S. 2. A bill to help middle class families succeed; to the Committee on Finance.

Mr. REID. 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. 2

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 “Middle Class Success Act”.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that Congress should—

(1) support middle class tax relief;
(2) help families afford the cost of college and improve opportunities for a secure retirement;
(3) invest in infrastructure and other measures to create good, well-paying jobs;
(4) help ensure that families have access to affordable child and elder care;
(5) preserve and improve affordable health care;
(6) ensure that all workers earn enough to meet basic living standards and do not live in poverty;
(7) ensure that tax dollars do not support companies that break the law or mistreat their workers;
(8) keep Social Security’s promise and block proposals to privatize the program;
(9) ensure that families have access to a healthy and clean environment, including access to safe drinking water;
(10) ensure that workers can secure representation without employer obstruction;
(11) ensure that our streets and communities are safe;
(12) address the serious housing problems facing many American families.

By Mr. REID (for himself, Mr. DURBAN, Mrs. FeINSTEIN, Mr. Brown of Ohio, Mr. KERRY, Mr. BENNET, Mrs. GILLIBRAND, Mr. COONS, Mrs. BOXER, and Mrs. SHAHEEN):

S. 3. A bill to promote fiscal responsibility and control spending; to the Committee on Finance.

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. 3

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 “Fiscal Responsibility and Spending Control Act”.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that Congress should—

(1) address the growing public concern about our rising national debt long-term fiscal challenges through a bipartisan agreement that—
(A) significantly corrects our Nation’s long-term fiscal imbalances and closes the gap between projected revenues and expenditures;
(B) ensures the economic security of the United States and;
(C) enhances future prosperity and growth for all Americans;

(2) reduce the Federal deficit and stabilize the national debt without damaging the economic recovery;
(3) consider deficit reduction proposals recently developed by leading budget experts, including various members of the National Commission on Fiscal Responsibility and Reform, and establish a plan that can attract bipartisan support;
(4) ensure that any plan to address our Nation’s long-term fiscal problems is balanced and provides fundamental reform of the Federal tax code along with prudent controls on spending;
(5) lower tax rates and raise Federal revenues by eliminating tax expenditures that only serve special interests, as well as take aggressive measures to close the tax gap and stop cheating;
(6) ensure that the Federal tax code fairly distributes the tax burden and helps American businesses compete in the global marketplace;
(7) extend the solvency of Social Security for its own sake and ensure that no savings are used to meet deficit reduction goals in the remainder of the budget;
(8) achieve savings through the elimination or consolidation of duplicative Federal programs and activities while also modernizing Federal procurement practices in order to reduce waste and leverage better value out of every dollar spent by the Federal Government; and
(9) reject efforts to exempt tax breaks for millionaires and special interests from strong pay-as-you-go budgetary rules.

By Mr. REID (for himself, Mr. BINGAMAN, Mr. Brown of Ohio, Mr. DURBAN, Mr. KERRY, Mr. BENNET, Mrs. GILLIBRAND, Mr. COONS, Mrs. BOXER, Mr. LAUTENBERG, Mrs. SHAHEEN, and Mr. AKAKA):

S. 4. A bill to make America the world’s leader in clean energy; to the Committee on Finance.

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. 4

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 “Make America the World’s Leader in Clean Energy Act”.

SEC. 2. SENSE OF THE SENATE.

It is the sense of the Senate that Congress should—

(1) promote investment in clean energy jobs and industries;
(2) free the United States from dependence on oil, especially foreign oil;
(3) reduce costs and pollution by promoting energy efficiency;
(4) promote clean energy by retooling the infrastructure and workforce of the United States;
(5) ensure the Federal Government is a leader in reducing pollution, promoting the use of clean energy sources, and implementing energy efficient practices;
(6) reduce harmful energy-related air, land, and water pollution; and
(7) eliminate wasteful tax subsidies that promote pollution.

