharing and System Integration Agreement consistent with this title).

(c) AUTHORITIES OF THE PUEBLOS.—

(1) IN GENERAL.—Each of the Pueblos may enter into contracts to lease or exchange water rights or to forbear undertaking new or expanded water uses for water rights recognized in section 2.1 of the Settlement Agreement for use within the Pojoaque Basin in accordance with the other limitations of section 2.1.5 of the Settlement Agreement provided that section 2.1.5 is amended accordingly.

(2) EXECUTION.—The Secretary shall not execute the Settlement Agreement until such amendment is accomplished under paragraph (1).

(3) APPROVAL BY SECRETARY.—Consistent with the Settlement Agreement as amended under paragraph (1), the Secretary shall approve or disapprove a lease entered into under paragraph (1).

(4) PROHIBITION ON PERMANENT ALIENATION.—No lease or contract under paragraph (1) shall be for a term exceeding 99 years, nor shall any such lease or contract provide for permanent alienation of any portion of the water rights made available to the Pueblos under the Settlement Agreement.

(5) APPLICABLE LAW.—Section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any lease or contract entered into under paragraph (1).

(6) LEASING OR MARKETING OF WATER SUPPLY.—The water supply provided on behalf of the Pueblos pursuant to section 113(a)(1) may only be leased or marketed by any of the Pueblos pursuant to the intergovernmental agreements described in section 114(c)(2).

(d) AMENDMENTS TO CONTRACTS.—The Secretary shall amend the contracts relating to the Nambe Falls Dam and Reservoir that are necessary to use water supplied from the Nambe Falls Dam and Reservoir in accordance with the Settlement Agreement.

SEC. 122. ENVIRONMENTAL COMPLIANCE.

(a) EFFECT OF EXECUTION OF SETTLEMENT AGREEMENT.—The execution of the Settlement Agreement under section 121(b) shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) COMPLIANCE WITH ENVIRONMENTAL LAWS.—In carrying out this subtitle, the Secretary shall comply with each law of the Federal Government relating to the protection of the environment, including—

(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 123. CONDITIONS PRECEDENT AND ENFORCEMENT DATE.

(a) CONDITIONS PRECEDENT.—

(1) IN GENERAL.—Upon the fulfillment of the conditions precedent described in paragraph (2), the Secretary shall publish in the Federal Register a statement of finding that the conditions have been fulfilled.

(2) REQUIREMENTS.—The conditions precedents referred to in paragraph (1) are the conditions that—

(A) to the extent that the Settlement Agreement conflicts with this title, the Settlement Agreement has been revised to conform with this title;

(B) the Settlement Agreement, so revised, including waivers and releases pursuant to section 124, has been executed by the appropriate parties and the Secretary;

(C) Congress has fully appropriated, or the Secretary has provided from other authorized sources, all funds authorized by section 117, with the exception of subsection (a)(1) of that section, by June 30, 2016;

(D) the State of New Mexico has enacted any necessary legislation and provided any funding that may be required under the Settlement Agreement;

(E) a partial final decree that sets forth the water rights and other rights to water to which the Pueblos are entitled under the Settlement Agreement and this title and that substantially conforms to the Settlement Agreement has been approved by the United States District Court for the District of New Mexico; and

(F) a final decree that sets forth the water rights for all parties to the Aamodt Case and that substantially conforms to the Settlement Agreement has been approved by the United States District Court for the District of New Mexico by December 15, 2012, or within the time period of any extension of that deadline granted by that court.

(b) ENFORCEMENT DATE.—The Settlement Agreement shall become enforceable as of the date that the United States District Court for the District of New Mexico enters a partial final decree pursuant to subsection (a)(2)(E) and an Interim Administrative Order consistent with the Settlement Agreement. The waivers and releases executed pursuant to section 124 shall become effective as of the date that the conditions precedent described in subsection (a)(2) have been fulfilled.

(c) EXPIRATION.—If the parties to the Settlement Agreement entitled to provide notice regarding the lack of substantial completion of the Regional Water System provide such notice in accordance with section 10.3 of the Settlement Agreement, the Settlement Agreement shall no longer be effective, the waivers and releases executed pursuant to section 124 shall no longer be effective, and any unexpended Federal funds, together with any income earned thereon, and title to any property acquired or constructed with expended Federal funds, shall be returned to the Federal Government unless otherwise agreed to by the appropriate parties in writing and approved by Congress.

SEC. 124. WAIVERS AND RELEASES.

(a) CLAIMS BY THE PUEBLO AND THE UNITED STATES.—The Pueblos, on behalf of themselves and their members, and the United States, acting in its capacity as trustee for the Pueblos, as part of their obligations under the Settlement Agreement, shall each execute a waiver and release of—

(1) all past, present, and future claims to surface and groundwater rights that the Pueblos, or the United States on behalf of the Pueblos, asserted or could have asserted in the Aamodt Case;

(2) all past, present, and future claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the Pojoaque Basin that accrued at any time up to and including the enforcement date identified in section 123(b), that the Pueblos or their members, or the United States on behalf of the Pueblos, asserted or could have asserted against the parties to the Aamodt Case;

(3) their defenses in the Aamodt Case to the claims previously asserted therein by the other Settlement Parties; and

(4) all pending inter se challenges against other parties to the Settlement Agreement.

(b) CLAIMS BY THE PUEBLOS.—The Pueblos, on behalf of themselves and their members, as part of their obligations under the Settlement Agreement, shall execute a waiver and release of—

(1) all causes of action against the United States, its agencies, or employees, arising out of all past, present, and future claims for water rights that were asserted, or could have been asserted, by the United States as trustee for the Pueblos and on behalf of the Pueblos in the Aamodt case;

(2) all claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the Pojoaque Basin that accrued at any time up to and including the enforcement date identified in section 123(b), that the Pueblos or their members may have against the United States, its agencies, or employees; and

(3) all claims arising out of or resulting from the negotiation or the adoption of the Settlement Agreement, exhibits thereto, the Final Decree, or this title, that the Pueblos of their members may have against the United States, its agencies, agents or employees.

(c) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.—Notwithstanding subsections (a) and (b), and except as otherwise provided in the Settlement Agreement, the Pueblos and the United States shall retain—

(1) all claims for water rights or injuries to water rights arising out of activities occurring outside the Pojoaque Basin except insofar as such claims are specifically addressed in the Cost-Sharing and System Integration Agreement;

(2) all claims for enforcement of the Settlement Agreement, the Final Decree, or this title, through such legal and equitable remedies as may be available in any court of competent jurisdiction;

(3) all rights to use and protect water rights acquired pursuant to state law to the extent not inconsistent with the Final Decree and the Settlement Agreement;

(4) all claims relating to activities affecting the quality of water; and

(5) all rights, remedies, privileges, immunities, powers, and claims not specifically waived and released pursuant to the Settlement Agreement or this title.

(d) TOLLING OF CLAIMS.—

(1) IN GENERAL.—Each applicable period of limitation and time-based equitable defense relating to a claim described in this section shall be tolled for the period beginning on the date of enactment of this Act and ending on the Enforcement Date.

(2) NO REVIVAL OF CLAIMS.—Nothing in this subsection revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act.

SEC. 125. EFFECT.

Nothing in this title or the Settlement Agreement affects the land and water rights, claims, or entitlements to water of any Indian tribe, pueblo, or community other than the Pueblos.

TITLE II—TAOS PUEBLO INDIAN WATER RIGHTS SETTLEMENT ACT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Taos Pueblo Indian Water Rights Settlement Act''.

SEC. 202. PURPOSE.

The purposes of this title are—

(1) to approve, ratify, and confirm the Taos Pueblo Indian Water Rights Settlement Agreement;

(2) to authorize and direct the Secretary to execute the Settlement Agreement and to perform all obligations of the Secretary under the Settlement Agreement and this title; and

(3) to authorize all actions and appropriations necessary for the United States to meet its obligations under the Settlement Agreement and this title.

SEC. 203. DEFINITIONS.

In this title:

(1) ELIGIBLE NON-PUEBLO ENTITIES.—The term ''Eligible Non-Pueblo Entities'' means the Town of Taos, EPWSD, and the New Mexico Department of Finance and Administration Local Government Division on behalf

of the Acequia Madre del Rio Lucero y del Arroyo Seco, the Acequia Madre del Prado, the Acequia del Monte, the Acequia Madre del Rio Chiquito, the Upper Ranchitos Mutual Domestic Water Consumers Association, the Upper Arroyo Hondo Mutual Domestic Water Consumers Association, and the Llano Quemado Mutual Domestic Water Consumers Association.

(2) ENFORCEMENT DATE.—The term ''Enforcement Date'' means the date upon which all conditions precedent set forth in section 210(f)(2) have been fulfilled.

(3) MUTUAL-BENEFIT PROJECTS.—The term ''Mutual-Benefit Projects'' means the projects described and identified in Articles 6 and 10.1 of the Settlement Agreement.

(4) PARTIAL FINAL DECREE.—The term ''Partial Final Decree'' means the Decree entered in New Mexico v. Abeyta and New Mexico v. Arellano, Civil Nos. 7896–BB (U.S. D.N.M.) and 7939–BB (U.S. D.N.M) (consolidated), for the resolution of the Pueblo's water right claims and which is substantially in the form agreed to by the Parties and attached to the Settlement Agreement as Attachment 5.

(5) PARTIES.—The term ''Parties'' means the Parties to the Settlement Agreement, as identified in Article 1 of the Settlement Agreement.

(6) PUEBLO.—The term ''Pueblo'' means the Taos Pueblo, a sovereign Indian Tribe duly recognized by the United States of America.

(7) PUEBLO LANDS.—The term ''Pueblo lands'' means those lands located within the Taos Valley to which the Pueblo, or the United States in its capacity as trustee for the Pueblo, holds title subject to Federal law limitations on alienation. Such lands include Tracts A, B, and C, the Pueblo's land grant, the Blue Lake Wilderness Area, and the Tenorio and Karavas Tracts and are generally depicted in Attachment 2 to the Settlement Agreement.

(8) SAN JUAN-CHAMA PROJECT.—The term ''San Juan-Chama Project'' means the Project authorized by section 8 of the Act of June 13, 1962 (76 Stat. 96, 97), and the Act of April 11, 1956 (70 Stat. 105).

(9) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(10) SETTLEMENT AGREEMENT.—The term ''Settlement Agreement'' means the contract dated March 31, 2006, between and among—

(A) the United States, acting solely in its capacity as trustee for Taos Pueblo;

(B) the Taos Pueblo, on its own behalf;

(C) the State of New Mexico;

(D) the Taos Valley Acequia Association and its 55 member ditches (''TVAA'');

(E) the Town of Taos;

(F) El Prado Water and Sanitation District (''EPWSD''); and

(G) the 12 Taos area Mutual Domestic Water Consumers Associations (''MDWCAs''), as amended to conform with this title.

(11) STATE ENGINEER.—The term ''State Engineer'' means the New Mexico State Engineer.

(12) TAOS VALLEY.—The term ''Taos Valley'' means the geographic area depicted in Attachment 4 of the Settlement Agreement.

SEC. 204. PUEBLO RIGHTS.

(a) IN GENERAL.—Those rights to which the Pueblo is entitled under the Partial Final Decree shall be held in trust by the United States on behalf of the Pueblo and shall not be subject to forfeiture, abandonment or permanent alienation.

(b) SUBSEQUENT ACT OF CONGRESS.—The Pueblo shall not be denied all or any part of its rights held in trust absent its consent unless such rights are explicitly abrogated by an Act of Congress hereafter enacted.

SEC. 205. PUEBLO WATER INFRASTRUCTURE AND WATERSHED ENHANCEMENT.

(a) IN GENERAL.—The Secretary, acting through the Commissioner of Reclamation, shall provide grants and technical assistance to the Pueblo on a nonreimbursable basis to—

(1) plan, permit, design, engineer, construct, reconstruct, replace, or rehabilitate water production, treatment, and delivery infrastructure;

(2) restore, preserve, and protect the environment associated with the Buffalo Pasture area; and

(3) protect and enhance watershed conditions.

(b) AVAILABILITY OF GRANTS.—Upon the Enforcement Date, all amounts appropriated pursuant to section 210(c)(1) shall be available in grants to the Pueblo after the requirements of subsection (c) have been met.

(c) PLAN.—The Secretary shall provide financial assistance pursuant to subsection (a) upon the Pueblo's submittal of a plan that identifies the projects to be implemented consistent with the purposes of this section and describes how such projects are consistent with the Settlement Agreement.

(d) EARLY FUNDS.—Notwithstanding subsection (b), $10,000,000 of the monies authorized to be appropriated pursuant to section 210(c)(1)—

(1) shall be made available in grants to the Pueblo by the Secretary upon appropriation or availability of the funds from other authorized sources; and

(2) shall be distributed by the Secretary to the Pueblo on receipt by the Secretary from the Pueblo of a written notice, a Tribal Council resolution that describes the purposes under subsection (a) for which the monies will be used, and a plan under subsection (c) for this portion of the funding.

SEC. 206. TAOS PUEBLO WATER DEVELOPMENT FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ''Taos Pueblo Water Development Fund'' (hereinafter, ''Fund'') to be used to pay or reimburse costs incurred by the Pueblo for—

(1) acquiring water rights;

(2) planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment or delivery infrastructure, on-farm improvements, or wastewater infrastructure;

(3) restoring, preserving and protecting the Buffalo Pasture, including planning, permitting, designing, engineering, constructing, operating, managing and replacing the Buffalo Pasture Recharge Project;

(4) administering the Pueblo's water rights acquisition program and water management and administration system; and

(5) for watershed protection and enhancement, support of agriculture, water-related Pueblo community welfare and economic development, and costs related to the negotiation, authorization, and implementation of the Settlement Agreement.

(b) MANAGEMENT OF THE FUND.—The Secretary shall manage the Fund, invest amounts in the Fund, and make monies available from the Fund for distribution to the Pueblo consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001, et seq.) (hereinafter, ''Trust Fund Reform Act''), this title, and the Settlement Agreement.

(c) INVESTMENT OF THE FUND.—The Secretary shall invest amounts in the Fund in accordance with—

(1) the Act of April 1, 1880 (21 Stat. 70, ch. 41, 25 U.S.C. 161);

(2) the first section of the Act of June 24, 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and

(3) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(d) AVAILABILITY OF AMOUNTS FROM THE FUND.—Upon the Enforcement Date, all monies deposited in the Fund pursuant to section 210(c)(2) shall be available to the Pueblo for expenditure or withdrawal after the requirements of subsection (e) have been met.

(e) EXPENDITURES AND WITHDRAWAL.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) IN GENERAL.—The Pueblo may withdraw all or part of the Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

(B) REQUIREMENTS.—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that the Pueblo spend any funds in accordance with the purposes described in subsection (a).

(2) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the requirement that monies withdrawn from the Fund are used for the purposes specified in subsection (a).

(3) LIABILITY.—If the Pueblo exercises the right to withdraw monies from the Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the monies withdrawn.

(4) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Pueblo shall submit to the Secretary for approval an expenditure plan for any portions of the funds made available under this title that the Pueblo does not withdraw under paragraph (1)(A).

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, amounts remaining in the Fund will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this title.

(5) ANNUAL REPORT.—The Pueblo shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(f) FUNDS AVAILABLE UPON APPROPRIATION.—Notwithstanding subsection (d), $15,000,000 of the monies authorized to be appropriated pursuant to section 210(c)(2)—

(1) shall be available upon appropriation for the Pueblo's acquisition of water rights in fulfillment of the Settlement Agreement, the Buffalo Pasture Recharge Project, implementation of the Pueblo's water rights acquisition program and water management and administration system, the design, planning, and permitting of water or wastewater infrastructure eligible for funding under sections 205 or 206, or costs related to the negotiation, authorization, and implementation of the Settlement Agreement; and

(2) shall be distributed by the Secretary to the Pueblo on receipt by the Secretary from the Pueblo of a written notice and a Tribal Council resolution that describes the purposes under paragraph (1) for which the monies will be used.

(g) NO PER CAPITA DISTRIBUTIONS.—No part of the Fund shall be distributed on a per capita basis to members of the Pueblo.

SEC. 207. MARKETING.

(a) PUEBLO WATER RIGHTS.—Subject to the approval of the Secretary in accordance with subsection (e), the Pueblo may market water rights secured to it under the Settlement Agreement and Partial Final Decree, provided that such marketing is in accordance with this section.

(b) PUEBLO CONTRACT RIGHTS TO SAN JUAN-CHAMA PROJECT WATER.—Subject to the approval of the Secretary in accordance with

subsection (e), the Pueblo may subcontract water made available to the Pueblo under the contract authorized under section 209(b)(1)(A) to third parties to supply water for use within or without the Taos Valley, provided that the delivery obligations under such subcontract are not inconsistent with the Secretary's existing San Juan-Chama Project obligations and such subcontract is in accordance with this section.

(c) LIMITATION.—

(1) IN GENERAL.—Diversion or use of water off Pueblo Lands pursuant to Pueblo water rights or Pueblo contract rights to San Juan-Chama Project water shall be subject to and not inconsistent with the same requirements and conditions of State law, any applicable Federal law, and any applicable interstate compact as apply to the exercise of water rights or contract rights to San Juan-Chama Project water held by non-Federal, non-Indian entities, including all applicable State Engineer permitting and reporting requirements.

(2) EFFECT ON WATER RIGHTS.—Such diversion or use off Pueblo Lands under paragraph (1) shall not impair water rights or increase surface water depletions within the Taos Valley.

(d) MAXIMUM TERM.—

(1) IN GENERAL.—The maximum term of any water use lease or subcontract, including all renewals, shall not exceed 99 years in duration.

(2) ALIENATION OF RIGHTS.—The Pueblo shall not permanently alienate any rights it has under the Settlement Agreement, the Partial Final Decree, and this title.

(e) APPROVAL OF SECRETARY.—The Secretary shall approve or disapprove any lease or subcontract submitted by the Pueblo for approval not later than—

(1) 180 days after submission; or

(2) 60 days after compliance, if required, with the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or any other requirement of Federal law, whichever is later, provided that no Secretarial approval shall be required for any water use lease or subcontract with a term of less than 7 years.

(f) NO FORFEITURE OR ABANDONMENT.—The nonuse by a lessee or subcontractor of the Pueblo of any right to which the Pueblo is entitled under the Partial Final Decree shall in no event result in a forfeiture, abandonment, relinquishment, or other loss of all or any part of those rights.

(g) NO PREEMPTION.—

(1) IN GENERAL.—The approval authority of the Secretary provided under subsection (e) shall not amend, construe, supersede, or preempt any State or Federal law, interstate compact, or international treaty that pertains to the Colorado River, the Rio Grande, or any of their tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quantity of those waters.

(2) APPLICABLE LAW.—The provisions of section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any water made available under the Settlement Agreement.

(h) NO PREJUDICE.—Nothing in this title shall be construed to establish, address, prejudice, or prevent any party from litigating whether or to what extent any applicable State law, Federal law or interstate compact does or does not permit, govern, or apply to the use of the Pueblo's water outside of New Mexico.

SEC. 208. MUTUAL-BENEFIT PROJECTS.

(a) IN GENERAL.—Upon the Enforcement Date, the Secretary, acting through the Commissioner of Reclamation, shall provide financial assistance in the form of grants on a nonreimbursable basis to Eligible Non-Pueblo Entities to plan, permit, design, engineer, and construct the Mutual Benefits Projects in accordance with the Settlement Agreement—

(1) to minimize adverse impacts on the Pueblo's water resources by moving future non-Indian ground water pumping away from the Pueblo's Buffalo Pasture; and

(2) to implement the resolution of a dispute over the allocation of certain surface water flows between the Pueblo and non-Indian irrigation water right owners in the community of Arroyo Seco Arriba.

(b) COST-SHARING.—

(1) FEDERAL SHARE.—The Federal share of the total cost of planning, designing, and constructing the Mutual Benefit Projects authorized in subsection (a) shall be 75 percent and shall be nonreimbursable.

(2) NON-FEDERAL SHARE.—The non-Federal share of the total cost of planning, designing, and constructing the Mutual Benefit Projects shall be 25 percent and may be in the form of in-kind contributions, including the contribution of any valuable asset or service that the Secretary determines would substantially contribute to completing the Mutual Benefit Projects.

SEC. 209. SAN JUAN-CHAMA PROJECT CONTRACTS.

(a) IN GENERAL.—Contracts issued under this section shall be in accordance with this title and the Settlement Agreement.

(b) CONTRACTS FOR SAN JUAN-CHAMA PROJECT WATER.—

(1) IN GENERAL.—The Secretary shall enter into 3 repayment contracts by December 31, 2009, for the delivery of San Juan-Chama Project water in the following amounts:

(A) 2,215 acre-feet/annum to the Pueblo.

(B) 366 acre-feet/annum to the Town of Taos.

(C) 40 acre-feet/annum to EPWSD.

(2) REQUIREMENTS.—Each such contract shall provide that if the conditions precedent set forth in section 210(f)(2) have not been fulfilled by December 31, 2015, the contract shall expire on that date.

(c) WAIVER.—With respect to the contracts authorized and required by subsection (b)(1) and notwithstanding the provisions of Public Law 87–483 (76 Stat. 96) or any other provision of law—

(1) the Secretary shall waive the entirety of the Pueblo's share of the construction costs, both principal and the interest, for the San Juan-Chama Project and pursuant to that waiver, the Pueblo's share of all construction costs for the San Juan-Chama Project, inclusive of both principal and interest shall be nonreimbursable; and

(2) the Secretary's waiver of the Pueblo's share of the construction costs for the San Juan-Chama Project will not result in an increase in the pro rata shares of other San Juan-Chama Project water contractors, but such costs shall be absorbed by the United States Treasury or otherwise appropriated to the Department of the Interior.

SEC. 210. AUTHORIZATIONS, RATIFICATIONS, CONFIRMATIONS, AND CONDITIONS PRECEDENT.

(a) RATIFICATION.—

(1) IN GENERAL.—Except to the extent that any provision of the Settlement Agreement conflicts with any provision of this title, the Settlement Agreement is authorized, ratified, and confirmed.

(2) AMENDMENTS.—To the extent amendments are executed to make the Settlement Agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(b) EXECUTION OF SETTLEMENT AGREEMENT.—To the extent that the Settlement Agreement does not conflict with this title, the Secretary shall execute the Settlement Agreement, including all exhibits to the Settlement Agreement requiring the signature of the Secretary and any amendments necessary to make the Settlement Agreement consistent with this title, after the Pueblo has executed the Settlement Agreement and any such amendments.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) TAOS PUEBLO INFRASTRUCTURE AND WATERSHED FUND.—There is authorized to be appropriated to the Secretary to provide grants pursuant to section 205, $30,000,000, as adjusted under paragraph (4), for the period of fiscal years 2009 through 2015.

(2) TAOS PUEBLO WATER DEVELOPMENT FUND.—There is authorized to be appropriated to the Taos Pueblo Water Development Fund, established at section 206(a), $50,000,000, as adjusted under paragraph (4), for the period of fiscal years 2009 through 2015.

(3) MUTUAL-BENEFIT PROJECTS FUNDING.—There is further authorized to be appropriated to the Secretary to provide grants pursuant to section 208, a total of $33,000,000, as adjusted under paragraph (4), for the period of fiscal years 2009 through 2015.

(4) ADJUSTMENTS TO AMOUNTS AUTHORIZED.—The amounts authorized to be appropriated under paragraphs (1) through (3) shall be adjusted by such amounts as may be required by reason of changes since April 1, 2007, in construction costs, as indicated by engineering cost indices applicable to the types of construction or rehabilitation involved.

(5) DEPOSIT IN FUND.—Except for the funds to be provided to the Pueblo pursuant to section 205(d), the Secretary shall deposit the funds made available pursuant to paragraphs (1) and (3) into a Taos Settlement Fund to be established within the Treasury of the United States so that such funds may be made available to the Pueblo and the Eligible Non-Pueblo Entities upon the Enforcement Date as set forth in sections 205(b) and 208(a).

(d) AUTHORITY OF THE SECRETARY.—The Secretary is authorized to enter into such agreements and to take such measures as the Secretary may deem necessary or appropriate to fulfill the intent of the Settlement Agreement and this title.

(e) ENVIRONMENTAL COMPLIANCE.—

(1) EFFECT OF EXECUTION OF SETTLEMENT AGREEMENT.—The Secretary's execution of the Settlement Agreement shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) COMPLIANCE WITH ENVIRONMENTAL LAWS.—In carrying out this title, the Secretary shall comply with each law of the Federal Government relating to the protection of the environment, including—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(f) CONDITIONS PRECEDENT AND SECRETARIAL FINDING.—

(1) IN GENERAL.—Upon the fulfillment of the conditions precedent described in paragraph (2), the Secretary shall publish in the Federal Register a statement of finding that the conditions have been fulfilled.

(2) CONDITIONS.—The conditions precedent referred to in paragraph (1) are the following:

(A) The President has signed into law the Taos Pueblo Indian Water Rights Settlement Act.

(B) To the extent that the Settlement Agreement conflicts with this title, the Settlement Agreement has been revised to conform with this title.

(C) The Settlement Agreement, so revised, including waivers and releases pursuant to section 211, has been executed by the Parties and the Secretary prior to the Parties' motion for entry of the Partial Final Decree.

(D) Congress has fully appropriated or the Secretary has provided from other authorized sources all funds authorized by paragraphs (1) through (3) of subsection (c) so that the entire amounts so authorized have been previously provided to the Pueblo pursuant to sections 205 and 206, or placed in the Taos Pueblo Water Development Fund or the Taos Settlement Fund as directed in subsection (c).

(E) The Legislature of the State of New Mexico has fully appropriated the funds for the State contributions as specified in the Settlement Agreement, and those funds have been deposited in appropriate accounts.

(F) The State of New Mexico has enacted legislation that amends NMSA 1978, section 72–6–3 to state that a water use due under a water right secured to the Pueblo under the Settlement Agreement or the Partial Final Decree may be leased for a term, including all renewals, not to exceed 99 years, provided that this condition shall not be construed to require that said amendment state that any State law based water rights acquired by the Pueblo or by the United States on behalf of the Pueblo may be leased for said term.

(G) A Partial Final Decree that sets forth the water rights and contract rights to water to which the Pueblo is entitled under the Settlement Agreement and this title and that substantially conforms to the Settlement Agreement and Attachment 5 thereto has been approved by the Court and has become final and nonappealable.

(g) ENFORCEMENT DATE.—The Settlement Agreement shall become enforceable, and the waivers and releases executed pursuant to section 211 and the limited waiver of sovereign immunity set forth in section 212(a) shall become effective, as of the date that the conditions precedent described in subsection (f)(2) have been fulfilled.

(h) EXPIRATION DATE.—

(1) IN GENERAL.—If all of the conditions precedent described in section (f)(2) have not been fulfilled by December 31, 2015, the Settlement Agreement shall be null and void, the waivers and releases executed pursuant to section 211 shall not become effective, and any unexpended Federal funds, together with any income earned thereon, and title to any property acquired or constructed with expended Federal funds, shall be returned to the Federal Government, unless otherwise agreed to by the Parties in writing and approved by Congress.

(2) EXCEPTION.—Notwithstanding subsection (h)(1) or any other provision of law, any unexpended Federal funds, together with any income earned thereon, made available under sections 205(d) and 206(f) and title to any property acquired or constructed with expended Federal funds made available under sections 205(d) and 206(f) shall be retained by the Pueblo.

(3) RIGHT TO SET-OFF.—In the event the conditions precedent set forth in subsection (f)(2) have not been fulfilled by December 31, 2015, the United States shall be entitled to set off any funds expended or withdrawn from the amount appropriated pursuant to paragraphs (1) and (2) of subsection (c) or made available from other authorized sources, together with any interest accrued, against any claims asserted by the Pueblo against the United States relating to water rights in the Taos Valley.

SEC. 211. WAIVERS AND RELEASES.

(a) CLAIMS BY THE PUEBLO AND THE UNITED STATES.—The Pueblo, on behalf of itself and its members, and the United States, acting through the Secretary in its capacity as trustee for the Pueblo, as part of their obligations under the Settlement Agreement, shall each execute a waiver and release of claims against all Parties to the Settlement Agreement, including individual members of signatory Acequias, from—

(1) all past, present, and future claims to surface and groundwater rights that the Pueblo, or the United States on behalf of the Pueblo, asserted or could have asserted in New Mexico v. Abeyta and New Mexico v. Arellano, Civil Nos. 7896–BB (U.S. D.N.M.) and 7939–BB (U.S. D.N.M.) (consolidated);

(2) all past, present, and future claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of water for lands within the Taos Valley that accrued from time immemorial through the Enforcement Date that the Pueblo, or the United States on behalf of the Pueblo, asserted or could have asserted;

(3) all past, present, and future claims to surface and groundwater rights to the use of Rio Grande mainstream or tributary water, whether presently known or unknown, whether for consumptive or nonconsumptive use, that the Pueblo, or the United States on behalf of the Pueblo, could assert in any present or future water rights adjudication proceeding that are not based on ownership of land or that are based on Pueblo or United States ownership of lands or water rights at any time prior to the Enforcement Date, except that nothing in this paragraph shall be construed to prevent the Pueblo or the United States from fully participating in the inter se phase of any such present or future water rights adjudication proceeding;

(4) all past, present, and future claims for damages, losses or injuries to water rights or claims of interference, diversion or taking of Rio Grande mainstream or tributary water that accrued from time immemorial through the Enforcement Date that the Pueblo, or the United States on behalf of the Pueblo, asserted or could have asserted; and

(5) all past, present, and future claims arising out of or resulting from the negotiation or the adoption of the Settlement Agreement, attachments thereto, or any specific terms and provisions thereof, against the State of New Mexico, its agencies, agents or employees.

(b) CLAIMS BY THE PUEBLO.—The Pueblo, on behalf of itself and its members, as part of its obligations under the Settlement Agreement, shall execute a waiver and release of claims against the United States, its agencies, and its employees from—

(1) all past, present, and future claims for water rights that were asserted, or could have been asserted, by the United States as trustee for the Pueblo and on behalf of the Pueblo in New Mexico v. Abeyta and New Mexico v. Arellano, Civil Nos. 7896–BB (U.S. D.N.M.) and 7939–BB (U.S. D.N.M) (consolidated);

(2) all past, present, and future claims for damages, losses or injuries to water rights or all past, present, and future claims for failure to intervene or act on the Pueblo's behalf in the protection of its water rights, or all past, present, and future claims for failure to acquire and/or develop the water rights and resources of the Pueblo, that accrued from time immemorial through the Enforcement Date; and

(3) all past, present, and future claims arising out of or resulting from the negotiation or the adoption of the Settlement Agreement, attachments thereto, or negotiation and enactment of this title or any specific terms and provisions thereof, against the United States, its agencies, agents or employees.

(c) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.—Notwithstanding subsections (a) and (b), the Pueblo and its members, and the United States, as trustee for the Pueblo and its members, shall retain the following rights and claims:

(1) All claims against persons other than the Parties to the Settlement Agreement for injuries to water rights arising out of activities occurring outside the Taos Valley or the Taos Valley Stream System.

(2) All claims for enforcement of the Settlement Agreement, the San Juan-Chama Project contract between the Pueblo and the United States, the Partial Final Decree, or this title, through such legal and equitable remedies as may be available in any court of competent jurisdiction.

(3) All rights to use and protect water rights acquired pursuant to state law, to the extent not inconsistent with the Partial Final Decree and the Settlement Agreement.

(4) All claims relating to activities affecting the quality of water.

(5) All rights, remedies, privileges, immunities, powers, and claims not specifically waived and released pursuant to the Settlement Agreement or this title.

(d) TOLLING OF CLAIMS.—

(1) IN GENERAL.—Each applicable period of limitation and time-based equitable defense relating to a claim described in this section shall be tolled for the period beginning on the date of enactment of this Act and ending on the Enforcement Date.

(2) NO REVIVAL OF CLAIMS.—Nothing in this subsection revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this title.

(3) LIMITATION.—Nothing in this section precludes the tolling of any period of limitations or any time-based equitable defense under any other applicable law.

SEC. 212. INTERPRETATION AND ENFORCEMENT.

(a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—Upon and after the Enforcement Date, if any Party to the Settlement Agreement brings an action in any court of competent jurisdiction over the subject matter relating only and directly to the interpretation or enforcement of the Settlement Agreement or this title, and names the United States or the Pueblo as a party, then the United States, the Pueblo, or both may be added as a party to any such action, and any claim by the United States or the Pueblo to sovereign immunity from the action is waived, but only for the limited and sole purpose of such interpretation or enforcement, and no waiver of sovereign immunity is made for any action against the United States or the Pueblo that seeks money damages.

(b) SUBJECT MATTER JURISDICTION NOT AFFECTED.—Nothing in this title shall be deemed as conferring, restricting, enlarging, or determining the subject matter jurisdiction of any court, including the jurisdiction of the court that enters the Partial Final Decree adjudicating the Pueblo's water rights.

(c) REGULATORY AUTHORITY NOT AFFECTED.—Nothing in this title shall be deemed to determine or limit any authority of the State or the Pueblo to regulate or administer waters or water rights now or in the future.

SEC. 213. DISCLAIMER.

Nothing in the Settlement Agreement or this title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims, or entitlements to water of any other Indian tribe.

Mr. BINGAMAN. Mr. President, today Senator DOMENICI and I are introducing a bill that I am pleased to say, will help end contentious disputes over water rights claims in two longstanding general stream adjudications in northern New Mexico. The bill accomplishes this by authorizing two Indian water rights settlements. The first is a settlement involving the

water rights claims of the Nambe, Pojoaque, San Ildefonso, and Tesuque Pueblos in the Rio Pojoaque stream system, north of Santa Fe. The second settlement resolves Taos Pueblo's water rights claims in the Rio Pueblo de Taos stream system.

The Rio Pojoaque stream adjudication is known as the Aamodt case, and it's my understanding that it's the longest active case in the Federal court system nationwide. The case began in 1966, and since that time has been actively litigated before the district court in New Mexico and the Tenth Circuit Court of Appeals. Forty years of litigation resolved very little, certainly not what the parties accomplished by engaging directly with each other in an attempt to resolve their differences. The Aamodt Litigation Settlement Act represents an agreement by the parties that will 1. secure water to meet the present and future needs of the four Pueblos involved in the litigation; 2. protect the interests and rights of long-standing water users, including century-old irrigation practices; and 3. ensure that water is available for municipal and domestic needs for all residents in the Pojoaque basin. Negotiation of this agreement was a lengthy process and the parties had to renegotiate several issues to address local, State, and Federal policy concerns. In the end, however, their commitment to solving the water supply issues in the basin prevailed.

The Rio Pueblo de Taos adjudication is a dispute that is almost 40 years old. Similar to the Aamodt case, little has been resolved by the pending litigation. The parties have been in settlement discussions for well over a decade but it was not until the last 5 years that the discussions took on the sense of urgency needed to resolve the issues at hand. The settlement will fulfill the rights of the Pueblo consistent with the Federal trust responsibility, while continuing the practice of sharing the water necessary to protect the sustainability of traditional agricultural communities. The town of Taos and other local entities are also secure in their ability to access the water necessary to meet municipal and domestic needs. The Taos Pueblo Indian Water Rights Settlement Act represents a commonsense set of solutions that all parties to the adjudication have a stake in implementing.

Both settlements are widely supported in their respective communities. Moreover, the State of New Mexico, under Governor Richardson's leadership, deserves special recognition for actively pursuing a settlement in both of these matters and committing significant resources so that the Federal Government does not have to bear the entire cost of these settlements. To the extent that going concerns may exist by some remaining water users, I am committed to continuing the dialog about the value of these settlements.

This bill is critical for New Mexico's future. I look forward to working with my colleagues in the Senate to see that it gets enacted into law. The U.S. Supreme Court once characterized the Federal Government's responsibilities to Indian tribes as ''moral obligation of the highest responsibility and trust.'' This bill is an attempt to ensure that the Government lives up to that standard, and does so in a manner that also addresses the needs of the Pueblos' neighbors.

By Mrs. FEINSTEIN:

S. 3382. A bill for the relief of Guy Privat Tape and Lou Nazie Raymonde Toto; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, today I am introducing a private relief bill on behalf of Guy Privat Tape and his wife Lou Nazie Raymonde Toto. Mr. Tape and Ms. Toto are citizens of the Ivory Coast, but have been living in the San Francisco area of California for approximately 15 years.

The story of the Mr. Tape and Ms. Toto is compelling and I believe they merit Congress's special consideration for such an extraordinary form of relief as a private bill.

Mr. Tape and Ms. Toto were subjected to numerous atrocities in the early 1990s in the Ivory Coast. After participating in a demonstration against the ruling party, they were jailed and tortured by their own government. Ms. Toto was brutally raped by her captors and several years later learned that she had contracted HIV.

Despite the hardships that they suffered, Mr. Tape and Ms. Toto were able to make a better life for themselves in the United States. Mr. Tape arrived in the U.S. in 1993 on a B1/B2 non-immigrant visa. Ms. Toto entered without inspection in 1995 from Spain. Despite being diagnosed with HIV, Ms. Toto gave birth to two healthy children, Melody, age 10, and Emmanuel, age 6.

Since arriving in the United States, this family has dedicated themselves to community involvement and a strong work ethic. They pay taxes and own their own home in Hercules, California. They are active members of Easter Hill United Methodist Church.

Mr. Tape is the owner of a small business, Melody's Carpet Cleaning & Upholstery, which has four other employees. Unfortunately, in 2002, Mr. Tape was diagnosed with urologic cancer. While his doctor states that the cancer is currently in remission, he will continue to require life-long surveillance to monitor for recurrence of the disease.

In addition to raising her two children, Ms. Toto obtained a certificate to be a nurse's aide and currently works as a Resident Care Specialist at Creekside Health Care in San Pablo, California. She hopes to finish her schooling so that she can become a Registered Nurse. She is currently taking classes at Contra Costa Community College. Ms. Toto continues to receive medical treatment for HIV. According to her doctor, without access to adequate health care and laboratory monitoring, she is at risk of developing life-threatening illnesses.

Mr. Tape and Ms. Toto applied for asylum when they arrived in the U.S., but after many years of litigation, the claim was ultimately denied by the 9th Circuit Court of Appeals.

Although the regime which subjected Mr. Tape and Ms. Toto to imprisonment and torture is no longer in power, Mr. Tape has been afraid to return to Ivory Coast due to his prior association with President Gbagbo. Mr. Tape had previously sought to promote democracy and peace in the region in support of the current President Gbagbo's party. However, in 2006 Mr. Tape publically distanced himself from President Gbagbo's government when he accused the party of violence and corruption. As a result, Mr. Tape strongly believes that his family will be targeted if they return to Ivory Coast.

One of the most compelling reasons for permitting the family to remain in the United States is the impact their deportation would have on their two U.S. citizen children. For Melody and Emmanuel, the United States is the only country they have ever known. Mr. Tape believes that if the family returns to Ivory Coast, these two young children will be forced to enter the army.

This bill is the only hope for this family to remain in the United States. To send them back to Ivory Coast, where they may face persecution and inadequate medical treatment for their illnesses would be devastating to the family. They are contributing members of their community and have embraced the American dream with their strong work ethic and family values. I have received approximately 50 letters from the church community in support of this family.

Mr. President, I ask unanimous consent that the text of the bill and letters of support be printed in the RECORD.

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

S. 3382

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

SECTION 1. PERMANENT RESIDENT STATUS FOR GUY PRIVAT TAPE AND LOU NAZIE RAYMONDE TOTO.

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act (8 U.S.C. 1151), Guy Privat Tape and Lou Nazie Raymonde Toto shall each be eligible for the issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of such Act or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Guy Privat Tape and Lou Nazie Raymonde Toto enters the United States before the filing deadline specified in subsection (c), Guy Privat Tape and Lou Nazie Raymonde Toto shall be considered to have entered and remained lawfully in the United States and shall be eligible for adjustment of status under section

245 of the Immigration and Nationality Act (8 U.S.C. 1255) as of the date of the enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for the issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees not later than 2 years after the date of the enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon granting an immigrant visa or permanent residence to Guy Privat Tape and Lou Nazie Raymonde Toto, the Secretary of State shall instruct the proper officer to reduce by 2, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of birth of Guy Privat Tape and Lou Nazie Raymonde Toto under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of birth of Guy Privat Tape and Lou Nazie Raymonde Toto under section 202(e) of such Act.

BLACK ALLIANCE FOR
JUST IMMIGRATION,
Berkeley, CA, July 17, 2008.

Hon. DIANNE FEINSTEIN,
U.S. Senator,
San Francisco, CA.

DEAR SENATOR FEINSTEIN: I'm writing on behalf of Guy Privat Tape and Raymond Tape and their three children. The Tape family arrived in the United States in 1993 (husband) and 1995 (wife) as political refugees from the Ivory Coast. Both of them were imprisoned, tortured and beaten, and Mrs. Tape was repeatedly raped, while in the Ivory Coast. As a consequence, she is HIV positive. They were very fortunate to escape with their lives. On the facts, they seem to have a strong case for political sanctuary since the same forces are in power in their homeland.

Recently the Tape family received the terrifying notice from the Immigration and Customs Enforcement (ICE) that on August 6 they should report to be deported. It is outrageous that our government is about to send this family into a dangerous situation. And the impact upon the two children will be devastating.

Please intervene and use your power to ask ICE to reconsider their petition for political asylum. Thank you for your attention to this matter.

Sincerely,

GERALD LENOIR,
Director.

JUNE 29, 2008.

Hon. DIANNE FEINSTEIN,
U.S. Senator,
San Francisco, CA.

DEAR SENATOR FEINSTEIN: I am writing this letter on behalf of Guy Privat Tape and his wife, Lou Nazie Toto and their two children. Guy Tape arrived in the United States in 1993 and his wife, Lou Nazie Toto, arrived in 1995 as political refugees from the Ivory Coast. In 1995 they applied for political asylum.

They became members of Easter Hill United Methodist Church in Richmond, California shortly after they arrived in the United States and have been faithful and loyal members since that time. They are the proud parents of two children who are United States Citizens. Their daughter sings in the children's choir and is a member of the children's usher board.

Guy Tape is self employed and Lou Nazie Toto is employed as a CNA (Nurse's Assistant). They own their own home and are productive taxpayers.

The U.S. Immigration and Custom Enforcement (ICE) is deporting Guy Tape and his wife, Lou Nazie Toto, back to the Ivory Coast on August 5, 2008. The United States government will be returning this family back to the people who jailed them, beat them.

I am asking you to please intervene and use your power to ask ICE to reconsider this couple's petition for political asylum.

Thank you for your consideration in this matter.

Sincerely yours,

REV. BILLYE AUSTIN,
Pastor.

p.s. America made a promise of political asylum to the Tapes—it should keep it!

EASTER HILL
UNITED METHODIST CHURCH,
Richmond, CA, June 30, 2008.

Hon. DIANNE FEINSTEIN,
U.S. Senator,
San Francisco, CA.

DEAR SENATOR FEINSTEIN: The members of Easter Hill United Methodist Church are asking your assistance to prevent the deportation of the Tape family on August 5, 2008. The Tape family are faithful members of Easter Hill Church. The enclosed 48 letters asking for your help were signed by members of Easter Hill United Methodist Church on Sunday, June 29, 2008:

The following are the members who have signed requesting your assistance for the Tape family:

Joyce Clark; Annie Harris; Horacio Avelino; Thelma Daniels; Augustine Williams; Justin M. McMath; Clara Davis; Karen Colquitt; Meredith Withers; Malanna Wheat; Jay Jackson; Dr. Robert Anderson; Monique Lee; Edward Colquitt; Cecile Smith; Dr. Corann Withers; and Ila Warner.

Pauline Wesley; Zachary Harris; Shirley Haney; Nicole Kelly; Charlesetta Cannady; Sylvester Weaver; Bennie Smith; Joan Daniels; Valree Wilson; Dr. Nannette Finley Hancock; Adolphus Benjamin; Harriet M. Brown; Beverly Hardy; Ernest Baffo-Gyan; Bassey Effiong; and Girlee Parr.

Gladys Harvey; Alfred J. Daniels, Jr.; Sheila Phillips; Renee Lowery; James Bell; Vesper Wheat; William Harris; Napoleon Britt; Todd Wheat; Carolyn Benjamin; Samuel Harvey; Cassandra Clarke; Sharon Nash Haynes; Ena A. Harris; Eloise Hewitt; and Frank Fisher.

Thank you,

MYRTLE BRAXTON ELLINGTON,
Church & Society Chairperson.

By Mr. CARDIN (for himself, Mrs. CLINTON, Ms. MIKULSKI, and Mr. SCHUMER):

S. 3383. A bill to establish the Harriet Tubman National Historical Park in Auburn, New York, and the Harriet Tubman Underground Railroad National Historical Park in Caroline, Dorchester, and Talbot Counties, Maryland, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. CARDIN. Mr. President, today I am proud to introduce The Harriet Tubman National Historical Park and The Harriet Tubman Underground Railroad National Historical Park Act. I am joined by Mrs. CLINTON, Ms. MIKULSKI, and Mr. SCHUMER as original cosponsors.

The woman, who is known to us as Harriet Tubman, was born Araminta, Minty, Ross approximately 1822 in Dorchester County, Maryland. She spent nearly 30 years of her life as a slave on Maryland's eastern shore. As an adult she took the first name Harriet, and when she was 25 she married John Tubman.

Harriet Tubman escaped from slavery in 1849. She did so in the dead of night, navigating the maze of tidal streams and wetlands that are a hallmark of Maryland's Eastern Shore. She did so alone, demonstrating courage, strength and fortitude that became her hallmarks. Not satisfied with attaining her own freedom, she returned repeatedly for more than 10 years to the places of her enslavement in Dorchester and Caroline counties where, under the most adverse conditions, she led away many family members and other slaves to their freedom. Tubman became known as ''Moses'' by African-Americans and white abolitionists. She was perhaps the most famous and most important conductor in the network of resistance known as the Underground Railroad.

During the Civil War, Tubman served the Union forces as a spy, a scout and a nurse. She served in Virginia, Florida, and South Carolina. She is credited with leading hundreds of slaves from those slave states to freedom during those years.

Following the Civil War, Tubman settled in Auburn, New York. There she was active in the women's suffrage movement, and she also established the one of the first incorporated homes for aged African-Americans. In 1903 she bequeathed the home to the African Methodist Episcopal Zion Church in Auburn. Harriet Tubman died in Auburn in 1913 and she is buried there in the Fort Hill Cemetery.

Slaves were forced to live in primitive buildings even though many were skilled tradesmen who constructed the substantial homes of their owners. Not surprisingly, few of the structures associated with the early years of Tubman's life still stand. The landscapes of the Eastern Shore of Maryland, however, remain evocative of the time that Tubman lived there. Farm fields and forests dot the landscape, which is also notable for its extensive network of tidal rivers and wetlands. In particular, a number of properties including the homestead of Ben Ross, her father, Stewart's Canal, where he worked, the Brodess Farm, where she worked as a slave, and others are within the boundaries of the Blackwater National Wildlife Refuge.

Similarly, Poplar Neck, the plantation from which she escaped to freedom, is still largely intact in Caroline County. The properties in Talbot County, immediately across the Choptank River from the plantation, are today protected by various conservation easements. Were she alive today, Tubman would recognize much of the landscape that she knew intimately as she secretly led black men, women and children to their freedom.

In New York, on the other hand, many of the buildings associated with

Tubman's life remain intact. Her personal home, as well as the Tubman Home for the Aged, the church and rectory of the Thompson Memorial AME Zion Episcopal Church, and the Fort Hill Cemetery are all extant.

In 1999, the Congress approved legislation authorizing a Special Resource Study to determine the appropriateness of establishing a unit of the National Park Service to honor Harriet Tubman. The Study has taken an exceptionally long time to complete, in part because of the lack of remaining structures on Maryland's Eastern Shore. There has never been any doubt that Tubman led an extraordinary life. Her contributions to American history are surpassed by few. Determining the most appropriate way to recognize that life and her contributions, however, has been more difficult. Eventually, the Park Service came to realize that determined that a Park that would include two geographically separate units would be appropriate. The New York unit would include the tightly clustered Tubman buildings in Auburn. The Maryland portion would include large sections of landscapes that are evocative of Tubman's time and are historically relevant. The Special Resource Study will be finalized and released later this year.

THE HARRIET TUBMAN NATIONAL HISTORICAL PARK AND THE HARRIET TUBMAN UNDERGROUND RAILROAD NATIONAL HISTORICAL PARK ACT

The legislation I am introducing today establishes two parks. The Harriet Tubman National Historical Park includes important historical structures in Auburn, New York. They include Tubman's home, the Home for the Aged that she established, the African Methodist Episcopal AME Zion Church, and the Fort Hill Cemetery where she is buried.

The Harriet Tubman Underground Railroad National Historical Park includes historically important landscapes in Dorchester, Caroline and Talbot counties, Maryland, that are evocative of the life of Harriet Tubman. The Maryland properties include about 2,200 acres in Caroline County that comprise the Poplar Neck plantation that Tubman escaped from in 1849. The 725 acres of viewshed across the Choptank River in Talbot County would also be included in the Park. In Dorchester County, the parcels would not be contiguous, but would include about 2,775 acres. All of them are included within the Blackwater National Wildlife Refuge boundaries or abut that resource land. The National Park Service would not own any of these lands.

The bill authorizes $7.5 million in grants for the New York properties for their preservation, rehabilitation, and restoration of those resources.

The bill authorizes $11 million in grants for the Maryland section. Funds can be used for the construction of the State Harriet Tubman Park Visitors Center and/or for easements or acquisition of properties inside or adjacent to the Historical Park boundaries.

Finally, the bill also authorizes a new grants program. Under the program, the National Park Service would award competitive grants to historically Black colleges and universities, predominately Black institutions, and minority serving institutions for research into the life of Harriet Tubman and the African-American experience during the years that coincide with the life of Harriet Tubman. The legislation authorizes $200,000 annually for this scholarship program.

Harriet Tubman was a true American patriot. She was someone for whom liberty and freedom were not just concepts. She lived those principles and shared that freedom with hundreds of others. In doing so, she has earned a nation's respect and honor. That is why I am so proud to introduce this legislation, establishing the Harriet Tubman National Historical Park and the Harriet Tubman Underground Railroad National Historical Park.

Mr. President, 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. 3383

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 ''Harriet Tubman National Historical Park and Harriet Tubman Underground Railroad National Historical Park Act''.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) Harriet Tubman (born Araminta ''Minty'' Ross)—

(A) was born into slavery in Maryland around 1822;

(B) married John Tubman at age 25;

(C) endured through her youth and young adulthood the hardships of enslaved African Americans; and

(D) boldly emancipated herself from bondage in 1849;

(2) not satisfied with attaining her own freedom, Harriet Tubman—

(A) returned repeatedly for more than 10 years to the places of her enslavement in Dorchester and Caroline Counties, Maryland; and

(B) under the most adverse circumstances led away many family members and acquaintances to freedom in the northern region of the United States and Canada;

(3) Harriet Tubman was—

(A) called ''Moses'' by African-Americans and white abolitionists; and

(B) acknowledged as 1 of the most prominent ''conductors'' of the resistance that came to be known as the ''Underground Railroad'';

(4) in 1868, Frederick Douglass wrote that, with the exception of John Brown, Douglass knew of ''no one who has willingly encountered more perils and hardships to serve our enslaved people'' than Harriet Tubman;

(5) during the Civil War, Harriet Tubman—

(A) was recruited to assist Union troops as a nurse, a scout, and a spy; and

(B) served in Virginia, Florida, and South Carolina, where she is credited with facilitating the rescue of hundreds of enslaved people;

(6) Harriet Tubman established in Auburn, New York, 1 of the first incorporated homes for aged African Americans in the United States, which, 10 years before her death, she bequeathed to the African Methodist Episcopal Zion Church;

(7) there are nationally significant resources comprised of relatively unchanged landscapes associated with the early life of Harriet Tubman in Caroline, Dorchester, and Talbot Counties, Maryland;

(8) there are nationally significant resources relating to Harriet Tubman in Auburn, New York, including—

(A) the residence of Harriet Tubman;

(B) the Tubman Home for the Aged;

(C) the Thompson Memorial AME Zion Church; and

(D) the final resting place of Harriet Tubman in Fort Hill Cemetery;

(9) in developing interpretive programs, the National Park Service would benefit from increased scholarship of the African-American experience during the decades preceding the Civil War and throughout the remainder of the 19th century; and

(10) it is fitting and proper that the nationally significant resources relating to Harriet Tubman be preserved for future generations as units of the National Park System so that people may understand and appreciate the contributions of Harriet Tubman to the history and culture of the United States.

(b) PURPOSES.—The purposes of this Act are—

(1) to preserve and promote stewardship of the resources in Auburn, New York, and Caroline, Dorchester, and Talbot Counties, Maryland, relating to the life and contributions of Harriet Tubman;

(2) to provide for partnerships with the African Methodist Episcopal Zion Church, the States of New York and Maryland, political subdivisions of the States, the Federal Government, local governments, nonprofit organizations, and private property owners for resource protection, research, interpretation, education, and public understanding and appreciation of the life and contributions of Harriet Tubman;

(3) to sustain agricultural and forestry land uses in Caroline, Dorchester, and Talbot Counties, Maryland, that remain evocative of the landscape during the life of Harriet Tubman; and

(4) to establish a competitive grants program for scholars of African-American history relating to Harriet Tubman and the Underground Railroad.

SEC. 3. DEFINITIONS.

In this Act:

(1) CHURCH.—The term ''Church'' means the Thompson Memorial AME Zion Church located in Auburn, New York.

(2) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term ''historically Black college or university'' has the meaning given the term ''part B institution'' in section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061)).

(3) PREDOMINANTLY BLACK INSTITUTION.—The term ''Predominantly Black Institution'' has the meaning given the term in section 499A(c) of the Higher Education Act of 1965 (20 U.S.C. 1099e(c)).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(5) VISITOR CENTER.—The term ''Visitor Center'' means the Harriet Tubman Underground Railroad State Park Visitor Center to be constructed under section 5(d).

SEC. 4. ESTABLISHMENT OF HARRIET TUBMAN NATIONAL HISTORICAL PARK.

(a) ESTABLISHMENT.—On the execution of easements with the Church, the Secretary shall—

(1) establish the Harriet Tubman National Historical Park (referred to in this section as

the ''Historical Park'') in the City of Auburn, New York, as a unit of the National Park System; and

(2) publish notice of the establishment of the Historical Park in the Federal Register.

(b) BOUNDARY.—

(1) IN GENERAL.—The Historical Park shall be comprised of structures and properties associated with the Harriet Tubman home, the Tubman Home for the Aged, the Church, and the Rectory, as generally depicted on the map entitled ''Harriet Tubman National Historical Park–Proposed Boundary'', numbered [_____], and dated [_____].

(2) AVAILABILITY OF MAP.—The map described in paragraph (1) shall be available for public inspection in the appropriate offices of the National Park Service.

(c) ACQUISITION OF LAND.—The Secretary may acquire from willing sellers, by donation, purchase with donated or appropriated funds, or exchange, land or interests in land within the boundary of the Historical Park.

(d) FINANCIAL ASSISTANCE.—The Secretary may provide grants to, and enter into cooperative agreements with—

(1) the Church for—

(A) historic preservation of, rehabilitation of, research on, and maintenance of properties within the boundary of the Historical Park; and

(B) interpretation of the Historical Park;

(2) the Fort Hill Cemetery Association for maintenance and interpretation of the gravesite of Harriet Tubman; and

(3) the State of New York, any political subdivisions of the State, the City of Auburn, and nonprofit organizations for—

(A) preservation and interpretation of resources relating to Harriet Tubman in the City of Auburn, New York;

(B) conducting research, including archaeological research; and

(C) providing for stewardship programs, education, public access, signage, and other interpretive devices at the Historical Park for interpretive purposes.

(e) INTERPRETATION.—The Secretary may provide interpretive tours to sites located outside the boundaries of the Historical Park in Auburn, New York, that include resources relating to Harriet Tubman.

(f) GENERAL MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 3 years after the date on which funds are made available to carry out this subsection, the Secretary, in cooperation with the Church, shall complete a general management plan for the Historical Park in accordance with section 12(b) of Public Law 91–383 (16 U.S. C. 1a–7(b)).

(2) COORDINATION.—The Secretary shall coordinate the preparation and implementation of the general management plan for the Harriet Tubman National Historical Park with—

(A) the Harriet Tubman Underground Railroad National Historical Park in Maryland; and

(B) the National Underground Railroad: Network to Freedom.

SEC. 5. ESTABLISHMENT OF THE HARRIET TUBMAN UNDERGROUND RAILROAD NATIONAL HISTORICAL PARK.

(a) ESTABLISHMENT.—There is established as a unit of the National Park System the Harriet Tubman Underground Railroad National Historical Park (referred to in this section as the ''Historical Park'') in Caroline, Dorchester, and Talbot Counties, Maryland.

(b) BOUNDARY.—

(1) IN GENERAL.—The boundary of the Historical Park shall consist of certain landscapes and associated resources relating to the early life and enslavement of Harriet Tubman and the Underground Railroad, as generally depicted on the map entitled ''Harriet Tubman Underground Railroad National Historical Park–Proposed Boundary'', numbered [_____], and dated [_____].

(2) ADDITIONAL SITES.—The Secretary, after consultation with landowners, the State of Maryland, and units of local government, may modify the boundary of the Historical Park to include additional resources relating to Harriet Tubman that—

(A) are located within the vicinity of the Historical Park; and

(B) are identified in the general management plan prepared under subsection (g) as appropriate for interpreting the life of Harriet Tubman.

(3) AVAILABILITY OF MAP.—On modification of the boundary of the Historical Park under paragraph (2), the Secretary shall make available for public inspection in the appropriate offices of the National Park Service a revised map of the Historical Park.

(c) ACQUISITION OF LAND.—The Secretary may acquire from willing sellers, by donation, purchase with donated or appropriated funds, or exchange, land or an interest in land within the boundaries of the Historical Park.

(d) GRANTS.—In accordance with section 7(b)(2), the Secretary may provide grants—

(1) to the State of Maryland, political subdivisions of the State, and nonprofit organizations for the acquisition of less than fee title (including easements) or fee title to land in Caroline, Dorchester, and Talbot Counties, Maryland, within the boundary of the Historical Park; and

(2) on execution of a memorandum of understanding between the State of Maryland and the Director of the National Park Service, to the State of Maryland for the construction of the Harriet Tubman Underground Railroad State Park Visitor Center on land owned by the State of Maryland in Dorchester County, Maryland, subject to the condition that the State of Maryland provide the Director of the National Park Service, at no additional cost, sufficient office space and exhibition areas in the Visitor Center to carry out the purposes of the Historical Park.

(e) FINANCIAL ASSISTANCE.—The Secretary may provide grants to, and enter into cooperative agreements with, the State of Maryland, political subdivisions of the State, nonprofit organizations, colleges and universities, and private property owners for—

(1) the restoration or rehabilitation, public use, and interpretation of sites and resources relating to Harriet Tubman;

(2) the conduct of research, including archaeological research;

(3) providing stewardship programs, education, signage, and other interpretive devices at the sites and resources for interpretive purposes; and

(4)(A) the design and construction of the Visitor Center; and

(B) the operation and maintenance of the Visitor Center.

(f) INTERPRETATION.—The Secretary may provide interpretive tours to sites and resources located outside the boundary of the Historical Park in Caroline, Dorchester, and Talbot Counties, Maryland, relating to the life of Harriet Tubman and the Underground Railroad.

(g) GENERAL MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 3 years after the date on which funds are made available to carry out this subsection, the Secretary, in coordination with the State of Maryland, political subdivisions of the State, and the United States Fish and Wildlife Service, shall complete a general management plan for the Historical Park in accordance with section 12(b) of Public Law 91–383 (16 U.S. C. 1a–7(b)).

(2) COORDINATION.—The Secretary shall coordinate the preparation and implementation of the general management plan for the Historical Park with—

(A) the Harriet Tubman National Historical Park in Auburn, New York;

(B) the National Underground Railroad: Network to Freedom;

(C) the Maryland Harriet Tubman Underground Railroad State Park; and

(D) the Harriet Tubman Underground Railroad Byway in Dorchester and Caroline Counties, Maryland.

(3) PRIORITY TREATMENT.—The general management plan for the Historical Park shall give priority to the adequate protection of, interpretation of, public appreciation for, archaeological investigation of, and research on Stewart's Canal, the Jacob Jackson home site, the Brodess Farm, the Ben Ross and Anthony Thompson properties on Harrisville Road, and the James Cook site, all of which are privately owned and located in the Blackwater National Wildlife Refuge.

(h) BLACKWATER NATIONAL WILDLIFE REFUGE.—

(1) INTERAGENCY AGREEMENT.—The Secretary shall ensure that, not later than 1 year after the date of enactment of this Act, the National Park Service and the United States Fish and Wildlife Service enter into an interagency agreement that—

(A) promotes and mutually supports the compatible stewardship and interpretation of Harriet Tubman resources at the Blackwater National Wildlife Refuge; and

(B) provides for the maximum level of cooperation between those Federal agencies to further the purposes of this Act.

(2) EFFECT OF ACT.—Nothing in this Act modifies, alters, or amends the authorities of the United States Fish and Wildlife Service in the administration and management of the Blackwater National Wildlife Refuge.

SEC. 6. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the Harriet Tubman National Historical Park and the Harriet Tubman Underground Railroad National Historical Park in accordance with this Act and the laws generally applicable to units of the National Park System including—

(1) the National Park Service Organic Act (16 U.S.C. 1 et seq.); and

(2) the Act of August 21, 1935 (16 U.S.C. 461 et seq.).

(b) PARK REGULATIONS.—Notwithstanding subsection (a), regulations and policies applicable to units of the National Park System shall apply only to Federal land administrated by the National Park Service that is located within the boundary of the Harriet Tubman Underground Railroad National Historical Park.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this Act (other than subsection (b)), including the provision of National Park Service personnel and National Park Service management funds for the Harriet Tubman National Historical Park and the Harriet Tubman Underground Railroad National Historical Park.

(b) GRANTS.—There are authorized to be appropriated not more than—

(1) $7,500,000 to provide grants to the Church for—

(A) historic preservation, rehabilitation, and restoration of resources within the boundary of the Harriet Tubman National Historical Park; and

(B) the costs of design, construction, installation, and maintenance of exhibits and other interpretive devices authorized under section 4(d)(1)(B);

(2) $11,000,000 for grants to the State of Maryland for activities authorized under subsections (d)(1) and (e)(4)(A) of section 5; and

(3) $200,000 for fiscal year 2009 and each fiscal year thereafter for competitive grants to historically Black colleges and universities, Predominately Black Institutions, and minority serving institutions for research into the life of Harriet Tubman and the African-American experience during the years that coincide with the life of Harriet Tubman.

(c) COST-SHARING REQUIREMENT.—

(1) CHURCH AND VISITOR CENTER GRANTS.—The Federal share of the cost of activities provided grants under paragraph (1) or (2) of subsection (b) and any maintenance, construction, or utility costs incurred pursuant to a cooperative agreement entered into under section 4(d)(1)(A) or section 5(e) shall not be more than 50 percent.

(2) HISTORICALLY BLACK COLLEGES AND UNIVERSITIES.—The Federal share of the cost of activities provided assistance under subsection (b)(3) shall be not more than 75 percent.

(3) FORM OF NON-FEDERAL SHARE.—The non-Federal share required under this subsection may be in the form of in-kind contributions of goods or services fairly valued.

By Mr. CARPER (for himself, Ms. COLLINS, Mr. LIEBERMAN, Mr. COLEMAN, and Mrs. MCCASKILL):

S. 3384. A bill to amend section 11317 of title 40, United States Code, to require greater accountability for cost overruns on Federal IT investment projects; to the Committee on Homeland Security and Governmental Affairs.

Mr. CARPER. Mr President, I rise today with my colleagues on the Homeland Security and Governmental Affairs Committee to introduce the Information Technology Oversight Enhancement and Waste Prevention Act of 2008.

With a long name like that, you would hope that it is addressing a very serious problem. Well I assure you, that it is.

Every year agencies spend billions of dollars on IT investments that—if planned and implemented properly—can increase productivity, reduce costs, and improve efficiency. As everyone knows, information technology has become a cornerstone of the way we conduct business. Just look at the rise in popularity of Blackberries, not only outside these walls, but right here in the Senate.

In fiscal year 2009, agencies are planning to spend almost $71 billion to improve their financial systems for better reporting, streamline their grant processes, and reduce wasteful paper applications. And this is a good thing.

However, the Government Accountability Office has reported for several years that many of these investments are poorly planned, poorly performing—or in some cases—both. Yet, agencies continue to fund these risky investments without any oversight or accountability. In fact, I was surprised to hear GAO report that $25.2 billion is at danger of being wasted because agencies failed to properly plan or manage their investments.

Mr. President, $25.2 billion may not be a very large sum of money when you compare it to what we spend every year, but I assure you that it is a very real sum of money to those families who can't pay for the gas they need to get to work, or who are struggling to put food on their table.

To illustrate my point further, this chamber had to include emergency funding in the last supplemental appropriations bill to bail out the Census Bureau's 2010 operations. They had been planning for more than a decade to use advanced handheld computers to verify addresses and follow up with households who don't send their census forms in on time. My colleagues and I on the Homeland Security and Governmental Affairs Committee heard, however, that Census Bureau officials failed to define what they need out of the handheld project and, as a result, the contractor was having trouble delivering a product that could work. We held two hearings to try and get to the bottom of the problem and find a solution but, at the end of the day, the Census Bureau had to scrap the handheld project and go with the same expensive and inefficient ''pen and paper'' counting method that they have used for centuries. The cost of this failure on the part of the Census Bureau is expected to total in the billions.

This extra money that the Census Bureau will need to spend between now and 2010 could have been used to improve the quality of the final count by outreaching to historically-undercounted groups. In fact, it could have been used for any number of worthwhile purposes.

My colleagues and I on the Homeland Security and Governmental Affairs Committee's Subcommittee on Federal Financial Management, which I chair, have held three hearings on the issue of troubled IT projects now, including one this morning. And what we've learned is that some agencies can't keep the expected cost of their investments down or deliver on time as promised. Nor do these agencies, in many cases, have qualified IT experts they can turn to before a project spirals out of control. The bill Senators LIEBERMAN, COLLINS and I have put forward today addresses these issues.

Our bill starts by requiring agencies to inform Congress when an investment begins to see increased costs, schedule delays, or performance deficiencies outside of 20 percent of the original plan.

Our bill would also require agencies to inform Congress if an investment exceeds 40 percent of their original plan, and require the agency head to conduct an analysis that determines whether we should continue to fund this investment or just pull the plug.

Many agencies today simply rewrite their plans when they run into trouble. They don't tell Congress that anything is wrong and the troubled projects just keep getting funded year in and year out.

Finally and perhaps most importantly, our bill recognizes that, many times, agencies lack the experience necessary to manage complex IT investments. To remedy this, we propose that OMB create what my staff and I have come to call an ''IT Strike Team.'' This team would be comprised of known individuals inside and outside government who have records of successfully managing complex IT projects. If an agency or OMB recognizes that an investment is beginning to experience problems, the team would come in make sure the project is brought online or scrapped before more money is wasted.

I look forward to working with my colleagues to get these important and necessary reforms enacted. I think I speak for all of us when I say that investing in IT systems is important. But these investments shouldn't come with wasted time and money that they all too often bring. In tight fiscal times like these, we need to make sure the money we do invest is spent wisely.

Mr. President, 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. 3384

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 ''Information Technology Investment Oversight Enhancement and Waste Prevention Act of 2008''.

SEC. 2. IT INVESTMENT PROJECTS.

(a) SIGNIFICANT AND GROSS DEVIATIONS.—Section 11317 of title 40, United States Code, is amended to read as follows:

''SEC. 11317. SIGNIFICANT AND GROSS DEVIATIONS.

''(a) DEFINITIONS.—In this subchapter:

''(1) AGENCY HEAD.—The term 'Agency Head' means the head of the Federal agency that is primarily responsible for the IT investment project under review.

''(2) ANSI EIA–748 STANDARD.—The term 'ANSI EIA–748 Standard' means the measurement tool jointly developed by the American National Standards Institute and the Electronic Industries Alliance to analyze earned value management systems.

''(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

''(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

''(B) the Committee on Oversight and Government Reform of the House of Representatives;

''(C) the Committee on Appropriations of the Senate;

''(D) the Committee on Appropriations of the House of Representatives; and

''(E) any other relevant congressional committee with jurisdiction over an agency required to take action under this section.

''(4) CHIEF INFORMATION OFFICER.—The term 'Chief Information Officer' means the Chief Information Officer designated under section 3506(a)(2) of title 44 of the Federal agency that is primarily responsible for the IT investment project under review.

''(5) CORE IT INVESTMENT PROJECT.—The terms 'core IT investment project' and 'core project' mean a mission critical IT investment project jointly designated as such by the Agency Head and the Director under subsection (b).

''(6) DIRECTOR.—The term 'Director' means the Director of the Office of Management and Budget.

''(7) GROSSLY DEVIATED.—The term 'grossly deviated' means cost, schedule, or performance variance that is at least 40 percent from the Original Baseline.

''(8) INDEPENDENT COST ESTIMATE.—The term 'independent cost estimate' means a pragmatic and neutral analysis, assessment, and quantification of all costs and risks associated with the acquisition of an IT investment project, which—

''(A) is based on programmatic and technical specifications provided by the office within the agency with primary responsibility for the development, procurement, and delivery of the project;

''(B) is formulated and provided by an entity other than the office within the agency with primary responsibility for the development, procurement, and delivery of the project;

''(C) contains sufficient detail to inform the selection of a baseline benchmark measure under the ANSI EIA–748 standard; and

''(D) accounts for the full life cycle cost plus associated operations and maintenance expenses over the usable life of the project's deliverables.

''(9) IT INVESTMENT PROJECT.—The terms 'IT investment project' and 'project' mean an information technology system or acquisition that—

''(A) requires special management attention because of its importance to the mission or function of the agency, a component of the agency, or another organization;

''(B) is for financial management and obligates more than $500,000 annually;

''(C) has significant program or policy implications;

''(D) has high executive visibility;

''(E) has high development, modernization, or enhancement costs;

''(F) is funded through other than direct appropriations; or

''(G) is defined as major by the agency's capital planning and investment control process.

''(10) LIFE CYCLE COST.—The term 'life cycle cost' means the total cost of an IT investment project for planning, research and development, modernization, and enhancement.

''(11) ORIGINAL BASELINE.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), the term 'Original Baseline' means the ANSI EIA–748 Standard-compliant cost, schedule, and performance benchmark established at the commencement of an IT investment project contract.

''(B) GROSSLY DEVIATED PROJECT.—If an IT investment project grossly deviates from its Original Baseline (as defined in subparagraph (A)), the term 'Original Baseline' means the ANSI EIA–748 Standard-compliant cost, schedule, and performance benchmark established under subsection (e)(3)(C).

''(12) SIGNIFICANTLY DEVIATED.—The term 'significantly deviated' means cost, schedule, or performance variance that is at least 20 percent from the Original Baseline.

''(b) CORE IT INVESTMENT PROJECTS.—

''(1) DESIGNATION.—Except as provided under paragraph (2), each Agency Head and the Director shall jointly designate not fewer than 5 of the agency's most mission critical IT investment projects as 'core IT investment projects' or 'core projects', after considering, among other factors—

''(A) whether the project represents a high-dollar value relative to the average IT investment project in the agency's portfolio;

''(B) whether the project delivers a capability critical to the successful completion of the agency mission, or a portion of such mission; and

''(C) whether the project incorporates unproven or previously undeveloped technology to meet primary project technical requirements.

''(2) EXCEPTION.—If the Agency Head and the Director jointly determine that fewer than 5 IT investment projects meet the criteria described in paragraph (1), the Director—

''(A) may provide the agency with written authorization to designate fewer than 5 projects; and

''(B) shall submit a report to the appropriate congressional committees that contains notice of, and justification for, any such authorization.

''(c) COST, SCHEDULE, AND PERFORMANCE REPORTS.—

''(1) QUARTERLY REPORTS.—Not later than 7 days after the end of each fiscal quarter, the project manager for an IT investment project shall submit a written report to the Chief Information Officer that includes, as of the last day of the applicable quarter—

''(A) a description of the cost, schedule, and performance of all projects under the project manager's supervision;

''(B) the original and current project cost, schedule, and performance benchmarks for each project under the project manager's supervision;

''(C) the cost, schedule, or performance variance related to each IT investment project under the project manager's supervision since the commencement of the contract;

''(D) for each project under the project manager's supervision, any known, expected, or anticipated changes to project schedule milestones or project performance benchmarks included as part of the original or current baseline description; and

''(E) the current cost, schedule, and performance status of all projects under supervision that were previously identified as significantly deviated or grossly deviated.

''(2) INTERIM REPORTS.—If the project manager for an IT investment project determines that there is reasonable cause to believe that an IT investment project has significantly deviated or grossly deviated since the issuance of the latest quarterly report, the project manager shall submit to the Chief Information Officer, not later than 7 days after such determination, a report on the project that includes, as of the date of the report—

''(A) a description of the original and current program cost, schedule, and performance benchmarks;

''(B) the cost, schedule, or performance variance related to the IT investment project since the commencement of the contract;

''(C) any known, expected, or anticipated changes to the project schedule milestones or project performance benchmarks included as part of the original or current baseline description; and

''(D) the major reasons underlying the significant or gross deviation of the project.

''(d) DETERMINATION OF SIGNIFICANT DEVIATION.—

''(1) CHIEF INFORMATION OFFICER.—Upon receiving a report under subsection (c), the Chief Information Officer shall—

''(A) determine if any IT investment project has significantly deviated; and

''(B) report such determination to the Agency Head.

''(2) CONGRESSIONAL NOTIFICATION.—If the Chief Information Officer determines under paragraph (1) that an IT investment project has significantly deviated and the Agency Head has not issued a report to the appropriate congressional committees of a significant deviation for that project under this section since the project was last required to be re-baselined under this section, the Agency Head shall submit a report to the appropriate congressional committees and to the Government Accountability Office that includes—

''(A) written notification of such determination;

''(B) the date on which such determination was made;

''(C) the amount of the cost increases and the extent of the schedule delays with respect to such project;

''(D) any requirements that—

''(i) were added subsequent to the original contract; or

''(ii) were originally contracted for, but were changed by deferment or deletion from the original schedule, or were otherwise no longer included in the requirements contracted for;

''(E) an explanation of the differences between—

''(i) the estimate at completion between the project manager, any contractor, and any independent analysis; and

''(ii) the original budget at completion;

''(F) the rough order of magnitude of the costs of any reasonable alternative system, or reasonable alternative approach to establishing an equivalent outcome or capability;

''(G) a statement of the reasons underlying the project's significant deviation;

''(H) the identities of the project managers responsible for program management and cost control of the program; and

''(I) a summary of the plan of action to remedy the significant deviation.

''(3) DEADLINE.—

''(A) NOTIFICATION BASED ON QUARTERLY REPORT.—If the determination of significant deviation is based on a report submitted under subsection (b)(1), the Agency Head shall notify Congress in accordance with paragraph (2) not later than 14 days after the end of the quarter upon which such report is based.

''(B) NOTIFICATION BASED ON INTERIM REPORT.—If the determination of significant deviation is based on a report submitted under subsection (b)(2), the Secretary shall notify Congress in accordance with paragraph (2) not later than 14 days after the submission of such report.

''(e) DETERMINATION OF GROSS DEVIATION.—

''(1) CHIEF INFORMATION OFFICER.—Upon receiving a report under subsection (c), the Chief Information Officer shall—

''(A) determine if any IT investment project has grossly deviated; and

''(B) report any such determination to the Agency Head.

''(2) CONGRESSIONAL NOTIFICATION.—If the Chief Information Officer determines under paragraph (1) that an IT investment project has grossly deviated and the Agency Head has not issued a report to the appropriate congressional committees of a gross deviation for that project under this section since the project was last required to be re-baselined under this section, the Agency Head shall submit a report to the appropriate congressional committees and to the Government Accountability Office that includes—

''(A) written notification of such determination, which states—

''(i) the date on which such determination was made; and

''(ii) an indication of whether or not the project has been previously reported as a significant or gross deviation by the Chief Information Officer, and the date of any such report;

''(B) incorporations by reference of all prior reports to Congress on the project required under this section;

''(C) updated accounts of the items described in subparagraphs (C) through (H) of subsection (d)(2);

''(D) the original estimate at completion for the project manager, any contractor, and any independent analysis;

''(E) a graphical depiction of actual cost variance since the commencement of the contract;

''(F) the amount, if any, of incentive award fees any contractor has received since the commencement of the contract and the reasons for receiving such award fees;

''(G) the project manager's estimated cost at completion and estimated completion date for the project if current requirements are not modified;

''(H) the project manager's estimated cost at completion and estimated completion date for the project based on reasonable modification of such requirements;

''(I) an explanation of the most significant occurrence contributing to the variance identified, including cost, schedule, and performance variances, and the effect such occurrence will have on future project costs and program schedule;

''(J) a statement regarding previous or anticipated re-baselining or re-planning of the project and the names of the individuals responsible for approval;

''(K) the original life cycle cost of the investment and the expected life cycle cost of the investment expressed in constant base year dollars and in current dollars; and

''(L) a comprehensive plan of action to remedy the gross deviation, and milestones established to control future cost, schedule, and performance deviations in the future.

''(3) REMEDIAL ACTION.—If the Chief Information Officer determines under paragraph (1) that an IT investment project has grossly deviated, the Agency Head, in consultation with the Chief Information Officer, shall ensure that—

''(A) a report is submitted to the appropriate congressional committees that—

''(i) describes the primary business case and key functional requirements for the project;

''(ii) describes any portions of the project that have technical requirements of sufficient clarity that such portions may be feasibly procured under firm, fixed-price contract;

''(iii) includes a certification by the Agency Head, after consultation with the Chief Information Officer, that all technical requirements have been reviewed and validated to ensure alignment with the reported business case;

''(iv) describes any changes to the primary business case or key functional requirements which have occurred since project inception; and

''(v) includes an independent cost estimate for the project conducted by an entity approved by the Director;

''(B) an analysis is submitted to the appropriate congressional committees that—

''(i) describes agency business goals that the project was originally designed to address;

''(ii) includes a gap analysis of what project deliverables remain in order for the agency to accomplish the business goals referred to in clause (i);

''(iii) identifies the 3 most cost-effective alternative approaches to the project which would achieve the business goals referred to in clause (i); and

''(iv) includes a cost-benefit analysis, which compares—

''(I) the completion of the project with the completion of each alternative approach, after factoring in future costs associated with the termination of the project; and

''(II) the termination of the project without pursuit of alternatives, after factoring in foregone benefits; and

''(C) a new baseline of the project is established that is consistent with the independent cost estimate required under subparagraph (A)(v); and

''(D) the project is designated as a core IT investment project and subjected to the requirements under subsection (f).

''(4) DEADLINE AND FUNDING CONTINGENCY.—

''(A) NOTIFICATION AND REMEDIAL ACTION BASED ON QUARTERLY REPORT.—

''(i) IN GENERAL.—If the determination of gross deviation is based on a report submitted under subsection (c)(1), the Agency Head shall—

''(I) not later than 45 days after the end of the quarter upon which such report is based, notify the appropriate congressional committees in accordance with paragraph (2); and

''(II) not later than 180 days after the end of the quarter upon which such report is based, ensure the completion of remedial action under paragraph (3).

''(ii) FAILURE TO MEET DEADLINES.—If the Agency Head fails to meet the deadlines described in clause (i)(II), additional funds may not be obligated to support expenditures associated with the project until the requirements of this subsection have been fulfilled.

''(B) NOTIFICATION AND REMEDIAL ACTION BASED ON INTERIM REPORT.—

''(i) IN GENERAL.—If the determination of gross deviation is based on a report submitted under subsection (c)(2), the Secretary shall—

''(I) not later than 45 days after the submission of such report, notify the appropriate congressional committees in accordance with paragraph (2); and

''(II) not later than 180 days after the submission of such report, ensure the completion of remedial action in accordance with paragraph (3).

''(ii) FAILURE TO MEET DEADLINES.—If the Agency Head fails to meet the deadlines described in clause (i)(II), additional funds may not be obligated to support expenditures associated with the project until the requirements of this subsection have been fulfilled.

''(f) ADDITIONAL REQUIREMENTS FOR CORE IT INVESTMENT PROJECT REPORTS.—

''(1) INITIAL REPORT.—If a report described in subsection (e)(3)(A) has not been submitted for a core IT investment project, the Agency Head, in coordination with the Chief Information Officer and responsible program managers, shall prepare an initial report for inclusion in the first budget submitted to Congress under section 1105(a) of title 31, United States Code, after the designation of a project as a core IT investment project, which includes—

''(A) a description of the primary business case and key functional requirements for the project;

''(B) an identification and description of any portions of the project that have technical requirements of sufficient clarity that such portions may be feasibly procured under firm, fixed-price contracts;

''(C) an independent cost estimate for the project;

''(D) certification by the Chief Information Officer that all technical requirements have been reviewed and validated to ensure alignment with the reported business case; and

''(E) any changes to the primary business case or key functional requirements which have occurred since project inception.

''(2) QUARTERLY REVIEW OF BUSINESS CASE.—The Agency Head, in coordination with the Chief Information Officer and responsible program managers, shall—

''(A) monitor the primary business case and core functionality requirements reported to Congress for designated core IT investment projects; and

''(B) if changes to the primary business case or key functional requirements for a core IT investment project occur in any fiscal quarter, submit a report to Congress not later than 7 days after the end of such quarter that details the changes and describes the impact the changes will have on the cost and ultimate effectiveness of the project.

''(3) ALTERNATIVE SIGNIFICANT DEVIATION DETERMINATION.—If the Chief Information Officer determines, subsequent to a change in the primary business case or key functional requirements, that without such change the project would have significantly deviated—

''(A) the Chief Information Officer shall notify the Agency Head of the significant deviation; and

''(B) the Agency Head shall fulfill the requirements under subsection (d)(2) in accordance with the deadlines under subsection (d)(3).

''(4) ALTERNATIVE GROSS DEVIATION DETERMINATION.—If the Chief Information Officer determines, subsequent to a change in the primary business case or key functional requirements, that without such change the project would have grossly deviated—

''(A) the Chief Information Officer shall notify the Agency Head of the gross deviation; and

''(B) the Agency Head shall fulfill the requirements under subsections (e)(2) and (e)(3) in accordance with subsection (e)(4).''.

(b) INCLUSION IN THE BUDGET SUBMITTED TO CONGRESS.—Section 1105(a) of title 31, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ''include in each budget the following:'' and inserting ''include in each budget—'';

(2) by redesignating the second paragraph (33) (as added by section 889(a) of Public Law 107–296) as paragraph (35);

(3) in each of paragraphs (1) through (34), by striking the period at the end and inserting a semicolon;

(4) in paragraph (35) (as redesignated by paragraph (2)), by striking the period at the end and inserting ''; and''; and

(5) by adding at the end the following:

''(36) the reports prepared under section 11317(f) of title 40, United States Code, relating to the core IT investment projects of the agency.''.

(c) IMPROVEMENT OF INFORMATION TECHNOLOGY ACQUISITION AND DEVELOPMENT.—Subchapter II of chapter 113 of title 40, United States Code, is amended by adding at the end the following:

''SEC. 11319. ACQUISITION AND DEVELOPMENT.

''(a) ESTABLISHMENT OF PROGRAMS.—Not later than 120 days after the date of the enactment of this section, each Agency Head (as defined in section 11317(a) of title 49, United States Code) shall establish a program to improve the information technology (referred to in this section as 'IT') processes of the agency overseen by the Agency Head.

''(b) PROGRAM REQUIREMENTS.—Each program established pursuant to this section shall include—

''(1) a documented process for information technology acquisition planning, requirements development and management, project management and oversight, earned-value management, and risk management;

''(2) the development of appropriate metrics for performance measurement of—

''(A) processes and development status; and

''(B) continuous process improvement;

''(3) a process to ensure that key program personnel have an appropriate level of experience or training in the planning, acquisition, execution, management, and oversight of information technology; and

''(4) a process to ensure that the applicable department and subcomponents implement and adhere to established processes and requirements relating to the planning, acquisition, execution, management, and oversight of information technology programs and developments.

''(c) OMB GUIDANCE.—The Director of the Office of Management and Budget shall—

''(1) prescribe uniformly applicable guidance to the administration of all the programs established under subsection (a); and

''(2) take any actions that are necessary to ensure that Federal agencies comply with the guidance.

''(d) ANNUAL REPORT TO CONGRESS.—Not later than the last day of February of each year, the Agency Head shall submit a report to Congress that includes—

''(1) a detailed summary of the accomplishments of the program established by the Agency Head pursuant to this section;

''(2) the status of completeness of implementation of each of the program requirements, and the date each such requirement was deemed to be completed;

''(3) the percentage of Federal IT projects covered under the program compared to all of the IT projects of the agency, listed by number of programs and by annual dollars expended;

''(4) the identification, listed by name and position, of—

''(A) the person assigned responsibility for implementation and management of the program and the percent of such person's time used to carry out such responsibility; and

''(B) the person to whom the person described in subparagraph (A) reports;

''(5) a detailed breakdown of the sources and uses of the amounts spent by the agency during the previous fiscal year to support the activities of the program;

''(6) a copy of any guidance issued under the program and a statement regarding whether each such guidance is mandatory;

''(7) the identification of the metrics developed in accordance with subsection (b)(2);

''(8) a description of how paragraphs (3) and (4) of subsection (b) have been implemented and any related agency guidance; and

''(9) a description of how continuous process improvement has been implemented and the objectives of such guidance.''.

(d) CLERICAL AMENDMENTS.—The table of sections for chapter 113 of title 40, United States Code, is amended—

(1) by striking the item relating to section 11317 and inserting the following:

''11317. Significant and gross deviations.''; and

(2) by inserting after the item relating to section 11318 the following:

''11319. Acquisition and development.''.

SEC. 3. IT STRIKE FORCE.

(a) PURPOSE.—The Director of the Office of Management of Budget (referred to in this section as the ''Director''), in consultation with the Administrator of the Office of Electronic Government and Information and Technology at the Office of Management and Budget (referred to in this section as the ''E-Gov Administrator''), shall assist agencies in avoiding significant and gross deviations in the cost, schedule, and performance of IT investment projects (as such terms are defined in section 11317(a) of title 40, United States Code).

(b) IT STRIKE FORCE.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the E-Gov Administrator shall establish a small group of individuals (referred to in this section as the ''IT Strike Force'') to carry out the purpose described in subsection (a).

(2) QUALIFICATIONS.—Individuals selected for the IT Strike Force—

(A) shall be certified at the Senior/Expert level according to the Federal Acquisition Certification for Program and Project Managers (FAC–P/PM); or

(B) shall have comparable education, certification, training, and experience to successfully manage high-risk IT investment projects.

(3) NUMBER.—The Director, in consultation with the E-Gov Administrator, shall determine the number of individuals who will be selected for the IT Strike Force.

(c) OUTSIDE CONSULTANTS.—

(1) IDENTIFICATION.—The E-Gov Administrator shall identify consultants in the private sector who have expert knowledge in IT program management and program management review teams. Not more than 20 percent of such consultants may be formally associated with any 1 of the following types of entities:

(A) Commercial firms.

(B) Nonprofit entities.

(C) Research and development corporations receiving Federal financial assistance.

(2) USE OF CONSULTANTS.—

(A) IN GENERAL.—Consultants identified under paragraph (1) may be used to assist the IT Strike Force in assessing and improving IT investment projects.

(B) LIMITATION.—Consultants with a formally established relationship with an organization may not participate in any assessment involving an IT investment project for which such organization is under contract to provide technical support.

(C) EXCEPTION.—The limitation described in subparagraph (B) may not be construed as precluding access to anyone having relevant information helpful to the conduct of the assessment.

(3) CONTRACTS.—The E-Gov Administrator, in conjunction with the Administrator of the General Services Administration (GSA), may establish competitively bid contracts with 1 or more qualified consultants, independent of any GSA schedule.

(d) INITIAL RESPONSE TO ANTICIPATED SIGNIFICANT OR GROSS DEVIATION.—If the E-Gov Administrator determines there is reasonable cause to believe that a major IT investment project is likely to significantly or grossly deviate (as defined in section 11317(a) of title 40, United States Code), including the receipt of inconsistent or missing data, the E-Gov Administrator shall carry out the following activities:

(1) Recommend the assignment of 1 or more members of the IT Strike Force to assess the project in accordance with the scope and time period described in section 11317(c)(1) of title 40, United States Code, beginning not later than 7 days after such recommendation. No member of the Strike Force who is associated with the department or agency whose IT investment project is the subject of the assessment may be assigned to participate in this assessment. Such limitation may not be construed as precluding access to anyone having relevant information helpful to the conduct of the assessment.

(2) If the E-Gov Administrator determines that 1 or more qualified consultants are needed to support the efforts of the IT Strike Force under paragraph (1), negotiate a contract with the consultant to provide such support during the period in which the IT Strike Force is conducting the assessment described in paragraph (1).

(3) Ensure that the costs of an assessment under paragraph (1) and the support services of 1 or more consultants under paragraph (2) are paid by the major IT investment project being assessed.

(4) Monitor the progress made by the IT Strike Force in assessing the project.

(e) REDUCTION OF SIGNIFICANT OR GROSS DEVIATION.—If the E-Gov Administrator determines that the assessment conducted under subsection (d) confirms that a major IT investment project is likely to significantly or grossly deviate, the E-Gov Administrator shall recommend that the Agency Head (as defined in section 11317(a)(1) of title 40, United States Code) take steps to reduce the deviation, which may include—

(1) providing training or mentoring to improve the qualifications of the program manager;

(2) replacing the program manager or other staff;

(3) supplementing the program management team with Federal Government employees or independent contractors;

(4) terminating the project; or

(5) hiring an independent contractor to report directly to senior management and the E-Gov Administrator.

(f) REPROGRAMMING OF FUNDS.—

(1) AUTHORIZATION.—The Director may direct an Agency Head to reprogram amounts which have been appropriated for such agency to pay for an assessment under subsection (d).

(2) NOTIFICATION.—An Agency Head who reprograms appropriations under paragraph (1) shall notify the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives of any such reprogramming.

(g) REPORT TO CONGRESS.—The Director shall include in the annual Report to Congress on the Benefits of E-Government Initiatives a detailed summary of the composition and activities of the IT Strike Force, including—

(1) the number and qualifications of individuals on the IT Strike Force;

(2) a description of the IT investment projects that the IT Strike Force has worked during the previous fiscal year;

(3) the major issues that necessitated the involvement of the IT Strike Force to assist agencies with assessing and managing IT investment projects and whether such issues were satisfactorily resolved;

(4) if the issues referred to in paragraph (3) were not satisfactorily resolved, the issues still needed to be resolved and the Agency Head's plan for resolving such issues;

(5) a detailed breakdown of the sources and uses of the amounts spent by the Office of Management and Budget and other Federal agencies during the previous fiscal year to support the activities of the IT Strike Force; and

(6) a determination of whether the IT Strike Force has been effective in reducing the amount of IT investment projects that deviate or significantly deviate.

Ms. COLLINS. Mr. President, I am pleased to join Senator CARPER in introducing a bill that will improve agency performance and Congressional oversight of major Federal information-technology, IT projects.

The well-publicized cost and performance problems with the Census Bureau's handheld computers for the 2010 Census—with its troubling implications for the next House reapportionment and for the allocation of Federal funds—represent only the most recent and conspicuous failure in a long trail of troubles that also includes critical IT projects like the FBI's virtual case file initiative. Former IBM executive and Carnegie-Mellon University technology expert Watts Humphrey makes the point succinctly: ''Software failures are common, and the biggest projects fail most often.''

During the 108th Congress, the Committee on Governmental Affairs investigated the botched automated recordkeeping project for the Federal employees' Thrift Savings Plan TSP. This project was terminated in 2001 after a

4-year contract produced $36 million in waste that was charged to the accounts of TSP participants and beneficiaries. A second vendor needed an additional $33 million to bring the system online, years overdue and costing more than double its original estimate.

In a 2004 letter from the Federal Retirement Thrift Investment Board to the Governmental Affairs Committee, the board characterized the project as ''ill-fated '' and acknowledged the importance of careful planning, task definition, communication, proper personnel, and risk management—all of which were lacking on that project.

Large IT project failures have cost U.S. taxpayers billions of dollars in wasted expenditures. The waste is troubling, but even more troubling is the fact that when Federal IT projects fail, they can undermine the Government's ability to defend the Nation, enforce its laws, or deliver critical services to citizens. Again and again, we have seen IT project failures grounded in poor planning, ill-defined and shifting requirements, undisclosed difficulties, poor risk management, and lax monitoring of performance.

Unfortunately, as the Government Accountability Office, GAO, tells us in a new report, Federal IT projects still fall short in their use of effective oversight techniques to monitor development and to spot signs of possible trouble.

The GAO reports that the Federal Government will spend over $70 billion in fiscal year 2008 on IT projects. Most of that spending is concentrated in two dozen agencies that have 778 major projects underway. These Federal entities range from Cabinet departments like Commerce, Defense, and Veterans Affairs, to agencies like NASA, the Office of Personnel Management, and the Agency for International Development.

The GAO observes that ''Effectively managing projects involves pulling together essential cost, schedule, and performance goals in a meaningful, coherent fashion so that managers have an accurate view of the program's development status.'' This set of goals becomes the project ''baseline.''

When the GAO conducted a study of a random sample of those major Federal IT projects, however, they found that 85—nearly half the sample—had been ''rebaselined.'' Eighteen of those projects have been rebaselined three or more times. For example, the Department of Defense Advanced Field Artillery Tactical Data System has been rebaselined four times; a Veterans Affairs Health Administration Center project has been rebaselined six times.