By Mr. REID (for himself, Mr. DURBAN, Mr. WyDEN, Mr. Brown of Ohio, Mr. BENNET, Mrs. JouHNSTON, Mr. BROWN of Ohio, Mr. Brown of Georgia, Mr. DURBAN, Mr. DURBAN, Mr. KERRY, Mr. BENNET, Mrs. GILLIBRAND, Mr. COONS, Mrs. BOXER, Mr. LAUTENBERG, Mrs. SHAHEEN, and Mr. AKAKA):
By Mr. REID (for himself, Mr. DURBIN, Mr. BROWN of Ohio, Mrs. GILLIBRAND, Mrs. BOXER, and Mr. LAUTENBERG):

S. 7. A bill to reform the Federal tax code; to the Committee on Finance.

Mr. REID, 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:

SEC. 1. SHORT TITLE.
This Act may be cited as the “Comprehensive and Fair Tax Reform Act”.

SEC. 2. SENSE OF THE SENATE.
It is the sense of the Senate that Congress should—
(1) simplify and shrink the tax code to reduce burdens on taxpayers and businesses;
(2) eliminate wasteful tax breaks for special interests and remove corporate tax loopholes;
(3) get rid of extra tax breaks for millionaires and billionaires; and
(4) crack down on cheaters and close the tax gap.

By Mr. REID (for himself, Mr. DURBIN, Mr. BROWN of Ohio, Mr. BENNET, Mrs. GILLIBRAND, Mrs. BOXER, and Mr. LAUTENBERG):

S. 8. A bill to reform America’s broken immigration system; to the Committee on the Judiciary.

Mr. REID, 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:

SEC. 1. SHORT TITLE.
This Act may be cited as the “Reform America’s Broken Immigration System Act”.

SEC. 2. SENSE OF THE SENATE.
It is the sense of the Senate that Congress should—
(1) fulfill and strengthen our Nation’s commitments regarding border security;
(2) pass legislation to support our national and economic security, such as the DREAM Act, which would allow students who came to America before turning 16 to earn citizenship by attending college or joining the armed forces, and AgJobs, which would help to ensure a stable and legal agricultural workforce and protect the sustainability of the American agricultural industry;
(3) implement a rational legal immigration system to ensure that the best and brightest minds of the world can come to the United States and create jobs for Americans while, at the same time, safeguarding the rights and wages of American workers;
(4) require all illegal aliens and undocumented workers to obtain secure, tamper-proof identification to prevent employers from hiring people here illegally, and toughen penalties on employers who break labor and immigration laws;
(5) hold people accountable who are currently here illegally by requiring them to either earn legal status through a series of penalties, sanctions, and requirements, or face immediate deportation; and
(6) adopt practical and fair immigration reforms to help ensure that families are able to be together.

By Mr. REID (for himself, Mr. DURBIN, Mr. BROWN of Ohio, Mrs. GILLIBRAND, Mrs. BOXER, and Mr. LAUTENBERG):

S. 10. A bill to ensure equity for women and address rising pressures on American families; to the Committee on Health, Education, Labor, and Pensions.

Mr. REID, 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:

SEC. 1. SHORT TITLE.
This Act may be cited as the “Family Economic Success Act”.

SEC. 2. SENSE OF THE SENATE.
It is the sense of the Senate that Congress should—
(1) guarantee pay equity for women;
(2) reward companies that promote flexible work environments for working parents with children, and workers who are caregivers;
There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 11

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 “Permanent Marriage Penalty Relief Act of 2011”.

SEC. 2. REPEAL OF SUNSET ON MARRIAGE PENALTY RELIEF. Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions of such Act) shall not apply to sections 301, 302, and 323(a) of such Act (relating to marriage penalty relief).

By Mr. REID (for himself, Mrs. FEINSTEIN, Mr. KERRY, Mr. LEAHY, Mr. LIEBERMAN, Mr. ROCKEFELLER, and Mr. BINGAMAN):

S. 21. A bill to secure the United States against cyber attack, to enhance American competitiveness and create jobs in the information technology industry, and to protect the identities and sensitive information of American citizens and businesses; to the Committee on Homeland Security and Governmental Affairs.

Mr. REID. 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. 21

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 “Cyber Security and American Cyber Competitiveness Act of 2011”.

SEC. 2. FINDINGS. Congress makes the following findings:

(1) Malicious, criminal, and terrorist, and other actors exploiting vulnerabilities in information and communications networks and gaps in cyber security pose one of the most serious and ubiquitous threats to both the national security and economy of the United States.

(2) With information technology now the backbone of the United States economy, a critical element of United States national security infrastructure and defense systems, the primary foundation of global communications and commerce, and a key enabling of most critical infrastructure, nearly every single American citizen is touched by cyberspace and is threatened by cyber attacks.