Rebaselining can reflect funding changes, revisions in project scope or goals, and other perfectly reasonable project modifications. But as the GAO notes, ''[rebaselining] can also be used to mask cost overruns and schedule delays.'' All major Federal agencies have rebaselining policies, but the GAO concludes that they are not comprehensive and that ''none of the policies are fully consistent with best practices.''

The bill that Senator CARPER and I are introducing will go far toward addressing the weaknesses identified by the GAO and will reduce the risks that important Federal IT projects will drag on far beyond deadlines, fail to deliver intended capabilities, or waste taxpayers' money. We are pleased to have Senators LIEBERMAN, COLEMAN, and MCCASKILL join us as cosponsors in this effort.

Our bill will improve both agency and Congressional oversight of large Federal IT projects. For all major investments, the bill requires agencies to track the earned value management index, a key cost and performance measure, and to alert Congress should that measure fall below a defined threshold.

The bill requires additional reports to Congress as well as specific corrective actions should those same indicators continue to worsen. Further, because the bill's performance thresholds are based on original cost baselines, rebaselining can no longer serve as a tactic to hide troubled projects. If severe shortfalls remain uncorrected, the bill can even suspend commitment of funds to a project until the agency takes the required corrective actions.

Our bill does not envision making Congress a micromanager of Federal projects—especially in so complex a field as information technology. But it will ensure that, for these important investments, agencies will be required to track key performance metrics, inform Congress of shortfalls in those metrics, and provide Congress with followup reports, independent cost estimates, and analyses of project alternatives when the original projects have run off course.

The bill also provides that each covered agency identify to Congress their top mission-critical projects. Those ''core investments'' would be subject to additional upfront planning, reporting, and performance monitoring requirements. This will help ensure that agencies apply extra vigilance to these projects at the planning stage and not just when execution begins.

In addition to tracking cost and schedule slippage, agencies making core IT investments must provide a complete ''business case'' that outlines the need for the project and its associated costs and schedules; produce a rigorous, independent, third-party estimate of the project's full, life-cycle costs; have the agency CIO certify the project's functional requirements; track these functional requirements; and report to Congress any changes in functional requirements, including whether those changes concealed a major cost increase.

To help agencies deliver IT projects on time and on budget, the bill also provides two new support mechanisms.

First, agency heads would be required to establish an internal IT-management program, subject to OMB guidelines, to improve project planning, requirements development, and management of earned value and risk.

Second, the Director of OMB and its E-Gov Administrator will be required to establish an IT strike force of experts and independent consultants who can be assigned to help agencies reform troubled projects. In addition, the E-Gov Administrator can recommend that agency heads mentor or replace an IT project manager, reinforce the management team, terminate the project, or hire an independent contractor to report on the project.

These and other provisions will help improve project planning, avoid problems in project execution, provide early alerts when problems arise, and promote prompt corrective action.

In projects where difficulties persist, our bill provides strong remedies. For projects that exhibit a performance shortfall of 20 percent or more, the agency head involved must not only alert Congress but also provide a summary of a concrete plan of action to correct the problem. If the shortfall exceeds 40 percent, agencies have 6 months to take required remedial steps or else suspend further project spending until those steps are completed.

If the provisions of this bill had been in force during the past decade, early indicators of trouble and prompt warnings to Congress might have helped prevent much of the added cost, decreased functionality, and increased anxiety we now see surrounding the handheld computers that were intended to streamline the 2010 Census. The additional scrutiny of plans and costs required by this bill might have saved some of the billions wasted on other IT projects that ultimately landed on high-risk lists.

Our bill creates a measured, methodical plan to ensure that Federal agencies apply best practices to IT projects, supply timely reports of problems, and devise corrective actions sooner rather than later. Our Government and our citizens will benefit from these improvements. I urge every Senator to support this constructive and bipartisan bill.

By Mr. DURBIN (for himself, Mr. GREGG, Mr. DODD, Mr. BURR, Mr. HARKIN, and Mr. ALEXANDER):

S. 3385. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the safety of the food supply; to the Committee on Health, Education, Labor, and Pensions.

Mr. DURBIN. Mr. President, today I rise to introduce the FDA Food Safety Modernization Act.

Yesterday, the Food and Drug Administration, which is responsible for ensuring the safety of about 80 percent of our food supply, announced that it was one step closer to pinpointing the source of the current Salmonella Saintpaul outbreak. At first we were told tomatoes were the culprit. Then tomatoes were exonerated and jalapeno

peppers in south Texas were to blame. Now FDA is saying it has discovered a strain of the bacteria in Serrano peppers from a farm in Tamaulipas, Mexico.

In the meantime, over three months have passed since the first reported case. At least 255 people have been hospitalized and two have died because of the outbreak. The tomato industry faces tens of millions of dollars in losses and a loss in consumer confidence. Some estimate that the economic impact may be as much as $100 to $500 million.

Over the last couple of years we have seen news headlines about E. coli in spinach, pet food spiked with melamine, Salmonella-tainted peanut butter, and now contaminated peppers. It's clear that these are not isolated cases but the product of a food safety system that is outdated, under-funded, and overwhelmed. Some of our most important food safety statutes date back to the early 1900s. Standards have not been updated. The budgets of the agencies that act as watchdogs over the system have eroded. We import more of our food than ever but we don't have the systems in place to make sure this food is as safe as it could be. All these shortcomings put consumers at unnecessary risk.

FDA is struggling to keep up. There are holes in its ability to protect consumers from unsafe foods. For example, the Consumer Protection Safety Commission, the EPA, and even FDA with respect to infant formula all have recall authority. But FDA is unable to pull any other contaminated food off the shelf when the company that makes it will not. FDA can suggest a recall and most of the time companies comply. But there are always bad actors and sometimes companies choose not to recall their products because they are afraid of upsetting consumer confidence or losing market share. In this case, FDA's hands are tied.

These are significant gaps in our food safety system that need to be addressed. We can and should do better.

That is why I am pleased to introduce The FDA Food Safety Modernization Act, along with Senators GREGG, DODD, BURR, HARKIN, and ALEXANDER. This bill is a comprehensive, bipartisan effort that addresses some of the weaknesses in FDA's authorities and resources and updates food safety standards to make important improvements in our current food safety system. The bill includes a number of important preventive measures, such as increasing the frequency of FDA inspections of food facilities, especially high-risk facilities; directing FDA to set standards for fresh produce; and requiring the food industry to control hazards in the food supply chain. It also enables FDA to more effectively respond to an outbreak by giving the agency new authorities to order recalls, shut down tainted facilities, and access records to track and trace food.

The food industry is one of the most important sectors of our economy, generating more than $1 trillion annually in economic activity and employing millions of American workers. Food is also a deeply personal experience, a part of our daily lives and our traditions and culture. For far too long Congress has gone without a comprehensive review of our food safety laws. As long as we continue to do nothing, we will pay the price for an outdated and ill-equipped food safety system.

I thank Senators GREGG, DODD, BURR, HARKIN, and ALEXANDER for joining me in crafting this bill and urge my colleagues to support.

Mr. President, 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. 3385

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

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''FDA Food Safety Modernization Act''.

(b) REFERENCES.—Except as otherwise specified, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

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

Sec. 1. Short title; references; table of contents.

TITLE I—GENERAL FOOD PROVISIONS

Sec. 101. Inspections of records.
Sec. 102. Registration of food facilities.
Sec. 103. Mandatory recall authority.
Sec. 104. Hazard analysis and risk-based preventive controls.
Sec. 105. Performance standards.
Sec. 106. Standards for produce safety.
Sec. 107. Targeting of inspection resources for domestic facilities, foreign facilities, and ports of entry; annual report.
Sec. 108. Administrative detention of food.
Sec. 109. Protection against intentional adulteration.
Sec. 110. National agriculture and food defense strategy.
Sec. 111. Food and Agriculture Coordinating Councils.
Sec. 112. Decontamination and disposal standards and plans.
Sec. 113. Authority to collect fees.
Sec. 114. Final rule for prevention of Salmonella Enteritidis in shell eggs during production.
Sec. 115. Sanitary transportation of food.
Sec. 116. Food allergy and anaphylaxis management.

TITLE II—DETECTION AND SURVEILLANCE

Sec. 201. Recognition of laboratory accreditation for analyses of foods.
Sec. 202. Integrated consortium of laboratory networks.
Sec. 203. Building domestic capacity.
Sec. 204. Enhancing traceback and recordkeeping.
Sec. 205. Surveillance.

TITLE III—SPECIFIC PROVISIONS FOR IMPORTED FOOD

Sec. 301. Foreign supplier verification program.
Sec. 302. Voluntary qualified importer program.
Sec. 303. Authority to require import certifications for food.
Sec. 304. Prior notice of imported food shipments.
Sec. 305. Review of a regulatory authority of a foreign country.
Sec. 306. Building capacity of foreign governments with respect to food.
Sec. 307. Inspection of foreign food facilities.
Sec. 308. Accreditation of qualified third-party auditors.
Sec. 309. Foreign offices of the Food and Drug Administration.
Sec. 310. Funding for food safety.
Sec. 311. Jurisdiction; authorities.

TITLE I—GENERAL FOOD PROVISIONS

SEC. 101. INSPECTIONS OF RECORDS.

Section 414(a) (21 U.S.C. 350c(a)) is amended—

(1) by striking the heading and all follows through ''of food is'' and inserting the following: ''RECORDS INSPECTION.—

''(1) ADULTERATED FOOD.—If the Secretary has a reasonable belief that an article of food, and any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, is'';

(2) by inserting '', and to any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner,'' after ''relating to such article'';

(3) by striking the last sentence; and

(4) by inserting at the end the following:

''(2) SERIOUS ADVERSE HEALTH CONSEQUENCES.—If the Secretary believes that there is a reasonable probability that the use of or exposure to an article of food, and any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, will cause serious adverse health consequences or death to humans or animals, each person (excluding farms and restaurants) who manufactures, processes, packs, distributes, receives, holds, or imports such article shall, at the request of an officer or employee duly designated by the Secretary, permit such officer or employee, upon presentation of appropriate credentials and a written notice to such person, at reasonable times and within reasonable limits and in a reasonable manner, to have access to and copy all records relating to such article and to any other article of food that the Secretary reasonably believes is likely to be affected in a similar manner, that are needed to assist the Secretary in determining whether there is a reasonable probability that the use of or exposure to the food will cause serious adverse health consequences or death to humans or animals.

''(3) APPLICATION.—The requirement under paragraphs (1) and (2) applies to all records relating to the manufacture, processing, packing, distribution, receipt, holding, or importation of such article maintained by or on behalf of such person in any format (including paper and electronic formats) and at any location.''.

SEC. 102. REGISTRATION OF FOOD FACILITIES.

(a) UPDATING OF FOOD CATEGORY REGULATIONS; BIENNIAL REGISTRATION RENEWAL.—Section 415(a) (21 U.S.C. 350d(a)) is amended—

(1) in paragraph (2), by—

(A) striking ''conducts business and'' and inserting ''conducts business, the e-mail address for the contact person of the facility, and''; and

(B) inserting '', or any other food categories as determined appropriate by the Secretary, including by guidance)'' after ''Code of Federal Regulations'';

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

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

''(3) BIENNIAL REGISTRATION RENEWAL.—During the period beginning on October 1

and ending on December 31 of each even-numbered year, a registrant that has submitted a registration under paragraph (1) shall submit to the Secretary a renewal registration containing the information described in paragraph (2). The Secretary shall provide for an abbreviated registration renewal process for any registrant that has not had any changes to such information since the registrant submitted the preceding registration or registration renewal for the facility involved.''.

(b) SUSPENSION OF REGISTRATION.—

(1) IN GENERAL.—Section 415 (21 U.S.C. 350d) is amended—

(A) in subsection (a)(2), by inserting after the first sentence the following: ''The registration shall contain a consent to permit the Secretary to inspect such facility.'';

(B) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(C) by inserting after subsection (a) the following:

''(b) SUSPENSION OF REGISTRATION.—

''(1) IN GENERAL.—If the Secretary determines that food manufactured, processed, packed, or held by a facility registered under this section has a reasonable probability of causing serious adverse health consequences or death to humans or animals, the Secretary may by order suspend the registration of the facility under this section in accordance with this subsection.

''(2) HEARING ON SUSPENSION.—The Secretary shall provide the registrant subject to an order under paragraph (1) with an opportunity for an informal hearing, to be held as soon as possible but not later than 2 days after the issuance of the order, on the actions required for reinstatement of registration and why the registration that is subject to suspension should be reinstated. The Secretary may reinstate a registration if the Secretary determines, based on evidence presented, that adequate grounds do not exist to continue the suspension of the registration.

''(3) POST-HEARING CORRECTIVE ACTION PLAN; VACATING OF ORDER.—

''(A) CORRECTIVE ACTION PLAN.—If, after providing opportunity for an informal hearing under paragraph (2), the Secretary determines that the suspension of registration remains necessary, the Secretary shall require the registrant to submit a corrective action plan to demonstrate how the registrant plans to correct the conditions found by the Secretary. The Secretary shall review such plan in a timely manner.

''(B) VACATING OF ORDER.—Upon a determination by the Secretary that adequate grounds do not exist to continue the suspension actions required by the order, or that such actions should be modified, the Secretary shall vacate the order or modify the order.

''(4) EFFECT OF SUSPENSION.—If the registration of a facility is suspended under this subsection, such facility shall not import food or offer to import food into the United States, or otherwise introduce food into interstate commerce in the United States.

''(5) REGULATIONS.—The Secretary shall promulgate regulations that describe the standards officials will use in making a determination to suspend a registration, and the format such officials will use to explain to the registrant the conditions found at the facility.

''(6) NO DELEGATION.—The authority conferred by this subsection to issue an order to suspend a registration or vacate an order of suspension shall not be delegated to any officer or employee other than the Commissioner.''.

(2) IMPORTED FOOD.—Section 801(l) (21 U.S.C. 381(l)) is amended by inserting ''(or for which a registration has been suspended under such section)'' after ''section 415''.

(c) CONFORMING AMENDMENTS.—

(1) Section 301(d) (21 U.S.C. 331(d)) is amended by inserting ''415,'' after ''404,''.

(2) Section 415(d), as redesignated by subsection (b), is amended by adding at the end before the period ''for a facility to be registered, except with respect to the reinstatement of a registration that is suspended under subsection (b)''.

SEC. 103. MANDATORY RECALL AUTHORITY.

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.) is amended by adding at the end the following:

''SEC. 418. MANDATORY RECALL AUTHORITY.

''(a) VOLUNTARY PROCEDURES.—If the Secretary determines, based on information gathered through the reportable food registry under section 417 or through any other means, that there is a reasonable probability that an article of food (other than infant formula) is adulterated under section 402 or misbranded under section 403(w) and the use of or exposure to such article will cause serious adverse health consequences or death to humans or animals, the Secretary shall provide the responsible party (as defined in section 417) with an opportunity to cease distribution and recall such article.

''(b) PREHEARING ORDER TO CEASE DISTRIBUTION AND GIVE NOTICE.—If the responsible party refuses to or does not voluntarily cease distribution or recall such article within the time and in the manner prescribed by the Secretary (if so prescribed), the Secretary may, by order require, as the Secretary deems necessary, such person to—

''(1) immediately cease distribution of such article; or

''(2) immediately notify all persons—

''(A) manufacturing, processing, packing, transporting, distributing, receiving, holding, or importing and selling such article; and

''(B) to which such article has been distributed, transported, or sold, to immediately cease distribution of such article.

''(c) HEARING ON ORDER.—The Secretary shall provide the responsible party subject to an order under subsection (b) with an opportunity for an informal hearing, to be held as soon as possible but not later than 2 days after the issuance of the order, on the actions required by the order and on why the article that is the subject of the order should not be recalled.

''(d) POST-HEARING RECALL ORDER AND MODIFICATION OF ORDER.—

''(1) AMENDMENT OF ORDER.—If, after providing opportunity for an informal hearing under subsection (c), the Secretary determines that removal of the article from commerce is necessary, the Secretary shall, as appropriate—

''(A) amend the order to require recall of such article or other appropriate action;

''(B) specify a timetable in which the recall shall occur;

''(C) require periodic reports to the Secretary describing the progress of the recall; and

''(D) provide notice to consumers to whom such article was, or may have been, distributed.

''(2) VACATING OF ORDER.—If, after such hearing, the Secretary determines that adequate grounds do not exist to continue the actions required by the order, or that such actions should be modified, the Secretary shall vacate the order or modify the order.

''(e) COOPERATION AND CONSULTATION.—The Secretary shall work with State and local public health officials in carrying out this section, as appropriate.

''(f) PUBLIC NOTIFICATION.—In conducting a recall under this section, the Secretary shall ensure that a press release is published regarding the recall, as well as alerts and public notices, as appropriate, in order to provide notification of the recall to consumers and retailers to whom such article was, or may have been, distributed. The notification shall include, at a minimum—

''(1) the name of the article of food subject to the recall; and

''(2) a description of the risk associated with such article.

''(g) NO DELEGATION.—The authority conferred by this section to order a recall or vacate a recall order shall not be delegated to any officer or employee other than the Commissioner.

''(h) EFFECT.—Nothing in this section shall affect the authority of the Secretary to request or participate in a voluntary recall.''.

(b) CIVIL PENALTY.—Section 303(f)(2)(A) (21 U.S.C. 333(f)(2)(A)) is amended by inserting ''or any person who does not comply with a recall order under section 418'' after ''section 402(a)(2)(B)''.

(c) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331 et seq.) is amended by adding at the end the following:

''(oo) The refusal or failure to follow an order under section 418.''.

SEC. 104. HAZARD ANALYSIS AND RISK-BASED PREVENTIVE CONTROLS.

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 103, is amended by adding at the end the following:

''SEC. 419. HAZARD ANALYSIS AND RISK-BASED PREVENTIVE CONTROLS.

''(a) IN GENERAL.—Each owner, operator, or agent in charge of a facility shall, in accordance with this section, evaluate the hazards that could affect food manufactured, processed, packed, or held by such facility, identify and implement preventive controls to significantly minimize or prevent their occurrence and provide assurances that such food is not adulterated under section 402 or misbranded under section 403(w), monitor the performance of those controls, and maintain records of this monitoring as a matter of routine practice.

''(b) HAZARD ANALYSIS.—The owner, operator, or agent in charge of a facility shall—

''(1) identify and evaluate known or reasonably foreseeable hazards that may be associated with the facility, including—

''(A) biological, chemical, physical, and radiological hazards, natural toxins, pesticides, drug residues, decomposition, parasites, allergens, and unapproved food and color additives; and

''(B) hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism; and

''(2) develop a written analysis of the hazards.

''(c) PREVENTIVE CONTROLS.—The owner, operator, or agent in charge of a facility shall identify and implement preventive controls, including at critical control points, if any, to provide assurances that—

''(1) hazards identified in the hazard analysis conducted under subsection (b) will be significantly minimized or prevented; and

''(2) the food manufactured, processed, packed, or held by such facility will not be adulterated under section 402 or misbranded under section 403(w).

''(d) MONITORING OF EFFECTIVENESS.—The owner, operator, or agent in charge of a facility shall monitor the effectiveness of the preventive controls implemented under subsection (c) to provide assurances that the outcomes described in subsection (c) shall be achieved.

''(e) CORRECTIVE ACTIONS.—The owner, operator, or agent in charge of a facility shall establish procedures that a facility will implement if the preventive controls implemented under subsection (c) are found to be

ineffective through monitoring under subsection (d).

''(f) VERIFICATION.—The owner, operator, or agent in charge of a facility shall verify that—

''(1) the preventive controls implemented under subsection (c) are adequate to control the hazards identified under subsection (b);

''(2) the owner, operator, or agent is conducting monitoring in accordance with subsection (d);

''(3) the owner, operator, or agent is making appropriate decisions about corrective actions taken under subsection (e); and

''(4) there is documented, periodic reanalysis of the plan under subsection (i) to ensure that the plan is still relevant to the raw materials, as well as to conditions and processes in the facility, and to new and emerging threats.

''(g) RECORDKEEPING.—The owner, operator, or agent in charge of a facility shall maintain, for not less than 2 years, records documenting the monitoring of the preventive controls implemented under subsection (c), instances of nonconformance material to food safety, instances when corrective actions were implemented, and the efficacy of preventive controls and corrective actions.

''(h) WRITTEN PLAN AND DOCUMENTATION.—Each owner, operator, or agent in charge of a facility shall prepare a written plan that documents and describes the procedures used by the facility to comply with the requirements of this section, including analyzing the hazards under subsection (b) and identifying the preventive controls adopted to address those hazards under subsection (c). Such written plan, together with documentation that the plan is being implemented, shall be made promptly available to a duly authorized representative of the Secretary upon oral or written request.

''(i) REQUIREMENT TO REANALYZE.—Each owner, operator, or agent in charge of a facility shall conduct a reanalysis under subsection (b) whenever a significant change is made in the activities conducted at a facility operated by such owner, operator, or agent if the change creates a reasonable potential for a new hazard or a significant increase in a previously identified hazard or not less frequently than once every 3 years, whichever is earlier. Such reanalysis shall be completed and additional preventive controls needed to address the hazard identified, if any, shall be implemented before the change in activities at the facility is commenced. Such owner, operator, or agent shall revise the written plan required under subsection (h) if such a significant change is made or document the basis for the conclusion that no additional or revised preventive controls are needed. The Secretary may require a reanalysis under this section to respond to new hazards and developments in scientific understanding.

''(j) DEEMED COMPLIANCE OF SEAFOOD, JUICE, AND LOW-ACID CANNED FOOD FACILITIES IN COMPLIANCE WITH HACCP.—An owner, operator, or agent in charge of a facility required to comply with 1 of the following standards and regulations with respect to such facility shall be deemed to be in compliance with this section, with respect to such facility:

''(1) The Seafood Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

''(2) The Juice Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

''(3) The Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards of the Food and Drug Administration (or any successor standards).

''(k) EXCEPTION FOR FACILITIES IN COMPLIANCE WITH SECTION 420.—This section shall not apply to a facility that is subject to section 420.

''(l) AUTHORITY WITH RESPECT TO CERTAIN FACILITIES.—The Secretary may, by regulation, exempt or modify the requirements for compliance under this section with respect to facilities that are solely engaged in the storage of packaged foods that are not exposed to the environment.

''(m) DEFINITIONS.—For purposes of this section:

''(1) CRITICAL CONTROL POINT.—The term 'critical control point' means a point, step, or procedure in a food process at which control can be applied and is essential to prevent or eliminate a food safety hazard or reduce it to an acceptable level.

''(2) FACILITY.—The term 'facility' means a domestic facility or a foreign facility that is required to register under section 415.

''(3) PREVENTIVE CONTROLS.—The term 'preventive controls' means those risk-based, reasonably appropriate procedures, practices, and processes that a person knowledgeable about the safe manufacturing, processing, packing, or holding of food would have employed to significantly minimize or prevent the hazards identified under the hazard analysis conducted under subsection (a) and that are consistent with the current scientific understanding of safe food manufacturing, processing, packing, or holding at the time of the analysis. Those procedures, practices, and processes may include the following:

''(A) Sanitation procedures for food contact surfaces and utensils and food-contact surfaces of equipment.

''(B) Supervisor, manager, and employee hygiene training.

''(C) An environmental monitoring program to verify the effectiveness of pathogen controls.

''(D) An allergen control program.

''(E) A recall contingency plan.

''(F) Good Manufacturing Practices (GMPs).

''(G) Supplier verification activities.''.

(b) REGULATIONS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this Act as the ''Secretary'') shall promulgate regulations to establish science-based minimum standards for conducting a hazard analysis, documenting hazards, implementing preventive controls, and documenting the implementation of the preventive controls under section 419 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)).

(2) CONTENT.—The regulations promulgated under paragraph (1) shall provide sufficient flexibility to be applicable in all situations, including in the operations of small businesses.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to provide the Secretary with the authority to apply specific technologies, practices, or critical controls to an individual facility.

(4) REVIEW.—In promulgating the regulations under paragraph (1), the Secretary shall review regulatory hazard analysis and preventive control programs in existence on the date of enactment of this Act to ensure that the program under such section 419 is consistent, to the extent practicable, with applicable internationally recognized standards in existence on such date.

(c) GUIDANCE DOCUMENT.—The Secretary shall issue a guidance document related to hazard analysis and preventive controls required under section 419 of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a)).

(d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331), as amended by section 103, is amended by adding at the end the following:

''(pp) The operation of a facility that manufacturers, processes, packs, or holds food for sale in the United States if the owner, operator, or agent in charge of such facility is not in compliance with section 419.''.

(e) NO EFFECT ON HACCP AUTHORITIES.—Nothing in the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.) to revise, issue, or enforce product and category-specific regulations, such as the Seafood Hazard Analysis Critical Controls Points Program, the Juice Hazard Analysis Critical Control Program, and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.

(f) EFFECTIVE DATE.—

(1) GENERAL RULE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

(2) EXCEPTIONS.—Notwithstanding paragraph (1)—

(A) the amendments made by this section shall apply to a small business (as defined by the Secretary) after the date that is 2 years after the date of enactment of this Act; and

(B) the amendments made by this section shall apply to a very small business (as defined by the Secretary) after the date that is 3 years after the date of enactment of this Act.

SEC. 105. PERFORMANCE STANDARDS.

The Secretary shall, not less frequently than every 2 years, review and evaluate epidemiological data and other appropriate sources of information to determine the most significant food-borne contaminants and the most significant resulting hazards, and may issue science-based guidance documents, action levels, and regulations to help prevent adulteration under section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342). Such standards shall be applicable to products and product classes and shall not be written to be facility-specific.

SEC. 106. STANDARDS FOR PRODUCE SAFETY.

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 104, is amended by adding at the end the following:

''SEC. 420. STANDARDS FOR PRODUCE SAFETY.

''(a) PROPOSED RULEMAKING.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary, in consultation with the Secretary of Agriculture and representatives of State departments of agriculture, shall publish a notice of proposed rulemaking to establish science-based minimum standards for the safe production and harvesting of those types of fruits and vegetables that are raw agricultural commodities for which the Secretary has determined that such standards minimize the risk of serious adverse health consequences or death.

''(2) PUBLIC INPUT.—During the comment period on the notice of proposed rulemaking under paragraph (1), the Secretary shall conduct not less than 3 public meetings in diverse geographical areas of the United States to provide persons in different regions an opportunity to comment.

''(3) CONTENT.—The proposed rulemaking under paragraph (1) shall—

''(A) include, with respect to growing, harvesting, sorting, and storage operations, minimum standards related to fertilizer use, nutrients, hygiene, packaging, temperature controls, animal encroachment, and water; and

''(B) consider hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism.

''(4) PRIORITIZATION.—The Secretary shall prioritize the implementation of the regulations for specific fruits and vegetables that are raw agricultural commodities that have

been associated with food-borne illness outbreaks.

''(b) FINAL REGULATION.—

''(1) IN GENERAL.—Not later than 1 year after the close of the comment period for the proposed rulemaking under subsection (a), the Secretary shall adopt a final regulation to provide for minimum standards for those types of fruits and vegetables that are raw agricultural commodities for which the Secretary has determined that such standards minimize the risk of serious adverse health consequences or death.

''(2) FINAL REGULATION.—The final regulation shall—

''(A) provide a reasonable period of time for compliance, taking into account the needs of small businesses for additional time to comply;

''(B) provide for coordination of education and enforcement activities by State and local officials, as designated by the Governors of the respective States; and

''(C) include a description of the variance process under subsection (c) and the types of permissible variances the Secretary may grant.

''(c) CRITERIA.—

''(1) IN GENERAL.—The regulations adopted under subsection (b) shall—

''(A) set forth those procedures, processes, and practices as the Secretary determines to be reasonably necessary to prevent the introduction of known or reasonably foreseeable biological, chemical, and physical hazards, including hazards that occur naturally, may be unintentionally introduced, or may be intentionally introduced, including by acts of terrorism, into fruits and vegetables that are raw agricultural commodities and to provide reasonable assurances that the produce is not adulterated under section 402; and

''(B) permit States and foreign countries from which food is imported into the United States, subject to paragraph (2), to request from the Secretary variances from the requirements of the regulations, where upon approval of the Secretary, the variance is considered permissible under the requirements of the regulations adopted under subsection (b)(1)(C) and where the State or foreign country determines that the variance is necessary in light of local growing conditions and that the procedures, processes, and practices to be followed under the variance are reasonably likely to ensure that the produce is not adulterated under section 402 to the same extent as the requirements of the regulation adopted under subsection (b).

''(2) APPROVAL OF VARIANCES.—A State or foreign country from which food is imported into the United States shall request a variance from the Secretary in writing. The Secretary may deny such a request as not reasonably likely to ensure that the produce is not adulterated under section 402 to the same extent as the requirements of the regulation adopted under subsection (b).

''(d) ENFORCEMENT.—The Secretary may coordinate with the Secretary of Agriculture and shall contract and coordinate with the agency or department designated by the Governor of each State to perform activities to ensure compliance with this section.

''(e) GUIDANCE.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall publish, after consultation with the Secretary of Agriculture and representatives of State departments of agriculture, updated good agricultural practices and guidance for the safe production and harvesting of specific types of fresh produce.

''(f) EXCEPTION FOR FACILITIES IN COMPLIANCE WITH SECTION 419.—This section shall not apply to a facility that is subject to section 419.''.

(b) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331), as amended by section 104, is amended by adding at the end the following:

''(qq) The production or harvesting of produce not in accordance with minimum standards as provided by regulation under section 420(b) or a variance issued under section 420(c).''.

(c) NO EFFECT ON HACCP AUTHORITIES.—Nothing in the amendments made by this section limits the authority of the Secretary under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or the Public Health Service Act (42 U.S.C. 201 et seq.) to revise, issue, or enforce product and category-specific regulations, such as the Seafood Hazard Analysis Critical Controls Points Program, the Juice Hazard Analysis Critical Control Program, and the Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards.

SEC. 107. TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY; ANNUAL REPORT.

(a) TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 106, is amended by adding at the end the following:

''SEC. 421. TARGETING OF INSPECTION RESOURCES FOR DOMESTIC FACILITIES, FOREIGN FACILITIES, AND PORTS OF ENTRY; ANNUAL REPORT.

''(a) IDENTIFICATION AND INSPECTION OF FACILITIES.—

''(1) IDENTIFICATION.—The Secretary shall allocate resources to inspect facilities according to the risk profile of the facilities, which shall be based on the following factors:

''(A) The risk profile of the food manufactured, processed, packed, or held at the facility.

''(B) The facility's history of food recalls, outbreaks, and violations of food safety standards.

''(C) The rigor of the facility's hazard analysis and risk-based preventive controls.

''(D) Whether the food manufactured, processed, packed, handled, prepared, treated, distributed, or stored at the facility meets the criteria for priority under section 801(h)(1).

''(E) Whether the facility has received a certificate as described in section 809(b).

''(F) Any other criteria deemed necessary and appropriate by the Secretary for purposes of allocating inspection resources.

''(2) INSPECTIONS.—The Secretary shall increase the frequency of inspection of all facilities, and shall increase the frequency of inspection of facilities identified under paragraph (1) as high-risk facilities such that—

''(A) for the first 2 years after the date of enactment of the FDA Food Safety Modernization Act, each high-risk facility is inspected not less often than once every 2 years; and

''(B) for each succeeding year, each high-risk facility is inspected not less often than once each year.

''(b) IDENTIFICATION AND INSPECTION AT PORTS OF ENTRY.—The Secretary, in consultation with the Secretary of Homeland Security, shall allocate resources to inspect articles of food imported into the United States according to the risk profile of the article of food, which shall be based on the following factors:

''(1) The risk profile of the food imported.

''(2) The risk profile of the countries of origin and countries of transport of the food imported.

''(3) The history of food recalls, outbreaks, and violations of food safety standards of the food importer.

''(4) The rigor of the foreign supplier verification program under section 805.

''(5) Whether the food importer participates in the Voluntary Qualified Importer Program under section 806.

''(6) Whether the food meets the criteria for priority under section 801(h)(1).

''(7) Whether the food is from a facility that has received a certificate as described in section 809(b).

''(8) Any other criteria deemed appropriate by the Secretary for purposes of allocating inspection resources.

''(c) COORDINATION.—The Secretary shall improve coordination and cooperation with the Secretary of Agriculture to target food inspection resources.

''(d) FACILITY.—For purposes of this section, the term 'facility' means a domestic facility or a foreign facility that is required to register under section 415.''.

(b) ANNUAL REPORT.—Section 903 (21 U.S.C. 393) is amended by adding at the end the following:

''(h) ANNUAL REPORT REGARDING FOOD.—Not later than February 1 of each year, the Secretary shall submit to Congress a report regarding—

''(1) information about food facilities including—

''(A) the appropriations used to inspect facilities registered pursuant to section 415 in the previous fiscal year;

''(B) the average cost of both a non-high-risk food facility inspection and a high-risk food facility inspection, if such a difference exists, in the previous fiscal year;

''(C) the number of domestic facilities and the number of foreign facilities registered pursuant to section 415 that the Secretary inspected in the previous fiscal year;

''(D) the number of domestic facilities and the number of foreign facilities registered pursuant to section 415 that the Secretary did not inspect in the previous fiscal year;

''(E) the number of high-risk facilities identified pursuant to section 421 that the Secretary inspected in the previous fiscal year; and

''(F) the number of high-risk facilities identified pursuant to section 421 that the Secretary did not inspect in the previous fiscal year;

''(2) information about food imports including—

''(A) the number of lines of food imported into the United States that the Secretary physically inspected or sampled in the previous fiscal year;

''(B) the number of lines of food imported into the United States that the Secretary did not physically inspect or sample in the previous fiscal year; and

''(C) the average cost of physically inspecting or sampling a food line subject to this Act that is imported or offered for import into the United States; and

''(3) information on the foreign offices established under section 309 of the FDA Food Safety Modernization Act including—

''(A) the number of foreign offices established; and

''(B) the number of personnel permanently stationed in each foreign office.

''(i) PUBLIC AVAILABILITY OF ANNUAL FOOD REPORTS.—The Secretary shall make the reports required under subsection (h) available to the public on the Internet Web site of the Food and Drug Administration.''.

SEC. 108. ADMINISTRATIVE DETENTION OF FOOD.

(a) IN GENERAL.—Section 304(h)(1)(A) (21 U.S.C. 334(h)(1)(A)) is amended by—

(1) striking ''credible evidence or information indicating'' and inserting ''reason to believe''; and

(2) striking ''presents a threat of serious adverse health consequences or death to humans or animals'' and inserting ''is adulterated or misbranded''.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue an interim final rule amending subpart K of part 1 of title 21, Code of Federal Regulations, to implement the amendment made by this section.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect 180 days after the date of enactment of this Act.

SEC. 109. PROTECTION AGAINST INTENTIONAL ADULTERATION.

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 107, is amended by adding at the end the following:

''SEC. 422. PROTECTION AGAINST INTENTIONAL ADULTERATION.

''(a) IN GENERAL.—Not later than 24 months after the date of enactment of the FDA Food Safety Modernization Act, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of Agriculture, shall promulgate regulations to protect against the intentional adulteration of food subject to this Act.

''(b) CONTENT OF REGULATIONS.—Regulations under subsection (a) shall only apply to food—

''(1) for which the Secretary has identified clear vulnerabilities (such as short shelf-life or susceptibility to intentional contamination at critical control points);

''(2) in bulk or batch form, prior to being packaged for the final consumer; and

''(3) for which there is a high risk of intentional contamination, as determined by the Secretary, that could cause serious adverse health consequences or death to humans or animals.

''(c) DETERMINATIONS.—In making the determination under subsection (b)(3), the Secretary shall—

''(1) conduct vulnerability assessments of the food system;

''(2) consider the best available understanding of uncertainties, risks, costs, and benefits associated with guarding against intentional adulteration at vulnerable points; and

''(3) determine the types of science-based mitigation strategies or measures that are necessary to protect against the intentional adulteration of food.

''(d) EXCEPTION.—This section shall not apply to food produced on farms, except for milk.

''(e) DEFINITION.—For purposes of this section, the term 'farm' has the meaning given that term in section 1.227 of title 21, Code of Federal Regulations (or any successor regulation).''.

(b) GUIDANCE DOCUMENTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Homeland Security and the Secretary of Agriculture, shall issue guidance documents related to protection against the intentional adulteration of food, including mitigation strategies or measures to guard against such adulteration as required under section 422 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a).

(2) CONTENT.—The guidance document issued under paragraph (1) shall—

(A) specify how a person shall assess whether the person is required to implement mitigation strategies or measures intended to protect against the intentional adulteration of food;

(B) specify appropriate science-based mitigation strategies or measures to prepare and protect the food supply chain at specific vulnerable points, as appropriate;

(C) include a model assessment for a person to use under subparagraph (A);

(D) include examples of mitigation strategies or measures described in subparagraph (B); and

(E) specify situations in which the examples of mitigation strategies or measures described in subparagraph (D) are appropriate.

(3) LIMITED DISTRIBUTION.—In the interest of national security, the Secretary, in consultation with the Secretary of Homeland Security, may determine the time and manner in which the guidance documents issued under paragraph (1) are made public, including by releasing such documents to targeted audiences.

(c) PERIODIC REVIEW.—The Secretary shall periodically review and, as appropriate, update the regulation under subsection (a) and the guidance documents under subsection (b).

(d) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331 et seq.), as amended by section 106, is amended by adding at the end the following:

''(rr) The failure to comply with section 422.''.

SEC. 110. NATIONAL AGRICULTURE AND FOOD DEFENSE STRATEGY.

(a) DEVELOPMENT AND SUBMISSION OF STRATEGY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, shall prepare and submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Health and Human Services and the Department of Agriculture, the National Agriculture and Food Defense Strategy.

(2) IMPLEMENTATION PLAN.—The strategy shall include an implementation plan for use by the Secretaries described under paragraph (1) in carrying out the strategy.

(3) RESEARCH.—The strategy shall include a coordinated research agenda for use by the Secretaries described under paragraph (1) in conducting research to support the goals and activities described in paragraphs (1) and (2) of subsection (b).

(4) REVISIONS.—Not later than 4 years after the date on which the strategy is submitted to the relevant committees of Congress under paragraph (1), and not less frequently than every 4 years thereafter, the Secretary of Health and Human Services and the Secretary of Agriculture, in coordination with the Secretary of Homeland Security, shall revise and submit to the relevant committees of Congress the strategy.

(5) CONSISTENCY WITH EXISTING PLANS.—The strategy described in paragraph (1) shall be consistent with—

(A) the National Incident Management System;

(B) the National Response Framework;

(C) the National Infrastructure Protection Plan;

(D) the National Preparedness Goals; and

(E) other relevant national strategies.

(b) COMPONENTS.—

(1) IN GENERAL.—The strategy shall include a description of the process to be used by the Department of Health and Human Services, the Department of Agriculture, and the Department of Homeland Security—

(A) to achieve each goal described in paragraph (2); and

(B) to evaluate the progress made by Federal, State, local, and tribal governments towards the achievement of each goal described in paragraph (2).

(2) GOALS.—The strategy shall include a description of the process to be used by the Department of Health and Human Services, the Department of Agriculture, and the Department of Homeland Security to achieve the following goals:

(A) PREPAREDNESS GOAL.—Enhance the preparedness of the agriculture and food system by—

(i) conducting vulnerability assessments of the agriculture and food system;

(ii) mitigating vulnerabilities of the system;

(iii) improving communication and training relating to the system;

(iv) developing and conducting exercises to test decontamination and disposal plans;

(v) developing modeling tools to improve event consequence assessment and decision support; and

(vi) preparing risk communication tools and enhancing public awareness through outreach.

(B) DETECTION GOAL.—Improve agriculture and food system detection capabilities by—

(i) identifying contamination in food products at the earliest possible time; and

(ii) conducting surveillance to prevent the spread of diseases.

(C) EMERGENCY RESPONSE GOAL.—Ensure an efficient response to agriculture and food emergencies by—

(i) immediately investigating animal disease outbreaks and suspected food contamination;

(ii) preventing additional human illnesses;

(iii) organizing, training, and equipping animal, plant, and food emergency response teams of—

(I) the Federal Government; and

(II) State, local, and tribal governments;

(iv) designing, developing, and evaluating training and exercises carried out under agriculture and food defense plans; and

(v) ensuring consistent and organized risk communication to the public by—

(I) the Federal Government;

(II) State, local, and tribal governments; and

(III) the private sector.

(D) RECOVERY GOAL.—Secure agriculture and food production after an agriculture or food emergency by—

(i) working with the private sector to develop business recovery plans to rapidly resume agriculture and food production;

(ii) conducting exercises of the plans described in subparagraph (C) with the goal of long-term recovery results;

(iii) rapidly removing, and effectively disposing of—

(I) contaminated agriculture and food products; and

(II) infected plants and animals; and

(iv) decontaminating and restoring areas affected by an agriculture or food emergency.

SEC. 111. FOOD AND AGRICULTURE COORDINATING COUNCILS.

The Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture, shall within 180 days of enactment of this Act, and annually thereafter, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Homeland Security, a report on the activities of the Food and Agriculture Government Coordinating Council and the Food and Agriculture Sector Coordinating Council, including the progress of such Councils on—

(1) facilitating partnerships between public and private entities to help unify and enhance the protection of the agriculture and food system of the United States;

(2) providing for the regular and timely interchange of information between each council relating to the security of the agriculture and food system (including intelligence information);

(3) identifying best practices and methods for improving the coordination among Federal, State, local, and private sector preparedness and response plans for agriculture and food defense; and

(4) recommending methods by which to protect the economy and the public health of the United States from the effects of—

(A) animal or plant disease outbreaks;

(B) food contamination; and

(C) natural disasters affecting agriculture and food.

SEC. 112. DECONTAMINATION AND DISPOSAL STANDARDS AND PLANS.

(a) IN GENERAL.—The Administrator of the Environmental Protection Agency (referred to in this section as the ''Administrator''), in coordination with the Secretary of Health and Human Services, Secretary of Homeland Security, and Secretary of Agriculture, shall provide support for, and technical assistance to, State, local, and tribal governments in preparing for, assessing, decontaminating, and recovering from an agriculture or food emergency.

(b) DEVELOPMENT OF STANDARDS.—In carrying out subsection (a), the Administrator, in coordination with the Secretary of Health and Human Services, Secretary of Homeland Security, Secretary of Agriculture, and State, local, and tribal governments, shall develop and disseminate specific standards and protocols to undertake clean-up, clearance, and recovery activities following the decontamination and disposal of specific threat agents and foreign animal diseases.

(c) DEVELOPMENT OF MODEL PLANS.—In carrying out subsection (a), the Administrator, the Secretary of Health and Human Services, and the Secretary of Agriculture shall jointly develop and disseminate model plans for—

(1) the decontamination of individuals, equipment, and facilities following an intentional contamination of agriculture or food; and

(2) the disposal of large quantities of animals, plants, or food products that have been infected or contaminated by specific threat agents and foreign animal diseases.

(d) EXERCISES.—In carrying out subsection (a), the Administrator, in coordination with the entities described under subsection (b), shall conduct exercises at least annually to evaluate and identify weaknesses in the decontamination and disposal model plans described in subsection (c). Such exercises shall be carried out, to the maximum extent practicable, as part of the national exercise program under section 648(b)(1) of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 748(b)(1)).

(e) MODIFICATIONS.—Based on the exercises described in subsection (d), the Administrator, in coordination with the entities described in subsection (b), shall review and modify as necessary the plans described in subsection (c) not less frequently than biennially.

(f) PRIORITIZATION.—The Administrator, in coordination with the entities described in subsection (b), shall develop standards and plans under subsections (b) and (c) in an identified order of priority that takes into account—

(1) highest-risk biological, chemical, and radiological threat agents;

(2) agents that could cause the greatest economic devastation to the agriculture and food system; and

(3) agents that are most difficult to clean or remediate.

SEC. 113. AUTHORITY TO COLLECT FEES.

(a) FEES FOR REINSPECTION, RECALL, AND IMPORTATION ACTIVITIES.—Subchapter C of chapter VII (21 U.S.C. 379f et seq.) is amended by inserting after section 740 the following:

''PART 5—FEES RELATED TO FOOD

''SEC. 740A. AUTHORITY TO COLLECT AND USE FEES.

''(a) IN GENERAL.—

''(1) PURPOSE AND AUTHORITY.—For fiscal year 2009 and each subsequent fiscal year, the Secretary shall, in accordance with this section, assess and collect fees from—

''(A) domestic facilities required to register under section 415, to cover reinspection-related costs for each such year;

''(B) domestic facilities required to register under section 415, to cover food recall activities performed by the Secretary, including technical assistance, follow-up effectiveness checks, and public notifications, for each such year;

''(C) importers required to register under section 415, to cover the administrative costs of participating in the voluntary qualified importer program under section 806 for each such year; and

''(D) importers, to cover reinspection-related costs at ports of entry for each such year.

''(2) DEFINITIONS.—For purposes of this section—

''(A) the term 'reinspection' means 1 or more inspections conducted under section 704 of this Act subsequent to an inspection conducted under such provision which identified noncompliance materially related to a food safety requirement of this Act, specifically to determine whether compliance has been achieved to the Secretary's satisfaction; and

''(B) the term 'reinspection-related costs' means all expenses, including administrative expenses, incurred in connection with—

''(i) arranging, conducting, and evaluating the results of reinspections; and

''(ii) assessing and collecting reinspection fees under this section.

''(b) ESTABLISHMENT OF FEES.—

''(1) IN GENERAL.—Subject to subsections (c) and (d), the Secretary shall establish the fees to be collected under this section for each fiscal year specified in subsection (a)(1), based on the methodology described under paragraph (2), and shall publish such fees in a Federal Register notice not later than 60 days before the start of each such year.

''(2) FEE METHODOLOGY.—

''(A) FEES.—Fees amounts established for collection—

''(i) under subparagraph (A) of subsection (a)(1) for a fiscal year shall be based on the Secretary's estimate of 100 percent of the costs of the reinspection-related activities (including by type or level of reinspection activity, as the Secretary determines applicable) described in such subparagraph (A) for such year;

''(ii) under subparagraph (B) of subsection (a)(1) for a fiscal year shall be based on the Secretary's estimate of 100 percent of the costs of the activities described in such subparagraph (B) for such year;

''(iii) under subparagraph (C) of subsection (a)(1) for a fiscal year shall be based on the Secretary's estimate of 100 percent of the costs of the activities described in such subparagraph (C) for such year; and

''(iv) under subparagraph (D) of subsection (a)(1) for a fiscal year shall be based on the Secretary's estimate of 100 percent of the costs of the activities described in such subparagraph (D) for such year.

''(B) OTHER CONSIDERATIONS.—In establishing the fee amounts for a fiscal year, the Secretary shall provide for the crediting of fees from the previous year to the next year if the Secretary overestimated the amount of fees needed to carry out such activities, and consider the need to account for any adjustment of fees and such other factors as the Secretary determines appropriate.

''(3) COMPLIANCE WITH INTERNATIONAL AGREEMENTS.—Nothing in this section shall be construed to authorize the assessment of any fee inconsistent with the agreement establishing the World Trade Organization or any other treaty or international agreement to which the United States is a party.