(3) Malicious actors in cyberspace have already caused significant damage to the United States Government, the United States economy, and United States citizens: United States Government computer networks are probed millions of times each day; approximately 9,000,000 Americans have their identities stolen each year; cyber crime costs American businesses with 500 or more employees an average of $3,800,000 per year; and intellectual property worth over $1,000,000,000,000 has already been stolen from American businesses.

(4) In its 2009 Cyberspace Policy Review, the White House concluded, “Ensuring that cyberspace is sufficiently resilient and trustworthy against cyber attacks is one of the major goals of economic growth, civil liberties and privacy protections, national security, and the continued advancement of democratic institutions requires making cybersecurity a national priority.”

(5) An effective solution to the tremendous challenges of cyber security demands cooperation and integration of effort across jurisdictions of multiple Federal, State, local, and tribal government agencies, between the government and the private sector, and with international allies, as well as increased public awareness and preparedness among the American people.

SEC. 3. SENSE OF CONGRESS. It is the sense of Congress that Congress should enact, and the President should sign, bipartisan legislation to secure the United States against cyber attack and enhance American competitiveness and create jobs in the information technology industry, and to protect the identities and sensitive information of American citizens and businesses by—

(1) enhancing the security and resiliency of United States Government communications and information networks against cyber attack by nation-states, terrorists, and cyber criminals;

(2) incentivizing the private sector to quantify, assess, and mitigate cyber risks to their communications and information networks;

(3) promoting investments in the American information technology sector that create and maintain good, well-paying jobs in the United States and help to enhance American economic competitiveness;

(4) improving the capability of the United States Government to assess cyber risks and prevent, detect, and robustly respond to cyber attacks against the government and the military;

(5) improving the capability of the United States Government and the private sector to assess, prevent, and protect the government and the military;

(6) enhancing the security and resiliency of United States Government communications and information networks and the world and battling global cyber crime through focused diplomacy;

(7) protecting and increasing the resiliency of United States critical infrastructure and assets, the financial sector, and telecommunications networks against cyber attacks and other threats and vulnerabilities;

(8) expanding tools and resources for investigating and prosecuting cyber crimes in a manner that respects privacy rights and civil liberties and promotes American innovation; and

(9) maintaining robust protections of the privacy of American citizens and their online activities and communications.

By Mr. LEAHY (for himself, Mr. HATCH, Mr. GRASSLEY, Ms. KLOBUCHAR, Mr. SESSIONS, Mr. KYL, Mr. LIEBERMAN, and Mr. COONS):

S. 23. A bill to amend title 35, United States Code, to provide for patent reform; to the Committee on the Judiciary.
remain complacent while expecting to stay on top. A Newsweek study last year found that only 41 percent of Americans believe that the United States is staying ahead in innovation. A Thompson Reuters analysis has already predicted that China will outpace the United States in patent filings this year. China, in fact, has a specific plan not just to overtake the United States this year in patent applications, but to more than quadruple its patent filings over the next 5 years.

That is astonishing, until considering that China has been modernizing its patent system and investing in innovation while the United States has failed to keep pace. It has now been nearly 60 years since Congress last acted to reform American patent law. We can no longer wait.

Today, I am reintroducing bipartisan patent reform legislation that is the culmination of three Congresses worth of bipartisanship, bicameral work, including eight hearings in the Senate alone. The Patent Reform Act of 2011 is based on legislation first introduced in the House by Chairman Smith and Mr. Berman in 2005. The legislation will accomplish three important goals, which have been at the center of the patent reform debate: improve the application process by transitioning to a first-inventor-to-file system; improve the quality of patents issued by the USPTO by introducing several quality-enhancement measures; and provide more certainty to users.

In many areas that were highly contentious when the patent reform debate began, the courts have stepped in to act. Their decisions reflect the concerns heard in Congress that question the current system and provide more certainty in litigation.

Most recently, the Federal Circuit aggressively moved to constrain runaway damage awards, which has plagued the patent system by basing awards on unreliable numbers, unipersonal to the reality of licensing decisions. As the court continues to move in the right direction, it is more apparent than ever that the gatekeeper compromise on damages we have made to reach with Senator Feinstein and others is what is needed to ensure an award of a reasonable royalty is not artificially inflated or based on irrelevant factors.