''(c) LIMITATIONS.—

''(1) IN GENERAL.—Fees under subsection (a) shall be refunded for a fiscal year beginning after fiscal year 2009 unless appropriations for the Center for Food Safety and Applied Nutrition and the Center for Veterinary Medicine and related activities of the Office of Regulatory Affairs at the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) are equal to or greater than the amount of appropriations for the Center for Food Safety and Applied Nutrition and the Center for Veterinary Medicine and related activities of the Office of Regulatory Affairs at the Food and Drug Administration for the preceding fiscal year (excluding the amount of fees appropriated for such fiscal year) multiplied by 1 plus 4.5 percent.

''(2) AUTHORITY.—If the Secretary does not assess fees under subsection (a) during any portion of a fiscal year because of paragraph (1) and if at a later date in such fiscal year the Secretary may assess such fees, the Secretary may assess and collect such fees, without any modification in the rate, under subsection (a), notwithstanding the provisions of subsection (a) relating to the date fees are to be paid.

''(3) LIMITATION ON AMOUNT OF CERTAIN FEES.—Notwithstanding any other provision of this section, in no case may the amount of the fees collected for a fiscal year—

''(A) under subparagraph (B) of subsection (a)(1) exceed $20,000,000; and

''(B) under subparagraphs (A) and (D) of subsection (a)(1) exceed $25,000,000 combined.

''(d) CREDITING AND AVAILABILITY OF FEES.—Fees authorized under subsection (a) shall be collected and available for obligation only to the extent and in the amount provided in appropriations Acts. Such fees are authorized to remain available until expended. Such sums as may be necessary may be transferred from the Food and Drug Administration salaries and expenses account without fiscal year limitation to such appropriation account for salaries and expenses with such fiscal year limitation. The sums transferred shall be available solely for the purpose of paying the operating expenses of the Food and Drug Administration employees and contractors performing activities associated with these food safety fees.

''(e) COLLECTION OF FEES.—

''(1) IN GENERAL.—The Secretary shall specify in the Federal Register notice described in subsection (b)(1) the time and manner in which fees assessed under this section shall be collected.

''(2) COLLECTION OF UNPAID FEES.—In any case where the Secretary does not receive payment of a fee assessed under this section within 30 days after it is due, such fee shall be treated as a claim of the United States Government subject to provisions of subchapter II of chapter 37 of title 31, United States Code.

''(f) ANNUAL REPORT TO CONGRESS.—Not later than 120 days after each fiscal year for which fees are assessed under this section, the Secretary shall submit a report to the Committee on Health, Education, Labor, and Pensions of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives, to include a description of fees assessed and collected for each such year and a summary description of the entities paying such fees and the types of business in which such entities engage.

''(g) AUTHORIZATION OF APPROPRIATIONS.—For fiscal year 2009 and each fiscal year

thereafter, there is authorized to be appropriated for fees under this section an amount equal to the total revenue amount determined under subsection (b) for the fiscal year, as adjusted or otherwise affected under the other provisions of this section.''.

(b) EXPORT CERTIFICATION FEES FOR FOODS AND ANIMAL FEED.—

(1) AUTHORITY FOR EXPORT CERTIFICATIONS FOR FOOD, INCLUDING ANIMAL FEED.—Section 801(e)(4)(A) (21 U.S.C. 381(e)(4)(A)) is amended—

(A) in the matter preceding clause (i), by striking ''a drug'' and inserting ''a food, drug'';

(B) in clause (i) by striking ''exported drug'' and inserting ''exported food, drug''; and

(C) in clause (ii) by striking ''the drug'' each place it appears and inserting ''the food, drug''.

(2) CLARIFICATION OF CERTIFICATION.—Section 801(e)(4) (21 U.S.C. 381(e)(4)) is amended by inserting after subparagraph (B) the following new subparagraph:

''(C) For purposes of this paragraph, a certification by the Secretary shall be made on such basis, and in such form (including a publicly available listing) as the Secretary determines appropriate.''.

SEC. 114. FINAL RULE FOR PREVENTION OF SALMONELLA ENTERITIDIS IN SHELL EGGS DURING PRODUCTION.

Not later than 1 year after the date of enactment of this Act, the Secretary shall issue a final rule based on the proposed rule issued by the Commissioner of Food and Drugs entitled ''Prevention of *Salmonella* Enteritidis in Shell Eggs During Production'', 69 Fed. Reg. 56824, (September 22, 2004).

SEC. 115. SANITARY TRANSPORTATION OF FOOD.

Not later than 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations described in section 416(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350e(b)).

SEC. 116. FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT.

(a) DEFINITIONS.—In this section:

(1) EARLY CHILDHOOD EDUCATION PROGRAM.—The term ''early childhood education program'' means—

(A) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.);

(B) a State licensed or regulated child care program or school; or

(C) a State prekindergarten program that serves children from birth through kindergarten.

(2) ESEA DEFINITIONS.—The terms ''local educational agency'', ''secondary school'', ''elementary school'', and ''parent'' have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) SCHOOL.—The term ''school'' includes public—

(A) kindergartens;

(B) elementary schools; and

(C) secondary schools.

(b) ESTABLISHMENT OF VOLUNTARY FOOD ALLERGY AND ANAPHYLAXIS MANAGEMENT GUIDELINES.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Education, shall—

(i) develop guidelines to be used on a voluntary basis to develop plans for individuals to manage the risk of food allergy and anaphylaxis in schools and early childhood education programs; and

(ii) make such guidelines available to local educational agencies, schools, early childhood education programs, and other interested entities and individuals to be implemented on a voluntary basis only.

(B) APPLICABILITY OF FERPA.—Each plan described in subparagraph (A) that is developed for an individual shall be considered an education record for the purpose of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g).

(2) CONTENTS.—The voluntary guidelines developed by the Secretary under paragraph (1) shall address each of the following, and may be updated as the Secretary deems necessary:

(A) Parental obligation to provide the school or early childhood education program, prior to the start of every school year, with—

(i) documentation from their child's physician or nurse—

(I) supporting a diagnosis of food allergy and the risk of anaphylaxis;

(II) identifying any food to which the child is allergic;

(III) describing, if appropriate, any prior history of anaphylaxis;

(IV) listing any medication prescribed for the child for the treatment of anaphylaxis;

(V) detailing emergency treatment procedures in the event of a reaction;

(VI) listing the signs and symptoms of a reaction; and

(VII) assessing the child's readiness for self-administration of prescription medication; and

(ii) a list of substitute meals that may be offered to the child by school or early childhood education program food service personnel.

(B) The creation and maintenance of an individual health care plan for food allergy management, in consultation with the parent, tailored to the needs of each child with a documented risk for anaphylaxis, including any procedures for the self-administration of medication by such children in instances where—

(i) the children are capable of self-administering medication; and

(ii) such administration is not prohibited by State law.

(C) Communication strategies between individual schools or early childhood education programs and local providers of emergency medical services, including appropriate instructions for emergency medical response.

(D) Strategies to reduce the risk of exposure to anaphylactic causative agents in classrooms and common school or early childhood education program areas such as cafeterias.

(E) The dissemination of general information on life-threatening food allergies to school or early childhood education program staff, parents, and children.

(F) Food allergy management training of school or early childhood education program personnel who regularly come into contact with children with life-threatening food allergies.

(G) The authorization and training of school or early childhood education program personnel to administer epinephrine when the nurse is not immediately available.

(H) The timely accessibility of epinephrine by school or early childhood education program personnel when the nurse is not immediately available.

(I) The creation of a plan contained in each individual health care plan for food allergy management that addresses the appropriate response to an incident of anaphylaxis of a child while such child is engaged in extracurricular programs of a school or early childhood education program, such as nonacademic outings and field trips, before- and after-school programs or before- and after-early child education program programs, and school-sponsored or early childhood education program-sponsored programs held on weekends.

(J) Maintenance of information for each administration of epinephrine to a child at risk for anaphylaxis and prompt notification to parents.

(K) Other elements the Secretary deems necessary for the management of food allergies and anaphylaxis in schools and early childhood education programs.

(3) RELATION TO STATE LAW.—Nothing in this section or the guidelines developed by the Secretary under paragraph (1) shall be construed to preempt State law, including any State law regarding whether students at risk for anaphylaxis may self-administer medication.

(c) SCHOOL-BASED FOOD ALLERGY MANAGEMENT GRANTS.—

(1) IN GENERAL.—The Secretary may award grants to local educational agencies to assist such agencies with implementing voluntary food allergy and anaphylaxis management guidelines described in subsection (b).

(2) APPLICATION.—

(A) IN GENERAL.—To be eligible to receive a grant under this subsection, a local educational agency shall submit an application to the Secretary at such time, in such manner, and including such information as the Secretary may reasonably require.

(B) CONTENTS.—Each application submitted under subparagraph (A) shall include—

(i) an assurance that the local educational agency has developed plans in accordance with the food allergy and anaphylaxis management guidelines described in subsection (b);

(ii) a description of the activities to be funded by the grant in carrying out the food allergy and anaphylaxis management guidelines, including—

(I) how the guidelines will be carried out at individual schools served by the local educational agency;

(II) how the local educational agency will inform parents and students of the guidelines in place;

(III) how school nurses, teachers, administrators, and other school-based staff will be made aware of, and given training on, when applicable, the guidelines in place; and

(IV) any other activities that the Secretary determines appropriate;

(iii) an itemization of how grant funds received under this subsection will be expended;

(iv) a description of how adoption of the guidelines and implementation of grant activities will be monitored; and

(v) an agreement by the local educational agency to report information required by the Secretary to conduct evaluations under this subsection.

(3) USE OF FUNDS.—Each local educational agency that receives a grant under this subsection may use the grant funds for the following:

(A) Purchase of materials and supplies, including limited medical supplies such as epinephrine and disposable wet wipes, to support carrying out the food allergy and anaphylaxis management guidelines described in subsection (b).

(B) In partnership with local health departments, school nurse, teacher, and personnel training for food allergy management.

(C) Programs that educate students as to the presence of, and policies and procedures in place related to, food allergies and anaphylactic shock.

(D) Outreach to parents.

(E) Any other activities consistent with the guidelines described in subsection (b).

(4) DURATION OF AWARDS.—The Secretary may award grants under this subsection for a period of not more than 2 years. In the event the Secretary conducts a program evaluation under this subsection, funding in the second year of the grant, where applicable, shall be contingent on a successful program evaluation by the Secretary after the first year.

(5) LIMITATION ON GRANT FUNDING.—The Secretary may not provide grant funding to a local educational agency under this subsection after such local educational agency has received 2 years of grant funding under this subsection.

(6) MAXIMUM AMOUNT OF ANNUAL AWARDS.—A grant awarded under this subsection may not be made in an amount that is more than $50,000 annually.

(7) PRIORITY.—In awarding grants under this subsection, the Secretary shall give priority to local educational agencies with the highest percentages of children who are counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)).

(8) MATCHING FUNDS.—

(A) IN GENERAL.—The Secretary may not award a grant under this subsection unless the local educational agency agrees that, with respect to the costs to be incurred by such local educational agency in carrying out the grant activities, the local educational agency shall make available (directly or through donations from public or private entities) non-Federal funds toward such costs in an amount equal to not less than 25 percent of the amount of the grant.

(B) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION.—Non-Federal funds required under subparagraph (A) may be cash or in kind, including plant, equipment, or services. Amounts provided by the Federal Government, and any portion of any service subsidized by the Federal Government, may not be included in determining the amount of such non-Federal funds.

(9) ADMINISTRATIVE FUNDS.—A local educational agency that receives a grant under this subsection may use not more than 2 percent of the grant amount for administrative costs related to carrying out this subsection.

(10) PROGRESS AND EVALUATIONS.—At the completion of the grant period referred to in paragraph (4), a local educational agency shall provide the Secretary with information on how grant funds were spent and the status of implementation of the food allergy and anaphylaxis management guidelines described in subsection (b).

(11) SUPPLEMENT, NOT SUPPLANT.—Grant funds received under this subsection shall be used to supplement, and not supplant, non-Federal funds and any other Federal funds available to carry out the activities described in this subsection.

(12) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $30,000,000 for fiscal year 2009 and such sums as may be necessary for each of the 4 succeeding fiscal years.

(d) VOLUNTARY NATURE OF GUIDELINES.—

(1) IN GENERAL.—The food allergy and anaphylaxis management guidelines developed by the Secretary under subsection (b) are voluntary. Nothing in this section or the guidelines developed by the Secretary under subsection (b) shall be construed to require a local educational agency to implement such guidelines.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Secretary may enforce an agreement by a local educational agency to implement food allergy and anaphylaxis management guidelines as a condition of the receipt of a grant under subsection (c).

TITLE II—DETECTION AND SURVEILLANCE

SEC. 201. RECOGNITION OF LABORATORY ACCREDITATION FOR ANALYSES OF FOODS.

(a) IN GENERAL.—Chapter IV (21 U.S.C. 341 et seq.), as amended by section 109, is amended by adding at the end the following:

"SEC. 423. RECOGNITION OF LABORATORY ACCREDITATION FOR ANALYSES OF FOODS.

''(a) RECOGNITION OF LABORATORY ACCREDITATION.—

''(1) IN GENERAL.—Not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall—

''(A) provide for the recognition of accreditation bodies that accredit laboratories, including laboratories run and operated by a State or locality, with a demonstrated capability to conduct analytical testing of food products; and

''(B) establish a publicly available registry of accreditation bodies, including the name of, contact information for, and other information deemed necessary by the Secretary about such bodies.

''(2) MODEL ACCREDITATION STANDARDS.—The Secretary shall develop model standards that an accreditation body shall require laboratories to meet in order to be included in the registry provided for under paragraph (1). In developing the model standards, the Secretary shall look to existing standards for guidance. The model standards shall include methods to ensure that—

''(A) appropriate sampling and analytical procedures are followed and reports of analyses are certified as true and accurate;

''(B) internal quality systems are established and maintained;

''(C) procedures exist to evaluate and respond promptly to complaints regarding analyses and other activities for which the laboratory is recognized;

''(D) individuals who conduct the analyses are qualified by training and experience to do so; and

''(E) any other criteria determined appropriate by the Secretary.

''(3) REVIEW OF ACCREDITATION.—To assure compliance with the requirements of this section, the Secretary shall—

''(A) periodically, or at least every 5 years, reevaluate accreditation bodies recognized under paragraph (1); and

''(B) promptly revoke the recognition of any accreditation body found not to be in compliance with the requirements of this section.

''(b) TESTING PROCEDURES.—Food testing shall be conducted by either Federal laboratories or non-Federal laboratories that have been accredited by an accreditation body on the registry established by the Secretary under subsection (a) whenever such testing is either conducted by or on behalf of an owner or consignee—

''(1) in support of admission of an article of food under section 801(a);

''(2) due to a specific testing requirement in this Act or implementing regulations;

''(3) under an Import Alert that requires successful consecutive tests; or

''(4) is so required by the Secretary as the Secretary deems appropriate.

The results of any such sampling or testing shall be sent directly to the Food and Drug Administration.

''(c) REVIEW BY SECRETARY.—If food sampling and testing performed by a laboratory run and operated by a State or locality that is accredited by an accreditation body on the registry established by the Secretary under subsection (a) result in a State recalling a food, the Secretary shall review the sampling and testing results for the purpose of determining the need for a national recall or other compliance and enforcement activities.''.

(b) FOOD EMERGENCY RESPONSE NETWORK.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Homeland Security, and State, local, and tribal governments shall, not later than 180 days after the date of enactment of this Act, and biennially thereafter, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Health and Human Services, a report on the progress in implementing a national food emergency response laboratory network that—

(1) provides ongoing surveillance, rapid detection, and surge capacity for large-scale food-related emergencies, including intentional adulteration of the food supply;

(2) coordinates the food laboratory capacities of State food laboratories, including the sharing of data between State laboratories to develop national situational awareness;

(3) provides accessible, timely, accurate, and consistent food laboratory services throughout the United States;

(4) develops and implements a methods repository for use by Federal, State, and local officials;

(5) responds to food-related emergencies; and

(6) is integrated with relevant laboratory networks administered by other Federal agencies.

SEC. 202. INTEGRATED CONSORTIUM OF LABORATORY NETWORKS.

(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, shall maintain an agreement through which relevant laboratory network members, as determined by the Secretary of Homeland Security, shall—

(1) agree on common laboratory methods in order to facilitate the sharing of knowledge and information relating to animal health, agriculture, and human health;

(2) identify the means by which each laboratory network member could work cooperatively—

(A) to optimize national laboratory preparedness; and

(B) to provide surge capacity during emergencies; and

(3) engage in ongoing dialogue and build relationships that will support a more effective and integrated response during emergencies.

(b) REPORTING REQUIREMENT.—The Secretary of Homeland Security shall, on a biennial basis, submit to the relevant committees of Congress, and make publicly available on the Internet Web site of the Department of Homeland Security, a report on the progress of the integrated consortium of laboratory networks, as established under subsection (a), in carrying out this section.

SEC. 203. BUILDING DOMESTIC CAPACITY.

(a) IN GENERAL.—

(1) INITIAL REPORT.—The Secretary shall, not later than 2 years after the date of enactment of this Act, submit to Congress a comprehensive report that identifies programs and practices that are intended to promote the safety and security of food and to prevent outbreaks of food-borne illness and other food-related hazards that can be addressed through preventive activities. Such report shall include a description of the following:

(A) Analysis of the need for regulations or guidance to industry.

(B) Outreach to food industry sectors, including through the Food and Agriculture

Coordinating Councils referred to in section 111, to identify potential sources of emerging threats to the safety and security of the food supply and preventive strategies to address those threats.

(C) Systems to ensure the prompt distribution to the food industry of information and technical assistance concerning preventive strategies.

(D) Communication systems to ensure that information about specific threats to the safety and security of the food supply are rapidly and effectively disseminated.

(E) Surveillance systems and laboratory networks to rapidly detect and respond to food-borne illness outbreaks and other food-related hazards, including how such systems and networks are integrated.

(F) Outreach, education, and training provided to States to build State food safety and food defense capabilities, including progress implementing strategies developed under sections 110 and 205.

(G) The estimated resources needed to effectively implement the programs and practices identified in the report developed in this section over a 5-year period.

(2) BIENNIAL REPORTS.—On a biennial basis following the submission of the report under paragraph (1), the Secretary shall submit to Congress a report that—

(A) reviews previous food safety programs and practices;

(B) outlines the success of those programs and practices;

(C) identifies future programs and practices; and

(D) includes information related to any matter described in subparagraphs (A) through (G) of paragraph (1), as necessary.

(b) RISK-BASED ACTIVITIES.—The report developed under subsection (a)(1) shall describe methods that seek to ensure that resources available to the Secretary for food safety-related activities are directed at those actions most likely to reduce risks from food, including the use of preventive strategies and allocation of inspection resources. The Secretary shall promptly undertake those risk-based actions that are identified during the development of the report as likely to contribute to the safety and security of the food supply.

(c) CAPABILITY FOR LABORATORY ANALYSES; RESEARCH.—The report developed under subsection (a)(1) shall provide a description of methods to increase capacity to undertake analyses of food samples promptly after collection, to identify new and rapid analytical techniques, including techniques that can be employed at ports of entry and through Food Emergency Response Network laboratories, and to provide for well-equipped and staffed laboratory facilities.

(d) INFORMATION TECHNOLOGY.—The report developed under subsection (a)(1) shall include a description of such information technology systems as may be needed to identify risks and receive data from multiple sources, including foreign governments, State, local, and tribal governments, other Federal agencies, the food industry, laboratories, laboratory networks, and consumers. The information technology systems that the Secretary describes shall also provide for the integration of the facility registration system under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d), and the prior notice system under section 801(m) of such Act (21 U.S.C. 381(m)) with other information technology systems that are used by the Federal Government for the processing of food offered for import into the United States.

(e) AUTOMATED RISK ASSESSMENT.—The report developed under subsection (a)(1) shall include a description of progress toward developing and improving an automated risk assessment system for food safety surveillance and allocation of resources.

(f) TRACEBACK AND SURVEILLANCE REPORT.—The Secretary shall include in the report developed under subsection (a)(1) an analysis of the Food and Drug Administration's performance in food-borne illness outbreaks during the 5-year period preceding the date of enactment of this Act involving fruits and vegetables that are raw agricultural commodities (as defined in section 201(r) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(r)) and recommendations for enhanced surveillance, outbreak response, and traceability. Such findings and recommendations shall address communication and coordination with the public and industry, outbreak identification, and traceback.

(g) BIENNIAL FOOD SAFETY AND FOOD DEFENSE RESEARCH PLAN.—The Secretary and the Secretary of Agriculture shall, on a biennial basis, submit to Congress a joint food safety and food defense research plan which may include studying the long-term health effects of food-borne illness. Such biennial plan shall include a list and description of projects conducted during the previous 2-year period and the plan for projects to be conducted during the following 2-year period.

SEC. 204. ENHANCING TRACEBACK AND RECORD-KEEPING.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of Agriculture and representatives of State departments of health and agriculture, shall improve the capacity of the Secretary to effectively and rapidly track and trace, in the event of an outbreak, fruits and vegetables that are raw agricultural commodities.

(b) PILOT PROJECT.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act, the Secretary shall establish a pilot project in coordination with the produce industry to explore and evaluate new methods for rapidly and effectively tracking and tracing fruits and vegetables that are raw agricultural commodities so that, if an outbreak occurs involving such a fruit or vegetable, the Secretary may quickly identify the source of the outbreak and the recipients of the contaminated food.

(2) CONTENT.—The Secretary shall select participants from the produce industry to run projects which overall shall include at least 3 different types of fruits or vegetables that have been the subject of outbreaks during the 5-year period preceding the date of enactment of this Act, and shall be selected in order to develop and demonstrate—

(A) methods that are applicable and appropriate for small businesses; and

(B) technologies, including existing technologies, that enhance traceback and trace forward.

(c) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary shall report to Congress on the findings of the pilot project under subsection (b) together with recommendations for establishing more effective traceback and trace forward procedures for fruits and vegetables that are raw agricultural commodities.

(d) TRACEBACK PERFORMANCE REQUIREMENTS.—Not later than 24 months after the date of enactment of this Act, the Secretary shall publish a notice of proposed rulemaking to establish standards for the type of information, format, and timeframe for persons to submit records to aid the Secretary in effectively and rapidly tracking and tracing, in the event of an outbreak, fruits and vegetables that are raw agricultural commodities. Nothing in this section shall be construed as giving the Secretary the authority to prescribe specific technologies for the maintenance of records.

(e) PUBLIC INPUT.—During the comment period in the notice of proposed rulemaking under subsection (d), the Secretary shall conduct not less than 3 public meetings in diverse geographical areas of the United States to provide persons in different regions an opportunity to comment.

(f) RAW AGRICULTURAL COMMODITY.—In this section, the term ''raw agricultural commodity'' has the meaning given that term in section 201(r) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(r)).

SEC. 205. SURVEILLANCE.

(a) DEFINITION OF FOOD-BORNE ILLNESS OUTBREAK.—In this section, the term ''food-borne illness outbreak'' means the occurrence of 2 or more cases of a similar illness resulting from the ingestion of a food.

(b) FOOD-BORNE ILLNESS SURVEILLANCE SYSTEMS.—

(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall enhance food-borne illness surveillance systems to improve the collection, analysis, reporting, and usefulness of data on food-borne illnesses by—

(A) coordinating Federal, State and local food-borne illness surveillance systems, including complaint systems, and increasing participation in national networks of public health and food regulatory agencies and laboratories;

(B) facilitating sharing of findings on a more timely basis among governmental agencies, including the Food and Drug Administration, the Department of Agriculture, and State and local agencies, and with the public;

(C) developing improved epidemiological tools for obtaining quality exposure data, and microbiological methods for classifying cases;

(D) augmenting such systems to improve attribution of a food-borne illness outbreak to a specific food;

(E) expanding capacity of such systems, including working toward automatic electronic searches, for implementation of fingerprinting strategies for food-borne infectious agents, in order to identify new or rarely documented causes of food-borne illness and submit standardized information to a centralized database;

(F) allowing timely public access to aggregated, de-identified surveillance data;

(G) at least annually, publishing current reports on findings from such systems;

(H) establishing a flexible mechanism for rapidly initiating scientific research by academic institutions;

(I) integrating food-borne illness surveillance systems and data with other bio-surveillance and public health situational awareness capabilities at the state and federal levels; and

(J) other activities as determined appropriate by the Secretary.

(2) PARTNERSHIPS.—The Secretary shall support and maintain a diverse working group of experts and stakeholders from Federal, State, and local food safety and health agencies, the food industry, consumer organizations, and academia. Such working group shall provide the Secretary, through at least annual meetings of the working group and an annual public report, advice and recommendations on an ongoing and regular basis regarding the improvement of food-borne illness surveillance and implementation of this section, including advice and recommendations on—

(A) the priority needs of regulatory agencies, the food industry, and consumers for information and analysis on food-borne illness and its causes;

(B) opportunities to improve the effectiveness of initiatives at the Federal, State, and

local levels, including coordination and integration of activities among Federal agencies, and between the Federal, State, and local levels of government;

(C) improvement in the timeliness and depth of access by regulatory and health agencies, the food industry, academic researchers, and consumers to food-borne illness surveillance data collected by government agencies at all levels, including data compiled by the Centers for Disease Control and Prevention;

(D) key barriers to improvement in food-borne illness surveillance and its utility for preventing food-borne illness at Federal, State, and local levels;

(E) the capabilities needed for establishing automatic electronic searches of surveillance data; and

(F) specific actions to reduce barriers to improvement, implement the working group's recommendations, and achieve the purposes of this section, with measurable objectives and timelines, and identification of resource and staffing needs.

(c) IMPROVING FOOD SAFETY AND DEFENSE CAPACITY AT THE STATE AND LOCAL LEVEL.—

(1) IN GENERAL.—The Secretary shall develop and implement strategies to leverage and enhance the food safety and defense capacities of State and local agencies in order to achieve the following goals:

(A) Improve food-borne illness outbreak response and containment.

(B) Accelerate food-borne illness surveillance and outbreak investigation, including rapid shipment of clinical isolates from clinical laboratories to appropriate State laboratories, and conducting more standardized illness outbreak interviews.

(C) Strengthen the capacity of State and local agencies to carry out inspections and enforce safety standards.

(D) Improve the effectiveness of Federal-State partnerships to coordinate food safety and defense resources and reduce the incidence of food-borne illness.

(E) Share information on a timely basis among public health and food regulatory agencies, with the food industry, with health care providers, and with the public.

(F) Strengthen the capacity of State and local agencies to achieve the goals described in section 110.

(2) REVIEW.—In developing of the strategies required by paragraph (1), the Secretary shall, not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, complete a review of State and local capacities, and needs for enhancement, which may include a survey with respect to—

(A) staffing levels and expertise available to perform food safety and defense functions;

(B) laboratory capacity to support surveillance, outbreak response, inspection, and enforcement activities;

(C) information systems to support data management and sharing of food safety and defense information among State and local agencies and with counterparts at the Federal level; and

(D) other State and local activities and needs as determined appropriate by the Secretary.

(d) FOOD SAFETY CAPACITY BUILDING GRANTS.—Section 317R(b) of the Public Health Service Act (42 U.S.C. 247b–20(b)) is amended—

(1) by striking ''2002'' and inserting ''2009''; and

(2) by striking ''2003 through 2006'' and inserting ''2010 through 2013''.

TITLE III—SPECIFIC PROVISIONS FOR IMPORTED FOOD

SEC. 301. FOREIGN SUPPLIER VERIFICATION PROGRAM.

(a) IN GENERAL.—Chapter VIII (21 U.S.C. 381 et seq.) is amended by adding at the end the following:

''SEC. 805. FOREIGN SUPPLIER VERIFICATION PROGRAM.

''(a) IN GENERAL.—

''(1) VERIFICATION REQUIREMENT.—Each United States importer of record shall perform risk-based foreign supplier verification activities in accordance with regulations promulgated under subsection (c) for the purpose of verifying that the food imported by the importer of record or its agent is—

''(A) produced in compliance with the requirements of section 419 or 420, as appropriate; and

''(B) is not adulterated under section 402 or misbranded under section 403(w).

''(2) IMPORTER EXCLUSION.—For purposes of this section, an 'importer of record' shall not include a person holding a valid license under section 641 of the Tariff Act of 1930 (19 U.S.C. 1641) (referred to as a 'customs broker') if the customs broker has executed a written agreement with another person who has agreed to comply with the requirements of this section with regard to food imported or offered for import by the customs broker.

''(b) GUIDANCE.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall issue guidance to assist United States importers of record in developing foreign supplier verification programs.

''(c) REGULATIONS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall promulgate regulations to provide for the content of the foreign supplier verification program established under subsection (a). Such regulations shall, as appropriate, include a process for verification by a United States importer of record, with respect to each foreign supplier from which it obtains food, that the imported food is produced in compliance with the requirements of section 419 or 420, as appropriate, and is not adulterated under section 402 or misbranded under section 403(w).

''(2) VERIFICATION.—The regulations under paragraph (1) shall require that the foreign supplier verification program of each importer of record be adequate to provide assurances that each foreign supplier to the importer of record produces the imported food employing processes and procedures, including risk-based reasonably appropriate preventive controls, equivalent in preventing adulteration and reducing hazards as those required by section 419 or section 420, as appropriate.

''(3) ACTIVITIES.—Verification activities under a foreign supplier verification program under this section may include monitoring records for shipments, lot-by-lot certification of compliance, annual on-site inspections, checking the hazard analysis and risk-based preventive control plan of the foreign supplier, and periodically testing and sampling shipments.

''(d) RECORD MAINTENANCE AND ACCESS.—Records of a United States importer of record related to a foreign supplier verification program shall be maintained for a period of not less than 2 years and shall be made available promptly to a duly authorized representative of the Secretary upon request.

''(e) DEEMED COMPLIANCE OF SEAFOOD, JUICE, AND LOW-ACID CANNED FOOD FACILITIES IN COMPLIANCE WITH HACCP.—An owner, operator, or agent in charge of a facility required to comply with 1 of the following standards and regulations with respect to such facility shall be deemed to be in compliance with this section with respect to such facility:

''(1) The Seafood Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

''(2) The Juice Hazard Analysis Critical Control Points Program of the Food and Drug Administration.

''(3) The Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers standards of the Food and Drug Administration (or any successor standards).

''(f) PUBLICATION OF LIST OF PARTICIPANTS.—The Secretary shall publish and maintain on the Internet Web site of the Food and Drug Administration a current list that includes the name of, location of, and other information deemed necessary by the Secretary about, importers participating under this section.''.

(b) PROHIBITED ACT.—Section 301 (21 U.S.C. 331), as amended by section 109, is amended by adding at the end the following:

''(ss) The importation or offering for importation of a food if the importer of record does not have in place a foreign supplier verification program in compliance with section 805.''.

(c) IMPORTS.—Section 801(a) (21 U.S.C. 381(a)) is amended by adding ''or the importer of record is in violation of section 805'' after ''or in violation of section 505''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 2 years after the date of enactment of this Act.

SEC. 302. VOLUNTARY QUALIFIED IMPORTER PROGRAM.

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 301, is amended by adding at the end the following:

''SEC. 806. VOLUNTARY QUALIFIED IMPORTER PROGRAM.

''(a) IN GENERAL.—Beginning not later than 1 year after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall—

''(1) establish a program, in consultation with the Department of Homeland Security, to provide for the expedited review and importation of food offered for importation by United States importers who have voluntarily agreed to participate in such program; and

''(2) issue a guidance document related to participation and compliance with such program.

''(b) VOLUNTARY PARTICIPATION.—An importer may request the Secretary to provide for the expedited review and importation of designated foods in accordance with the program procedures established by the Secretary.

''(c) ELIGIBILITY.—In order to be eligible, an importer shall be offering food for importation from a facility that has a certification described in section 809(b). In reviewing the applications and making determinations on such requests, the Secretary shall consider the risk of the food to be imported based on factors, such as the following:

''(1) The nature of the food to be imported.

''(2) The compliance history of the foreign supplier.

''(3) The capability of the regulatory system of the country of export to ensure compliance with United States food safety standards.

''(4) The compliance of the importer with the requirements of section 805.

''(5) The recordkeeping, testing, inspections and audits of facilities, traceability of articles of food, temperature controls, and sourcing practices of the importer.

''(6) The potential risk for intentional adulteration of the food.

''(7) Any other factor that the Secretary determines appropriate.

''(d) REVIEW AND REVOCATION.—Any importer qualified by the Secretary in accordance with the eligibility criteria set forth in this section shall be reevaluated not less often than once every 3 years and the Secretary shall promptly revoke the qualified importer status of any importer found not to be in compliance with such criteria.

''(e) DEFINITION.—For purposes of this section, the term 'importer' means the person that brings food, or causes food to be brought, from a foreign country into the customs territory of the United States.''.

SEC. 303. AUTHORITY TO REQUIRE IMPORT CERTIFICATIONS FOR FOOD.

(a) IN GENERAL.—Section 801(a) (21 U.S.C. 381(a)) is amended by inserting after the third sentence the following: ''With respect to an article of food, if importation of such food is subject to, but not compliant with, the requirement under subsection (p) that such food be accompanied by a certification or other assurance that the food meets some or all applicable requirements of this Act, then such article shall be refused admission.''.

(b) ADDITION OF CERTIFICATION REQUIREMENT.—Section 801 (21 U.S.C. 381) is amended by adding at the end the following new subsection:

''(p) CERTIFICATIONS CONCERNING IMPORTED FOODS.—

''(1) IN GENERAL.—The Secretary, based on public health considerations, including risks associated with the food or its place of origin, may require as a condition of granting admission to an article of food imported or offered for import into the United States, that an entity specified in paragraph (2) provide a certification or such other assurances as the Secretary determines appropriate that the article of food complies with some or all applicable requirements of this Act, as specified by the Secretary. Such certification or assurances may be provided in the form of shipment-specific certificates, a listing of certified entities, or in such other form as the Secretary may specify. Such certification shall be used for designated food imported from countries with which the Food and Drug Administration has an agreement to establish a certification program.

''(2) CERTIFYING ENTITIES.—For purposes of paragraph (1), entities that shall provide the certification or assurances described in such paragraph are—

''(A) an agency or a representative of the government of the country from which the article of food at issue originated, as designated by such government or the Secretary; or

''(B) such other persons or entities accredited pursuant to section 809 to provide such certification or assurance.

''(3) RENEWAL AND REFUSAL OF CERTIFICATIONS.—The Secretary may—

''(A) require that any certification or other assurance provided by an entity specified in paragraph (2) be renewed by such entity at such times as the Secretary determines appropriate; and

''(B) refuse to accept any certification or assurance if the Secretary determines that such certification or assurance is no longer valid or reliable.

''(4) ELECTRONIC SUBMISSION.—The Secretary shall provide for the electronic submission of certifications under this subsection.''.

(c) CONFORMING TECHNICAL AMENDMENT.—Section 801(b) (21 U.S.C. 381(b)) is amended in the second sentence by striking ''with respect to an article included within the provision of the fourth sentence of subsection (a)'' and inserting ''with respect to an article described in subsection (a) relating to the requirements of sections 760 or 761,''.

(d) NO LIMIT ON AUTHORITY.—Nothing in the amendments made by this section shall limit the authority of the Secretary to conduct random inspections of imported food or to take such other steps as the Secretary deems appropriate to determine the admissibility of imported food.

SEC. 304. PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS.

(a) IN GENERAL.—Section 801(m)(1) (21 U.S.C. 381(m)(1)) is amended by inserting ''any country to which the article has been refused entry;'' after ''the country from which the article is shipped;''.

(b) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary shall issue an interim final rule amending subpart I of part 1 of title 21, Code of Federal Regulations, to implement the amendment made by this section.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect 180 days after the date of enactment of this Act.

SEC. 305. REVIEW OF A REGULATORY AUTHORITY OF A FOREIGN COUNTRY.

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 302, is amended by adding at the end the following:

''SEC. 807. REVIEW OF A REGULATORY AUTHORITY OF A FOREIGN COUNTRY.

''The Secretary may review information from a country outlining the statutes, regulations, standards, and controls of such country, and conduct on-site audits in such country to verify the implementation of those statutes, regulations, standards, and controls. Based on such review, the Secretary shall determine whether such country can provide reasonable assurances that the food supply of the country is equivalent in safety to food manufactured, processed, packed, or held in the United States.''.

SEC. 306. BUILDING CAPACITY OF FOREIGN GOVERNMENTS WITH RESPECT TO FOOD.

(a) IN GENERAL.—The Secretary shall, not later than 2 years of the date of enactment of this Act, develop a comprehensive plan to expand the technical, scientific, and regulatory capacity of foreign governments, and their respective food industries, from which foods are exported to the United States.

(b) CONSULTATION.—In developing the plan under subsection (a), the Secretary shall consult with the Secretary of Agriculture, Secretary of State, Secretary of the Treasury, and the Secretary of Commerce, representatives of the food industry, appropriate foreign government officials, and nongovernmental organizations that represent the interests of consumers, and other stakeholders.

(c) PLAN.—The plan developed under subsection (a) shall include, as appropriate, the following:

(1) Recommendations for bilateral and multilateral arrangements and agreements, including provisions to provide for responsibility of exporting countries to ensure the safety of food.

(2) Provisions for electronic data sharing.

(3) Provisions for mutual recognition of inspection reports.

(4) Training of foreign governments and food producers on United States requirements for safe food.

(5) Recommendations to harmonize requirements under the Codex Alimentarius.

(6) Provisions for the multilateral acceptance of laboratory methods and detection techniques.

SEC. 307. INSPECTION OF FOREIGN FOOD FACILITIES.

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 305, is amended by inserting at the end the following:

''SEC. 808. INSPECTION OF FOREIGN FOOD FACILITIES.

''(a) INSPECTION.—The Secretary—

''(1) may enter into arrangements and agreements with foreign governments to facilitate the inspection of foreign facilities registered under section 415; and

''(2) shall direct resources to inspections of foreign facilities, suppliers, and food types, especially such facilities, suppliers, and food types that present a high risk (as identified by the Secretary), to help ensure the safety and security of the food supply of the United States.

''(b) EFFECT OF INABILITY TO INSPECT.—Notwithstanding any other provision of law, food shall be refused admission into the United States if it is from a foreign facility registered under section 415 of which the owner, operator, or agent in charge of the facility, or the government of the foreign country, refuses to permit entry of United States inspectors, upon request, to inspect such facility. For purposes of this subsection, such an owner, operator, or agent in charge shall be considered to have refused an inspection if such owner, operator, or agent in charge refuses such a request to inspect a facility more than 48 hours after such request is submitted.''.

SEC. 308. ACCREDITATION OF QUALIFIED THIRD-PARTY AUDITORS.

Chapter VIII (21 U.S.C. 381 et seq.), as amended by section 307, is further amended by adding at the end the following:

''SEC. 809. ACCREDITATION OF QUALIFIED THIRD-PARTY AUDITORS.

''(a) ACCREDITATION OF CERTIFYING AGENTS.—

''(1) IN GENERAL.—Beginning not later than 2 years after the date of enactment of the FDA Food Safety Modernization Act, the Secretary shall establish and implement an accreditation system under which a foreign government, a State or regional food authority, a foreign or domestic cooperative that aggregates the products of growers or processors, or any other third party that the Secretary determines appropriate, may request to be accredited as a certifying agent to certify that eligible entities meet the applicable requirements of this Act.

''(2) REVIEW BY SECRETARY.—When establishing the accreditation system under paragraph (1), the Secretary shall review third-party accreditation systems in existence on the date of enactment of the FDA Food Safety Modernization Act, to avoid unnecessary duplication of efforts and costs.

''(3) REQUEST BY FOREIGN GOVERNMENT.—Prior to accrediting a foreign government as a certifying agent, the Secretary shall perform such reviews and audits of food safety programs, systems, and standards of the government as the Secretary deems necessary to determine that they are adequate to ensure that eligible entities certified by such government meet the requirements of this Act with respect to food manufactured, processed, packed, or held for import to the United States.

''(4) REQUEST BY STATE OR REGIONAL FOOD AUTHORITY.—Prior to accrediting a State or regional food authority as a certifying agent, the Secretary shall perform such reviews and audits of the training and qualifications of auditors used by the authority and conduct such reviews of internal systems and such other investigation of the authority as the Secretary deems necessary to determine that each eligible entity certified by the authority has systems and standards in use to ensure that such entity meets the requirements of this Act.

''(5) COOPERATIVES AND OTHER THIRD PARTIES.—Prior to accrediting a foreign or domestic cooperative that aggregates the products of growers or processors or any other

third party that the Secretary determines appropriate as a certifying agent, the Secretary shall perform such reviews and audits of the training and qualifications of auditors used by the cooperative or party and conduct such reviews of internal systems and such other investigation of the cooperative or party as the Secretary deems necessary to determine that each eligible entity certified by the cooperative or party has systems and standards in use to ensure that such entity meets the requirements of this Act.

''(6) LIMITATION ON THIRD PARTIES.—The Secretary may not accredit a third party that the Secretary determines appropriate as a certifying agent unless each auditor used by such party prepares the audit report for an audit under this section in a form and manner designated by the Secretary. An audit report shall include—

''(A) the identity of the persons at the audited eligible entity responsible for compliance with food safety requirements;

''(B) the dates of the audit;

''(C) the scope of the audit; and

''(D) any other information required by the Secretary that relate to or may influence an assessment of compliance with this Act.

''(b) IMPORTATION.—As a condition of accrediting a foreign government, a State or regional food authority, a foreign or domestic cooperative that aggregates the products of growers or processors, or any other third party that the Secretary determines appropriate as a certifying agent, such government, authority, cooperative, or party shall agree to issue a written and electronic certification to accompany each food shipment made for import from an eligible entity certified by the certifying agent, subject to requirements set forth by the Secretary. The Secretary shall consider such certificates when targeting inspection resources under section 421.

''(c) MONITORING.—Following any accreditation of a certifying agent, the Secretary may at any time—

''(1) conduct an on-site audit of any eligible entity certified by the agent, with or without the certifying agent present; or

''(2) require the agent to submit to the Secretary, for any eligible entity certified by the agent, an onsite inspection report and such other reports or documents the agent requires as part of the audit process, including, for an eligible entity located outside the United States, documentation that the eligible is in compliance with any applicable registration requirements.

''(d) DEFINITIONS.—For purposes of this section:

''(1) AUDITOR.—The term 'auditor' means an individual who—

''(A) is qualified to conduct food safety audits; and

''(B) has successfully completed any training requirements established by the Secretary for the conduct of food safety audits.

''(2) CERTIFYING AGENT.—The term 'certifying agent' means a foreign government, a State or regional food authority, a foreign or domestic cooperative that aggregates the products of growers or processors, or any other third party that conducts audits of eligible entities and that is accredited by the Secretary under this section.

''(3) ELIGIBLE ENTITY.—The term 'eligible entity' means any entity in the food supply chain that chooses to be audited by a certifying agent.

''(e) AVOIDING CONFLICTS OF INTEREST WITH CERTIFYING AGENTS.—

''(1) IN GENERAL.—A certifying agent shall—

''(A) not be owned, managed, or controlled by any person that owns or operates an eligible entity to be certified by such agent;

''(B) have procedures to ensure against the use, in carrying out audits of eligible entities under this section, of any officer or employee of such agent that has a financial conflict of interest regarding an eligible entity to be certified by such agent; and

''(C) annually make available to the Secretary, disclosures of the extent to which such agent, and the officers and employees of such agent, have maintained compliance with subparagraphs (A) and (B) relating to financial conflicts of interest.

''(2) REGULATIONS.—The Secretary shall promulgate regulations not later than 18 months after the date of enactment of the FDA Food Safety Modernization Act to ensure that there are protections against conflicts of interest between a certifying agent and the eligible entity to be certified by such agent. Such regulations shall include—

''(A) requiring that domestic audits performed under this section be unannounced;

''(B) a structure, including timing and public disclosure, for fees paid by eligible entities to certifying agents to decrease the potential for conflicts of interest; and

''(C) appropriate limits on financial affiliations between a certifying agent and any person that owns or operates an eligible entity to be certified by such agent.

''(f) FALSE STATEMENTS.—Any statement of representation made by an employee or agent of an eligible entity to an auditor of a certifying agent or a certifying agent shall be subject to section 1001 of title 18, United States Code.

''(g) RISKS TO PUBLIC HEALTH.—If, at any time during an audit, an auditor of a certifying agent discovers a condition that could cause or contribute to a serious risk to the public health, the auditor shall immediately notify the Secretary of—

''(1) the identification of the eligible entity subject to the audit; and

''(2) such condition.

''(h) WITHDRAWAL OF ACCREDITATION.—The Secretary may withdraw accreditation from a certifying agent—

''(1) if food from eligible entities certified by such agent is linked to an outbreak of human or animal illness;

''(2) following a performance audit and finding by the Secretary that the agent no longer meets the requirements for accreditation; or

''(3) following a refusal to allow United States officials to conduct such audits and investigations as may be necessary to ensure continued compliance with the requirements set forth in this section.

''(i) PERFORMANCE AUDITS AND RENEWAL.—To ensure that accreditation of a certifying agent continues to meet the standards of this section and this Act and to allow for the renewal of accreditation of such certifying agent, the Secretary shall—

''(1) audit the performance of such certifying agent on a periodic basis, not less than every 4 years, through the review of audit reports by such certifying agent and the compliance history, as available, of eligible entities certified by such certifying agent; and

''(2) any other measures deemed necessary by the Secretary.

''(j) PUBLICATION OF LIST OF CERTIFYING AGENTS.—The Secretary shall publish and maintain on the Internet Web site of the Food and Drug Administration a current list, including, the name, location and other information deemed necessary by the Secretary, of certifying agents under this section.

''(k) NEUTRALIZING COSTS.—The Secretary shall establish a method, similar to the method used by the Department of Agriculture, by which certifying agents reimburse the Food and Drug Administration for the work performed to accredit such certifying agents. The Secretary shall make operating this program revenue-neutral and shall not generate surplus revenue from such a reimbursement mechanism.

''(l) NO EFFECT ON SECTION 704 INSPECTIONS.—The audits performed under this section shall not be considered inspections under section 704.

''(m) NO EFFECT ON INSPECTION AUTHORITY.—Nothing in this section affects the authority of the Secretary to inspect any eligible entity pursuant to this Act.''.

SEC. 309. FOREIGN OFFICES OF THE FOOD AND DRUG ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall by October 1, 2010, establish an office of the Food and Drug Administration in not less than 5 foreign countries selected by the Secretary, to provide assistance to the appropriate governmental entities of such countries with respect to measures to provide for the safety of articles of food and other products regulated by the Food and Drug Administration exported by such country to the United States, including by directly conducting risk-based inspections of such articles and supporting such inspections by such governmental entity.

(b) CONSULTATION.—In establishing the foreign offices described in subsection (a), the Secretary shall consult with the Secretary of State and the United States Trade Representative.

(c) REPORT.—Not later than October 1, 2011, the Secretary shall submit to Congress a report on the basis for the selection by the Secretary of the foreign countries in which the Secretary established offices under subsection (a), the progress which such offices have made with respect to assisting the governments of such countries in providing for the safety of articles of food and other products regulated by the Food and Drug Administration exported to the United States, and the plans of the Secretary for establishing additional foreign offices of the Food and Drug Administration, as appropriate.