The courts have addressed issues where they can, but in some areas, only Congress can take the necessary steps. The Patent Reform Act will both speed the application process and, at the same time, improve patent quality. It will provide the USPTO with the resources it needs to work through its application backlog, while also providing for greater input from third parties to improve the quality of patents issued, while remaining in effect.

High quality patents are the key to our economic growth. They benefit both patent owners and users, who can be more confident in the validity of issued patents. Patents of low quality and dubious validity, by contrast, enable patent trolls and constitute a drag on innovation. Too many dubious patents also unjustly cast doubt on truly high quality patents.

The Patent Reform Act provides the tools the USPTO needs to separate the inventive wheat from the chaff. It will allow our inventors and innovators to flourish. The Department of Commerce recently issued a report indicating that these reforms will create jobs without adding to the deficit. The Obama administration supports these efforts, as do industries and stakeholders from all sectors of the patent community. Congressional action can no longer be delayed.

Innovation and economic development are not uniquely Democrat or Republican objectives, as we worked together to find the proper balance for America—for our economy, for our inventors, for our consumers. Thomas Freidman wrote not too long ago: "New York City is the country which "endows its people with more tools and basic research to invent new goods and services [...] is the one that will not just survive but thrive down the road. [...] We might be able to stimulate our way back to stability, but we can only invent our way back to prosperity."

Reforming our patent system will stimulate the American economy through standard changes, rather than taxpayer dollars. I look forward to working with all Senators and our counterparts in the House, who have also made this a bipartisan priority, to ensure that this is the year we make our patent system reward inventors and provide certainty to users.

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. 23
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 "Patent Reform Act of 2011".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 1</td>
<td>Short title; table of contents</td>
</tr>
<tr>
<td>Sec. 2</td>
<td>First inventor to file</td>
</tr>
<tr>
<td>Sec. 3</td>
<td>Inventor's oath or declaration</td>
</tr>
<tr>
<td>Sec. 4</td>
<td>Damages</td>
</tr>
<tr>
<td>Sec. 5</td>
<td>Post-grant review proceedings</td>
</tr>
<tr>
<td>Sec. 6</td>
<td>Patent Trial and Appeal Board</td>
</tr>
<tr>
<td>Sec. 7</td>
<td>Preissuance submissions by third parties</td>
</tr>
<tr>
<td>Sec. 8</td>
<td>Venue</td>
</tr>
<tr>
<td>Sec. 9</td>
<td>Fee setting authority</td>
</tr>
<tr>
<td>Sec. 10</td>
<td>Supplemental examination</td>
</tr>
<tr>
<td>Sec. 11</td>
<td>Residency of Federal Circuit judges</td>
</tr>
<tr>
<td>Sec. 12</td>
<td>Micro entity defined</td>
</tr>
<tr>
<td>Sec. 13</td>
<td>Funding agreements</td>
</tr>
<tr>
<td>Sec. 14</td>
<td>Patent application fees</td>
</tr>
<tr>
<td>Sec. 15</td>
<td>Statutory nonrepudiation and security</td>
</tr>
<tr>
<td>Sec. 16</td>
<td>Tax strategies deemed within the prior art</td>
</tr>
<tr>
<td>Sec. 17</td>
<td>Effective date; rule of construction</td>
</tr>
</tbody>
</table>

SEC. 2. FIRST INVENTOR TO FILE.

(a) Deemed filed.—As provided in title 35, United States Code, is amended by adding at the end the following:

"(g) The term ‘joint research agreement’ means a written contract, grant, or cooperative agreement entered into by 2 or more research entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

(b) The filing date of the earliest application for which the patent or application is entitled, as to such invention, to a right of priority under section 129, 121, or 365(c)."

"(2) The effective filing date for a claimed invention in an application for reissue or reissued patent shall be the date on which the claim to the invention to have been contained in the patent for which reissue was sought.

(c) The term ‘claimed invention’ means the material subject matter described by a claim in a patent or an application for a patent."

(a) novels.—A person shall be entitled to a patent unless—

(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention;

(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention.

(b) EXCEPTIONS.—

(1) DISCLOSURES MADE 1 YEAR OR LESS BEFORE THE EFFECTIVE FILING DATE OF THE CLAIMED INVENTION.—A disclosure made 1 year or less before the effective filing date of a claimed invention shall not be prior art to the claimed invention under subsection (a)(1) if—

"(A) the disclosure was made by the inventor or joint inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor; or

"(B) the subject matter disclosed had, before such disclosure, been publically disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor.

(2) DISCLOSURES APPEARING IN APPLICATIONS AND PATENTS.—A disclosure shall not be prior art to a claimed invention under subsection (a)(2) if—

"(A) the subject matter disclosed was obtained directly or indirectly from the inventor or a joint inventor; or

"(B) the subject matter disclosed had, before such subject matter was effectively filed..."
under subsection (a)(2), been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or joint inventor; and

(c) The subject matter disclosed and the claimed invention, not later than the effective filing date of the claimed invention, were the subject matter on which the person to whom the person to whom the obligation of assignment was made to disclose the names of the parties to the joint research agreement.

(d) REPEAL OF REQUIREMENTS FOR INVENTIONS MADE ABROAD.—Section 120 of title 35, United States Code, is amended by striking “Subject to section 102(b) of this title, such” and inserting “subject to section 102(b) of this title, such”.

§103. Conditions for patentability; non-obviousness

(a) Apatent for a claimed invention may not be obtained, notwithstanding that the claimed invention is not identically disclosed as set forth in section 102, if the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious before the effective filing date of the claimed invention to a person having ordinary skill in the art to which the claimed invention pertains. Patency shall not be negated by the manner in which the invention was made.

(d) REPEAL OF REQUIREMENTS FOR INVENTIONS MADE ABROAD.—Section 104 of title 35, United States Code, is amended by striking the item relating to that section in the table of sections for chapter 10 of title 35, United States Code, are repealed.

(e) REPEAL OF STATUTORY INVENTION REGISTRATION.—

(1) IN GENERAL.—Section 157 of title 35, United States Code, and the item relating to that section in the table of sections for chapter 14 of title 35, United States Code, are repealed.

(2) REMOVAL OF CROSS REFERENCES.—Section 111(b)(8) of title 35, United States Code, is amended by striking “sections 115, 131, 135, and 157” and inserting “sections 115 and 135”.

(3) The amendments made by this subsection shall take effect 1 year after the date of the enactment of this Act, and shall apply to any request for a patent by the inventor or assignee of an invention filed on or after that date.

(4) EARLIER FILING DATE FOR INVENTOR AND JOINT INVENTOR.—Section 120 of title 35, United States Code, is amended by striking “which is filed by an inventor or inventors named” and inserting “which names an inventor or joint inventor”.

(5) PATENTS AND PUBLISHED APPLICATIONS EFFECTIVE AS PRIOR ART.—For purposes of determining whether a patent or application for patent is prior art to a claimed invention under subsection (a)(2), such patent or application shall be considered to have been effectively filed, with respect to any subject matter described in the patent or application—

(1) on or before the date of the actual filing date of the patent or the application for patent; or

(2) if the patent or application for patent is entitled to the benefit of a priority claim under sections 119, 365(a), or 365(b), to claim the benefit of an earlier filing date under section 120, 121, or 365(c), based upon 1 or more prior applications for patent, as of the filing date of the earliest such application that describes the subject matter.


(7) CONDITIONS FOR PATENTABILITY; NON-OBSERVABLE SUBJECT MATTER.—Section 102(b) of title 35, United States Code, is amended to read as follows:

(a) IN GENERAL.—The owner of a patent may have relief by civil action against the owner of another patent that claims the same invention and has an earlier effective filing date than the application in which such patent was derived from the inventor of the invention claimed in the patent owned by the person seeking relief under this section.

(b) FILING LIMITATION.—An action under this section may only be filed within 1 year after the issuance of the first patent containing claims to the subject matter of the application in which such other patent was derived from the inventor of the invention claimed in the patent owned by the person seeking relief under this section.

(c) DETERMINATION OF JURISDICTION.—The Patent Trial and Appeal Board shall have jurisdiction of a case instituted under subsection (a) if the patent or application of which the derivation is sought is filed after the date of the enactment of this Act, or if it is pending on that date.