SEC. 310. FUNDING FOR FOOD SAFETY.

(a) IN GENERAL.—There are authorized to be appropriated to carry out the activities of the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and related field activities in the Office of Regulatory Affairs of the Food and Drug Administration—

(1) $775,000,000 for fiscal year 2009; and

(2) such sums as may be necessary for fiscal years 2010 through 2013.

(b) INCREASED NUMBER OF FIELD STAFF.—To carry out the activities of the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and related field activities of the Office of Regulatory Affairs of the Food and Drug Administration, the Secretary of Health and Human Services shall increase the field staff of such Centers and Office with a goal of not fewer than—

(1) 3,600 staff members in fiscal year 2009;

(2) 3,800 staff members in fiscal year 2010;

(3) 4,000 staff members in fiscal year 2011;

(4) 4,200 staff members in fiscal year 2012; and

(5) 4,600 staff members in fiscal year 2013.

SEC. 311. JURISDICTION; AUTHORITIES.

Nothing in this Act, or an amendment made by this Act, shall be construed to—

(1) alter the jurisdiction between the Secretary of Agriculture and the Secretary of Health and Human Services, under applicable statutes and regulations;

(2) limit the authority of the Secretary of Health and Human Services to issue regulations related to the safety of food under—

(A) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act; or

(B) the Public Health Service Act (42 U.S.C. 301 et seq.) as in effect on the day before the date of enactment of this Act; or

(3) impede, minimize, or affect the authority of the Secretary of Agriculture to prevent, control, or mitigate a plant or animal health emergency, or a food emergency involving products regulated under the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act.

By Mr. HATCH (for himself and Mr. DODD):

S. 3387. A bill to amend the Public Health Service Act with respect to pain care; to the Committee on Health, Education, Labor, and Pensions.

Mr. HATCH. Mr. President, I rise today to introduce the National Pain Care Policy Act of 2008. I am pleased to have worked with my colleague, Senator CHRISTOPHER DODD, on this legislation which will help to address barriers to pain care by enhancing coordination of research, improving healthcare provider education and training, and elevating public awareness of pain and pain management.

According to the American Pain Foundation, an estimated 75 million Americans suffer from either chronic or acute pain. Pain is the most common reason that people access the health care system and persistent pain can interfere with everyday life and make ordinary tasks seem impossible. Severe chronic pain also can hinder sleep, work, and social functions. Due to its very nature as a prominent feature of many chronic conditions, pain is said to affect more Americans than diabetes, heart disease and cancer combined.

Most pain can be relieved with proper treatment. This simple fact implies that the pain problems of these countless Americans can be easily fixed. Unfortunately, many people in pain face considerable barriers to accessing proper diagnosis, treatment, and management of their pain.

Health care professionals are, more often than not, inadequately trained regarding pain assessment and management, making it difficult for them to treat their patients' pain safely and effectively. As such, providers may be unfamiliar with current research and guidelines for appropriate pain care. Further, health care professionals may be hesitant to prescribe pain medications for pain management due to lack of knowledge regarding regulatory policies.

To make worse the problem, the National Institutes of Health, NIH, our country's premier institution for biomedical research, currently dedicates less than 1 percent of its research budget to pain research. Worse yet, this research is spread across multiple Institutes and centers without efficient coordination. Effective education is contingent upon adequate research.

Patients may also create for themselves barriers to pain care and management. As impractical as it seems, patients often do not tell their doctor about their pain because they do not want to complain or appear to be a nuisance. They also may avoid taking pain medicines because of addiction or dependency concerns which may be based on misinformation due to lack of education.

The National Pain Care Policy Act of 2008 will help to identify these barriers by authorizing an Institute of Medicine, IOM, Conference on Pain Care to evaluate the adequacy of pain assessment, treatment and management. The conference will establish an action agenda by which to address barriers and improve education and training.

The bill also authorizes permanently the Pain Consortium at the National Institutes of Health, NIH, to establish a coordinated clinical research agenda and promote pain research across NIH institutes, centers, and programs. The Consortium will convene annual conferences to make recommendations on pain research and activities at the NIH. The legislation also establishes a multidisciplinary Advisory Committee

The National Pain Care Policy Act of 2008 addresses the lack of pain care education by creating a grant program for the development and implementation of programs to educate and train health care professionals in pain assessment and management. It also requires the Agency for Healthcare Research and Quality, AHRQ, to collect evidence-based practices regarding pain and disseminate such information to the pain care community.

This bill also will break down barriers to pain care access by raising awareness among people who suffer from pain, and helping them and their families find the proper information about pain management. A national pain management public outreach and awareness campaign will be developed and implemented by the Department of Health and Human Services, HHS, to focus on the significance of pain as a national public health problem.

The National Pain Care Policy Act of 2008 contains provisions that will help the millions of Americans who live everyday with pain by heightening awareness, enhancing coordination of research, and advancing education. Similar legislation was introduced in the House by Representatives LOIS CAPPS and MIKE ROGERS last year. The House bill is supported by more than 100 organizations in the pain care community, including the America Pain Society, the American Academy of Pain Medicine, and the American Cancer Society. I thank Senator DODD for his leadership on and interest in this issue, and I urge my colleagues to support our bill.

Mr. DODD. Mr. President, I rise today to join my colleague from Utah, Senator ORRIN HATCH, in introducing the National Pain Care Policy Act of 2008. This important legislation would make significant strides in the understanding and treatment of pain as a medical condition. Pain is the most common symptom leading to medical care and a leading health issue. Yet people suffering through pain often struggle to get relief because of a variety of issues. This is why we are introducing this important legislation.

Each year pain results in more than 50 million lost workdays estimated to cost the United States $100 billion. Beyond the economic impact, pain is a leading cause of disability, with back pain alone causing chronic disability in 1 percent of the population of this country. In the United States 40 million people suffer from arthritis, more than 26 million, ages 20 to 64, experience frequent back pain, more than 25 million experience migraine headaches, and 20 million have jaw and lower facial pain each year. It is estimated that 70 percent of cancer patients have significant pain as they fight the disease. And half of all patients in hospitals suffer through moderate to severe pain in their last days. As with many medical conditions, this is a problem that is likely to become worse as the baby boom generation approaches retirement and the population ages.

Sadly, though most pain can be relieved, it often is not. Many suffering patients are reluctant to tell their medical provider about the pain they are experiencing, for fear of being identified as a ''bad patient,'' and concern about addiction often leads patients to avoid seeking or using medications to treat their pain. But even if patients were more forthcoming about their condition, few medical providers are equipped to do something about it. Often they have not been trained in assessment techniques or pain management, and are unaware of the latest research, guidelines, and standards for treatment. There is also concern among most providers that prescribing treatment for pain will lead to greater scrutiny by regulatory agencies and insurers.

But we can do something about these barriers and help individuals suffering from pain. The National Pain Care Policy Act would lead to improvements in pain care across the country. The legislation would call for an Institute of Medicine conference on pain care to increase awareness of this issue as a public health problem, identify barriers to pain care and determine action for overcoming those barriers. A number of years ago, my good friend Senator HATCH helped establish a Pain Consortium at the National Institutes of Health to establish a coordinated pain research agenda. This legislation will codify that consortium and update its mission. The bill addresses the training and education of health care professionals through new grant programs at the Agency for Health Research and Quality, AHRQ, and the Health Resources and Services Administration, HRSA. And finally this legislation creates a national outreach and awareness campaign at the Department of Health and Human Services to educate patients, families, and caregivers about

the significance of pain and the importance of treatment.

I want to thank Senator HATCH for his leadership on this issue and urge my colleagues to join us on this important effort to help the millions of Americans suffering from severe pain.

By Mr. DURBIN:

S. 3390. A bill to amend the National Voter Registration Act of 1993 to provide for the treatment of institutions of higher education as voter registration agencies; to the Committee on Rules and Administration.

Mr. DURBIN. Mr. President, I rise today to introduce the Student Voter Opportunity to Encourage Registration Act of 2008—the Student VOTER Act.

The success of America's experiment in democracy lies in broad participation and deep civic engagement. From the Reconstruction Amendments, to women's suffrage, to the abolition of the poll tax, and finally the ratification of the 26th amendment, we have witnessed a steady but difficult march toward a more inclusive nation.

To realize the full potential of these great strides, the Student VOTER Act provides a pathway to participation for America's youth.

The need for this bill is clear. Despite a small rise in youth voting in the current Presidential election cycle, the larger trend is unmistakable. Young voters—historically independent-minded—are far less likely to cast a ballot than older voters. In the 2004 Presidential election, only 47 percent of 18 to 24-year-old citizens voted, compared to 66 percent of citizens 25 and older. This marked the eighth straight Presidential contest in which less than half of these young Americans actually participated. In fact, the percentage of young Americans who vote today is lower than it was in the first Presidential election following the 26th amendment's ratification.

Several obstacles stand in the way of youth voting. Because so many students are first-time voters, they often are unfamiliar with how to register. In some States, first-time voters must register in person in order to cast an absentee ballot. For students who attend college outside of their home State or who do not have access to transportation, these requirements can be cumbersome, confusing, and insurmountable.

Of course, apathy contributes to the fact that young voters tend to stay home on election day. But studies show that when an effort is made to reach out to young voters, they will cast a ballot. If we fail to reach out to the youth, we may lose a generation of civically minded Americans.

Congress already tried to encourage youth voting with a provision in the Higher Education Act of 1998, which requires colleges and universities to make a ''good faith effort'' to register students to vote. Many universities fulfill that obligation. For example, even before orientation begins, Brown University in Providence provides its students with voter registration materials not only for Rhode Island but also for each student's home State.

Unfortunately, too many colleges and universities have failed to follow Brown's lead. According to a 2004 Harvard University study, only 17 percent of colleges and universities nationwide fully comply with the Higher Education Act. The health of our democracy suffers as a result.

The Student VOTER Act offers a straightforward solution: it requires colleges and universities that receive Federal funds to offer voter registration services to students. The Student VOTER Act simply amends the National Voter Registration Act of 1993, popularly known as the Motor Voter Act, to designate colleges and universities that receive Federal funds as voter registration agencies.

That designation is fitting. Our institutions of higher education are among the wealthiest in the world, and they lead the globe in producing Nobel laureates and scientific breakthroughs. But colleges and universities also have a special obligation to educate an active, informed citizenry.

The act does not impose a heavy burden on colleges and universities. We know this because the Student VOTER Act builds on the successful model of the Motor Voter Act, which brought voter registration to DMV offices across the country, adding 5 million voters—mainly independents—to the rolls in the 8 months after its passage. While some DMV offices simply mail completed registration forms to the appropriate clerk or registrar, others now use efficient, easy-to-use computer software to submit registrations electronically.

This means that the price tag of the Student VOTER Act to colleges and universities is at most a 42-cent stamp for each student. I know most of my fellow Senators would agree that this is not too high a price to pay for a lifetime of civic engagement.

In reality, costs should be even lower. Colleges and universities can provide voter registration services at student orientation or during class registration using the same technology that DMV offices already have implemented.

Like the Motor Voter Act, this bill should pass with broad bipartisan support. It is a low-cost, commonsense solution to the very real problem of low youth voter turnout. It represents a natural but modest extension of the Higher Education Act and the Motor Voter Act without changing or amending any other State or Federal voting regulations in any way.

The bill may also serve to depoliticize voter registration efforts on college campuses. Polls consistently show that young voters are less likely to identify with a political party than older voters. Polls generally show that more than 4 in 10 young voters identify as independents, with roughly 3 in 10 young voters identifying with each of the two major political parties. In a July 30, 2008 letter sent to Congress in support of this bill, the U.S. Student Association explained that under the present system, ''partisan student groups often become the main voter registrants, which can alienate undecided and independent voters. The Student VOTER Bill of 2008 seeks to institutionalize the dissemination of voting procedure and register more young people in a systematic and non-partisan capacity.''

In addition to the U.S. Student Association, this bill is supported by U.S. PIRG and the Student Association for Voter Empowerment, SAVE. In particular, I would like to recognize Matthew Segal, SAVE's founder and a Chicago native, with whom my office worked closely to prepare this bill.

I would also like to applaud the efforts of Representative JAN SCHAKOWSKY, a Democrat, and Representative STEVEN LATOURETTE, a Republican, who will introduce a companion bill today in the House of Representatives. The Student VOTER Bill of 2008 is a bipartisan effort that is an important step toward empowering our Nation's youth. I look forward to working with my Democratic and Republican colleagues in Congress to ensure its enactment into law.

Mr. President, 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. 3390

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 ''Student Voter Opportunity To Encourage Registration Act of 2008'' or the ''Student VOTER Act of 2008''.

SEC. 2. TREATMENT OF UNIVERSITIES AS VOTER REGISTRATION AGENCIES.

(a) IN GENERAL.—Section 7(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–5(a)) is amended—

(1) in paragraph (2)—

(A) by striking ''and'' at the end of subparagraph (A);

(B) by striking the period at the end of subparagraph (B) and inserting ''; and''; and

(C) by adding at the end the following new subparagraph:

''(C) each institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) in the State that receives Federal funds.''; and

(2) in paragraph (6)(A), by inserting ''or, in the case of an institution of higher education, with each registration of a student for enrollment in a course of study'' after ''assistance,''.

(b) AMENDMENT TO HIGHER EDUCATION ACT OF 1965.—Section 487(a) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)) is amended by striking paragraph (23).

By Mr. REID (for himself and Mr. ENSIGN):

S. 3393. A bill to promote conservation and provide for sensible development in Carson City, Nevada, and for

other purposes; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, today I rise with my good friend Senator ENSIGN to introduce the Carson City Vital Community Act of 2008.

The origins of this legislation can be found in Carson City's collaborative master planning effort, ''Envision Carson City.'' In 2004, the elected officials in Carson City started a dialogue with their citizens to determine how the city should grow and change over the next 20 years. At the end of a 2-year public process, city leaders had a clear message from their residents. The community wants to keep growth compact, maintain the integrity of the Bureau of Land Management (BLM) and Forest Service lands surrounding the town, enhance open space opportunities and maintain easy access to public lands. The Carson City Vital Community Act of 2008 was developed in close partnership with Carson City and other key stakeholders to help fulfill these goals.

Before I describe this legislation and its importance, it might be helpful for me to explain that Carson City is both a city and a county. It wasn't always this way. For over a hundred years the town of Carson City was the county seat of Ormsby County. But in 1969 the county dissolved and the government functions were consolidated into what we now simply call Carson City.

Like all but one of our counties in Nevada, Carson City is mostly Federal land. The town of Carson City is bounded on the west by Forest Service lands that stretch to the shores of Lake Tahoe and by BLM lands on the east. These open landscapes create a dramatic western backdrop for Nevada's State capital but also mean that the Federal Government is intimately involved in what would normally be local community decisions.

This legislation makes much needed adjustments to the pattern of Federal land ownership in Carson City. We have strived to make changes that will improve the ability of the Federal land management agencies to focus on their core goals. All too often, the BLM and the Forest Service are distracted from proper forest and range management by urban encroachment issues. We have a unique situation in Carson City where the community has offered to take on the responsibilities of managing the wildland-urban interface, while also offering to convey a major inholding to the Forest Service for incorporation into the Humboldt-Toiyabe National Forest. This is a major step in the right direction and hopefully will serve as a model for other communities around the west.

Our legislation also provides lands to the Washoe Tribe, strengthening the Tribe's conservation and commercial efforts in Carson City. Additionally, nearly 20,000 acres of BLM lands surrounding Carson City will be permanently withdrawn from future develop to protect local viewsheds and public access. All of these actions will move Carson City one step closer to realizing the vision that it worked hard to develop through a public process that has now spanned over four years.

Title I of this legislation aims to create a sensible land ownership pattern in Carson City, aligned with the community's vision of keeping growth compact and maintaining the integrity of the surrounding public lands. It also addresses two serious concerns facing the community: wildfires in the foothills of the Sierras and flooding along the Carson River.

Under this title, roughly 2,200 acres of Carson City land will be transferred to the Forest Service. This prime, forested land is far removed from Carson City and is surrounded by state park lands and the Humboldt-Toiyabe National Forest. Incorporating this large inholding into the Humboldt-Toiyabe will allow for improved management for wildlife habitat, watershed protection, and other important uses. It will also ensure that the land remains undeveloped and open for public access.

This title also makes important adjustments to the pattern of city and Federal lands on the west side of the town. Roughly 1,000 acres of Forest Service land bordering urban areas will be conveyed to Carson City as protected open space. This conveyance will let both Carson City and the Forest Service do what they do best. Carson City can more actively manage urban interface uses and the Forest Service can focus on their core responsibilities of resource protection and forest health.

Proper management of this buffer area between Carson City's neighborhoods and businesses and the broader public lands is an issue of great concern to the community. On July 14, 2004, thirty-one homes and three businesses were destroyed or damaged in the Waterfall Fire which spanned nearly 9,000 acres of public and private land. Through our legislation, the Forest Service land that currently borders neighborhoods will be conveyed to Carson City, allowing the city to take a more prominent role in managing fuel loads in this critical area.

There is a different threat on the east side of Carson Valley. The Carson River has a long history of dramatic flooding. Over the last 150 years the river has flooded over 30 times, with half of those floods causing extensive damage. Two 100-year flood events have struck just in the last decade, one of which caused over $5 million in damage. In a show of real vision and leadership, Carson City has started an aggressive campaign to acquire land along the Carson River, recognizing the value of protecting the natural function of the local floodplains.

Our legislation will enhance Carson City's efforts to acquire lands in the river corridor by conveying the 3,500-acre Silver Saddle Ranch and Prison Hill area from BLM to the city. Transferring these properties to Carson City will help create a large regional park along the Carson River, support the community's flood control efforts and address the community's call for open space. The city has been a key partner in the management of the Silver Saddle Ranch for over a decade. Along with the Friends of Silver Saddle, Carson City has taken the lead on the day-to-day management of the property, including providing law enforcement patrols and caring for facilities.

It is important to note that when this land is conveyed to the city it will come with conditions. The Federal Government will hold a conservation easement on these parcels to ensure that the scenic and natural qualities of the Silver Saddle Ranch and Prison Hill are protected in perpetuity. The details of the conservation easement, which will focus on protecting the river corridor and the important wildlife habitat associated with the property, will be worked out by BLM, Carson City and key stakeholders like Friends of Silver Saddle and The Nature Conservancy.

In addition to supporting Carson City's forward-looking plans for the Carson River and its floodplain, conveying the Silver Saddle and Prison Hill area to Carson City also makes sense from a resource management perspective. BLM's Carson City District Office manages over 5 million acres of public land in western Nevada and eastern California. Their strength is managing Nevada's wide open spaces—not urban interface. Carson City, on the other hand, has far more resources to bring to bear in managing the Silver Saddle Ranch and Prison Hill area. Carson City has over 20 employees working on parks and open space, including two park rangers. They also have contracts in place with some of Nevada's most respected natural resource experts. The BLM will also keep a light hand in the management of this property by virtue of the conservation easement.

There is one unique provision related to the Silver Saddle Ranch and Prison Hill conveyance that deserves special mention. A small section of this land was once owned by Carson City. This 62-acre property, known as the Bernhard parcel, was slated to be subdivided into 35 home sites in 2001. The BLM and Carson City both recognized that the acquisition of this land was a priority for the protection of the Carson River corridor. Carson City responded quickly and acquired the parcel for open space before it could be developed. Their purchase price in 2001 was roughly $1 million. Later, in 2006, the BLM purchased the Bernhard parcel from Carson City for fair market value, which by that time had reached $2.5 million.

Under this legislation, we transfer the Bernhard parcel back to Carson City as part of the Silver Saddle Ranch and Carson River Area. We feel it is important that Carson City pay back 25 percent of the $1.5 million profit they made on their transaction with the

BLM. Why just 25 percent? The 25 percent reflects the remaining value of the land that is being conveyed back to Carson City after the conservation easement is taken into account. In western Nevada, conservation easements restricting development typically reduce property values by anywhere from 75 percent to 90 percent. We have required Carson City to come up with 25 percent, the most generous estimate of remaining value for the Bernhard parcel. When received, these funds will be placed into an endowment account for the BLM to use for the monitoring and enforcement of the conservation easement on the Silver Saddle Ranch and Prison Hill Area.

Our legislation also conveys roughly 1,700 acres of BLM land to Carson City for recreation and public purposes and open space. These are scattered parcels of BLM land in and around Carson City that would be used for primarily for parks, but also for flood control structures, municipal infrastructure like water tanks, and to give residents room to roam. Carson City already controls roughly a third of these acres through Recreation and Public Purpose Act leases. This bill would quickly and efficiently transfer these lands to the city.

Another provision of Title I deals with 53 acres of land that Carson City acquired from BLM years ago, under the Recreation and Public Purposes Act. The city now believes the land is better suited for commercial development. Although Carson City already owns these lands, by statute, if the city uses the land for something other than public purposes, the land reverts back to the BLM. Our legislation would remove the reversionary interest on these 50 acres so that Carson City can sell the land at an appropriate time. If the City decides to sell the land, we require that it be auctioned, with proceeds returning to the Carson City special account which provides funding for federal acquisition of sensitive lands and protection of noted cultural resources.

One of the parcels where the federal interest would be released is home to the Carson City Gun Club. Once on the edge of town, the shooting range is now surrounded by commercial development and the Eagle Valley Golf Course. Although our legislation would allow Carson City to sell this land, we have asked for and received a commitment that Carson City will not sell this property until the shooting facility has been relocated to another, more appropriate location.

The first title of our legislation also transfers 50 acres of Forest Service land to the BLM. The Forest Service is also authorized to develop and implement, in partnership with Carson City, a plan for managing its land in a way that minimizes the impact of flood events on nearby residential areas.

Under Title II, 150 acres of federal lands would be made available for sale through an open and competitive process. This includes the 50 acres transferred from the Forest Service to the BLM in Title 1. All of the lands identified for sale in our legislation are isolated or seriously impacted by nearby commercial or residential development. Both agencies have concluded that these parcels should be disposed of and that this action is consistent with their respective management plans.

Similar to past Nevada land bills, this legislation directs the Secretary of Interior to reinvest the proceeds of these limited land sales back into important public projects. Ninety-five percent of the proceeds will be used to acquire environmentally sensitive lands in Carson City and to protect archaeological resources. The remaining five percent of the proceeds will go to Nevada's general education program.

This title also permanently withdraws nearly 20,000 acres of BLM lands in Carson City from land sales and mineral development. These same lands, located north and east of Carson City are already administratively withdrawn by the BLM. This bill would make the withdrawal permanent, preserving foothill views, open space and access to public lands, in line with ''Envision Carson City.''

Our bill also provides guidance that Off-Highway Vehicle (OHV) use on BLM lands in Carson City should be restricted to existing roads and trails until the BLM completes their travel management planning process. The Pine Nut Mountains east of Carson City are a favorite destination for local and visiting OHV enthusiasts. This provision will better protect this area until routes can be designated.

Finally, the second title of the bill opens a new avenue for Carson City to continue their conservation efforts along the Carson River. The Southern Nevada Public Land Management Act (SNPLMA) will be amended to authorize funds for Carson City to acquire land for parks and trails along the Carson River and to authorize conservation initiatives, also along the Carson River. In addition, we make a small change to SNPLMA which will only affect Washoe County. In the White Pine County bill of 2006 (P. L. 109–432), Washoe County was given access to SNPLMA through 2011 to acquire part of the Ballardini Ranch. The county has made good progress towards this acquisition, but may not make the 2011 deadline. We are pleased to extend the authorization to 2015.

Title III addresses the Washoe Tribe's pressing need for more land for residential and commercial development. Tribal lands adjacent to both of the colonies in Carson City, Stewart and Carson, would be expanded by this legislation. Carson Colony tribal lands would grow by over 280 acres. On this parcel, the lands located below the 5,200-foot elevation contour would be available for residential or commercial development. The lands above the 5,200-foot contour would only be available for traditional tribal uses, like ceremonial gatherings, hunting and plant collecting. Tribal lands at the Stewart Colony would grow by only 5 acres, all of which would be available for commercial and residential development.

In 2003, Senator ENSIGN and I passed legislation that conveyed 25 acres of Forest Service land at Skunk Harbor, on the shores of Lake Tahoe, to the Washoe Tribe. Unfortunately, the parcel was not accurately described in the legislation and consequently the land that was conveyed did not fully reflect our commitment to the Tribe. This bill includes a technical correction that will provide a long overdue fix to the Washoe Indian Tribe Trust Land Conveyance (P. L. 108–67).

Lastly, this bill directs the Forest Service to develop a cooperative agreement with the Washoe Tribe to ensure the Tribe's access across Forest Service land for their traditional ''lifeway'' walk to Lake Tahoe. For centuries the Washoe people have moved from the Pine Nut Mountains east of Carson City in the fall to Lake Tahoe in the summer. Our legislation ensures that they are able to continue this important tradition.

This bill, is built on years of public input. We believe it is a model piece of legislation and appreciate the support of our colleagues in this effort. We look forward to working with Chairman BINGAMAN, Ranking Member DOMENICI and the other distinguished members of the Energy and Natural Resources Committee to move this bill forward during the time we have remaining in this legislative session.

Mr. President, 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. 3393

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Carson City Vital Community Act of 2008''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—PUBLIC CONVEYANCES

Sec. 101. Conveyances of Federal land and City land.
Sec. 102. Transfer of administrative jurisdiction from the Forest Service to the Bureau of Land Management.

TITLE II—LAND DISPOSAL

Sec. 201. Disposal of Carson City land.
Sec. 202. Disposition of proceeds.
Sec. 203. Withdrawal.
Sec. 204. Availability of funds.

TITLE III—TRANSFER OF LAND TO BE HELD IN TRUST FOR THE WASHOE TRIBE, SKUNK HARBOR CONVEYANCE CORRECTION, FOREST SERVICE AGREEMENT, AND ARTIFACT COLLECTION

Sec. 301. Transfer of land to be held in trust for Washoe Tribe.

Sec. 302. Correction of Skunk Harbor conveyance.
Sec. 303. Agreement with Forest Service.
Sec. 304. Artifact collection.
TITLE IV—AUTHORIZATION OF APPROPRIATIONS
Sec. 401. Authorization of appropriations.

SEC. 2. DEFINITIONS.

In this Act:

(1) CITY.—The term ''City'' means Carson City Consolidated Municipality, Nevada.

(2) MAP.—The term ''Map'' means the map entitled ''Carson City, Nevada Area'', dated July 17, 2008, and on file and available for public inspection in the appropriate offices of—

(A) the Bureau of Land Management;

(B) the Forest Service; and

(C) the City.

(3) SECRETARY.—The term ''Secretary'' means—

(A) with respect to land in the National Forest System, the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) with respect to other Federal land, the Secretary of the Interior.

(4) TRIBE.—The term ''Tribe'' means the Washoe Tribe of Nevada and California, which is a federally recognized Indian tribe.

TITLE I—PUBLIC CONVEYANCES

SEC. 101. CONVEYANCES OF FEDERAL LAND AND CITY LAND.

(a) IN GENERAL.—Notwithstanding section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), if the City offers to convey to the United States title to the non-Federal land described in subsection (b)(1) that is acceptable to the Secretary of Agriculture—

(1) the Secretary of Agriculture shall accept the offer; and

(2) not later than 180 days after the date on which the Secretary of Agriculture receives acceptable title to the non-Federal land described in subsection (b)(1), the Secretary of Agriculture and the Secretary of Interior shall convey to the City, subject to valid existing rights and for no consideration, except as provided in subsection (c)(1), all right, title, and interest of the United States in and to the Federal land or interest in land described in subsection (b)(2).

(b) DESCRIPTION OF LAND.—

(1) NON-FEDERAL LAND.—The parcels of non-Federal land referred to in subsection (a) are the approximately 2,260 acres of land administered by the City and identified on the Map as ''To the U.S. Forest Service''.

(2) FEDERAL LAND.—The parcels of Federal land referred to in subsection (a)(2) are—

(A) the approximately 1,012 acres of Forest Service land identified on the Map as ''To Carson City for Natural Areas'';

(B) the approximately 3,526 acres of Bureau of Land Management land identified on the Map as ''Silver Saddle Ranch and Carson River Area'';

(C) the approximately 1,746 acres of Bureau of Land Management land identified on the Map as ''To Carson City for Parks and Public Purposes''; and

(D) the approximately 53 acres of City land in which the Bureau of Land Management has a reversionary interest that is identified on the Map as ''Reversionary Interest of United States Released''.

(c) CONDITIONS.—

(1) CONSIDERATION.—Before the conveyance of the 62–acre Bernhard parcel to the City, the City shall deposit in the special account established by section 202(b)(1) an amount equal to 25 percent of the difference between—

(A) the amount for which the Bernhard parcel was purchased by the City on July 18, 2001; and

(B) the amount for which the Bernhard parcel was purchased by the Secretary on March 17, 2006.

(2) CONSERVATION EASEMENT.—As a condition of the conveyance of the parcels of land described in subsection (b)(2)(B), the Secretary, in consultation with Carson City and affected local interests, shall reserve a perpetual conservation easement to the parcels to protect, preserve, and enhance the conservation values of the parcels, consistent with subsection (d)(2).

(3) COSTS.—Any costs relating to the conveyance under subsection (a), including any costs for surveys and other administrative costs, shall be paid by the recipient of the land being conveyed.

(d) USE OF LAND.—

(1) NATURAL AREAS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the parcel of land described in subsection (b)(2)(A) shall be managed by the City to maintain undeveloped open space and to preserve the natural characteristics of the parcel of land in perpetuity.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the City may—

(i) conduct projects on the parcel of land to reduce fuels;

(ii) construct and maintain trails, trailhead facilities, and any infrastructure on the parcel of land that is required for municipal water and flood management activities; and

(iii) maintain or reconstruct any improvements on the parcel of land that are in existence on the date of enactment of this Act.

(2) SILVER SADDLE RANCH AND CARSON RIVER AREA.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the parcel of land described in subsection (b)(2)(B) shall—

(i) be managed by the City to protect and enhance the Carson River, the floodplain and surrounding upland, and important wildlife habitat; and

(ii) be used for undeveloped open space, passive recreation, customary agricultural practices, and wildlife protection.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the City may—

(i) construct and maintain trails and trailhead facilities on the parcel of land;

(ii) conduct projects on the parcel of land to reduce fuels;

(iii) maintain or reconstruct any improvements on the parcel of land that are in existence on the date of enactment of this Act; and

(iv) allow the use of motorized vehicles on designated roads, trails, and areas in the south end of Prison Hill.

(3) PARKS AND PUBLIC PURPOSES.—The parcel of land described in subsection (b)(2)(C) shall be managed by the City for—

(A) undeveloped open space; or

(B) recreation or other public purposes in accordance with the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act'') (43 U.S.C. 869 et seq.).

(4) REVERSIONARY INTEREST.—

(A) RELEASE.—The reversionary interest described in subsection (b)(2)(D) shall terminate on the date of enactment of this Act.

(B) CONVEYANCE BY CITY.—

(i) IN GENERAL.—If the City sells, leases, or otherwise conveys any portion of the land described in subsection (b)(2)(D), the sale, lease, or conveyance of land shall be—

(I) through a competitive bidding process; and

(II) except as provided in clause (ii), for not less than fair market value.

(ii) CONVEYANCE TO GOVERNMENT OR NONPROFIT.—A sale, lease, or conveyance of land described in subsection (b)(2)(D) to the Federal Government, a State government, a unit of local government, or a nonprofit organization shall be for consideration in an amount equal to the price established by the Secretary of the Interior under section 2741.8 of title 43, Code of Federal Regulation (or successor regulations).

(iii) DISPOSITION OF PROCEEDS.—The gross proceeds from the sale, lease, or conveyance of land under clause (i) shall be distributed in accordance with section 202(a).

(e) REVERSION.—If a parcel of land conveyed under subsection (a) is used in a manner that is inconsistent with the uses described in paragraph (1), (2), (3), or (4) of subsection (d), the parcel of land shall, at the discretion of the Secretary, revert to the United States.

(f) MISCELLANEOUS PROVISIONS.—

(1) IN GENERAL.—On conveyance of the non-Federal land under subsection (a) to the Secretary of Agriculture, the non-Federal land shall—

(A) become part of the Humboldt-Toiyabe National Forest; and

(B) be administered in accordance with the laws (including the regulations) and rules generally applicable to the National Forest System.

(2) MANAGEMENT PLAN.—The Secretary of Agriculture, in consultation with the City and other interested parties, may develop and implement a management plan for National Forest System land that ensures the protection and stabilization of the National Forest System land to minimize the impacts of flooding on the City.

SEC. 102. TRANSFER OF ADMINISTRATIVE JURISDICTION FROM THE FOREST SERVICE TO THE BUREAU OF LAND MANAGEMENT.

(a) CONVEYANCE.—Notwithstanding the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), administrative jurisdiction over the approximately 50 acres of Forest Service land identified on the Map as ''Parcel #1'' is transferred, from the Secretary of Agriculture to the Secretary of the Interior.

(b) COSTS.—Any costs relating to the transfer under subsection (a), including any costs for surveys and other administrative costs, shall be paid by the Secretary of the Interior.

(c) USE OF LAND.—

(1) RIGHT-OF-WAY.—Not later than 120 days after the date of enactment of this Act, the Secretary of the Interior shall grant to the City a right-of-way for the maintenance of flood management facilities located on the land.

(2) DISPOSAL.—The land referred to in subsection (a) shall be disposed of in accordance with section 201.

(3) DISPOSITION OF PROCEEDS.—The gross proceeds from the disposal of land under paragraph (2) shall be distributed in accordance with section 202(a).

TITLE II—LAND DISPOSAL

SEC. 201. DISPOSAL OF CARSON CITY LAND.

(a) IN GENERAL.—Notwithstanding sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712, 1713), the Secretary of the Interior shall, in accordance with that Act, this title, and other applicable law, and subject to valid existing rights, conduct sales of the parcels of Federal land described in subsection (b) to qualified bidders.

(b) DESCRIPTION OF LAND.—The parcels of Federal land referred to in subsection (a) are—

(1) the approximately 103 acres of Bureau of Land Management land identified as ''Lands for Disposal'' on the Map; and

(2) the approximately 50 acres of Bureau of Land Management land identified as ''Parcel #1'' on the Map.

(c) COMPLIANCE WITH LOCAL PLANNING AND ZONING LAWS.—Before a sale of Federal land under subsection (a), the City shall submit to the Secretary a certification that qualified bidders have agreed to comply with—

(1) City zoning ordinances; and

(2) any master plan for the area approved by the City.

(d) METHOD OF SALE; CONSIDERATION.—The sale of Federal land under subsection (a) shall be—

(1) consistent with subsections (d) and (f) of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713);

(2) unless otherwise determined by the Secretary, through a competitive bidding process; and

(3) for not less than fair market value.

(e) WITHDRAWAL.—Subject to valid existing rights, the Federal land described in subsection (b) is withdrawn from—

(1) all forms of entry and appropriation under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing and geothermal leasing laws.

(f) DEADLINE FOR SALE.—

(1) IN GENERAL.—Except as provided in paragraph (2), not later than 1 year after the date of enactment of this Act, if there is a qualified bidder for the land described in paragraphs (1) and (2) of subsection (b), the Secretary of the Interior shall offer the land for sale to the qualified bidder.

(2) POSTPONEMENT; EXCLUSION FROM SALE.—

(A) REQUEST BY CARSON CITY FOR POSTPONEMENT OR EXCLUSION.—At the request of the City, the Secretary shall postpone or exclude from the sale under paragraph (1) all or a portion of the land described in paragraphs (1) and (2) of subsection (b).

(B) INDEFINITE POSTPONEMENT.—Unless specifically requested by the City, a postponement under subparagraph (A) shall not be indefinite.

SEC. 202. DISPOSITION OF PROCEEDS.

(a) IN GENERAL.—Of the proceeds from the sale of land under sections 101(d)(4)(B) and 201(a)—

(1) 5 percent shall be paid directly to the State for use in the general education program of the State; and

(2) the remainder shall be deposited in a special account in the Treasury of the United States, to be known as the ''Carson City Special Account'', and shall be available without further appropriation to the Secretary until expended to—

(A) reimburse costs incurred by the Bureau of Land Management for preparing for the sale of the Federal land described in section 201(b), including the costs of—

(i) surveys and appraisals; and

(ii) compliance with—

(I) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(II) sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712, 1713);

(B) reimburse costs incurred by the Bureau of Land Management and Forest Service for preparing for, and carrying out, the transfers of land to be held in trust by the United States under section 301;

(C) acquire land or an interest in environmentally sensitive land; and

(D) conduct an inventory of, evaluate, and protect unique archaeological resources (as defined in section 3 of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb)) of the City.

(b) SILVER SADDLE ENDOWMENT ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a special account, to be known as the ''Silver Saddle Endowment Account'', consisting of such amounts are deposited under section 101(c)(1).

(2) AVAILABILITY OF AMOUNTS.—Amounts deposited in the account established by paragraph (1) shall be available to the Secretary, without further appropriation, for the oversight and enforcement of the conservation easement established under section 101(c)(2).

(c) INVESTMENT OF ACCOUNTS.—

(1) IN GENERAL.—Amounts deposited as principal in the Carson City Special Account established by subsection (a)(2) and the Silver Saddle Endowment Account established by subsection (b)(1) shall earn interest in the amount determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities.

(2) AVAILABILITY.—Any interest earned under paragraph (1) shall be—

(A) added to the principal of the applicable account; and

(B) expended in accordance with subsection (a)(2) or (b)(2), as applicable.

SEC. 203. WITHDRAWAL.

(a) IN GENERAL.—Subject to valid existing rights, the Federal land described in subsection (b) is permanently withdrawn from—

(1) all forms of entry and appropriation under the public land laws and mining laws;

(2) location and patent under the mining laws; and

(3) operation of the mineral laws, geothermal leasing laws, and mineral material laws.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 19,747 acres, which is identified on the Map as ''Urban Interface Withdrawal''.

(c) OFF-HIGHWAY VEHICLE MANAGEMENT.—Until the date on which the Secretary, in consultation with the State, the City, and any other interested persons, completes a transportation plan for Federal land in the City, the use of motorized and mechanical vehicles on Federal land within the City shall be limited to roads and trails in existence on the date of enactment of this Act unless the use of the vehicles is needed—

(1) for administrative purposes; or

(2) to respond to an emergency.

SEC. 204. AVAILABILITY OF FUNDS.

Section 4(e) of the Southern Nevada Public Land Management Act of 1998 (Public Law 105–263; 112 Stat. 2346; 116 Stat. 2007; 117 Stat. 1317; 118 Stat. 2414; 120 Stat. 3045) is amended—

(1) in paragraph (3)(A)(iv), by striking ''Clark, Lincoln, and White Pine Counties and Washoe County (subject to paragraph 4))'' and inserting ''Clark, Lincoln, and White Pine Counties and Washoe County (subject to paragraph 4)) and Carson City (subject to paragraph (5))'';

(2) in paragraph (3)(A)(v), by striking ''Clark, Lincoln, and White Pine Counties'' and inserting ''Clark, Lincoln, and White Pine Counties and Carson City (subject to paragraph (5))'';

(3) in paragraph (4), by striking ''2011'' and inserting ''2015''; and

(4) by adding at the end the following:

''(5) LIMITATION FOR CARSON CITY.—Carson City shall be eligible to nominate for expenditure amounts to acquire land or an interest in land for parks or natural areas and for conservation initiatives—

''(A) adjacent to the Carson River; or

''(B) within the floodplain of the Carson River.''.

TITLE III—TRANSFER OF LAND TO BE HELD IN TRUST FOR THE WASHOE TRIBE, SKUNK HARBOR CONVEYANCE CORRECTION, FOREST SERVICE AGREEMENT, AND ARTIFACT COLLECTION

SEC. 301. TRANSFER OF LAND TO BE HELD IN TRUST FOR WASHOE TRIBE.

(a) IN GENERAL.—Subject to valid existing rights, all right, title, and interest of the United States in and to the land described in subsection (b)—

(1) shall be held in trust by the United States for the benefit and use of the Tribe; and

(2) shall be part of the reservation of the Tribe.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 293 acres, which is identified on the Map as ''To Washoe Tribe''.

(c) SURVEY.—Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall complete a survey of the boundary lines to establish the boundaries of the land taken into trust under subsection (a).

(d) USE OF LAND.—

(1) GAMING.—Land taken into trust under subsection (a) shall not be eligible, or considered to have been taken into trust, for class II gaming or class III gaming (as those terms are defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703)).

(2) TRUST LAND FOR CEREMONIAL USE AND CONSERVATION.—With respect to the use of the land taken into trust under subsection (a), the Tribe—

(A) shall limit the use of the land above the 5,200′ elevation contour to—

(i) traditional and customary uses; and

(ii) stewardship conservation for the benefit of the Tribe; and

(B) shall not permit any—

(i) permanent residential or recreational development on the land; or

(ii) commercial use of the land, including commercial development or gaming.

(3) TRUST LAND FOR COMMERCIAL AND RESIDENTIAL USE.—With respect to the use of the land identified as ''To Washoe Tribe'' on the Map, the Tribe shall limit the use of the land below the 5,200′ elevation to—

(A) traditional and customary uses;

(B) stewardship conservation for the benefit of the Tribe; and

(C)(i) residential or recreational development; or

(ii) commercial use.

(4) THINNING; LANDSCAPE RESTORATION.—With respect to the land taken into trust under subsection (a), the Secretary of Agriculture, in consultation and coordination with the Tribe, may carry out any thinning and other landscape restoration activities on the land that is beneficial to the Tribe and the Forest Service.

SEC. 302. CORRECTION OF SKUNK HARBOR CONVEYANCE.

(a) PURPOSE.—The purpose of this section is to amend Public Law 108–67 (117 Stat. 880) to make a technical correction relating to the land conveyance authorized under that Act.

(b) TECHNICAL CORRECTION.—Section 2 of Public Law 108–67 (117 Stat. 880) is amended—

(1) by striking ''Subject to'' and inserting the following:

''(a) IN GENERAL.—Subject to'';

(2) in subsection (a) (as designated by paragraph (1)), by striking ''the parcel'' and all that follows through the period at the end and inserting the following: ''and to approximately 23 acres of land identified as 'Parcel #1' on the map entitled 'Skunk Harbor Conveyance Correction' and dated June 24, 2008, the western boundary of which is the low water line of Lake Tahoe at elevation 6,223.0 (Lake Tahoe Datum).''; and

(3) by adding at the end the following:

''(b) SURVEY.—Not later than 180 days after the date of enactment of this subsection, the Secretary of Agriculture shall complete a survey of the boundary lines to establish the boundaries of the trust land.

''(c) PUBLIC ACCESS AND USE.—Nothing in this Act prohibits any approved general public access (through existing easements or by boat) to, or use of, land remaining within the Lake Tahoe Basin Management Unit after the conveyance of the land to the Secretary of the Interior, in trust for the Tribe, under subsection (a), including access to, and use of, the beach and shoreline areas adjacent to the portion of land conveyed under that subsection.''.

(c) DATE OF TRUST STATUS.—The trust land described in section 2(a) of Public Law 108–67 (117 Stat. 880) shall be considered to be taken into trust as of August 1, 2003.

(d) TRANSFER.—The Secretary of the Interior, acting on behalf of and for the benefit of the Tribe, shall transfer to the Secretary of Agriculture administrative jurisdiction over the land identified as ''Parcel #2'' on the map entitled ''Skunk Harbor Conveyance Correction'' and dated June 24, 2008.

SEC. 303. AGREEMENT WITH FOREST SERVICE.

The Secretary of Agriculture, in consultation with the Tribe, shall develop and implement a cooperative agreement that ensures regular access by members of the Tribe and other people in the community of the Tribe across National Forest System land from the City to Lake Tahoe for cultural and religious purposes.

SEC. 304. ARTIFACT COLLECTION.

(a) NOTICE.—At least 180 days before conducting any ground disturbing activities on the land identified as ''Parcel #2'' on the Map, the City shall notify the Tribe of the proposed activities to provide the Tribe with adequate time to inventory and collect any artifacts in the affected area.

(b) AUTHORIZED ACTIVITIES.—On receipt of notice under subsection (a), the Tribe may collect and possess any artifacts relating to the Tribe in the land identified as ''Parcel #2'' on the Map.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

SEC. 401. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

By Mr. INHOFE:

S. 3395. A bill to provide for marginal well production preservation an enhancement; to the Committee on Finance.

Mr. INHOFE. Mr. President, a marginal well is defined as one which produces 15 barrels or less of oil per day. Yet, according to the Interstate Oil and Gas Compact Commission, IOGCC, these marginal wells contribute nearly 18 percent of the oil and 9 percent of the natural gas produced in America.

In fact, marginal wells produced more than 335 million barrels of oil in 2006. That's equivalent to more than 60 percent as much as the United States imports annually from Saudi Arabia or 67 percent as much as the Nation imports annually from Venezuela. In my own State of Oklahoma, it is the small independents, basically mom-and-pop operations, that produce the majority of oil and natural gas, with 85 percent of Oklahoma's oil coming from marginal wells.

In addition to reducing our dependence on foreign oil, a producing well provides both State and Federal taxes, pays royalties to land and mineral owners, and keeps jobs and dollars on American soil and in American pockets. A plugged well provides none of this. On the contrary, the IOGCC reported that in 2006, plugged and abandoned marginal wells resulted in the loss of $1.77 billion in economic output, $369.2 million in earnings reductions, and 8,223 lost jobs.

These statistics testify to the importance of America's marginal well production. With gasoline prices at record highs, Congress must ensure that government policies do not discourage, and instead prolong and enhance, production from these low volume wells.

That is why today I am glad to join with my fellow Oklahoman, Congressman DAN BOREN, to introduce the Marginal Well Production Preservation and Enhancement Act. This bill will streamline and clarify government regulations, prolong economic feasibility, and enhance production volumes from marginal wells. Every onshore oil and gas well in the Nation eventually declines into marginal production. The Marginal Well Production Preservation and Enhancement Act ensures that the Nation's policies recognize and reflect the economic importance of marginal well production. It's good for America's small producers, as well as America's consumers.

By Mr. KOHL (for himself, Mr. DURBIN, Mr. KENNEDY, and Mr. CASEY):

S. 3396. A bill to amend the Public Health Service Act to provide grants or contracts for prescription drug education and outreach for healthcare providers and their parents; to the Committee on Health, Education, Labor, and Pensions.

Mr. KOHL. Mr. President, I rise today to introduce the Independent Drug Education and Outreach Act. Over the past year, the Committee on Aging has been taking a close look at the relationship between the pharmaceutical industry and our Nation's physicians. Not only does the interaction between these two parties seem to be fraught with conflicts of interest, but it is likely that the marketing methods employed by drug companies—and the manner in which they educate doctors about their products—have an impact on the rising costs of prescription drugs in America.

When it comes to knowing what treatment options are available to doctors, pharmaceutical sales reps are currently one of the most common ways physicians learn about the latest drugs on the market. However, these sales reps often seem to confuse educating with selling, and evidence shows that doctors' prescribing patterns can be heavily influenced by the sometimes biased information handed out by these sales representatives.