(d) JURISDICTION.—The Patent Trial and Appeal Board shall have exclusive jurisdiction of a case instituted under subsection (a), or a related case, within the 1-year period following the date of institution, whether or not the case is pending on the date of the enactment of this Act.

(e) APPLICATION FOR JURISDICTION.—The parties may apply to the Patent Trial and Appeal Board for a determination of the jurisdiction in which the case is to be heard.

(f) REMEDIES.—The Patent Trial and Appeal Board may order the parties to a case instituted under subsection (a) to deposit with the Board an amount as the Board determines is just and equitable for the determination of the case, including the costs of the case.

(2) CONFORMING AMENDMENTS.—

(a) DETERMINATION OF JURISDICTION.—The Patent Trial and Appeal Board shall not have jurisdiction of a case instituted under subsection (a) unless the patent or application of which the derivation is sought is filed after the date of the enactment of this Act, or if it is pending on that date.

(b) JURISDICTION.—The Patent Trial and Appeal Board shall have exclusive jurisdiction of a case instituted under subsection (a), or a related case, within the 1-year period following the date of institution, whether or not the case is pending on the date of the enactment of this Act.

(c) APPLICATION FOR JURISDICTION.—The parties may apply to the Patent Trial and Appeal Board for a determination of the jurisdiction in which the case is to be heard.

(d) REMEDIES.—The Patent Trial and Appeal Board may order the parties to a case instituted under subsection (a) to deposit with the Board an amount as the Board determines is just and equitable for the determination of the case, including the costs of the case.
shall give notice of any arbitration award to the Director, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it relates. The arbitration award shall be enforceable in the proceeding until such notice is given. Nothing in this subsection shall preclude the Director from determining the patentability of the claimed invention in the proceeding.

(ii) Elimination of References to Interferences.—(1) Sections 141, 145, 146, 154, 395, and 314 of title 35, United States Code, are each amended by striking "Board of Patent Appeals and Interferences" each place it appears and inserting "Patent Trial and Appeal Board".

(2) The sections 146 and 154 of title 35, United States Code, are each amended—

(i) by striking "an interference" each place it appears and inserting "a derivation proceeding"; and

(ii) by striking "interference" each additional place it appears and inserting "derivation proceeding".

The subparagraph heading for section 154(b)(1)(C) of title 35, United States Code, as amended by this paragraph, is further amended by—

(i) striking "OR" and inserting "OF"; and

(ii) striking "SECRECY ORDER" and inserting "SECRECY ORDERS".

The second sentence of the heading for section 134 of title 35, United States Code, is amended to read as follows:

"§ 134. Appeal to the Patent Trial and Appeal Board."

The section heading for section 146 of title 35, United States Code, is amended to read as follows:

"§ 146. Civil action in case of derivation proceeding".

The section 154(b)(1)(C) of title 35, United States Code, as amended by this section, is amended—

(A) in subsection (a), by adding at the end the following:

"Only the United States may sue for the penalty authorized by this subsection."; and

(B) by striking subsection (b) and inserting the following:

"Any person who has suffered a competitive injury as a result of a violation of this section may file a civil action in a district court of the United States for recovery of damages adequate to compensate for the injury.".

(2) Effective Date.—The amendments made by this subsection shall apply to all cases, without exception, pending on or after the date of the enactment of this Act.

(3) Oaths.—In section 371(a) of title 35, United States Code, the oath contained—

(A) by this section shall take effect on the date that is 18 months after the date of the enactment of this Act; or

(B) a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any patent or application that contains or contained at any time such a claim.

(4) Interfering Patents.—The provisions of sections 102(g), 135, and 291 of title 35, United States Code, in effect on the date prior to the date of the enactment of this Act, apply to any application for patent, and any patent issued thereon, for an invention claimed in a patent application made by this section shall take effect on the date that is 18 months after the date of the enactment of this Act, and shall apply to any application for patent, and to any patent issuing thereon, that contains or contained at any time—

(A) a claim to a claimed invention that has an effective filing date defined in section 100(i) of title 35, United States Code, that is 18 months or more after the date of the enactment of this Act; or

(B) a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any patent or application that contains or contained at any time such a claim.

(5) Report.—Not later than 1 year after the date of the enactment of this Act, the Chief Counsel shall submit to the Committee on Small Business and Entrepreneurship and the Committee on the Judiciary of the Senate and the Committee on Small Business and Entrepreneurship and the Committee on the Judiciary of the House of Representatives a report regarding the results of the study under paragraph (2).

(6) Right of Review.—In general, any party that requests examination of an application, or any part of an application, for which a claim is made by this section shall start an appeal, or any part of an application, for which a claim is made by this section shall start an appeal, or any party that requests examination of an application, or any part of an application, for which a claim is made by this section shall start an appeal, if the Director makes a final disposition of the request for reissue, and shall provide on a biennial basis to the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives the findings and recommendations of the Director on the operation of provisions of this Act that affect the rights in selected countries in the industrialized world. The report shall include the following:

(A) A comparison between patent laws of the United States and other industrialized countries, including members of the European Union and Japan, Canada, and Australia.

(B) An analysis of the effect of prior user rights on innovation rates in the selected countries.

(C) An analysis of the correlation, if any, between prior user rights and the ability to attract venture capital to start new companies.

(D) An analysis of the effect of prior user rights, if any, on small businesses, universities, and individual inventors.

(E) An analysis of legal and constitutional issues, if any, that arise from placing trade secret law in patent law.

(F) An analysis of whether the change to a first-to-file patent system creates a particular need for prior user rights.

(7) Other Matters.—(A) Consultation with Other Agencies.—In preparing the report required under paragraph (1), the Director shall consult with the United States Trade Representative, the Secretary of State, and the Attorney General.

(B) Effect of Clause.—In general, except as otherwise provided by this Act, any modifications to the application for patent, and any patent issued thereon, that contains or contained at any time such a claim.

(8) Effective Date.—In general, except as otherwise provided by this Act, any modifications to the application for patent, and any patent issued thereon, that contains or contained at any time such a claim.

(9) Effective Date.—In general, except as otherwise provided by this Act, any modifications to the application for patent, and any patent issued thereon, that contains or contained at any time such a claim.

(10) Effective Date.—In general, except as otherwise provided by this Act, any modifications to the application for patent, and any patent issued thereon, that contains or contained at any time such a claim.
(b) REQUIRED STATEMENTS.—An oath or declaration under subsection (a) shall contain statements that—

(1) the application was made or was authorized to be made by the assignor or declarant; and

(2) such individual believes himself or herself to be the original inventor or an original joint inventor of a claimed invention in the application.

(c) ADDITIONAL REQUIREMENTS.—The Director may specify additional information relating to the inventor and the invention that is required to be included in an oath or declaration under subsection (a).

(1) IN GENERAL.—In lieu of executing an oath or declaration under subsection (a), the applicant for patent may provide a substitute statement under the circumstances described in paragraph (2) and such additional circumstances that the Director may specify by regulation.

(2) PERMITTED CIRCUMSTANCES.—A substitute statement under paragraph (1) is permitted with respect to any individual who—

(A) is unable to file the oath or declaration under subsection (a) because the individual—

(i) is deceased;

(ii) is under legal incapacity; or

(iii) cannot be found or reached after diligent effort; or

(B) is under an obligation to assign the invention but has refused to make the oath or declaration under subsection (a).

(3) CONTENTS.—A substitute statement under this subsection shall—

(A) identify the individual with respect to whom the statement applies;

(B) set forth the circumstances representing the permitted basis for the filing of the substitute statement in lieu of the oath or declaration under subsection (a); and

(C) contain any additional information, including any showing, required by the Director.

(e) MAKING REQUIRED STATEMENTS IN ASSIGNMENT OF RECORD.—An individual who is under an obligation to assign an application for patent may include the required statements under subsections (b) and (c) in the assignment executed by the individual and was recorded in connection with the application for patent.

(g) EARLIER-FILED APPLICATION CONTAINING REQUIRED STATEMENTS OR SUBSTITUTE STATEMENT.—

(1) EXCEPTION.—The requirements under this section shall not apply to an individual with respect to an application for patent in which an application is named as the inventor or a joint inventor and who claims the benefit under section 120, 121, or 365(c) of the filing of an earlier-filed application, if—

(A) an oath or declaration meeting the requirements of subsection (a) was executed by the individual and was filed in connection with the earlier-filed application;

(B) a substitute statement meeting the requirements of subsection (d) was filed in the earlier filed application with respect to the individual; or

(C) a patent application meeting the requirements of subsection (e) was executed with respect to the earlier-filed application by the individual and was recorded in connection with the earlier-filed application.