The Independent Drug Education and Outreach Act offers an alternative method of providing information to doctors. It's called academic detailing, and we believe it can have a positive impact on both quality and cost of healthcare nationwide. Academic detailing provides physicians and other prescribers with an objective source of unbiased information on all prescription drugs, based on scientific research certified by HHS. The information is presented to doctors in their own offices by trained clinicians and pharmacists. Academic detailing ensures that physicians have access to the most comprehensive data available on drug safety of the full array of pharmaceutical treatment options, including low-cost generic alternatives.

The proposed legislation would provide two sets of grants. The first grant program would create educational materials for doctors on the safety, efficacy, and cost of prescription drugs, including generic drugs and over-the-counter alternatives. A second set of up to ten grants would be used to dispatch trained medical staff—such as pharmacists, nurses, and other health care professionals—into physicians' offices to distribute and discuss the independent information. To ensure their neutrality, all grant recipients would be prohibited from receiving financial support from drug manufacturers.

When doctors are better informed about the full range of drugs available on the market, they are more likely to prescribe the most effective treatment, as opposed to the latest brand-name blockbuster drug. The result is also lower health care costs. A study in the *New England Journal of Medicine* projected that for every dollar spent on academic detailing, two dollars can be saved in drug costs, due in part to the increased use of generic drugs. In this way, a Federal academic detailing program will likely pay for itself, while saving the government, consumers, and employers a considerable amount of money.

I would like to thank my cosponsors in the Senate, Majority Whip DICK DURBIN, HELP Committee Chairman TED KENNEDY, and Senator BOB CASEY. I would also like to thank Representatives HENRY WAXMAN and FRANK PALLONE, who are introducing a companion bill today in the House. We stand together with the goal of providing doctors with unbiased information on prescription drugs, and ensuring Americans receive the quality health care they deserve.

Mr. DURBIN. Prescription drugs can restore health, prevent illness, and extend lives. But deciding whether to prescribe a drug, and which one, requires a careful balancing of potential benefits, risks, and costs.

Prescribing should not be determined by how heavily a drug is promoted by a pharmaceutical company. Sadly, this is largely what happens today.

Our health care system does not generate objective, easy-to-access information for doctors to guide them when it comes to prescribing options.

New drugs are constantly entering the marketplace, but there's very little objective information about what drug might be marginally safer or more effective than existing drugs.

Even the most vigilant doctors would be challenged to monitor the dozens of medical journals that could contain a helpful study comparing the safety and effectiveness of drugs.

The pharmaceutical industry has taken advantage of this information void.

It spends about $7 billion a year marketing to physicians and sends over 90,000 sales representatives, called detailers, to pitch their company's latest and most expensive drugs.

What the drug industry is doing is not education. It is promotion. And there's a big difference between the two.

The drug company sales representatives are hired more for their charisma than their scientific knowledge, and they provide doctors with information skewed to portray their company's product in the most favorable light.

The sales representatives arrive with free lunches and free drug samples. Lucrative speaking and consulting fees are possible for doctors who change their prescribing to the liking of a drug company.

The consequence of such a system is clear: an over-reliance on prescribing the latest, most expensive drugs even when existing drugs are as effective, as safe, or cost less.

The pain-reliever Vioxx provides a cautionary tale of what can happen when marketing prowess trumps evidence-based medicine.

Heavy marketing quickly made Vioxx a blockbuster drug with $3 billion a year in sales, despite a lack of evidence that it could provide any greater pain relief for most patients than Advil and despite early indications that it increased the risk of heart attacks. Many Americans needlessly paid more and placed themselves at risk because the benefits of Vioxx were oversold and the risks minimized.

Another example is the marketing of calcium-channel blockers in 1990s. Heavy marketing increased the sales of the new patent-protected calcium-channel blockers but decreased sales of other blood-pressure drugs, such as thiazide diuretics and betablockers, that were cheaper and often more effective.

A more recent example is the cholesterol drug Vytorin. The new drug has been heavily marketed since it was introduced in 2004. But a study released earlier this year did not find that Vytorin was any better at limiting plaque buildup in the arteries than Zocor, an older cholesterol drug that recently came out in a lower-priced generic form.

We have to find a better way to educate physicians about prescription drug options and fill the void of medical information that the drug industry is now taking advantage of.

Part of the solution is academic detailing, an idea first developed by Jerry Avorn, a physician at Harvard Medical School and Brigham and Women's Hospital in Boston.

Academic detailing programs use some of the marketing tools that the drug industry has used so effectively, such as office visits to physicians and easy-to-read materials, but employs them to promote appropriate prescribing, based on an objective analysis of the medical literature.

These programs—which send trained nurses and pharmacists, armed with unbiased information, to doctors' office—have been shown to generate $2 in savings for every $1 that it costs to implement them.

Pennsylvania's PACE program is the State's pharmacy assistance program for low- and moderate-income seniors, and it runs the most notable publicly funded academic detailing program.

The PACE academic detailing program has reduced costs associated with the overuse of Nexium, an acid-reflux drug for which there are similar lower-cost alternatives, and reduced the use of Cox–2 inhibitors such as Vioxx.

Today, I am joining Senator KOHL and Senators KENNEDY and CASEY in introducing legislation that would promote additional academic detailing programs.

The Independent Drug Education and Outreach Act would provide funds to medical schools, schools of pharmacies, and others for the development of educational materials based on what unbiased, peer-reviewed medical literature says about appropriate prescribing for a particular condition.

The bill also would provide funds to ten governmental or non-profit groups to train nurses and pharmacists and to send them to physician offices to present and discuss this information directly with physicians.

The bill includes protections against financial conflicts of interest and calls on the Agency for Health Care Research and Quality to review the accuracy of the information provided to doctors.

The Independent Drug Education and Outreach Act would begin to fix one of the glaring shortcomings of our current health care system: the lack of a systematic way of disseminating information on the relative benefits, risks, and costs of various treatment options directly to doctors.

When it comes to prescription drugs, newer isn't necessarily better. In many cases, they are not.

We can no longer afford to rely on drug company salespersons to be doctors' primary source of information about new drugs.

I urge my colleagues to support this bill.

By Mr. REID (for Mr. KENNEDY (for himself, Mr. LEAHY, Mr. DODD, Mr. HARKIN, Ms. MIKULSKI, Mr. BINGAMAN, Mrs. MURRAY, Mr. REED, Mrs. CLINTON, Mr. OBAMA, Mr. SANDERS, Mr. BROWN, and Mr. WHITEHOUSE)):

S. 3398. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to liability under State and local requirements respecting devices; to the Committee on Health, Education, Labor, and Pensions.

Mr. HARKIN. Mr. President, I am proud to join my colleagues in introducing the Medical Device Safety Act. This legislation reverses the Supreme Court's erroneous decision in Riegel v. Medtronic. There, the Court misread a statute designed to protect consumers by giving the Food and Drug Administration the authority to approve medical devices as preempting state tort claims when a medical device causes harm. Riegel prevents consumers from receiving fair compensation for injuries sustained, medical expenses incurred and lost wages, and it must be reversed.

Congressional action should be unnecessary. When Congress passed the Medical Device Amendments, or MDA, in 1976, it did so ''[t]o provide for the safety and effectiveness of medical devices intended for human use.'' In other words, Congress passed the MDA precisely to protect consumers from dangerous medical devices. Toward that end, Congress gave the FDA the authority to approve, prior to a product entering the market, certain medical devices. For over 30 years the MDA has been in effect, and over that period FDA regulation and tort liability have complemented each other in protecting consumers.

Given the MDA's purpose, and the fact it has operated successfully for 30 years, I was disheartened to find the Court twist the meaning of the statute to strip from consumers all remedies when a medical device fails. In contorted logic, the Court found that the FDA's requirements in approving a medical device preempted state laws designed to ensure that manufacturers marketed safe devices. In other words, the Court believes that a company's responsibility to its patients ends when it receives FDA approval. I strenuously disagree.

In fact, there is absolutely no evidence that Congress intended that under the MDA, consumers would lose their only avenue for receiving compensation for injuries caused by negligent or inadequately labeled devices. Not a single member or committee report articulated the view that the statute would preempt state tort law.

Nevertheless, because of the Court's decision, it is imperative that Congress act to ensure that those harmed by flawed medical devices can seek compensation. The bill introduced today addresses the Court's action by explicitly stating that actions for damages under state law are preserved. Specifically, it amends section 521 of the Federal Food, Drug, and Cosmetic Act to state that the section shall not be construed to modify or otherwise affect any action for damages or the liability

of any person under the law of any State. And, the bill applies retroactively to the date of the enactment of the MDA, consistent with Congress's intent when it passed that act over 30 years ago. Practically, that means that it applies to cases pending on the date of enactment of this legislation or claims for injuries sustained prior to enactment.

The harm from Riegel, unless Congress acts, cannot be more real. Take Riegel itself. In 1996, Charles Riegel had an angioplasty performed on his right coronary artery. During the procedure, Mr. Reigel's surgeon used Medtronic's Evergreen Balloon Catheter. The catheter burst inside Mr. Reigel's artery, causing him severe and permanent injuries and disabilities.

Under our system of law, when someone is injured, he or she can normally seek redress from the entity that caused him or her harm. Yet, because of the Court's decision, Mr. Riegel and his wife will receive no compensation for the defective design and inadequate warning.

It is not just Mr. Riegel. In 2002, Gary Despain was implanted with a defective hearing aid Soundtec manufactured. While working as a welder, he suffered damage to his right ear, apparently as a result of interference between a magnet in his hearing device and some electronic welding equipment being used in the plant. The device caused severe ringing in his ear, but the labeling for the device failed to warn of this potential risk. Mr. Despain had to have the device surgically removed and he remains unemployed and disabled as a result of the device.

Nevertheless, two weeks after the Court's Riegel decision, Mr. Despain's lawsuit against Soundtec was dismissed and Mr. Despain has no ability to seek remedies for his injuries.

The result of Riegel, therefore, is that in the event the FDA does an inadequate job of inspecting and assuring the safety of medical devices—and because tort actions are now precluded—then consumers are left at extreme risk.

While FDA approval of medical devices, moreover, is important, it cannot be the sole protection for consumers. FDA approval is simply inadequate to replace the long-standing safety incentives and consumer protections that state tort law provides.

As a senior member of the Health, Education, Labor and Pension Committee, which has oversight over FDA, I have worked hard to ensure that the FDA performs its job. No matter how effective the FDA is, however, the FDA simply cannot guarantee that no defective, dangerous and deadly medical device will reach consumers. As the former Director of the FDA's Center for Devices and Radiological Health acknowledged, the FDA's ''system of approving devices isn't perfect, and that unexpected problems [with approved devices] do arise.'' In 1993, a House report identified a ''number of cases in which the FDA [had] approved devices that proved unsafe in use.''

The fact is, the FDA conducts the approval process with minimal resources and simply does not have adequate funds to genuinely ensure that devices are safe or to properly and effectively reevaluate approvals as new information becomes available.

Further, the FDA approval process is based on partial information. A principal shortcoming is that the device's manufacturer compiles the studies and data supporting an application, and the data is often unreliable. And, the FDA does not conduct independent investigations into a device's safety. A manufacturer, moreover, is not required to submit information about development of the device, including alternative designs, manufacturing methods and labeling possibilities that the manufacturer considered, but rejected.

In 1993, an FDA committee found flaws in the design, conduct and analysis of the clinical studies used to support applications that were ''sufficiently serious to impede the agency's ability to make the necessary judgments about [device] safety and effectiveness.'' It added, ''[o]ne of the main reasons [problems arise after approval] is that the data upon which we base our safety and effectiveness decisions isn't perfect.'' Likewise, in 1996, the Inspector General of the Department of Health and Human Services reported ''serious deficiencies . . . in the clinical data submitted as part of pre-market applications.''

FDA review, moreover, is a one-time event with no reevaluation and very little FDA oversight once a device reaches doctors and patients. In fact, even the best-designed and most reliable clinical studies by their very nature cannot duplicate all aspects and hazards of everyday use. Moreover, while manufacturers are supposed to report defects and injuries, the FDA has admitted that there is ''severe underreporting'' of defects and injuries.

Given the FDA's limitations, it is crucial that an individual have a right to seek redress. When defective medical devices reach the market, whether or not approved by the FDA, patients are often injured. Those injured are often left temporarily unable to work or to enjoy normal lives, and in many cases never fully recover. State tort law provides the only relief for patients injured by defective medical devices and should not be foreclosed.

Not only does access to State court mean that a person injured can receive fair compensation, but there are other advantages. Such suits aid in exposing dangers and serve as a catalyst to address their consequences. Through discovery, litigation can help uncover previously unavailable information on adverse effects of products that might not have been caught during the regulatory system. Litigants can demand documents and information on product risks that might not have been shared with the FDA. In this way, the public as a whole is alerted to dangers in medical products.

Finally, providing the ability to sue when injured provides an important incentive to manufacturers to use the utmost care. Additionally, threat of product liability suits creates continuing incentives for product manufacturers to improve the safety of their device, even after FDA approval.

The Court fundamentally misread Congress's intent in passing the Medical Device Amendments in 1976, and Reigel represents yet another victory by big business over consumers. Those injured, however, deserve to have their day in court and are entitled to compensation when they are injured by faulty medical devices, have medical expenses to pay and lost wages, regardless of whether FDA approved a device or not. We must reverse this erroneous decision and ensure that those who have suffered serious injury at the hands of others receive justice.

By Mrs. LINCOLN (for herself, Mr. SMITH, Ms. CANTWELL, Mr. CORNYN, Mrs. MURRAY, Mrs. DOLE, Ms. LANDRIEU, Mr. CHAMBLISS, Mr. WICKER, and Mr. VITTER):

S. 3399. A bill to amend the Internal Revenue Code of 1986 to make permanent the reduction in the rate of tax on qualified timber gain of corporations, and for other purposes; to the Committee on Finance.

Mrs. LINCOLN. Mr. President, I am very pleased to rise today to introduce the Timber Revitalization and Economic Enhancement Act II of 2008 with my good friend, Senator SMITH of Oregon. I also want to say a special thanks to our cosponsors, Senators CANTWELL, MURRAY, DOLE, CHAMBLISS, CORNYN, LANDRIEU, WICKER and VITTER.

This legislation has commonly been referred to as the TREE Act. I appreciate that Congress understood the importance of the TREE Act with its inclusion and enactment in the Farm Bill earlier this year. But, unfortunately, this tax policy is already set to expire in less than one year. So today, my colleagues and I introduce the TREE Act II to make this important forest policy permanent.

In my home State of Arkansas, the est products industry is a foundation of our economy and culture. More than 50 percent of Arkansas land is forested. Much of this is sustainably managed to create products we use every day. In addition, there are jobs associated with the growing of these forests and manufacture of these great products. More than 32,000 Arkansas men and women work in our woods, at our sawmills and in our paper mills. These are good jobs located in our small rural towns.

However, these jobs and this industry continue to face many challenges. The TREE Act II addresses one of these challenges. Just as it is important to have diversity in our forests, it is also important to maintain diversity in our forestry industry, and we must ensure

that all business forms have the necessary tools so they can be successful in the global marketplace. Timber companies that are organized as corporations continue to be under intensifying pressure to reorganize. In that case, a corporation that owns substantial manufacturing facilities would be forced to sell some of those facilities and to make other structural changes in order to comply with the relevant tax rules that it would newly become subject to. This would be likely to cause disruptions in some of these communities and also would make it harder for U.S. companies to compete internationally.

In Arkansas, like so many other States across our Nation, a strong forest product industry is essential to having a strong economy. A permanent solution to the TREE Act II is imperative for this industry and supporting the jobs it provides. I look forward to working with my colleagues on the Senate Finance Committee to ensure this important tax policy is made permanent.

By Mr. FEINGOLD (for himself and Mr. WHITEHOUSE):

S. 3405. A bill to prohibit secret modifications and revocations of the law, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. FEINGOLD. Mr. President, today, the junior Senator from Rhode Island, Senator WHITEHOUSE, and I will introduce the Executive Order Integrity Act of 2008. The bill prevents secret changes to published Executive Orders by requiring the President to place a notice in the Federal Register when he has modified or revoked a published Order. Through this simple measure, the bill takes an important step toward stemming the growth of secret law in the executive branch.

The principle behind this bill is straightforward. It is a basic tenet of democracy that the people have a right to know the law. Indeed, the notion of ''secret law'' has been described in court opinions and law treatises as ''repugnant'' and ''an abomination.'' That is why the laws passed by Congress have historically been matters of public record.

But the law that applies in this country includes more than just statutes. It includes regulations, the controlling legal interpretations of courts and the executive branch, and certain Presidential directives. As we learned at a hearing of the Judiciary Committee's Constitution Subcommittee that I chaired in April, some of this body of executive and judicial law is increasingly being kept secret from the public, and too often from Congress as well. The Bush administration has concealed Department of Justice legal opinions, interpretations of the Foreign Intelligence Surveillance Court, and even the agency rule that requires Americans to show identification at airports.

The shroud of secrecy extends to Executive Orders and other Presidential directives that carry the force of law. The Federal Register Act requires the President to publish any Executive Orders that have general applicability and legal effect. But through the diligent efforts of my colleague Senator Whitehouse, we learned last December that the Department of Justice has taken the position that a President can ''waive'' or ''modify'' any Executive Order without any notice to the public or Congress—simply by not following it. In other words, even in cases where the President is required to make the law public, the President can change the law in secret.

The Office of Legal Counsel memorandum that contains this position is still classified, but Senator Whitehouse convinced the Department of Justice to declassify certain statements in the memorandum. The Senator from Rhode Island spoke on the floor last December, and many times since then, about these statements. They include the statement that ''[w]henever [the President] wishes to depart from the terms of a previous executive order,'' he may do so, because ''an executive order cannot limit a President.'' And he doesn't have to change the executive order, or give notice that he's violating it, because by ''depart[ing] from the executive order,'' the President ''has instead modified or waived it.''

Now, no one disputes that a President can withdraw or revise an Executive Order at any time; that is every President's prerogative. But abrogating a published Executive order without any public notice works a secret change in the law. Worse, because the published Order stays on the books, it actively misleads Congress and the public as to what the law is.

This is not just a hypothetical problem dreamed up by the Office of Legal Counsel. It has happened, and it could happen again. To list just one example, the administration's warrantless wiretapping program not only violated the Foreign Intelligence Surveillance Act; it was inconsistent with several provisions of Executive Order 12333, the longstanding executive order governing electronic surveillance and other intelligence activities. Apparently, the administration believed its actions constituted a tacit amendment of that Executive Order. And who knows how many other Executive Orders have been secretly revoked or amended by the conduct of this Administration.

The bill that Senator Whitehouse and I will introduce provides a simple solution to this problem. If the President revokes, modifies, waives, or suspends a published Executive Order or similar directive, notice of this change in the law must be placed in the Federal Register within 30 days. The notice must specify the Order or the provision that has been affected; whether the change is a revocation, a modification, a waiver, or a suspension; and the nature and circumstances of the change. If information about the nature and circumstances of the change is classified, it is exempt from the publication requirement, but the information still must be provided to Congress so that we, as legislators, know how the law has been changed.

That is what our bill does; now let me talk briefly about what our bill does not do. First, it does not expand the existing legal requirements, under the Federal Register Act, that determine which Executive Orders must be published. To the extent the Federal Register Act permits a certain amount of ''secret law'' in the form of unpublished Executive Orders, our bill leaves that framework in place.

Second, our bill does not require public notice when the President revokes or modifies an unpublished Executive Order—even if the substance of the unpublished order is well-known to Congress and even the American people. This bill is narrowly aimed at the situation in which the American people have been given official notice of one version of the law, but a different version is being implemented.

Third, the bill does not require the President to adhere to the terms of an Executive Order. Many scholars have argued that a President must adhere to a formally promulgated Executive Order unless or until the Order is formally withdrawn or amended, just as the head of an agency must adhere to the agency's regulations. I happen to agree. But this bill does not take a position on OLC's assertion that any deviation from the Executive Order by the President is a permissible amendment of that Order. It simply requires public notice that the amendment has occurred.

Fourth, the bill does not require the publication of classified information about intelligence sources and methods or similar information. The basic fact that the published law is no longer in effect, however, cannot be classified. On rare occasions, national security can justify elected officials keeping some information secret, but it can never justify lying to the American people about what the law is. Maintaining two different sets of laws, one public and one secret, is just that—deceiving the American people about what law applies to the government's conduct.

I commend Senator WHITEHOUSE for his tireless work to bring this issue to light, and I urge all of my colleagues in the Senate to support this modest effort to ensure the integrity of our published laws.

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

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

S. 3405

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 ''Executive Order Integrity Act of 2008''.

SEC. 2. REVOCATIONS, MODIFICATIONS, WAIVERS, AND SUSPENSIONS OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS.

Section 1505 of title 44, United States Code, is amended by adding at the end the following:

''(d) REVOCATIONS, MODIFICATIONS, WAIVERS, AND SUSPENSIONS OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS.—

''(1) NOTICE REQUIRED.—If the President, whether formally or informally, and whether through express order, conduct, or other means—

''(A) revokes, modifies, waives, or suspends any portion of a Presidential proclamation, Executive Order, or other Presidential directive that was published in the Federal Register; or

''(B) authorizes the revocation, modification, waiver, or suspension of any portion of such Presidential proclamation, Executive Order, or other Presidential directive;

notice of such revocation, modification, waiver, or suspension shall be published in the Federal Register within 30 days after the revocation, modification, waiver, or suspension, in accordance with the terms under paragraph (2).

''(2) CONTENT OF NOTICE.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), the notice required under paragraph (1) shall specify—

''(i) the Presidential proclamation, Executive Order, or other Presidential directive, and any particular portion thereof that is affected;

''(ii) for each affected directive or portion thereof, whether that directive or portion thereof was revoked, modified, waived, or suspended; and

''(iii) except where such information is classified, the specific nature and circumstances of the revocation, modification, waiver, or suspension.

''(B) REVISED EXECUTIVE ORDER.—Where the revocation, modification, waiver, or suspension of a Presidential proclamation, Executive Order, or other Presidential directive is accomplished through the publication in the Federal Register of a revised Presidential proclamation, Executive Order, or other Presidential directive that replaces or amends the one that was revoked, modified, waived, or suspended, that revised Presidential proclamation, Executive Order, or other Presidential directive shall constitute notice for purposes of paragraph (1).

''(3) CLASSIFIED INFORMATION.—If the information specified under paragraph (2)(A)(iii) is classified, such information shall be provided to Congress, using the security procedures established under section 501(d) of the National Security Act of 1947 (50 U.S.C. 413(d)), in the form of a classified annex delivered to—

''(A) the majority and minority leader of the Senate;

''(B) the Speaker, majority leader, and minority leader of the House of Representatives;

''(C) the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives; and

''(D) if the information pertains to national security matters, the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

''(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed as either authorizing or prohibiting the revocation, modification, waiver, or suspension of any Presidential proclamation, Executive Order, or other Presidential directive that was published in the Federal Register through means other than a formal directive issued by the President and published in the Federal Register.''.

By Mr. HARKIN (for himself, Mr. HATCH, Mr. KENNEDY, Mr. ENZI, Mr. SPECTER, Mr. OBAMA, Mr. MCCAIN, Mr. DODD, Mr. GREGG, Mrs. CLINTON, Mr. ALEXANDER, Mr. JOHNSON, Mr. ROBERTS, Mr. KERRY, Mr. COLEMAN, Mr. FEINGOLD, Ms. SNOWE, Mr. LEAHY, Mr. BURR, Mr. BROWN, Mr. SMITH, Mr. DURBIN, Ms. MURKOWSKI, Mr. LAUTENBERG, Mr. WARNER, Mr. SANDERS, Mr. BROWNBACK, Mr. REED, Mr. MARTINEZ, Ms. MIKULSKI, Mr. ISAKSON, Mr. CASEY, Mr. CRAIG, Mrs. MURRAY, Mr. BENNETT, Ms. LANDRIEU, Ms. COLLINS, Mr. BIDEN, Mr. ALLARD, Mr. NELSON of Florida, Mr. SUNUNU, Mr. CARDIN, Mr. THUNE, Mr. LEVIN, Mr. BARRASSO, Mrs. MCCASKILL, Mr. CRAPO, Mr. SCHUMER, Mr. STEVENS, Mr. SALAZAR, Mr. VOINOVICH, Mr. TESTER, Mr. COCHRAN, Mr. REID, Mr. LUGAR, and Mr. CHAMBLISS):

S. 3406. A bill to restore the intent and protections of the Americans with Disabilities Act of 1990; read the first time.

Mr. HARKIN. Mr. President, I am pleased to join with Senators HATCH, OBAMA, and MCCAIN in introducing the ADA Amendments Act of 2008. This bipartisan legislation will allow us to advance and fulfill the original promise of the Americans with Disabilities Act, which was signed into law 18 years ago this month.

I am especially grateful to the distinguished senior Senator from Utah, Senator HATCH, for his partnership and leadership in helping to craft our bill here in the Senate and to Senator KENNEDY for his career-long leadership in fighting for the rights of people with disabilities. Senator KENNEDY has worked from the beginning to help craft this bill.

This bill is similar to bipartisan legislation introduced in the other body by House Majority Leader STENY HOYER and Congressman JIM SENSENBRENNER. That bill passed by a 402–17 margin last month.

I am also grateful that, from the outset, these bills have been conceived and crafted in a spirit of genuine bipartisanship, with members of both parties coming together to do the right thing for all Americans with disabilities.

Of course, passage of the Americans with Disabilities Act was also a bipartisan effort. As chief sponsor in the Senate, I worked very closely with Senator Bob Dole and others on both sides of the aisle. We received invaluable support from President George Herbert Walker Bush and key members of his administration, including White House Counsel Boyden Gray, Attorney General Richard Thornburgh, and Transportation Secretary Sam Skinner.

The fact is that Americans of all walks of life take enormous pride in the progress we have made since the ADA was passed 18 years ago. Nobody wants to go backward.

The Americans with Disabilities Act was one of the landmark civil rights laws of the 20th century—a long-overdue emancipation proclamation for Americans with disabilities. Thanks to that law, we have removed most physical barriers to movement and access for more than 50 million Americans with disabilities. We have required employers to provide reasonable accommodations so that people with disabilities can have equal opportunity in the workplace. And we have advanced the four goals of the ADA—equality of opportunity, full participation, independent living, and economic self-sufficiency.

The reach—the triumph—of the ADA revolution struck home to me, some time back, when I attended a Washington convention of several hundred disability rights advocates, many with significant disabilities. They arrived in Washington on trains and airplanes built to accommodate people with mobility impairments. They came to the hotel on Metro and in regular busses, all seamlessly accessible by wheelchair. They navigated city streets equipped with curb cuts and ramps. The hotel where the convention took place was equipped in countless ways to accommodate people with disabilities. There was a sign language interpreter on the dais so that people with hearing disabilities could be full participants.

For those of us who do not have disabilities, these many changes are all but invisible. But for individuals with disabilities, they are transforming and liberating. So are provisions in the ADA outlawing discrimination against qualified individuals with disabilities in the workplace, and requiring employers to provide ''reasonable accommodations.''

But despite this progress, we face a challenge. In recent years, the courts have narrowed the definition of who qualifies as an ''individual with a disability.'' As a consequence, people with conditions that common sense tells us are disabilities are being told by courts that they are not in fact disabled, and are not eligible for the protections of the law. In a ruling last year, the 11th Circuit Court even concluded that a person with an intellectual disability was not ''disabled'' under the ADA.

When I explain to people what the Supreme Court has done, they are shocked. Impairments that the Court says are not to be considered disabilities under the law include amputation, intellectual disabilities, epilepsy, diabetes, muscular dystrophy, and multiple sclerosis.

In three rulings in 1999—Sutton v. United Airlines, Murphy v. United Parcel Service, and Albertson's v. Kirkingburg—the Court held that corrective and mitigating measures must be considered in determining whether an individual has a disability under the ADA.

In Sutton, the Supreme Court held that if a person is taking corrective

measures to mitigate a physical or mental impairment, the effects of those measures must be taken into account when judging whether a person is ''disabled.'' Corrective measures could include anything from visual aids to a prosthesis. The Court went on to say that the approach adopted by the Equal Employment Opportunity Commission—that persons are to be evaluated in their hypothetical uncorrected state—was an impermissible interpretation of the ADA.

In Murphy, the Court applied the same analysis to medication used to treat hypertension, and concluded that an employee who was fired because he had hypertension was not protected under the ADA, because medication alleviated some of his symptoms.

In Kirkingburg, the Supreme Court went further and declared that mitigating measures to be included in the determination of whether someone is disabled included not only artificial aids such as devices and medications, but also subconscious measures an individual may use to compensate for his or her impairment. Kirkingburg was an individual who was blind in one eye, and the court found that he was not ''disabled'' under the ADA.

Moreover, in another Supreme Court case, Toyota v. Williams 2002, the Court held that there must be a ''demanding standard for qualifying as disabled.'' This too, has resulted in a much more restrictive requirement than Congress intended. It has had the effect of excluding countless individuals with disabilities from the protections of the law.

Together, these Supreme Court cases have created a supreme absurdity: The more successful a person is at coping with a disability, the more likely it is for a court to find that they are no longer sufficiently disabled to be protected by the ADA. And if these individuals are no longer protected under the ADA, then their requests for a reasonable accommodation at work can be denied. Or they can be fired—without recourse.

Think about it this way: Imagine that you are an individual with a disability who has a job. Due to your disability, you take some medication or maybe you use an assistive device. The use of the medication or the assistive device allows you to be qualified to do your job. It's a job that you really love. At some point, you need to request a reasonable accommodation from your employer—maybe, if you have diabetes, it is 10 minutes a day to take your insulin and check your blood levels.

Or perhaps you use a prosthesis. Your employer says no, they don't want to give you an accommodation. Eventually you get fired as a result. When you go to court, your employer argues that you aren't really a person with a disability so you aren't entitled to the protections of the ADA. Then, under these Supreme Court cases, the employer prevails by convincing the court that because of the mitigating measure—the prosthesis—you can't meet the test of being ''disabled'' under the law.

So what are you supposed to do in these cases? If you don't take the medication or use the assistive device, then you are not qualified to do the job. On the other hand, if you stop taking the medication, or stop using your prosthesis, you will be considered a person with a disability under the ADA, but you will be unable to do your job.

What would you do? This is the Catch 22 situation that, today, confronts countless people with disabilities. This is clearly not what I intended, or what Congress intended, when we passed the ADA in 1990.

It boggles the mind that any court would rule that, for instance, multiple sclerosis or muscular dystrophy, is not a disability covered by the ADA. But that is where we are today. And that is why we are introducing this bill today.

This Senate bill builds on the success of the House bill. However, it seeks to broaden the definition of disability in a way that maximizes bipartisan consensus and minimizes unintended consequences.

Our bill leaves the ADA's familiar disability definition language intact: A person with a disability is one who has a physical or mental impairment that ''substantially limits'' one or more of the major life activities of the individual. It does not substitute the term ''materially restricts'' as in the House bill. Instead, the bill takes several specific and general steps that, individually and in combination, direct courts toward a more generous meaning and application of the definition.

This bill will overturn the basis for the reasoning in the Supreme Court decisions—the Sutton trilogy and the Toyota case—that have been so problematic for so many people with very real disabilities.

This bill fixes the ''mitigating measures'' problem by clearly stating that mitigating measures—like the medication or assistive devices I talked about earlier—are not to be considered in determining whether someone is entitled to the protections of the ADA.

This bill will make it easier for people with disabilities to be covered by the ADA because it effectively expands the definition of disability to include many more major life activities, as well as a new category of major bodily functions. This latter point is important for those with immune disorders, or cancer, or kidney disease, or liver disease, because they no longer need to show what specific activity they are limited in, in order to meet the statutory definition of disability.

This bill rejects the current EEOC regulation which says that ''substantially limits'' means ''significantly restricted'' as too high a standard. We indicate Congress's expectation that the regulation be rewritten in a less stringent way, and we provide the authority to do so.

This bill revives the ''regarded as'' prong of the definition of disability, and makes it easier for those with physical or mental impairments to be able to seek relief if they have been subjected to an adverse action because of their disability.

This bill has a broad construction provision which instructs the courts and the agencies that the definition of disability is to be interpreted broadly, to the maximum extent permitted by the ADA.

Mr. President, 18 years ago, the Americans with Disabilities Act passed with overwhelming bipartisan support. Likewise, today, with the introduction of this bill, we are building a strong bicameral, bipartisan majority to support the ADA Amendments Act of 2008.

Let me say, again, that I am grateful for the bipartisan spirit with which we are approaching this legislation. We have an opportunity to come together and make an important difference for millions of Americans with disabilities.

This bill also enjoys strong support out in the country. It is supported by most national disability organizations, as well as the U.S. Chamber of Commerce, the National Association of Manufacturers, the Society for Human Resource Management, and the Human Resources Policy Association.

I look forward to working with my colleagues on both sides of the aisle to pass this bill, and to advance and fulfill the original promise of the Americans with Disabilities Act.

Mr. President, I ask unanimous consent 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. 3406

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 ''ADA Amendments Act of 2008''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act ''provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities'' and provide broad coverage;

(2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;

(3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled;

(4) the holdings of the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;

(5) the holding of the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;

(6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;

(7) in particular, the Supreme Court, in the case of Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), interpreted the term ''substantially limits'' to require a greater degree of limitation than was intended by Congress; and

(8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term ''substantially limits'' as ''significantly restricted'' are inconsistent with congressional intent, by expressing too high a standard.

(b) PURPOSES.—The purposes of this Act are—

(1) to carry out the ADA's objectives of providing ''a clear and comprehensive national mandate for the elimination of discrimination'' and ''clear, strong, consistent, enforceable standards addressing discrimination'' by reinstating a broad scope of protection to be available under the ADA;

(2) to reject the requirement enunciated by the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

(3) to reject the Supreme Court's reasoning in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in School Board of Nassau County v. Arline, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;

(4) to reject the standards enunciated by the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), that the terms ''substantially'' and ''major'' in the definition of disability under the ADA ''need to be interpreted strictly to create a demanding standard for qualifying as disabled,'' and that to be substantially limited in performing a major life activity under the ADA ''an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives'';

(5) to convey congressional intent that the standard created by the Supreme Court in the case of Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) for ''substantially limits'', and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis; and

(6) to express Congress' expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term ''substantially limits'' as ''significantly restricted'' to be consistent with this Act, including the amendments made by this Act.

SEC. 3. CODIFIED FINDINGS.

Section 2(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101) is amended—

(1) by amending paragraph (1) to read as follows:

''(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;'';

(2) by striking paragraph (7); and

(3) by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively.

SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUCTION.

(a) DEFINITION OF DISABILITY.—Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102) is amended to read as follows:

''SEC. 3. DEFINITION OF DISABILITY.

''As used in this Act:

''(1) DISABILITY.—The term 'disability' means, with respect to an individual—

''(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

''(B) a record of such an impairment; or

''(C) being regarded as having such an impairment (as described in paragraph (3)).

''(2) MAJOR LIFE ACTIVITIES.—

''(A) IN GENERAL.—For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

''(B) MAJOR BODILY FUNCTIONS.—For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

''(3) REGARDED AS HAVING SUCH AN IMPAIRMENT.—For purposes of paragraph (1)(C):

''(A) An individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

''(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

''(4) RULES OF CONSTRUCTION REGARDING THE DEFINITION OF DISABILITY.—The definition of 'disability' in paragraph (1) shall be construed in accordance with the following:

''(A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

''(B) The term 'substantially limits' shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

''(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

''(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

''(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

''(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

''(II) use of assistive technology;

''(III) reasonable accommodations or auxiliary aids or services; or

''(IV) learned behavioral or adaptive neurological modifications.

''(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

''(iii) As used in this subparagraph—

''(I) the term 'ordinary eyeglasses or contact lenses' means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

''(II) the term 'low-vision devices' means devices that magnify, enhance, or otherwise augment a visual image.''.

(b) CONFORMING AMENDMENT.—The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is further amended by adding after section 3 the following:

''SEC. 4. ADDITIONAL DEFINITIONS.

''As used in this Act:

''(1) AUXILIARY AIDS AND SERVICES.—The term 'auxiliary aids and services' includes—

''(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

''(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

''(C) acquisition or modification of equipment or devices; and

''(D) other similar services and actions.

''(2) STATE.—The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.''.

(c) AMENDMENT TO THE TABLE OF CONTENTS.—The table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 is amended by striking the item relating to section 3 and inserting the following items:

''Sec. 3. Definition of disability.

''Sec. 4. Additional definitions.''.

SEC. 5. DISCRIMINATION ON THE BASIS OF DISABILITY.

(a) ON THE BASIS OF DISABILITY.—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(1) in subsection (a), by striking ''with a disability because of the disability of such individual'' and inserting ''on the basis of disability''; and

(2) in subsection (b) in the matter preceding paragraph (1), by striking ''discriminate'' and inserting ''discriminate against a qualified individual on the basis of disability''.

(b) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Section 103 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12113) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and inserting after subsection (b) the following new subsection:

''(c) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Notwithstanding section 3(4)(E)(ii), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)) is amended—

(A) in the paragraph heading, by striking ''WITH A DISABILITY''; and

(B) by striking ''with a disability'' after ''individual'' both places it appears.

(2) Section 104(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12114(a)) is amended by striking ''the term 'qualified individual with a disability' shall'' and inserting ''a qualified individual with a disability shall''.

SEC. 6. RULES OF CONSTRUCTION.

(a) Title V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 et seq.) is amended—

(1) by adding at the end of section 501 the following:

''(e) BENEFITS UNDER STATE WORKER'S COMPENSATION LAWS.—Nothing in this Act alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

''(f) FUNDAMENTAL ALTERATION.—Nothing in this Act alters the provision of section 302(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

''(g) CLAIMS OF NO DISABILITY.—Nothing in this Act shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability.

''(h) REASONABLE ACCOMMODATIONS AND MODIFICATIONS.—A covered entity under title I, a public entity under title II, and any person who owns, leases (or leases to), or operates a place of public accommodation under title III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 3(1) solely under subparagraph (C) of such section.'';

(2) by redesignating section 506 through 514 as sections 507 through 515, respectively, and adding after section 505 the following:

''SEC. 506. RULE OF CONSTRUCTION REGARDING REGULATORY AUTHORITY.

''The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this Act includes the authority to issue regulations implementing the definitions of disability in section 3 (including rules of construction) and the definitions in section 4, consistent with the ADA Amendments Act of 2008.''; and

(3) in section 511 (as redesignated by paragraph (2)) (42 U.S.C. 12211), in subsection (c), by striking ''511(b)(3)'' and inserting ''512(b)(3)''.

(b) The table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 is amended by redesignating the items relating to sections 506 through 514 as the items relating to sections 507 through 515, respectively, and by inserting after the item relating to section 505 the following new item:

''Sec. 506. Rule of construction regarding regulatory authority.''.

SEC. 7. CONFORMING AMENDMENTS.

Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

(1) in paragraph (9)(B), by striking ''a physical'' and all that follows through ''major life activities'', and inserting ''the meaning given it in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)''; and

(2) in paragraph (20)(B), by striking ''any person who'' and all that follows through the period at the end, and inserting ''any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).''.

SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on January 1, 2009.

Mr. HATCH. Mr. President, I am proud to rise today, as I did 18 years ago, and stand beside my good friend from Iowa, Senator HARKIN, to introduce legislation advancing opportunities for our disabled fellow citizens. Our commitment to that cause never ends. We must always remain open to learn from experience, to observe and evaluate how laws we put on the books work in practice, and to be ready to do our part with appropriate legislation. We are doing our part today by introducing the ADA Amendments Act.

The Americans with Disabilities Act is perhaps the most comprehensive piece of civil rights legislation we have ever enacted. It prohibits discrimination based on present, past, or perceived disabilities. It affirmatively requires accommodations in the workplace and modifications and assistance to ensure that persons with disabilities can access and enjoy places of public accommodation. That combination of the negative prohibition and the affirmative obligation makes the ADA truly unique and able to make such a positive contribution to the lives of so many across our great Nation.

This legislation responds to Supreme Court decisions that have had the effect of narrowing the ADA's definition of disability and thereby restricting its coverage. Its goal is to once again broaden the definition of disability in a way that maximizes bipartisan consensus and minimizes unintended consequences. I am sure that my friend from Iowa, Senator HARKIN, joins me in thanking so many people and organizations who have been part of this process, offering countless suggestions and ideas and input about how to achieve this goal.

This effort has been neither simple nor easy. Because the ADA is such a comprehensive statute, virtually any change we make can have effects in areas beyond where a problem might have occurred. In addition, Members on both sides of the aisle, with liberal or conservative perspectives, equally want to help the disabled but have very different views about how to do it.

And so the bill we introduce today is really the third phase in a process that began more than a year ago with introduction of the ADA Restoration Act and continued with passage last month of the House ADA Amendments Act. I am glad to say that it enjoys the support of the broad coalitions of disability and business groups that have provided valuable input and analysis along the way. It also takes steps to address concerns expressed by the education community. While the problems this legislation addresses arose in the employment arena, the solution this legislation represents will certainly impact the education arena.

Finally, let me say that like the original ADA, this bill is the result of negotiation and compromise on all sides. That is the nature of the legislative process and the more important the goal, the greater the effort to continue the process until we reach a good result. We have done that here and I hope and trust that when this legislation passes here and in the other body that the margin of the votes will reflect the breadth of the consensus behind this new effort to advance opportunities for the disabled to participate in all that this great country has to offer.

By Mr. BURR (for himself, Mr. WICKER, Mr. ALEXANDER, and Mr. INHOFE):

S. 3407. A bill to amend title 10, United States Code, to authorize commanders of wounded warrior battalions to accept charitable gifts on behalf of the wounded members of the Armed Forces assigned to such battalions; to the Committee on Armed Services.

Mr. BURR. Mr. President, in the years since the War on Terror began, we have seen the creation of new Wounded Warrior Battalions and Warrior Transition Battalions in the Marines and the Army. These units were built from the ground up with one purpose in mind: to ensure that seriously wounded service members receive the medical care and benefits that they have earned. The service personnel who command and administer these units are some of the most competent and dedicated professionals in our armed forces, and they deserve our praise.

These professionals have done much to improve the quality of care that is given to our Nation's wounded service members, but many of the young men and women who find themselves assigned to a Wounded Warrior Battalion still face a tough journey on their road to recovery. Thankfully, the challenges that these men and women face rarely go unnoticed in their communities. Over the past several years we have heard countless stories of private citizens, church congregations and other community groups stepping forward to donate their time, money and other charitable gifts to our wounded service personnel. It is not uncommon to hear about donations of $10,000 or more being offered to help provide additional resources to help our wounded recover.

Unfortunately, the military's gift-acceptance rules have not been updated

to take into account the generosity of the American people. For example, if a North Carolinian wished to provide a gift of just over $12,000 to the Wounded Warrior Battalion at Camp Lejeune, the acceptance paperwork for this donation would spend months working its way through a complicated bureaucracy before finally arriving on the desk of the Commandant of the Marine Corps. Our taxpayers and our wounded veterans are not being served very well when gifts of such a small dollar amount must be approved at the very highest levels of command.

That is why I am introducing the Friends of Wounded Warriors Act. This legislation will streamline the gift-acceptance process by empowering the commanders of Wounded Warrior Battalions and similar units with the authority to accept charitable gifts of up to $100,000 for the benefit of the members of their unit. This will enable these commanders to cut through the red tape that is currently the cause of needless delay in getting extra resources to our wounded service men and women. I hope you will join me in making a commitment to ensure that out-dated processes for accepting gifts do not stand in the way of the generosity of concerned citizens and communities seeking to contribute to the care of our wounded and ill service members.

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

S. 3408. A bill to amend title XI of the Social Security Act to provide for the conduct of comparative effectiveness research and to amend the Internal Revenue Code of 1986 to establish a Comparative Effectiveness Research Trust Fund, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, in 2006, America spent more than $2 trillion on health care. By any standard, $2 trillion is an enormous figure. Health care accounts for 16 percent of our Nation's economy. That means that for every $100 in goods and services produced and consumed in America in 2006, $16 were for health care. And the health care share of the economy is expected to reach 20 percent in just 10 years.

These projections are cause for concern. If so much of our Nation's resources are devoted to heath care, we need to ask ourselves what we are—or are not—getting for it.

The answer is that we are getting a mixed bag of goods. Some patients receive medical treatments that work well. Some patients receive treatments that don't work well. In many cases, doctors and patients don't have enough reliable evidence to know whether treatments work or don't.

Of the $2 trillion spent on health in 2006, only 1/10 of 1 percent was spent to assess what works and what doesn't. At the Federal level, only $15 million was directly appropriated to compare the effectiveness of health interventions and services. People who purchase other goods—anything from cars to computers—use information to compare the value of the different products before they purchase. Physicians and patients deserve better. We should devote more than 1/10 of 1 percent of health spending to study how well health goods and services actually work.

Rapid innovation has led to an ever-changing array of new and sometimes expensive technologies. The age of personalized medicine and genetic engineering will provide even more choices for patients and their physicians. Indeed, patients and physicians can face great difficulty in choosing among treatment options.

But much of the information about those options is biased. Much information about those options is of poor quality. And for many treatments, there are large gaps in what is known to be most effective.

With a paucity of sound evidence, clinical guidelines and treatment protocols can vary widely. If there has ever been a need for better information—on what works, for which patients, under which circumstances—it is in this age of rapid innovation of technology.

Several august bodies—including the Institute of Medicine, the Medicare Payment Advisory Commission, and the Congressional Budget Office—have called on Congress to create a national entity charged with conducting research to determine what works in health care.

Today, I am proud to introduce the Comparative Effectiveness Research Act of 2008. I am joined by the Chairman of the Budget Committee, Senator CONRAD. He and I share a deep concern about rising health care costs. And we share a deep commitment to finding ways to address it.

This bill does what the experts suggest. It would create a new entity responsible for generating better information on the effectiveness of health care treatments.

Specifically, the bill would create a nonprofit corporation responsible for setting national priorities for comparative effectiveness research. The corporation, which would be called the Health Care Comparative Effectiveness Research Institute, would be a private entity. But it would be governed by a public-private sector Board of Governors. It would not be an agency of the Federal Government.

In addition to setting national priorities, the Institute would provide for the conduct of research studies that answer the most pressing questions about what works in health care. The Institute would have the authority to contract with experienced Federal agencies, such as the Agency for Healthcare Research and Quality, or AHRQ, and the National Institutes for Health, or NIH, or with private researchers if appropriate, for the conduct of the actual research. The Institute would also be charged with disseminating the findings of the research in ways that patients and providers can understand.

The Institute would be required to assess the full spectrum of health interventions, including pharmaceuticals, medical devices, medical procedures, medical services, and other therapies. This type of research is often called ''comparative effectiveness research,'' because it evaluates and compares the clinical effect of alternative medical treatments. This type of research provides better quality evidence concerning the best treatment, prevention, and management of the health conditions. Most importantly, this type of research helps patients, providers, and payers of health care to make more informed decisions.

While many experts have called for creation of a new entity, they do not specify how the entity should be structured. This bill would create a private, nonprofit institute rather than a new entity within the executive branch or legislative. Keeping it private would remove the potential for political influence on the development of national research priorities. Comparative effectiveness research will be more credible, and more useful, if it is done independently of political influence and with broad stakeholder input.

This bill includes stringent requirements for public input, transparency of process and findings, and integrity of the research. For example, the Institute would be required to publish its rules, proceedings, and reports on a public Internet site. Its meetings would be open to the public. It would be required to provide public comment periods at key stages, in addition to open forums to solicit and obtain public input on the Institute's activities.

This bill would also require accountability and government oversight of finances and the mission. The Institute would be subject to annual financial audits. And the Comptroller General would perform periodic audits of the activities of the Institute to ensure that the Institute would meet its statutory mission and would do so in a fair, open, and credible way.

Finally, this bill would provide a stable source of funding for the Institute. For the first 3 years, general revenues would be used to start up the Institute. In the 4th year, funding would move to an all-payer system—from both public and private sources. Annual contributions would be made from the Medicare Trust Funds, from revenues generated by a fee on private health insurance policies, and from general revenues. The work of the new Institute would benefit Americans who receive health care through the public and private sources. Therefore, public and private sources should contribute to this type of research. The private insurance fee would be $1 per insured person per year. Funding from Medicare would also be $1 per beneficiary per year.

All sources of funding for the Institute would sunset after 10 years. That

way, Congress could review a report from the Comptroller General on the value of the research to the public and private insurance sectors. Total funding for the first year would be $5 million, and funding would increase to $300 million a year by the year 2013.

It is high time that America invested more than a fraction of a percent to generate knowledge about what works in health care, to improve the efficiency and the quality of our health care system, and to give patients and doctors better information to make treatment decisions. It is high time that we built a foundation of evidence for the trillions of dollars spent on health in America each year.

Mr. President, 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. 3408

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 ''Comparative Effectiveness Research Act of 2008''.

SEC. 2. COMPARATIVE EFFECTIVENESS RESEARCH.

(a) IN GENERAL.—Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new part:

''PART D—COMPARATIVE EFFECTIVENESS RESEARCH

''COMPARATIVE EFFECTIVENESS RESEARCH

''SEC. 1181. (a) DEFINITIONS.—In this section:

''(1) BOARD.—The term 'Board' means the Board of Governors established under subsection (f).

''(2) COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH.—

''(A) IN GENERAL.—The term 'comparative clinical effectiveness research' means research evaluating and comparing the clinical effectiveness, risks, and benefits of 2 or more medical treatments, services, and items described in subparagraph (B).

''(B) MEDICAL TREATMENTS, SERVICES, AND ITEMS DESCRIBED.—The medical treatments, services, and items described in this subparagraph are health care interventions, protocols for treatment, procedures, medical devices, diagnostic tools, pharmaceuticals (including drugs and biologicals), and any other processes or items being used in the treatment and diagnosis of, or prevention of illness or injury in, patients.

''(3) COMPARATIVE EFFECTIVENESS RESEARCH.—The term 'comparative effectiveness research' means research evaluating and comparing the implications and outcomes of 2 or more health care strategies to address a particular medical condition.

''(4) CONFLICTS OF INTEREST.—The term 'conflicts of interest' means associations, including financial and personal, that may be reasonably assumed to have the potential to bias an individual's decisions in matters related to the Institute or the conduct of activities under this section.

''(5) INSTITUTE.—The term 'Institute' means the 'Health Care Comparative Effectiveness Research Institute' established under subsection (b)(1).

''(b) HEALTH CARE COMPARATIVE EFFECTIVENESS RESEARCH INSTITUTE.—

''(1) ESTABLISHMENT.—There is authorized to be established a nonprofit corporation, to be known as the ''Health Care Comparative Effectiveness Research Institute'' which is neither an agency nor establishment of the United States Government.

''(2) APPLICATION OF PROVISIONS.—The Institute shall be subject to the provisions of this section, and, to the extent consistent with this section, to the District of Columbia Nonprofit Corporation Act.

''(3) FUNDING OF COMPARATIVE EFFECTIVENESS RESEARCH.—For fiscal year 2009 and each subsequent fiscal year, amounts in the Comparative Effectiveness Research Trust Fund (referred to in this section as the 'CERTF') under section 9511 of the Internal Revenue Code of 1986 shall be available, without further appropriation, to the Institute to carry out this section.

''(c) PURPOSE.—The purpose of the Institute is to improve health care delivered to individuals in the United States by advancing the quality and thoroughness of evidence concerning the manner in which diseases, disorders, and other health conditions can effectively and appropriately be prevented, diagnosed, treated, and managed clinically through research and evidence synthesis, and the dissemination of research findings with respect to the relative outcomes, effectiveness, and appropriateness of the medical treatments, services, and items described in subsection (a)(2)(B).

''(d) DUTIES.—

''(1) IDENTIFYING RESEARCH PRIORITIES AND ESTABLISHING RESEARCH PROJECT AGENDA.—

''(A) IDENTIFYING RESEARCH PRIORITIES.—The Institute shall identify national priorities for comparative clinical effectiveness research, taking into account factors, including—

''(i) disease incidence, prevalence, and burden in the United States;

''(ii) evidence gaps in terms of clinical outcomes;

''(iii) practice variations, including variations in delivery and outcomes by geography, treatment site, provider type, and patient subgroup;

''(iv) the potential for new evidence concerning certain categories of health care services or treatments to improve patient health and well-being, and the quality of care; and

''(v) the effect or potential for an effect on health expenditures associated with a health condition or the use of a particular medical treatment, service, or item.

''(B) ESTABLISHING RESEARCH PROJECT AGENDA.—

''(i) IN GENERAL.—The Institute shall establish and update a research project agenda to address the priorities identified under subparagraph (A), taking into consideration the types of research that might address each priority and the relative value (determined based on the cost of conducting such research compared to the potential usefulness of the information produced by such research) associated with such different types of research, and such other factors as the Institute determines appropriate.

''(ii) CONSIDERATION OF NEED TO CONDUCT A SYSTEMATIC REVIEW.—In establishing and updating the research project agenda under clause (i), the Institute shall consider the need to conduct a systematic review of existing research before providing for the conduct of new research under paragraph (2)(A).

''(2) CARRYING OUT RESEARCH PROJECT AGENDA.—

''(A) COMPARATIVE CLINICAL EFFECTIVENESS RESEARCH.—In carrying out the research project agenda established under paragraph (1)(B), the Institute shall provide for the conduct of appropriate research and the synthesis of evidence, in accordance with the methodological standards adopted under paragraph (9), using methods, including the following:

''(i) Systematic reviews and assessments of existing research and evidence.

''(ii) Clinical research, such as randomized controlled trials and observational studies.

''(iii) Any other methodologies recommended by the methodology committee established under paragraph (6) that are adopted by the Board under paragraph (9).

''(B)(i) CONTRACTS WITH FEDERAL AGENCIES AND INSTRUMENTALITIES.—The Institute shall give preference to agencies and instrumentalities of the Federal Government that have experience in conducting comparative clinical effectiveness research, such as the Agency for Healthcare Research and Quality, when entering into contracts for the management and conduct of research in accordance with the research project agenda established under paragraph (1)(B), to the extent that such contracts are authorized under the governing statutes of such agencies and instrumentalities.

''(ii) CONTRACTS WITH OTHER ENTITIES.—The Institute may enter into contracts with appropriate private sector research or study-conducting entities for the conduct of research described in clause (i).

''(iii) CONDITIONS FOR CONTRACTS.—A contract entered into under this subparagraph shall require that the agency, instrumentality, or other entity—

''(I) abide by the transparency and conflicts of interest requirements that apply to the Institute with respect to the research managed or conducted under such contract;

''(II) comply with the methodological standards adopted under paragraph (9) with respect to such research; and

''(III) take into consideration public comments on the study design that are transmitted by the Institute to the agency, instrumentality, or other entity under subsection (i)(1)(B) during the finalization of the study design and transmit responses to such comments to the Institute, which will publish such comments, responses, and finalized study design in accordance with subsection (i)(3)(A)(iii) prior to the conduct of such research.

''(iv) COVERAGE OF COPAYMENTS OR COINSURANCE.—A contract entered into under this subparagraph may allow for the coverage of copayments or co-insurance, or allow for other appropriate measures, to the extent that such coverage or other measures are necessary to preserve the validity of a research project, such as in the case where the research project must be blinded.

''(C) REVIEW AND UPDATE OF EVIDENCE.—The Institute shall review and update evidence on a periodic basis, in order to take into account new research and evolving evidence as they become available, as appropriate.

''(D) TAKING INTO ACCOUNT POTENTIAL DIFFERENCES.—Research shall—

''(i) be designed, as appropriate, to take into account the potential for differences in the effectiveness of health care treatments, services, and items as used with various subpopulations, such as racial and ethnic minorities, women, different age groups, and individuals with different comorbidities; and

''(ii) seek to include members of such subpopulations as subjects in the research as feasible and appropriate.

''(3) STUDY AND REPORT ON FEASIBILITY OF CONDUCTING RESEARCH IN-HOUSE.—

''(A) STUDY.—The Institute shall conduct a study on the feasibility of conducting research in-house.

''(B) REPORT.—Not later than 5 years after the date of enactment of this section, the Institute shall submit a report to Congress containing the results of the study conducted under subparagraph (A).

''(4) DATA COLLECTION.—

''(A) IN GENERAL.—The Secretary shall, with appropriate safeguards for privacy, make available to the Institute such data collected by the Centers for Medicare & Medicaid Services under the programs under titles XVIII, XIX, and XXI as the Institute may require to carry out this section. The Institute may also request and, if such request is granted, obtain data from Federal, State, or private entities.

''(B) USE OF DATA.—The Institute shall only use data provided to the Institute under subparagraph (A) in accordance with laws and regulations governing the release and use of such data, including applicable confidentiality and privacy standards.

''(5) APPOINTING ADVISORY PANELS.—

''(A) IN GENERAL.—The Institute may appoint permanent or ad hoc advisory panels as determined appropriate by the Institute to assist in the establishment and carrying out of the research project agenda under paragraphs (1) and (2), respectively. Panels may advise or guide the Institute in matters such as identifying gaps in and updating medical evidence and identifying research priorities and potential study designs in order to ensure that the information produced from such research is clinically relevant to decisions made by clinicians and patients at the point of care and may provide advice throughout the conduct of research.

''(B) COMPOSITION.—An advisory panel appointed under subparagraph (A) shall include representatives of clinicians and patients and may include experts in scientific and health services research, health services delivery, and the manufacture of health items who have experience in the relevant topic, project, or category for which the panel is established.

''(6) ESTABLISHING METHODOLOGY COMMITTEE.—

''(A) IN GENERAL.—The Institute shall establish a standing methodology committee to carry out the functions described in subparagraph (C).

''(B) APPOINTMENT AND COMPOSITION.—Members shall be appointed to the methodology committee established under subparagraph (A) by the Comptroller General of the United States. Members appointed to the methodology committee shall be experts in their scientific field, such as health services research, clinical research, comparative effectiveness research, biostatistics, and research methodologies. Stakeholders with such expertise may be appointed to the methodology committee.

''(C) FUNCTIONS.—Subject to subparagraph (D), the methodology committee shall work to develop and improve the science of comparative effectiveness research by undertaking the following activities:

''(i) Not later than 1 year after the date on which the members of the methodology committee are appointed under subparagraph (B), developing and periodically updating methodological standards regarding outcomes measures, risk adjustment, statistical protocols, evaluation of evidence, conduct of research, and other aspects of research and assessment to be used when conducting research on comparative clinical effectiveness (and procedures for the use of such standards) in order to help ensure accurate and effective comparisons. Such standards shall also include methods by which new information, data, or advances in technology are considered and incorporated into ongoing research projects by the Institute, as appropriate. In developing and updating methodological standards under this clause, the methodology committee shall ensure that such standards are scientifically based.

''(ii) Not later than 5 years after such date, examining the following:

''(I) Methods by which various aspects of the health care delivery system (such as benefit design and performance, and health services organization, management, and delivery) could be assessed and compared for their relative effectiveness, benefits, risks, advantages, and disadvantages in a scientifically valid and standardized way.

''(II) Methods by which cost-effectiveness and value could be assessed in a scientifically valid and standardized way.

''(D) CONSULTATION AND CONDUCT OF EXAMINATIONS.—

''(i) IN GENERAL.—Subject to clause (iii), in undertaking the activities described in subparagraph (C), the methodology committee shall—

''(I) consult or contract with 1 or more of the entities described in clause (ii); and

''(II) consult with stakeholders and other entities knowledgeable in relevant fields, as appropriate.

''(ii) ENTITIES DESCRIBED.—The following entities are described in this clause:

''(I) The Institute of Medicine of the National Academies.

''(II) The Agency for Healthcare Research and Quality.

''(III) The National Institutes of Health.

''(iii) CONDUCT OF EXAMINATIONS.—The methodology committee shall contract with the Institute of Medicine of the National Academies for the conduct of the examinations described in subclauses (I) and (II) of subparagraph (C)(ii).

''(E) REPORTS.—The methodology committee shall submit reports to the Board on the committee's performance of the functions described in subparagraph (C). Reports submitted under the preceding sentence with respect to the functions described in clause (i) of such subparagraph shall contain recommendations—

''(i) for the Institute to adopt methodological standards developed and updated by the methodology committee under such subparagraph; and

''(ii) for such other action as the methodology committee determines is necessary to comply with such methodological standards.

''(7) PROVIDING FOR A PEER-REVIEW PROCESS.—

''(A) IN GENERAL.—The Institute shall ensure that there is a process for peer review of the research conducted under this section. Under such process—

''(i) evidence from research conducted under this section shall be reviewed to assess scientific integrity and adherence to methodological standards adopted under paragraph (9); and

''(ii) a list of the names of individuals contributing to any peer-review process during the preceding year or years shall be made public and included in annual reports in accordance with paragraph (11)(D).

''(B) COMPOSITION.—Such peer-review process shall have been designed in a manner so as to avoid bias and conflicts of interest on the part of the reviewers and shall be composed of experts in the scientific field relevant to the research under review.

''(C) USE OF EXISTING PROCESSES.—In the case where the Institute enters into a contract or other agreement with another entity for the conduct or management of research under this section, the Institute may utilize the peer-review process of such entity if such process meets the requirements under subparagraphs (A) and (B).

''(8) DISSEMINATION OF RESEARCH FINDINGS.—

''(A) IN GENERAL.—The Institute shall disseminate research findings to clinicians, patients, and the general public in accordance with the dissemination protocols and strategies adopted under paragraph (9). Research findings disseminated—

''(i) shall convey findings of research so that they are comprehensible and useful to patients and providers in making health care decisions;

''(ii) shall discuss findings and other considerations specific to certain subpopulations, risk factors, and comorbidities, as appropriate;

''(iii) shall include considerations such as limitations of research and what further research may be needed, as appropriate;

''(iv) shall not include practice guidelines or policy recommendations; and

''(v) shall not include any data the dissemination of which would violate the privacy of research participants or violate any confidentiality agreements made with respect to the use of data under this section.

''(B) DISSEMINATION PROTOCOLS AND STRATEGIES.—The Institute shall develop protocols and strategies for the appropriate dissemination of research findings in order to ensure effective communication of such findings and the use and incorporation of such findings into relevant activities for the purpose of informing higher quality and more effective and efficient decisions regarding medical treatments, services, and items. In developing and adopting such protocols and strategies, the Institute shall consult with stakeholders concerning the types of dissemination that will be most useful to the end users of the information and may provide for the utilization of multiple formats for conveying findings to different audiences.

''(C) DEFINITION OF RESEARCH FINDINGS.—In this paragraph, the term 'research findings' means the results of a study, appraisal, or assessment.

''(9) ADOPTION.—Subject to subsection (i)(1)(A)(i), the Institute shall adopt the national priorities identified under paragraph (1)(A), the research project agenda established under paragraph (1)(B), the methodological standards developed and updated by the methodology committee under paragraph (6)(C)(i), any peer-review process provided under paragraph (7), and dissemination protocols and strategies developed under paragraph (8)(B) by majority vote. In the case where the Institute does not adopt such national priorities, research project agenda, methodological standards, peer-review process, or dissemination protocols and strategies in accordance with the preceding sentence, the national priorities, research project agenda, methodological standards, peer-review process, or dissemination protocols and strategies shall be referred to the appropriate staff or entity within the Institute (or, in the case of the methodological standards, the methodology committee) for further review.

''(10) COORDINATION OF RESEARCH AND RESOURCES AND BUILDING CAPACITY FOR RESEARCH.—

''(A) COORDINATION OF RESEARCH AND RESOURCES.—The Institute shall coordinate research conducted, commissioned, or otherwise funded under this section with comparative clinical effectiveness and other relevant research and related efforts conducted by public and private agencies and organizations in order to ensure the most efficient use of the Institute's resources and that research is not duplicated unnecessarily.

''(B) BUILDING CAPACITY FOR RESEARCH.—The Institute may build capacity for comparative clinical effectiveness research and other relevant research and related efforts through appropriate activities, such as making payments, up to 5 percent of the amounts appropriated or credited to the CERTF under section 9511(b) of the Internal Revenue Code of 1986 with respect to the fiscal year, to The Cochrane Collaboration (or a successor organization) to support the infrastructure of The Cochrane Collaboration (or a successor

organization) or to provide for sets of reviews related to a particular topic or associated with a particular review group.

''(C) INCLUSION IN ANNUAL REPORTS.—The Institute shall report on any coordination and capacity building conducted under this paragraph in annual reports in accordance with paragraph (11)(E).

''(11) ANNUAL REPORTS.—The Institute shall submit an annual report to Congress and the President, and shall make the annual report available to the public. Such report shall contain—

''(A) a description of the activities conducted under this section during the preceding year, including the use of amounts appropriated or credited to the CERTF under section 9511(b) of the Internal Revenue Code of 1986 to carry out this section, research projects completed and underway, and a summary of the findings of such projects;

''(B) the research project agenda and budget of the Institute for the following year;

''(C) a description of research priorities identified under paragraph (1)(A), dissemination protocols and strategies developed by the Institute under paragraph (8)(B), and methodological standards developed and updated by the methodology committee under paragraph (6)(C)(i) that are adopted under paragraph (9) during the preceding year;

''(D) the names of individuals contributing to any peer-review process provided under paragraph (7) during the preceding year or years, in a manner such that those individuals cannot be identified with a particular research project; and

''(E) a description of efforts by the Institute under paragraph (10) to—

''(i) coordinate the research conducted, commissioned, or otherwise funded under this section and the resources of the Institute with research and related efforts conducted by other private and public entities; and

''(ii) build capacity for comparative clinical effectiveness research and other relevant research and related efforts through appropriate activities.

''(F) any other relevant information (including information on the membership of the Board, advisory panels appointed under paragraph (5), the methodology committee established under paragraph (6), and the executive staff of the Institute, any conflicts of interest with respect to the members of such Board, advisory panels, and methodology committee, or with respect to any individuals selected for employment as executive staff of the Institute, and any bylaws adopted by the Board during the preceding year).

''(e) ADMINISTRATION.—

''(1) IN GENERAL.—Subject to paragraph (2), the Board shall carry out the duties of the Institute.

''(2) NONDELEGABLE DUTIES.—The activities described in subsections (b)(3)(D), (d)(1), and (d)(9) are nondelegable.

''(f) BOARD OF GOVERNORS.—

''(1) IN GENERAL.—The Institute shall have a Board of Governors, which shall consist of the following members:

''(A) The Secretary of Health and Human Services (or the Secretary's designee).

''(B) The Director of the Agency for Healthcare Research and Quality (or the Director's designee).

''(C) The Director of the National Institutes of Health (or the Director's designee).

''(D) 18 members appointed by the Comptroller General of the United States not later than 6 months after the date of enactment of this section, as follows:

''(i) 3 members representing patients and health care consumers.

''(ii) 3 members representing practicing physicians, including surgeons.

''(iii) 3 members representing agencies that administer public programs, as follows:

''(I) 1 member representing the Centers for Medicare & Medicaid Services who has experience in administering the program under title XVIII.

''(II) 1 member representing agencies that administer State health programs (who may represent the Centers for Medicare & Medicaid Services and have experience in administering the program under title XIX or the program under title XXI or be a governor of a State).

''(III) 1 member representing agencies that administer other Federal health programs (such as a health program of the Department of Defense under chapter 55 of title 10, United States Code, the Federal employees health benefits program under chapter 89 of title 5 of such Code, a health program of the Department of Veterans Affairs under chapter 17 of title 38 of such Code, or a medical care program of the Indian Health Service or of a tribal organization).

''(iv) 3 members representing private payers, of whom at least 1 member shall represent health insurance issuers and at least 1 member shall represent employers who self-insure employee benefits.

''(v) 3 members representing pharmaceutical, device, and technology manufacturers or developers.

''(vi) 1 member representing nonprofit organizations involved in health services research.

''(vii) 1 member representing organizations that focus on quality measurement and improvement or decision support.

''(viii) 1 member representing independent health services researchers.

''(2) QUALIFICATIONS.—

''(A) DIVERSE REPRESENTATION OF PERSPECTIVES.—The Board shall represent a broad range of perspectives and collectively have scientific expertise in clinical health sciences research, including epidemiology, decisions sciences, health economics, and statistics.

''(B) CONFLICTS OF INTEREST.—

''(i) IN GENERAL.—In appointing members of the Board under paragraph (1)(D), the Comptroller General of the United States shall take into consideration any conflicts of interest of potential appointees. Any conflicts of interest of members appointed to the Board under paragraph (1) shall be disclosed in accordance with subsection (i)(4)(B).

''(ii) RECUSAL.—A member of the Board shall be recused from participating with respect to a particular research project or other matter considered by the Board in carrying out its research project agenda under subsection (d)(2) in the case where the member (or an immediate family member of such member) has a financial or personal interest directly related to the research project or the matter that could affect or be affected by such participation.

''(3) TERMS.—

''(A) IN GENERAL.—A member of the Board appointed under paragraph (1)(D) shall be appointed for a term of 6 years, except with respect to the members first appointed under such paragraph—

''(i) 6 shall be appointed for a term of 6 years;

''(ii) 6 shall be appointed for a term of 4 years; and

''(iii) 6 shall be appointed for a term of 2 years.

''(B) LIMITATION.—No individual shall be appointed to the Board under paragraph (1)(D) for more than 2 terms.

''(C) EXPIRATION OF TERM.—Any member of the Board whose term has expired may serve until such member's successor has taken office, or until the end of the calendar year in which such member's term has expired, whichever is earlier.

''(D) VACANCIES.—

''(i) IN GENERAL.—Any member appointed to fill a vacancy prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term.

''(ii) VACANCIES NOT TO AFFECT POWER OF BOARD.—A vacancy on the Board shall not affect its powers, but shall be filled in the same manner as the original appointment was made.

''(4) CHAIRPERSON AND VICE-CHAIRPERSON.—

''(A) IN GENERAL.—The Comptroller General of the United States shall designate a Chairperson and Vice-Chairperson of the Board from among the members of the Board appointed under paragraph (1)(D).

''(B) TERM.—The members so designated shall serve as Chairperson and Vice-Chairperson of the Board for a period of 3 years.

''(5) COMPENSATION.—

''(A) IN GENERAL.—A member of the Board shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(B) TRAVEL EXPENSES.—While away from home or regular place of business in the performance of duties for the Board, each member of the Board may receive reasonable travel, subsistence, and other necessary expenses.

''(6) DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.—The Board may—

''(A) employ and fix the compensation of an executive director and such other personnel as may be necessary to carry out the duties of the Institute;

''(B) seek such assistance and support as may be required in the performance of the duties of the Institute from appropriate departments and agencies of the Federal Government;

''(C) enter into contracts or make other arrangements and make such payments as may be necessary for performance of the duties of the Institute;

''(D) provide travel, subsistence, and per diem compensation for individuals performing the duties of the Institute, including members of any advisory panel appointed under subsection (d)(5), members of the methodology committee established under subsection (d)(6), and individuals selected to contribute to any peer-review process under subsection (d)(7); and

''(E) prescribe such rules, regulations, and bylaws as the Board determines necessary with respect to the internal organization and operation of the Institute.

''(7) MEETINGS AND HEARINGS.—The Board shall meet and hold hearings at the call of the Chairperson or a majority of its members. In the case where the Board is meeting on matters not related to personnel, Board meetings shall be open to the public and advertised.

''(8) QUORUM.—A majority of the members of the Board shall constitute a quorum for purposes of conducting the duties of the Institute, but a lesser number of members may meet and hold hearings.

''(g) FINANCIAL OVERSIGHT.—

''(1) CONTRACT FOR AUDIT.—The Institute shall provide for the conduct of financial audits of the Institute on an annual basis by a private entity with expertise in conducting financial audits.

''(2) REVIEW OF AUDIT AND REPORT TO CONGRESS.—The Comptroller General of the United States shall—

''(A) review the results of the audits conducted under paragraph (1); and

''(B) submit a report to Congress containing the results of such audits and review.

''(h) GOVERNMENTAL OVERSIGHT.—

''(1) REVIEW AND REPORTS.—

''(A) IN GENERAL.—The Comptroller General of the United States shall review the following:

''(i) Processes established by the Institute, including those with respect to the identification of research priorities under subsection (d)(1)(A) and the conduct of research projects under this section. Such review shall determine whether information produced by such research projects—

''(I) is objective and credible;

''(II) is produced in a manner consistent with the requirements under this section; and

''(III) is developed through a transparent process.

''(ii) The overall effect of the Institute and the effectiveness of activities conducted under this section, including an assessment of—

''(I) the utilization of the findings of research conducted under this section by health care decision makers; and

''(II) the effect of the Institute and such activities on innovation and on the health economy of the United States.

''(B) REPORTS.—Not later than 5 years after the date of enactment of this section, and not less frequently than every 5 years thereafter, the Comptroller General of the United States shall submit a report to Congress containing the results of the review conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

''(2) FUNDING ASSESSMENT.—

''(A) IN GENERAL.—The Comptroller General of the United States shall assess the adequacy and use of funding for the Institute and activities conducted under this section under the CERTF under section 9511 of the Internal Revenue Code of 1986. Such assessment shall include a determination as to whether, based on the utilization of findings by public and private payers, each of the following are appropriate sources of funding for the Institute, including a determination of whether such sources of funding should be continued or adjusted:

''(i) The transfer of funds from the Federal Hospital Insurance Trust Fund under section 1817 and the Federal Supplementary Medical Insurance Trust Fund under section 1841 to the CERTF under section 1182.

''(ii) The amounts appropriated under subparagraphs (A), (B), (C), (D)(ii), and (E)(ii) of subsection (b)(1) of such section 9511.

''(iii) Private sector contributions under subparagraphs (D)(i) and (E)(i) of such subsection (b)(1).

''(B) REPORT.—Not later than 8 years after the date of enactment of this section, the Comptroller General of the United States shall submit a report to Congress containing the results of the assessment conducted under subparagraph (A), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

''(i) ENSURING TRANSPARENCY, CREDIBILITY, AND ACCESS.—The Institute shall establish procedures to ensure that the following requirements for ensuring transparency, credibility, and access are met:

''(1) PUBLIC COMMENT PERIODS.—

''(A) IN GENERAL.—The Institute shall provide for a public comment period of not less than 30 and not more than 60 days at the following times:

''(i) Prior to the adoption of the national priorities identified under subsection (d)(1)(A), the research project agenda established under subsection (d)(1)(B), the methodological standards developed and updated by the methodology committee under subsection (d)(6)(C)(i), the peer-review process generally provided under subsection (d)(7), and dissemination protocols and strategies developed by the Institute under subsection (d)(8)(B) in accordance with subsection (d)(9).

''(ii) Prior to the finalization of individual study designs.

''(B) TRANSMISSION OF PUBLIC COMMENTS ON STUDY DESIGN.—The Institute shall transmit public comments submitted during the public comment period described in subparagraph (A)(ii) to the entity conducting research with respect to which the individual study design is being finalized.

''(2) ADDITIONAL FORUMS.—The Institute shall, in addition to the public comment periods described in paragraph (1)(A), support forums to increase public awareness and obtain and incorporate public feedback through media (such as an Internet website) on the following:

''(A) The identification of research priorities and the establishment of the research project agenda under subparagraphs (A) and (B), respectively, of subsection (d)(1).

''(B) Research findings.

''(C) Any other duties, activities, or processes the Institute determines appropriate.

''(3) PUBLIC AVAILABILITY.—The Institute shall make available to the public and disclose through the official public Internet website of the Institute, and through other forums and media the Institute determines appropriate, the following:

''(A) The process and methods for the conduct of research under this section, including—

''(i) the identity of the entity conducting such research;

''(ii) any links the entity has to industry (including such links that are not directly tied to the particular research being conducted under this section);

''(iii) draft study designs (including research questions and the finalized study design, together with public comments on such study design and responses to such comments);

''(iv) research protocols (including measures taken, methods of research, methods of analysis, research results, and such other information as the Institute determines appropriate);

''(v) the identity of investigators conducting such research and any conflicts of interest of such investigators; and

''(vi) any progress reports the Institute determines appropriate.

''(B) Public comments submitted during each of the public comment periods under paragraph (1)(A).

''(C) Bylaws, processes, and proceedings of the Institute, to the extent practicable and as the Institute determines appropriate.

''(D) Not later than 90 days after receipt by the Institute of a relevant report or research findings, appropriate information contained in such report or findings.

''(4) CONFLICTS OF INTEREST.—The Institute shall—

''(A) in appointing members to an advisory panel under subsection (d)(5) and the methodology committee under subsection (d)(6), and in selecting individuals to contribute to any peer-review process under subsection (d)(7) and for employment as executive staff of the Institute, take into consideration any conflicts of interest of potential appointees, participants, and staff; and

''(B) include a description of any such conflicts of interest and conflicts of interest of Board members in the annual report under subsection (d)(11), except that, in the case of individuals contributing to any such peer review process, such description shall be in a manner such that those individuals cannot be identified with a particular research project.

''(j) RULES.—

''(1) GIFTS.—The Institute, or the Board and staff of the Institute acting on behalf of the Institute, may not accept gifts, bequeaths, or donations of services or property.

''(2) ESTABLISHMENT AND PROHIBITION ON ACCEPTING OUTSIDE FUNDING OR CONTRIBUTIONS.—The Institute may not—

''(A) establish a corporation other than as provided under this section; or

''(B) accept any funds or contributions other than as provided under this part.

''(k) RULES OF CONSTRUCTION.—

''(1) COVERAGE.—Nothing in this section shall be construed—

''(A) to permit the Institute to mandate coverage, reimbursement, or other policies for any public or private payer; or

''(B) as preventing the Secretary from covering the routine costs of clinical care received by an individual entitled to, or enrolled for, benefits under title XVIII, XIX, or XXI in the case where such individual is participating in a clinical trial and such costs would otherwise be covered under such title with respect to the beneficiary.

''(2) REPORTS AND FINDINGS.—None of the reports submitted under this section or research findings disseminated by the Institute shall be construed as mandates, guidelines, or recommendations for payment, coverage, or treatment.

''TRUST FUND TRANSFERS TO COMPARATIVE EFFECTIVENESS RESEARCH TRUST FUND

''SEC. 1182. (a) IN GENERAL.—The Secretary shall provide for the transfer, from the Federal Hospital Insurance Trust Fund under section 1817 and the Federal Supplementary Medical Insurance Trust Fund under section 1841, in proportion (as estimated by the Secretary) to the total expenditures during such fiscal year that are made under title XVIII from the respective trust fund, to the Comparative Effectiveness Research Trust Fund (referred to in this section as the 'CERTF') under section 9511 of the Internal Revenue Code of 1986, the following:

''(1) For fiscal year 2012, an amount equal to 50 cents multiplied by the average number of individuals entitled to benefits under part A, or enrolled under part B, of title XVIII during such fiscal year.

''(2) For each of fiscal years 2013, 2014, 2015, 2016, 2017, and 2018, an amount equal to $1 multiplied by the average number of individuals entitled to benefits under part A, or enrolled under part B, of title XVIII during such fiscal year.

''(b) ADJUSTMENTS FOR INCREASES IN HEALTH CARE SPENDING.—In the case of any fiscal year beginning after September 30, 2013, the dollar amount in effect under subsection (a)(2) for such fiscal year shall be equal to the sum of such dollar amount for the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

''(1) such dollar amount for the previous fiscal year, multiplied by

''(2) the percentage increase in the projected per capita amount of National Health Expenditures from the calendar year in which the previous fiscal year ends to the calendar year in which the fiscal year involved ends, as most recently published by the Secretary before the beginning of the fiscal year.''.

(b) COORDINATION WITH PROVIDER EDUCATION AND TECHNICAL ASSISTANCE.—Section 1889(a) of the Social Security Act (42 U.S.C. 1395zz(a)) is amended by inserting ''and to enhance the understanding of and utilization by providers of services and suppliers of research findings disseminated by the Health Care Comparative Effectiveness Research Institute established under section 1181'' before the period at the end.

(c) COMPARATIVE EFFECTIVENESS RESEARCH TRUST FUND; FINANCING FOR TRUST FUND.—

(1) ESTABLISHMENT OF TRUST FUND.—

(A) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to establishment of trust funds) is amended by adding at the end the following new section:

"SEC. 9511. COMPARATIVE EFFECTIVENESS RESEARCH TRUST FUND.

''(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Comparative Effectiveness Research Trust Fund' (hereafter in this section referred to as the 'CERTF'), consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section and section 9602(b).

''(b) TRANSFERS TO FUND.—

''(1) APPROPRIATION.—There are hereby appropriated to the Trust Fund the following:

''(A) For fiscal year 2009, $5,000,000.

''(B) For fiscal year 2010, $25,000,000.

''(C) For fiscal year 2011, $75,000,000.

''(D) For fiscal year 2012—

''(i) an amount equivalent to the net revenues received in the Treasury from the fees imposed under subchapter B of chapter 34 (relating to fees on health insurance and self-insured plans) for such fiscal year; and

''(ii) $75,000,000.

''(E) For each of fiscal years 2013, 2014, 2015, 2016, 2017, and 2018—

''(i) an amount equivalent to the net revenues received in the Treasury from the fees imposed under subchapter B of chapter 34 (relating to fees on health insurance and self-insured plans) for such fiscal year; and

''(ii) $75,000,000.

The amounts appropriated under subparagraphs (A), (B), (C), (D)(ii), and (E)(ii) shall be transferred from the general fund of the Treasury, from funds not otherwise appropriated.

''(2) TRUST FUND TRANSFERS.—In addition to the amounts appropriated under paragraph (1), there shall be credited to the CERTF the amounts transferred under section 1182 of the Social Security Act.

''(3) LIMITATION ON TRANSFERS TO CERTF.—No amount may be appropriated or transferred to the CERTF on and after the date of any expenditure from the CERTF which is not an expenditure permitted under this section. The determination of whether an expenditure is so permitted shall be made without regard to—

''(A) any provision of law which is not contained or referenced in this chapter or in a revenue Act, and

''(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.

''(c) TRUSTEE.—The Secretary of Health and Human Services shall be a trustee of the CERTF.

''(d) EXPENDITURES FROM FUND.—Amounts in the CERTF are available, without further appropriation, to the Health Care Comparative Effectiveness Research Institute established by section 2(a) of the Comparative Effectiveness Research Act of 2008 for carrying out part D of title XI of the Social Security Act (as in effect on the date of enactment of the Comparative Effectiveness Research Act of 2008).

''(e) NET REVENUES.—For purposes of this section, the term 'net revenues' means the amount estimated by the Secretary of the Treasury based on the excess of—

''(1) the fees received in the Treasury under subchapter B of chapter 34, over

''(2) the decrease in the tax imposed by chapter 1 resulting from the fees imposed by such subchapter.

''(f) TERMINATION.—No amounts shall be available for expenditure from the CERTF after September 30, 2018, and any amounts in such Trust Fund after such date shall be transferred to the general fund of the Treasury.''.

(B) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end the following new item:

''Sec. 9511. Comparative Effectiveness Research Trust Fund.''.

(2) FINANCING FOR FUND FROM FEES ON INSURED AND SELF-INSURED HEALTH PLANS.—

(A) GENERAL RULE.—Chapter 34 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subchapter:

"Subchapter B—Insured and Self-Insured Health Plans

''Sec. 4375. Health insurance.

''Sec. 4376. Self-insured health plans.

''Sec. 4377. Definitions and special rules.

"SEC. 4375. HEALTH INSURANCE.

''(a) IMPOSITION OF FEE.—There is hereby imposed on each specified health insurance policy for each policy year ending after September 30, 2011, a fee equal to the product of $1 (50 cents in the case of policy years ending during fiscal year 2012) multiplied by the average number of lives covered under the policy.

''(b) LIABILITY FOR FEE.—The fee imposed by subsection (a) shall be paid by the issuer of the policy.

''(c) SPECIFIED HEALTH INSURANCE POLICY.—For purposes of this section:

''(1) IN GENERAL.—Except as otherwise provided in this section, the term 'specified health insurance policy' means any accident or health insurance policy (including a policy under a group health plan) issued with respect to individuals residing in the United States.

''(2) EXEMPTION FOR CERTAIN POLICIES.—The term 'specified health insurance policy' does not include any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c).

''(3) TREATMENT OF PREPAID HEALTH COVERAGE ARRANGEMENTS.—

''(A) IN GENERAL.—In the case of any arrangement described in subparagraph (B)—

''(i) such arrangement shall be treated as a specified health insurance policy, and

''(ii) the person referred to in such subparagraph shall be treated as the issuer.

''(B) DESCRIPTION OF ARRANGEMENTS.—An arrangement is described in this subparagraph if under such arrangement fixed payments or premiums are received as consideration for any person's agreement to provide or arrange for the provision of accident or health coverage to residents of the United States, regardless of how such coverage is provided or arranged to be provided.

''(d) ADJUSTMENTS FOR INCREASES IN HEALTH CARE SPENDING.—In the case of any policy year ending in any fiscal year beginning after September 30, 2013, the dollar amount in effect under subsection (a) for such policy year shall be equal to the sum of such dollar amount for policy years ending in the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

''(1) such dollar amount for policy years ending in the previous fiscal year, multiplied by

''(2) the percentage increase in the projected per capita amount of National Health Expenditures from the calendar year in which the previous fiscal year ends to the calendar year in which the fiscal year involved ends, as most recently published by the Secretary of Health and Human Services before the beginning of the fiscal year.

''(e) TERMINATION.—This section shall not apply to policy years ending after September 30, 2018.

"SEC. 4376. SELF-INSURED HEALTH PLANS.

''(a) IMPOSITION OF FEE.—In the case of any applicable self-insured health plan for each plan year ending after September 30, 2011, there is hereby imposed a fee equal to $1 (50 cents in the case of plan years ending during fiscal year 2012) multiplied by the average number of lives covered under the plan.

''(b) LIABILITY FOR FEE.—

''(1) IN GENERAL.—The fee imposed by subsection (a) shall be paid by the plan sponsor.

''(2) PLAN SPONSOR.—For purposes of paragraph (1) the term 'plan sponsor' means—

''(A) the employer in the case of a plan established or maintained by a single employer,

''(B) the employee organization in the case of a plan established or maintained by an employee organization,

''(C) in the case of—

''(i) a plan established or maintained by 2 or more employers or jointly by 1 or more employers and 1 or more employee organizations,

''(ii) a multiple employer welfare arrangement, or

''(iii) a voluntary employees' beneficiary association described in section 501(c)(9),

the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, or

''(D) the cooperative or association described in subsection (c)(2)(F) in the case of a plan established or maintained by such a cooperative or association.

''(c) APPLICABLE SELF-INSURED HEALTH PLAN.—For purposes of this section, the term 'applicable self-insured health plan' means any plan for providing accident or health coverage if—

''(1) any portion of such coverage is provided other than through an insurance policy, and

''(2) such plan is established or maintained—

''(A) by one or more employers for the benefit of their employees or former employees,

''(B) by one or more employee organizations for the benefit of their members or former members,

''(C) jointly by 1 or more employers and 1 or more employee organizations for the benefit of employees or former employees,

''(D) by a voluntary employees' beneficiary association described in section 501(c)(9),

''(E) by any organization described in section 501(c)(6), or

''(F) in the case of a plan not described in the preceding subparagraphs, by a multiple employer welfare arrangement (as defined in section 3(40) of Employee Retirement Income Security Act of 1974), a rural electric cooperative (as defined in section 3(40)(B)(iv) of such Act), or a rural telephone cooperative association (as defined in section 3(40)(B)(v) of such Act).

''(d) ADJUSTMENTS FOR INCREASES IN HEALTH CARE SPENDING.—In the case of any plan year ending in any fiscal year beginning after September 30, 2013, the dollar amount in effect under subsection (a) for such plan year shall be equal to the sum of such dollar amount for plan years ending in the previous fiscal year (determined after the application of this subsection), plus an amount equal to the product of—

''(1) such dollar amount for plan years ending in the previous fiscal year, multiplied by

''(2) the percentage increase in the projected per capita amount of National Health Expenditures from the calendar year in which the previous fiscal year ends to the calendar year in which the fiscal year involved ends, as most recently published by the Secretary of Health and Human Services before the beginning of the fiscal year.

''(e) TERMINATION.—This section shall not apply to plan years ending after September 30, 2018.

''SEC. 4377. DEFINITIONS AND SPECIAL RULES.

''(a) DEFINITIONS.—For purposes of this subchapter—

''(1) ACCIDENT AND HEALTH COVERAGE.—The term 'accident and health coverage' means any coverage which, if provided by an insurance policy, would cause such policy to be a specified health insurance policy (as defined in section 4375(c)).

''(2) INSURANCE POLICY.—The term 'insurance policy' means any policy or other instrument whereby a contract of insurance is issued, renewed, or extended.

''(3) UNITED STATES.—The term 'United States' includes any possession of the United States.

''(b) TREATMENT OF GOVERNMENTAL ENTITIES.—

''(1) IN GENERAL.—For purposes of this subchapter—

''(A) the term 'person' includes any governmental entity, and

''(B) notwithstanding any other law or rule of law, governmental entities shall not be exempt from the fees imposed by this subchapter except as provided in paragraph (2).

''(2) TREATMENT OF EXEMPT GOVERNMENTAL PROGRAMS.—In the case of an exempt governmental program, no fee shall be imposed under section 4375 or section 4376 on any covered life under such program.

''(3) EXEMPT GOVERNMENTAL PROGRAM DEFINED.—For purposes of this subchapter, the term 'exempt governmental program' means—

''(A) any insurance program established under title XVIII of the Social Security Act,

''(B) the medical assistance program established by title XIX or XXI of the Social Security Act,

''(C) any program established by Federal law for providing medical care (other than through insurance policies) to individuals (or the spouses and dependents thereof) by reason of such individuals being—

''(i) members of the Armed Forces of the United States, or

''(ii) veterans, and

''(D) any program established by Federal law for providing medical care (other than through insurance policies) to members of Indian tribes (as defined in section 4(d) of the Indian Health Care Improvement Act).

''(c) TREATMENT AS TAX.—For purposes of subtitle F, the fees imposed by this subchapter shall be treated as if they were taxes.

''(d) NO COVER OVER TO POSSESSIONS.—Notwithstanding any other provision of law, no amount collected under this subchapter shall be covered over to any possession of the United States.''.

(B) CLERICAL AMENDMENTS.—

(i) Chapter 34 of such Code is amended by striking the chapter heading and inserting the following:

''CHAPTER 34—TAXES ON CERTAIN INSURANCE POLICIES

''SUBCHAPTER A. POLICIES ISSUED BY FOREIGN INSURERS

''SUBCHAPTER B. INSURED AND SELF-INSURED HEALTH PLANS

''Subchapter A—Policies Issued By Foreign Insurers''.

(ii) The table of chapters for subtitle D of such Code is amended by striking the item relating to chapter 34 and inserting the following new item:

''CHAPTER 34—TAXES ON CERTAIN INSURANCE POLICIES''.

SEC. 3. GAO REPORT ON NATIONAL COVERAGE DETERMINATIONS PROCESS.

Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the process for making national coverage determinations (as defined in section 1869(f)(1)(B) of the Social Security Act (42 U.S.C. 1395ff(f)(1)(B)) under the Medicare program under title XVIII of the Social Security Act. Such report shall include a determination whether, in initiating and conducting such process, the Secretary of Health and Human Services has complied with applicable law and regulations, including requirements for consultation with appropriate outside experts, providing appropriate notice and comment opportunities to the public, and making information and data (other than proprietary data) considered in making such determinations available to the public and to nonvoting members of any advisory committees established to advise the Secretary with respect to such determinations.

Mr. CONRAD. Mr. President, today I join my good friend and colleague, Senator BAUCUS, in introducing the Comparative Effectiveness Research Act of 2008. This proposal is the product of months of careful deliberations regarding the best way to expand the quality and quantity of evidence available to health consumers about the comparative clinical effectiveness of health care services and treatments. We have met with dozens of key stakeholders and thought leaders to discuss various aspects of this legislation. I am proud of the result. This legislation lays the groundwork for improving health care outcomes, enhancing patient safety, and reducing overall health care costs in the long-run.

As chairman of the Senate Budget Committee, I am acutely aware of the long-term budget challenges facing our nation. Health care spending is growing at an unsustainable rate. Although demographic changes associated with the retirement of the baby boom generation contribute to this spending growth, the most significant factor is growth in health care costs in excess of per capita GDP growth. According to Congressional Budget Office projections, by 2050, Medicare and Medicaid spending alone will consume 12 percent of our Nation's gross domestic product.

But excess growth in per capita health care costs is not just a challenge for Federal health spending and the federal budget. If we continue on the current trajectory, the private sector will also be overwhelmed by rising health care costs. In fact, total health care spending is projected to grow from about 16 percent of GDP in 2007—which is far higher than in other industrialized countries—to more than 37 percent of GDP in 2050.

Clearly, we need to address the underlying causes of rising health care costs, not just in the Medicare and Medicaid programs, but in the overall health care system. Simply cutting Medicare and Medicaid without making other changes will do little to solve the larger problem we face. As GAO Comptroller General David Walker pointed out in testimony before the House Budget Committee, in 2005, ''[F]ederal health spending trends should not be viewed in isolation from the health care system as a whole . . . . Rather, in order to address the long-term fiscal challenge, it will be necessary to find approaches that deal with health care cost growth in the overall health care system.''

A key problem we must confront is that our health care system does not deliver care as efficiently or effectively as it should. In fact, the United States spends far more on health expenditures as a percent of GDP than any other country in the Organization for Economic Cooperation and Development. For example, the United States spent 16 percent of GDP on health expenditures in 2006, compared to 9 percent in Italy. And the disparity is even starker today. Despite this additional health care spending, health outcomes in the United States are no better than health outcomes in the other OECD countries. In fact, by some measures, they are worse.

We can and must find ways to deliver health care more efficiently, reduce ineffective or unnecessary care, and get better health outcomes without harming patients.

One solution is to generate better information about the relative effectiveness of alternative health strategies—and encourage patients and providers to use that information to make better choices about their health. Many newer, more expensive health care services and treatments are absorbed quickly into routine medical care—yet there is little evidence that these services and treatments are any more clinically effective than existing treatments and services.

The Federal Government currently funds some comparative effectiveness research through the Agency for Healthcare Research and Quality. The Effective Health Care Program has been a successful initiative, and we commend AHRQ for its work, but comparative effectiveness research is not the primary focus of any federal agency—nor is this federal funding occurring on a large-scale. The Congressional Budget Office, CBO, the Medicare Payment Advisory Commission, MedPAC, and the Institute of Medicine, IOM, have all discussed the positive impact of creating a new entity charged solely with conducting research on the comparative effectiveness of health interventions, including pharmaceuticals, medical devices, medical procedures, diagnostic tools, medical services and other therapies.

In its June 2007 report to Congress, MedPAC issued a unanimous recommendation that ''Congress should charge an independent entity to sponsor credible research on comparative effectiveness of health care services and disseminate this information to patients, providers, and public and private payers.''

And the Congressional Budget Office agrees. In a recent report, entitled, ''Research on the Comparative Effectiveness of Medical Treatments: Issues and Options for an Expanded Federal

Role,'' CBO Director Peter Orszag wrote that, ''generating better information about the costs and benefits of different treatment options—through research on the comparative effectiveness of those options—could help reduce health care spending without adversely affecting health overall.''

The IOM also supports getting better information into the hands of patients and providers. As part of its report, ''Learning What Works Best: The Nation's Need for Evidence on Comparative Effectiveness in Health Care,'' the Institute concluded that,

''[A] SUBSTANTIALLY INCREASED CAPACITY TO CONDUCT AND EVALUATE RESEARCH ON CLINICAL EFFECTIVENESS OF INTERVENTIONS BRINGS MANY POTENTIAL OPPORTUNITIES FOR IMPROVEMENT ACROSS A WIDE SPECTRUM OF HEALTHCARE NEEDS.''

This bill that Senator BAUCUS and I are introducing today represents an important step in expanding comparative effectiveness research. The bill would significantly expand the conduct of comparative clinical effectiveness research to get better information into the hands of patients and providers in the hopes of improving health outcomes and reducing unnecessary or ineffective care.

The purpose of this bill is to provide health care providers and patients with objective and credible evidence about which health care treatments, services, and items are most clinically effective for particular patient populations. The research conducted under our bill would evaluate and compare the clinical effectiveness of two or more health care interventions, treatment protocols, procedures, medical devices, diagnostic tools, pharmaceuticals, and other processes or items used in the treatment or diagnosis of patients. Access to better evidence about what works best will help patients and health care providers make better-informed decisions about how best to treat particular diseases and conditions. Our hope is that the evidence generated by this research could lead to savings in the overall health care system over the long-term by allowing providers to avoid treatments that may be clinically ineffective, while at the same time improving health care outcomes.

Specifically, our bill creates a private, nonprofit corporation, known as the Health Care Comparative Effectiveness Research Institute, which would be responsible for organizing and implementing a national comparative effectiveness research agenda. In conducting the research, the Institute would contract with the Agency for Healthcare Research and Quality, the National Institutes of Health and other appropriate public and private entities and could use a variety of research methods, including clinical trials, observational studies and systematic reviews of existing evidence.

Many thought leaders on this issue, such as the Medicare Payment Advisory Committee, had concerns that a large entity within the Federal Government would be vulnerable to political interference that could hamper the Institute's credibility, and, therefore, limit the usefulness of its research. As a result, we chose a model outside of the Federal Government, but subject to government oversight.

In order to ensure that the information developed is credible and unbiased, our bill establishes a 21-Member Board of Governors to oversee the Institute's activities. Permanent board members would include the Secretary of Health and Human Services and the Directors of the Agency for Healthcare Research and Quality and the National Institutes of Health, NIH. The remaining 18 board members would be appointed by the Comptroller General of the United States and would include a balanced mix of patients, physicians, drug, device, and technology manufacturers, public and private payers, academic researchers, philanthropic organizations and quality improvement entities.

To ensure further credibility, the Institute is also required to appoint advisory panels of patients, clinicians, and other stakeholders that would assist in the development and carrying out of the research agenda; establish a methodology committee that would help create standards by which all research commissioned by the Institute must be conducted; create a peer review process through which all research findings must be assessed; and develop protocols to help translate and disseminate the evidence in the most effective, user-friendly way.

Moreover, Senator BAUCUS and I want to ensure that the operations of the Institute are transparent. Therefore, we built in a strong role for public comment prior to all key decisions made by the Institute. For example, the bill requires public comment periods prior to the approval of the overall research agenda and the individual study designs. In addition, the bill calls for periodic public forums to seek input, requires that all proceedings of the Institute be made public and available through annual reports, and requires that any conflicts of interest be made public and that board members recuse themselves from matters in which they have a financial or personal interest.

Because all health care users will benefit from this research, our legislation funds the Institute with contributions from both public and private payers. These contributions will include mandatory general revenues from the Federal Government, amounts from the Medicare Trust Funds equal to $1 per beneficiary annually, and amounts from a $1 fee per-covered life assessed annually on insured and self-insured health plans. Funding will ramp up over a series of years. By the fifth year, we expect the Institute's total annual funding to exceed $300 million per year and continue to grow thereafter.

The concept of an all-payer approach for comparative effectiveness research has been embraced by a number of health care experts. For example, on the subject of comparative effectiveness information in its June 2008 report, MedPAC stated: ''The Commission supports funding from federal and private sources as the research findings will benefit all users—patients, providers, private health plans, and federal health programs. The Commission also supports a dedicated funding mechanism to help ensure the entity's independence and stability. Dedicated broadly based financing would reduce the likelihood of outside influence and would best ensure the entity's stability . . .''

To ensure accountability for these funds and to the Institute's mission, our bill requires an annual financial audit of the Institute. In addition, the bill requires GAO to report to Congress every five years on the processes developed by the Institute and its overall effectiveness, including how the research findings are used by health care consumers and what impact the research is having on the health economy. Finally, the bill requires a review after eight years of the adequacy of the Institute's funding, which will include a review of the appropriateness and adequacy of each funding source.

Let me take a moment to address some of the criticisms that might be levied against this proposal. Some may say this Institute will impede access to care and will deny coverage for high-cost health care services. That is not the case. Our proposal explicitly prohibits the Institute from making coverage decisions or setting practice guidelines. It will be up to specialty societies and patient groups to use the research findings as they see fit. Moreover, to the extent that high-cost health care services or new technologies are studied by the Institute and found to be clinically ineffective compared to other services and technologies, such evidence will be made public to consumers and providers so that they can make the best possible health care decisions. Other critics may claim that this proposal will result in one-size-fits-all approach to comparative clinical effectiveness research. We recognize that different health care treatments may have different levels of effectiveness for different subpopulations. That is why our bill requires that the Institute's research be designed, as appropriate, to take into account the potential differences in the effectiveness of health care services as used with various subpopulations, such as women, racial and ethnic minorities, different age groups, and individuals with different comorbidities.

This bill is a balanced, carefully crafted proposal that has taken into consideration the recommendations of a broad range of stakeholders and thought-leaders. We welcome further discussion and suggested improvements. But we refuse to allow this proposal to get bogged down in political

maneuvering or scare tactics. Our nation needs to ramp up comparative effectiveness research immediately to improve health outcomes and reduce ineffective and inefficient care.

Senator BAUCUS and I will work jointly to push for the expeditious enactment of this bill. I urge all of my colleagues to join our effort and cosponsor the Comparative Effectiveness Research Act of 2008. There is no time to waste.

By Mr. REID (for Mr. KENNEDY (for himself and Mr. GRASSLEY)):

S. 3409. A bill to amend the Federal Food, Drug, and Cosmetic Act to ensure the safety and quality of medical products and enhance the authorities of the Food and Drug Administration, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. GRASSLEY. Mr. President, as Ranking Member of the Senate Finance Committee, I view my role as working to ensure the safety and well-being of the more than 80 million Americans who are beneficiaries of the Medicare and Medicaid programs. These programs spend a lot of taxpayers' money on prescription drugs and medical devices, and that money should be spent on drugs and devices that are safe and effective.

Over the last four years I have conducted extensive oversight of the Food and Drug Administration. I have reviewed and questioned how the FDA handles the pre-market review and post-market surveillance of drugs, biologics, devices and veterinary medicines to assess whether or not the agency is fulfilling its mission to protect the public health. As a result of my oversight activities, I identified serious problems at the FDA that included the quashing of scientific opinion within the agency, delays in informing the public of emerging safety problems, too cozy a relationship between the FDA and the industries it is supposed to regulate, and a failure to be adequately transparent and accountable to the public.

Last year, when the Senate Health, Education, Labor, and Pensions Committee and the House Energy and Commerce Committee were working on FDA legislation, I encouraged them to take that opportunity to reform, improve, and re-establish the FDA as the gold standard for drug safety. I believed the FDA needed additional tools, resources, and authorities to do its work.

The Congress passed the Food and Drug Administration Amendments Act last September. While we did not fix a fundamental problem at the FDA that's been shown through my investigations over the last few years, the new legislation did provide additional tools in FDA's toolbox to better protect the American people. It was a positive step toward restoring the public's trust in the FDA.

Today, I am here to talk about another FDA bill. Last summer, I started examining FDA's program for inspection of foreign pharmaceutical manufacturing plants. I expressed concerns to the FDA regarding, among other things, inspection funding, emerging exporters, and weaknesses in the inspection process.

An increasing amount of the drugs and active pharmaceutical ingredients (API) Americans use are being manufactured in foreign countries. Yet, as reported by the Government Accountability Office in November 2007, the Food and Drug Administration does not know how many foreign establishments are subject to inspection and the agency conducts relatively few inspections each year.

From fiscal year 2002 through fiscal year 2007, the FDA conducted fewer than 1,400 inspections of foreign pharmaceutical facilities, often focused in countries with few reported quality concerns. In China, the world's largest producer of active pharmaceutical ingredients, and where export safety appears to be a growing problem, only 11 inspections were conducted during FY 2007, compared to 14 in Switzerland, 18 in Germany, and 24 in France, all countries with advanced regulatory infrastructures. I was troubled by these numbers.

Then came the wake-up call in January of this year. FDA announced that Baxter International Inc. temporarily suspended production of its blood thinner heparin because of an increase in the reports of adverse events that may be associated with its drug. It was discovered that the active ingredient in heparin was contaminated and that the ingredient was produced at a facility in the People's Republic of China. Soon more recalls were announced. After several months, the FDA established a link between the contaminant found in heparin and the serious adverse events seen in patients that were given heparin. FDA's investigation of the source of the contamination highlighted significant weaknesses in oversight of the production and supply chain.

With limited inspection resources, the FDA is charged with ensuring the safety and efficacy of drugs and pharmaceutical ingredients produced in nearly every corner of the globe. To make matters worse, as the FDA's challenges multiply, its resources for foreign inspections are shrinking. It is troubling that the FDA is grossly under-resourced at a time when foreign production of drugs and active pharmaceutical ingredients is growing at record rates. Adding to the difficulty of this task, it appears that many foreign pharmaceutical plants register with the FDA as a means to bolster their own standing and with no intention of exporting products to the United States market.

That is why I am introducing the Drug and Device Accountability Act today with Senator KENNEDY, chairman of the Committee on Health, Education, Labor, and Pensions.

This legislation would augment FDA's resources through the collection of registration and inspection fees. The bill also expands the agency's authority for ensuring the safety of drugs and medical devices, including foreign manufactured drugs and devices, by expanding FDA's authority to inspect foreign manufacturers and importers, allowing the FDA to issue subpoenas, and allowing the FDA to detain a device or drug when its inspectors have reason to believe the product is adulterated or misbranded.

In addition, the bill includes a provision that expands on an amendment I filed last spring to the Senate bill, S. 1082 Food and Drug Administration Revitalization Act. That amendment provided for a certification by drug manufacturers that the information submitted as part of a new drug or supplemental application is accurate.

Under the Drug and Device Accountability Act, individuals responsible for the submission of a drug or device application or a report related to safety or effectiveness would have to certify that the application or report is compliant with applicable regulations and not false or misleading. Civil as well as criminal penalties could be imposed for false or misleading certifications. I believe this is an important provision, especially in light of the troubling findings presented in the Journal of the American Medical Association in April. Based on a review of documents from recent litigation involving the pain medication Vioxx, the authors of those articles concluded that the maker of Vioxx was not forthcoming in its communication with the Food and Drug Administration about the mortality risks seen in clinical trials of Vioxx conducted in patients with Alzheimer disease or cognitive impairment.

Last year, Congress passed legislation that would strengthen FDA's ability to act on emerging safety problems. Now we need legislation that will enhance FDA's oversight of drugs and devices if the Agency is to ensure that America's increasingly foreign-produced drug and device supply is both safe and effective.

By Mr. AKAKA (for himself, Mr. SCHUMER, Mr. LIEBERMAN, and Mr. INOUYE):

S. 3410. A bill to authorize a grant program to provide for expanded access to mainstream financial institutions; to the Committee on Banking, Housing, and Urban Affairs.

Mr. AKAKA. President, as a member of the Banking Committee, I have worked to improve the financial literacy of our country. My interest in financial literacy dates back to when my fourth grade teacher required me to have a piggy bank. We were made to understand how money saved, a little at a time, can grow into a large amount—enough to buy things that would have been impossible to obtain without savings. My experience with a piggy bank taught me important lessons about money management that

have stayed with me throughout my life. More people need to be taught these important lessons so that they are better able to manage their resources.

Too many Americans lack basic financial literacy. Americans of all ages and backgrounds face increasingly complex financial decisions as members of the nation's workforce, managers of their families' resources, and voting citizens. Many find these decisions confusing and frustrating because they lack the tools necessary that would enable them to make wise, personal choices about their finances.

Without a sufficient understanding of economics and personal finance, individuals will not be able to appropriately manage their finances, effectively evaluate credit opportunities, successfully invest for long-term financial goals in an increasingly complex marketplace, or be able to cope with difficult financial situations. Unfortunately, today too many working families are struggling as they are confronted with increases in energy and food costs or the loss of a job.

It is essential that we work toward improving education, consumer protections, and empowering individuals and families through economic and financial literacy in order to build stronger families, businesses, and communities.

Today I am introducing the Improving Access to Mainstream Financial Institutions Act of 2008. This bill provides economic empowerment and educational opportunities for working families by helping bank the unbanked. It will also encourage the use of mainstream financial institutions for working families that need small loans. I thank my cosponsors, Senators SCHUMER, LIEBERMAN, and INOUYE.

Millions of working families do not have a bank or credit union account. The unbanked rely on alternative financial service providers to obtain cash from checks, pay bills, and send remittances. Many of the unbanked are low- and moderate-income families that can ill afford to have their earnings diminished by reliance on these high-cost and often predatory financial services. In addition, the unbanked are unable to save securely to prepare for the loss of a job, a family illness, a down payment on a first home, or education expenses.

My bill authorizes grants intended to help low- and moderate-income unbanked individuals establish bank or credit union accounts. Providing access to a bank or credit union account can empower families with tremendous financial opportunities. An account at a bank or credit union provides consumers with alternatives to rapid refund loans, check cashing services, and lower cost remittances. In addition, bank and credit union accounts provide access to saving and borrowing services.

Low- and moderate-income individuals are often challenged with a number of barriers that limit their ability to open up and or maintain accounts. Regular checking accounts may be too costly for some consumers unable to maintain minimum balances or unable to afford monthly fees. Poor credit histories may also hinder their ability to open accounts. By providing federal resources for product development, administration, outreach, and financial education, banks and credit unions will be better able to reach out and bank the unbanked.

The second grant program authorized by my legislation provides consumers with a lower cost, short term alternative to payday loans. Payday loans are cash loans repaid by borrowers' postdated checks or borrowers' authorizations to make electronic debits against existing financial accounts. Payday loans often have triple digit interest rates that range from 390 percent to 780 percent when expressed as an annual percentage rate. Loan flipping, which is a common practice, is the renewing of loans at maturity by paying additional fees without any principal reduction. Loan flipping often leads to instances where the fees paid for a payday loan well exceed the principal borrowed. This situation often creates a cycle of debt that is hard to break.

There is a great need for working families to have access to affordable small loans. My legislation would encourage banks and credit unions to develop payday loan alternatives. Consumers who apply for these loans would be provided with financial literacy and educational opportunities. Loans extended to consumers under the grant would be subject to the annual percentage rate promulgated by the National Credit Union Administration's, NCUA, Loan Interest Rates, currently capped at an annual percentage rate of 18 percent. Several credit unions have developed similar products. One example is the Windward Community Federal Credit Union in Kailua, on the island of Oahu, which has developed an affordable alternative to payday loans to help the U.S. Marines and the other members that they serve. I am very proud of the work done by the staff of the Windward Community Federal Credit Union. This program was developed with an NCUA grant. More working families need access to affordable small loans. More needs to be done to encourage mainstream financial service providers to develop affordable small loan products. My legislation will help support the development of affordable credit products at bank and credit unions. Working families would be better off by going to their credit unions and banks, mainstream financial services providers, than payday loan shops.

I will work to enact this legislation so vital to empowering our citizens. In our current, modern, complex economy, not having a bank or credit union account severely hinders the ability of families to improve their financial condition or help them navigate difficult financial circumstances. Instead of borrowing money from payday lenders at outrageous fees, we need to encourage people to utilize their credit unions and banks for affordable small loans. Banks and credit unions have the ability to make the lives of working families better by helping them save, invest, and borrow at affordable rates.

Mr. President I ask unanimous consent that the text of the bill and letters of support be printed in the RECORD.

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

S. 3410

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 ''Improving Access to Mainstream Financial Institutions Act of 2008''.

SEC. 2. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ALASKA NATIVE CORPORATION.—The term ''Alaska Native Corporation'' has the same meaning as the term ''Native Corporation'' under section 3(m) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)).

(2) COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term ''community development financial institution'' has the same meaning as in section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)).

(3) FEDERALLY INSURED DEPOSITORY INSTITUTION.—The term ''federally insured depository institution'' means any insured depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) and any insured credit union (as that term is defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(4) LABOR ORGANIZATION.—The term ''labor organization'' means an organization—

(A) in which employees participate;

(B) which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and

(C) which is described in section 501(c)(5) of the Internal Revenue Code of 1986.

(5) NATIVE HAWAIIAN ORGANIZATION.—The term ''Native Hawaiian organization'' means any organization that—

(A) serves and represents the interests of Native Hawaiians; and

(B) has as a primary and stated purpose, the provision of services to Native Hawaiians.

(6) PAYDAY LOAN.—The term ''payday loan'' means any transaction in which a small cash advance is made to a consumer in exchange for—

(A) the personal check or share draft of the consumer, in the amount of the advance plus a fee, where presentment or negotiation of such check or share draft is deferred by agreement of the parties until a designated future date; or

(B) the authorization of the consumer to debit the transaction account or share draft account of the consumer, in the amount of the advance plus a fee, where such account will be debited on or after a designated future date.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(8) TRIBAL ORGANIZATION.—The term ''tribal organization'' has the same meaning as in

section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 3. EXPANDED ACCESS TO MAINSTREAM FINANCIAL INSTITUTIONS.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary is authorized to award grants, including multi-year grants, to eligible entities to establish an account in a federally insured depository institution for low- and moderate-income individuals that currently do not have such an account.

(b) ELIGIBLE ENTITIES.—An entity is eligible to receive a grant under this section, if such an entity is—

(1) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, and is exempt from taxation under section 501(a) of such Code;

(2) a federally insured depository institution;

(3) an agency of a State or local government;

(4) a community development financial institution;

(5) an Indian tribal organization;

(6) an Alaska Native Corporation;

(7) a Native Hawaiian organization;

(8) a labor organization; or

(9) a partnership comprised of 1 or more of the entities described in the preceding subparagraphs.

(c) EVALUATION AND REPORTS TO CONGRESS.—For each fiscal year in which a grant is awarded under this section, the Secretary shall submit a report to Congress containing a description of the activities funded, amounts distributed, and measurable results, as appropriate and available.

SEC. 4. LOW COST ALTERNATIVES TO PAYDAY LOANS.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary is authorized to award demonstration project grants (including multi-year grants) to eligible entities to provide low-cost, small loans to consumers that will provide alternatives to more costly, predatory payday loans.

(b) ELIGIBLE ENTITIES.—An entity is eligible to receive a grant under this section if such an entity is—

(1) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code;

(2) a federally insured depository institution;

(3) a community development financial institution; or

(4) a partnership comprised of 1 or more of the entities described in paragraphs (1) through (3).

(c) TERMS AND CONDITIONS.—

(1) PERCENTAGE RATE.—For purposes of this section, an eligible entity that is a federally insured depository institution shall be subject to the annual percentage rate promulgated by the National Credit Union Administration's Loan Interest Rates under part 701 of title 12, Code of Federal Regulations (or any successor thereto), in connection with a loan provided to a consumer pursuant to this section.

(2) FINANCIAL LITERACY AND EDUCATION OPPORTUNITIES.—Each eligible entity awarded a grant under this section shall offer financial literacy and education opportunities, such as relevant counseling services or educational courses, to each consumer provided with a loan pursuant to this section.

(d) EVALUATION AND REPORTS TO CONGRESS.—For each fiscal year in which a grant is awarded under this section, the Secretary shall submit a report to Congress containing a description of the activities funded, amounts distributed, and measurable results, as appropriate and available.

SEC. 5. PROCEDURAL PROVISIONS.

(a) APPLICATIONS.—A person desiring a grant under section 3 or 4 shall submit an application to the Secretary, in such form and containing such information as the Secretary may require.

(b) LIMITATION ON ADMINISTRATIVE COSTS.—A recipient of a grant under section 3 or 4 may use not more than 6 percent of the total amount of such grant in any fiscal year for the administrative costs of carrying out the programs funded by such grant in such fiscal year.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary, such sums as are necessary to carry out the grant programs authorized by this Act, to remain available until expended.

SEC. 7. REGULATIONS.

The Secretary is authorized to promulgate regulations to implement and administer the grant programs authorized by this Act.

NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS,
Arlington, VA, July 29, 2008.

Hon. DANIEL AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: I am writing on behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association that exclusively represents the interests of our nation's Federal credit unions, to applaud your leadership on working to get low- and moderate-income unbanked individuals into mainstream financial institutions, such as credit unions, and your continued commitment to financial literacy as demonstrated in the Improving Access to Mainstream Financial Institutions Act of 2008.

We believe it is important to help the unbanked set up credit union accounts that will allow these individuals to obtain the products and services that they need, such as lower cost check cashing and remittance services, as well as financial education to encourage savings and thank you for your efforts to help this cause.

Unfortunately, payday lending has also increasingly become a precarious problem for many Americans. People that find themselves in sudden need of a financial boost and individuals unfairly subjected to higher mortgage payments with higher interest rates often rely on payday lenders to help cover their bills. These types of loans can worsen their current financial situation, making the consumer even more dependent than before. Despite our greatest efforts to prevent predatory lending in America, the evidence shows these deceptive practices still occur. Predators continue to target specific communities, such as low-income, minority, elderly and, in recent findings, the men and women of the United States military.

Luckily, credit unions continue to be part of the solution, not the problem. Many credit unions offer alternative loan programs that ensure the safety and financial reprieve that their members need. These loan programs offer consumers small unsecured loans with low interest rates and encourage financial responsibility. We greatly appreciate your continued support of these efforts.

NAFCU appreciates the opportunity to share our thoughts on this legislation and strongly support your dedication to this important matter. Please do not hesitate to contact me or NAFCU's Associate Director of Legislative Affairs, Amanda Slater at 703–522–4770 with any questions that you may have.

Sincerely,

FRED R. BECKER, Jr.,
President/CEO.

HAWAII CREDIT UNION LEAGUE,
Honolulu, HI, July 28, 2008.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: On behalf of the Hawaii Credit Union League and its 93 affiliated credit unions representing approximately 811,000 members, I am writing in support of the proposed Improving Access to Mainstream Financial Institutions Act. This bill, which is targeted to assist low- and moderate-income unbanked individuals, would go a long way toward helping underserved people achieve financial stability and independence.

Today's volatile economic climate makes it difficult or even unrealistic for people of modest means to borrow money or open an account at an insured depository institution. This measure would establish grant programs within the Department of the Treasury to assist those who would otherwise be unqualified for banking services. In addition, this measure would provide financial literary education opportunities to those applying for loans. Financial education is an invaluable service that credit unions provide, and this legislation would open more doors to this service.

Please accept our gratitude for introducing legislation to help the unserved residents of our state and nation. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

DENNIS K. TANIMOTO,
President.

COUNCIL FOR NATIVE HAWAIIAN ADVANCEMENT,
Honolulu, HI, July 24, 2008.

Re Unbanked and Payday Lending

Hon. SENATOR DANIEL AKAKA,
Hart Senate Office Building,
Washington, DC.

ALOHA SENATOR AKAKA: The Council for Native Hawaiian Advancement is a nonprofit network of over 100 Native Hawaiian organizations. Its mission is to enhance the cultural, economic and community development of Native Hawaiians. We achieve our mission through policy advocacy, grant training, consultancy, leadership development and connecting resources to challenges in our communities.

We believe in policies that promote asset building that empowers low and moderate income families to increase financial asset management, home ownership and small business development.

Senator, there is a clear need for intermediary programming that helps low and moderate income families to connect with financial services, including deposit and savings accounts, as well as loan alternatives to high cost payday lending practices.

CNHA has developed asset building products that are moving families to financial self sufficiency. For example, we developed the Homestead Individual Development Accounts (HIDA) that is assisting 30 families to open savings accounts at First Hawaiian Bank, provides financial education and helps low income families to save toward the down payment on a home purchase on Hawaiian trust lands. We also developed the Home Ownership Assistance Program (HOAP), a statewide program of the State of Hawaii, Department of Hawaiian Home Lands to expand the reach and delivery of financial literacy counseling to thousands of families.

Currently, we are in the process of developing a dedicated Earned Income Tax Credit program to assist families in filing for this important tax credit to claim wages they have earned.

We support Federal legislation that will promote further connections between families and banking services, particularly, the ''unbanked''. We also know that payday lending continues to be a detriment to families on the lowest end of the income scale and would support assistance to place alternatives to these loans in the community development marketplace.

Mahalo for your consideration. If we can provide additional information, please contact me at any time at 808.596.8155 or via email at *robinhawaiiancouncil.org*.

Sincerely,

ROBIN PUANANI DANNER,
President and Chief Executive Officer.

HAWAI'I ALLIANCE FOR COMMUNITY-BASED ECONOMIC DEVELOPMENT,
Honolulu, HI, July 30, 2008

Re Support for ''Improving Access to Mainstream Financial Institutions Act of 2008''

Hon. DANIEL KAHIKINA AKAKA,
U.S. Senator for Hawai'i.

ALOHA SENATOR AKAKA: The Hawai'i Alliance for Community-Based Economic Development (HACBED) is pleased to support the bill titled, ''Improving Access to Mainstream Financial Institutions Act of 2008.''

Hawai'i needs comprehensive public policies to help people build assets. This should include a package of programs, tax incentives, regulatory changes, and other mechanisms to help people earn more, save more, protect hard earned assets, start businesses and become homeowners.

Assets are essential for three reasons:

To have financial security against difficult times; to create economic opportunities for oneself; and to leave a legacy for future generations to have a better life.

This legislation would create the following two grant programs within the Department of Treasury:

1. The first program would authorize grants intended to help low- and moderate-income unbanked individuals to establish bank or credit union accounts.

2. The second program would provide consumers with a lower cost, short term alternative to payday loans as well as financial education.

It is proven that ''banked'' households are better of financially and more likely to build and own assets than their ''unbanked'' counterparts. This bill will authorize grants to assist millions of families to enter the financial mainstream.

Programs that help low- and moderate-income unbanked individuals to establish bank accounts provide families with the opportunity to save and build their assets. Approximately 22 million U.S. households do not have a checking or savings account. These households depend on various high-cost, alternative financial service providers to meet their banking needs, including check-cashing stores, payday lenders, title lenders, rent-to-own stores, and tax preparers. Reliance on these types of financial services undermines a family's ability to survive as they can become trapped in a cycle of debt due to high fees and interest rates. These families' put nearly 13.3 billion dollars toward predatory lending scams annually.

By improving our families' access to mainstream services, we can enhance their financial security and success. Access to savings and checking accounts can provide a foundation for low- and moderate-families to begin accumulating assets. In addition, families are more likely to save for assets such as their children's college education, a home, retirement, and business startup costs. By entering the financial mainstream and having access to financial services, families are also able to establish credit and increase their access to buying power for the purchase of assets.

Payday loans and other financial services with high fees and interest rates undermine families' ability to truly save and build their assets. This bill will provide families with an alternative to payday loans as well as the opportunity to receive financial education.

Check cashing, or payday lending, is a short-term, high-interest loan that has the potential to severely impact consumers. Many consumers are often not aware of the annual percentage rate associated with the fee structure of payday loans causing millions of families to struggle to meet their most basic needs to survive.

It is extremely important to protect hard working families from financial services that are predatory in nature, and stripping them of their hard earned income. Particularly worrisome is the practice of targeting military families. According to the Center for Responsible Lending, active-duty military personnel are three times more likely than civilians to take out a payday loan and one in five active-duty personnel are payday borrowers.

The loans provided to families under the grant in this bill would be subject to the annual percentage rate promulgated by the National Credit Union Administration's (NCUA) Loan Interest Rates, which is currently capped at an annual percentage rate of 18 percent.

Several credit unions have developed similar products to assist families. In Hawai'i, the Windward Community Federal Credit Union has developed an affordable alternative to payday loans to help the Marines and the other members that they serve. This program was developed with an NCUA grant.

This bill will also provide financial education to families that apply for the loans. As the financial market expands and becomes more complex, having a financial education is extremely important for every family. More than ever, financial education can help families navigate the maze of financial services that exist. Providing families with a financial education allows them to have choice and control over their finances so they are able to save and build assets.

We urge the Senate's favorable consideration of this bill that would give millions of low- and moderate-income families the opportunity to successfully enter the financial world.

Mahalo nui loa,

LARISSA MEINECKE,
Public Policy Associate.

By Mr. SANDERS (for himself, Mr. OBAMA, Mrs. CLINTON, Mr. KENNEDY, Mr. BROWN, Ms. MIKULSKI, Mr. CASEY, Mrs. BOXER, Mr. DURBIN, and Mr. INOUYE):

S. 3413. A bill to achieve access to comprehensive primary health care services for all Americans and to improve primary care delivery through an expansion of the community health center and National Health Service Corps programs; to the Committee on Health, Education, Labor, and Pensions.

Mr. SANDERS. Mr. President, today there is some good news and some bad news. The bad news is that oil is at $123 a barrel and working people are paying $4 for a gallon of gas, and this coming winter residents of the Northeast could be paying over $5 for a gallon of heating oil.

But, there is some good news. Today, the CEOs of ExxonMobil, Shell, BP and ConocoPhillips are celebrating. They're feeling pretty good. And, they have good reason to feel that way.

ExxonMobil reported today that it made over $11.68 billion in profits over the 2nd quarter alone, breaking its own record for the largest quarterly profit of any American company in the history of the world.

But, ExxonMobil is not alone. Shell's 2nd quarter profit jumped by 33 percent to $11.56 billion; and BP's 2nd quarter profit jumped by 28 percent.

As a matter of fact, since George W. Bush and DICK CHENEY have been in office, the five largest oil companies have made over $640 billion in profits. This includes $212 billion for ExxonMobil; $157 billion for Shell; $125 billion for BP; $80 billion for ChevronTexaco; and $66 billion for ConocoPhillips.

Believe it or not, the Big 5 oil companies made more profits during the 2nd quarter, than they did during the entire year of 2002.

Now, with the exception of my Republican friends here in Congress, there are very few people in this country who believe the oil companies give one hoot about the well-being of the American people. Our Republican friends are saying that if we just give these huge oil companies more acres offshore to drill for oil, they will certainly do the right thing, as they always have, for the American people. Let's just trust those big oil companies because they are really staying up day after day, night after night, worrying about the well-being of the American people. That is what their full-page ads in the New York Times and all their ads on television are telling us.

Well, it is good to see there are at least some people in America who believe that. I don't, but apparently my Republican colleagues do.

Let me tell you, big oil companies are so concerned about Americans paying high prices for gas and oil that this is what they are doing with their profits:

In 2005, ExxonMobil gave its CEO, Lee Raymond, a $398 million retirement package—one of the richest compensation packages in corporate history. They weren't going out looking for new land to drill on, they weren't building more refineries, and they weren't working on energy efficiency. They gave their CEO a $398 million retirement package.

In 2006, Occidental Petroleum, gave its CEO, Ray Irani, over $400 million in total compensation.

The situation is so absurd and the greed of the oil companies is so outrageous that these companies are not only giving their executives huge compensation packages during their life here on earth, but they have also created a situation, if you can believe it, where these oil companies have carved out huge corporate payments to the heirs of senior executives if they die in office. I guess this is what happens when you have more money than you know what to do with.

According to the Wall Street Journal, if the CEO of Occidental Petroleum dies in office, his family will get $115 million. The family of the CEO of Nabors Industries, another oil company, would receive $288 million. This would be funny if it were not so pathetic in the sense of the impact this type of spending has on the American people.

Not only are huge oil companies using their record-breaking profits on big compensation benefits for their CEOs, but they are also spending large sums of money buying back their own stock. In other words, when they are making these very large profits, they are not going out drilling for more oil, as our Republican friends are suggesting.

In fact, While Americans are struggling to pay for the skyrocketing price of gasoline; big oil companies are having an entirely different problem. For the past seven years, big oil companies are struggling to figure out what they are going to do with all of their windfall profits.

Let me quote from a headline taken from the front page of the Wall Street Journal way back on July 30 of 2001, ''Pumping Money: Major Oil Companies Struggle to Spend Huge Hoards of Cash.'' According to this 2001 article, ''Royal Dutch/Shell Group said it was pumping out $1.5 million in profit an hour and sitting on more than $11 billion in the bank.'' That was in 2001. Since that time Shell's profits have more than tripled.

On April 18, 2005, Fortune Magazine published an article with the Headline ''Poor Little Rich Company,'' referring to ExxonMobil. According to this article, ''ExxonMobil CEO Lee Raymond, suddenly has a new anxiety: how to spend the windfall wrought by $55 a barrel oil. By the end of April [of 2005], Exxon will have a cash hoard of more than $25 billion. . . . At a time when domestic energy production is declining and drivers are paying a record $2.15 a gallon [remember, this was in 2005], American consumers, not to mention politicians, are likely to start focusing on whether Exxon is spending enough to find oil and gas. While Exxon is returning more money to shareholders via dividends and buying back more of its stock, its spending on drilling and other development activities actually declined in 2004—even though crude prices jumped by a third.'' That was when the price of oil was $55 a barrel and gas was $2.15 a gallon. Today oil is over $123 a barrel and gas is about $4 a gallon.

What is happening today? Big oil companies are spending even more on stock buybacks and CEO compensation and less on trying to produce more oil.

For example, ConocoPhillips recently announced that it plans to give all of the $12 billion in profits it made last year back to shareholders, paying more than $3 billion in dividends and spending the rest to buy back shares of its own stock. To put this in perspective the money that ConocoPhillips is spending on stock buybacks and dividends is enough to reduce the price of gas by 9 cents a gallon throughout the entire United States.

Now, I want my Republican friends to listen closely. They have been saying over and over again that big oil desperately needs all of these windfall profits to drill for more oil.

But, guess what? According to the CEO of ConocoPhillips, James Mulva, ''We like the discipline of the share repurchase. If we find that we have more cash flow, it's not really going to be going toward capital spending.'' In other words, ConocoPhillips won't use their windfall profits to drill for more oil, or invest in renewable energy, or explore for new sources of oil discoveries no matter how much their profits rise.

Overall, since 2005, the five biggest oil companies have made $345 billion in profits and spent over $250 billion buying back stock and paying dividends to shareholders.

Last year, ExxonMobil spent 850 percent more buying back its own stock than it did on capital expenditures in the United States.

The $38 billion in windfall profits that ExxonMobil gave back to shareholders last year could have been used to reduce gas prices at the pump throughout the United States by 27 cents a gallon for the entire year.

Mr. President, let's not kid ourselves. One of the major reasons as to why Americans are getting ripped-off at the gas pump has to do with the tremendous power and influence that big oil companies have in the Congress. As a matter of fact, since 1998, the oil and gas industry has spent over $616 million on lobbying activities.

Who have they hired? Well, on April 8 of this year, The Hill reported that Chevron hired former Majority Leader Trent Lott, a Republican; former Senator John Breaux, a Democrat; their sons Chester Trent Lott, Jr. and John Breaux, Jr.; and Trent Boyles, who was Lott's Chief of Staff to lobby Congress on issues relating to trade, climate change, and energy taxes.

ExxonMobil has hired former Senator Don Nickles, a Republican from Oklahoma, who served in this body for 24 years, to lobby Congress on behalf of their issues.

These are just a few of the hundreds of lobbyists that big oil and gas companies have hired to influence Congress, many of them former Senators, former Congressmen, and former Congressional staffers.

That is one of the reasons why, among many other reasons, this Congress, in recent years, has decided to give some $18 billion in tax breaks to oil companies despite their record-breaking profits.

In addition, since 1990 big oil companies have made over $213 million in campaign contributions. And that is a simple fact.

Lo and behold, what we are hearing today—just coincidentally, no doubt—is that the most important thing we can do in terms of the energy crisis is to provide more land offshore for the oil companies to drill at a time when they already have some 68 million acres of leased land, which they are not drilling on today.

The American people want action, and there are some things we can do—not in 15 or 20 years but that we can do right now.

First, we need to impose a windfall profits tax on big oil companies so that they would be prohibited from gouging consumers at the gas pump.

Unfortunately, instead of taking away big oil's windfall profits and giving it back to the American people, Republicans want to provide even more tax breaks to big oil. In fact, Sen. MCCAIN has a plan that would give ExxonMobil a $1.5 billion tax break.

Now, we have heard Republicans give three reasons as to why they are opposed to a windfall profits tax.

First, Republicans claim that the last time Congress enacted a windfall profits tax in 1981 it had the effect of increasing our dependence on foreign oil. Wrong. Mr. President, when Congress repealed the windfall profits tax in 1988, the U.S. was importing 7.4 million barrels of oil a day. Today, the U.S. is importing over 13.4 million barrels of oil a day. We are far more dependent on foreign oil today without a windfall profits tax than we were 20 years ago when we had a windfall profits tax.

Secondly, my Republican friends tell us that the windfall profits tax didn't work because Congress repealed it in 1988. That is also wrong. While I would have structured it differently, the fact of the matter is that from 1981 until 1988 when the windfall profits tax was repealed, the price of oil fell from $35 a barrel to less than $15 a barrel. In addition, gas prices at the pump fell from $1.35 a gallon to 90 cents a gallon—a drop of 45 cents a gallon. And the Federal Government collected over $80 billion in revenue.

The reason why the windfall profits tax was repealed was due to low oil and gas prices, which makes perfect sense. If oil and gas prices are low, big oil companies are not making windfall profits and there is no need for a windfall profits tax. If gas prices at the pump were only 90 cents a gallon, I would be one of the first Senators to say we don't need a windfall profits tax. But, they are not. They are over $4 a gallon.

Finally, Republicans claim that big oil companies need to keep their windfall profits so that they can increase production and build more refineries. That particular argument is laughable.

Big oil companies have been making windfall profits for over seven long years—and they are not using these profits to build more refineries and they are not using it to expand production. Instead, they are using this money to buy back their own stock, increase dividends to their shareholders,

and enrich their CEOs, as I have explained earlier.

Not only do we need to impose a windfall profits tax on these extremely powerful oil corporations, but we also have to address what I perceive is a growing understanding that Wall Street investment banks, such as Goldman Sachs, Morgan Stanley, JPMorgan Chase, and hedge fund managers are driving up the price of oil in the unregulated energy futures market. In other words, they are speculating on energy futures and driving up prices.

There are estimates that 25 to 50 percent of the cost of a barrel of oil is attributable to unregulated speculation on oil futures. We have heard from some leading energy economists, and we have heard from people in the oil industry themselves who tell us that 25 to 50 percent of the cost of a barrel of oil today is not due to supply and demand or the cost of production but is due to manipulation of markets and excessive speculation. In essence, Wall Street firms are making billions as they artificially drive up oil prices by buying, holding, and selling huge amounts of oil on dark unregulated markets.

Some of my Republican friends claim that the increase in the price of oil has nothing to do with speculation, but it is interesting to me that we have had executives of major oil companies—major oil companies—who have come before Congress and who are saying, ''Why is oil $125, $130, and $140 a barrel?'' Do you know what they say? The CEO of Royal Dutch Shell testified before Congress and said: ''The oil fundamentals are no problem. They are the same as they were when oil was selling for $60 a barrel.''

This is not some radical economist. It is not some left-winger. This is a guy who is the head of Royal Dutch Shell.

The CEO of Marathon Oil recently said: ''$100 oil isn't justified by the physical demand in the market.''

I know my Republican friends have a lot of respect for the oil industry, a great competence in them. They love them and give them huge tax breaks. So maybe they should listen to what some of these guys are saying in terms of oil speculation.

For those who believe that excessive speculation is not causing oil prices to climb higher, let me just say this. Over the past 7 years, Enron; BP; and Amaranth were caught redhanded manipulating the price of electricity; propane; and natural gas. Each time, supply and demand was to blame and each time the pundits were proven wrong. Excessive speculation; manipulation and greed were the cause. Enron employees are in jail for manipulating the electricity market in 2001; BP was forced to pay a $300 million fine for manipulating propane prices in 2004; and the Amaranth hedge fund collapsed after manipulating natural gas prices in 2006.

The Stop Excessive Speculation Act introduced by Majority Leader REID begins to seriously address this problem. We need to pass this bill as soon as possible.

The bottom line is that it is time for the United States Senate to say no to big oil companies and greedy hedge fund managers and yes to the American people.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 636—RECOGNIZING THE STRATEGIC SUCCESS OF THE TROOP SURGE IN IRAQ AND EXPRESSING GRATITUDE TO THE MEMBERS OF THE UNITED STATES ARMED FORCES WHO MADE THAT SUCCESS POSSIBLE

Mr. LIEBERMAN (for himself, Mr. GRAHAM, Mr. MCCAIN, Mr. ENZI, Mr. MARTINEZ, Mr. BOND, Mr. WICKER, Mr. CORNYN, Mr. CRAPO, Mr. ALLARD, Mr. THUNE, Mr. BARRASSO, and Mr. INHOFE) submitted the following resolution; which was referred to the Committee on Armed Services:

S. RES. 636

Whereas, by the end of 2006, it had become clear that, despite exceptional efforts and sacrifices on the part of the United States Armed Forces in Iraq, the United States was pursuing a failed strategy in Iraq;

Whereas, by the end of 2006, large-scale sectarian violence was accelerating throughout Iraq, al Qaeda had established significant safe havens there, militias sponsored by the Government of Iran had seized effective control of large swaths of Iraq, and the Government of Iraq was suffering from political paralysis;

Whereas, by the end of 2006, insurgents and death squads were killing more than 3,000 civilians in Iraq each month and coalition forces were sustaining more than 1,200 attacks each week;

Whereas, in December 2006, the Iraq Study Group warned that ''the United States is facing one of its most difficult and significant international challenges in decades'' in Iraq and that ''Iraq is vital to regional and even global stability, and is critical to U.S. interests'';

Whereas, in December 2004, Osama bin Laden said the following of the war in Iraq: ''The most important and serious issue today for the whole world is this Third World War. . . . The world's millstone and pillar is Baghdad, the capital of the caliphate.'';

Whereas, on January 10, 2007, in an address to the Nation, President George W. Bush acknowledged that the situation in Iraq was ''unacceptable'' and announced his intention to put in place a new strategy, subsequently known as ''the surge'';

Whereas President Bush nominated and the Senate confirmed General David H. Petraeus as the Commander of Multi-National Forces-Iraq, a position he assumed on February 10, 2007;

Whereas General Petraeus, upon assuming command, and in partnership with Lieutenant General Raymond Odierno, the Commander of Multi-National Corps-Iraq, and United States Ambassador to Iraq Ryan Crocker, developed a comprehensive civil-military counterinsurgency campaign plan to reverse Iraq's slide into chaos, defeat the enemies of the United States in Iraq, and, in partnership with the Iraqi Security Forces and the Government of Iraq, reestablish security across the country;

Whereas, under the previous strategy, the overwhelming majority of United States combat forces were concentrated on a small number of large forward operating bases and were not assigned the mission of providing security for the people of Iraq against insurgents, terrorists, and militia fighters, in part because there were insufficient members of the United States Armed Forces in Iraq to do so;

Whereas, as an integral component of the surge, approximately 5 additional United States Army brigades and 2 United States Marine Corps battalions were deployed to Iraq;

Whereas, as an integral component of the surge, members of the United States Armed Forces were deployed out of large forward operating bases onto small bases throughout Baghdad and other key population centers, partnering with the Iraqi Security Forces to provide security for the local population against insurgents, terrorists, and militia fighters;

Whereas additional members of the United States Armed Forces began moving into Iraq in January 2007 and reached full strength in June 2007;

Whereas, as a consequence of the additional forces needed in Iraq, in April 2007 the United States Army added 3 months to the standard year-long tour for all active duty soldiers in Iraq and Afghanistan, and the United States Marine Corps added 3 months to the standard 6-month tour for all active duty Marines in Iraq and Afghanistan;

Whereas, as an integral component of the surge, members of the United States Armed Forces began simultaneous and successive offensive operations, in partnership with the Iraqi Security Forces, of unprecedented breadth, continuity, and sophistication, striking multiple enemy safe havens and lines of communication at the same time;

Whereas, as an integral component of the surge, additional members of the United States Armed Forces were deployed to Anbar province to provide essential support to the nascent tribal revolt against al Qaeda in that province;

Whereas those additional members of the United States Armed Forces played a critical role in the success and spread of anti-Qaeda Sunni tribal groups in Anbar province and subsequently in other regions of Iraq;

Whereas, since the start of the surge in January 2007, there have been marked and hopeful improvements in almost every political, security, and economic indicator in Iraq;

Whereas, in 2007, General Petraeus described Iraq as ''the central front of al Qaeda's global campaign'';

Whereas, in 2008, as a consequence of the success of the surge, al Qaeda has been dealt what Director of Central Intelligence Michael Hayden assesses as a ''near strategic defeat'' in Iraq;

Whereas, as a consequence of the success of the surge, militias backed by the Government of Iran have been routed from major population centers in Iraq and no longer control significant swaths of territory;

Whereas, as a consequence of the success of the surge, sectarian violence in Iraq has fallen dramatically and has been almost entirely eliminated;

Whereas, as a consequence of the success of the surge, overall insurgent attacks have fallen by approximately 80 percent since June 2007 and are at their lowest level since March 2004;

Whereas, as a consequence of the success of the surge, United States casualties in Iraq have dropped dramatically and United States combat deaths in Iraq in July 2008 were lower than in any other month since the beginning of the war;