(2) COPIES OF OATHS, DECLARATIONS, STATEMENTS, OR ASSIGNMENTS.—Notwithstanding paragraph (1), the Director may require that a copy of the executed oath or declaration, the substitute statement, or the assignment filed in the earlier-filed application be included in the later-filed application.

(h) SUPPLEMENTAL AND CORRECTED STATEMENTS, FILING ADDITIONAL STATEMENTS.—

(1) IN GENERAL.—Any person making a statement required under this section may withdraw, replace, or otherwise correct the statement at any time if a change is made in the naming of the inventor requiring the filing of 1 or more additional statements under this section, the Director shall establish reasonable regulations which such additional statements may be filed.

(2) SUPPLEMENTAL STATEMENTS NOT REQUIRED.—If an individual has executed an oath or declaration meeting the requirements of subsection (a) or an assignment meeting the requirements of subsection (e) with respect to an application for patent, the individual facts and a showing that such action is necessary to comply with a requirement under this section to the earlier-filed application by the assignee of the entire invention.

(iii) cannot be found or reached after diligent effort; or

(ii) is under legal incapacity; or

(A) is unable to file the oath or declaration under paragraph (1) because the individual is named as the inventor of a claimed invention in the application filed under this section by a person to whom the inventor has assigned or is under an obligation to assign the invention.

(b) REQUIRED STATEMENTS.—An oath or declaration under subsection (a) shall contain statements that—

(A) are executed in the assignment executed by the individual and was recorded in connection with the application for patent may include the requirements of subsection (a) shall contain statements that—

(1) the application was made or was authorized to be made by the assignor or declarant; and

(2) such individual believes himself or herself to be the original inventor or an original joint inventor of a claimed invention in the application.

(c) ADDITIONAL REQUIREMENTS.—The Director may specify additional information relating to the inventor and the invention that is required to be included in an oath or declaration under subsection (a).

(1) IN GENERAL.—In lieu of executing an oath or declaration under subsection (a), the applicant for patent may provide a substitute statement under the circumstances described in paragraph (2) and such additional circumstances that the Director may specify by regulation.

(2) PERMITTED CIRCUMSTANCES.—A substitute statement under paragraph (1) is permitted with respect to any individual who—

(A) is unable to file the oath or declaration under subsection (a) because the individual—

(i) is deceased;

(ii) is under legal incapacity; or

(iii) cannot be found or reached after diligent effort; or

(B) is under an obligation to assign the invention but has refused to make the oath or declaration under subsection (a).

(3) CONTENTS.—A substitute statement under this subsection shall—

(A) identify the individual with respect to whom the statement applies;

(B) set forth the circumstances representing the permitted basis for the filing of the substitute statement in lieu of the oath or declaration under subsection (a); and

(C) contain any additional information, including any showing, required by the Director.

(e) MAKING REQUIRED STATEMENTS IN ASSIGNMENT OF RECORD.—An individual who is under an obligation to assign an application for patent may include the required statements under subsections (b) and (c) in the assignment executed by the individual, and was recorded in connection with the application for patent.

(g) EARLIER-FILED APPLICATION CONTAINING REQUIRED STATEMENTS OR SUBSTITUTE STATEMENT.—

(1) EXCEPTION.—The requirements under this section shall not apply to an individual with respect to an application for patent in which an application is named as the inventor or a joint inventor and who claims the benefit under section 120, 121, or 365(c) of the filing of an earlier-filed application, if—

(A) an oath or declaration meeting the requirements of subsection (a) was executed by the individual and was filed in connection with the earlier-filed application;

(B) a substitute statement meeting the requirements of subsection (d) was filed in the earlier filed application with respect to the individual; or

(C) a patent application meeting the requirements of subsection (e) was executed with respect to the earlier-filed application by the individual and was recorded in connection with the earlier-filed application.

(2) COPIES OF OATHS, DECLARATIONS, STATEMENTS, OR ASSIGNMENTS.—Notwithstanding paragraph (1), the Director may require that a copy of the executed oath or declaration, the substitute statement, or the assignment filed in the earlier-filed application be included in the later-filed application.

(h) SUPPLEMENTAL AND CORRECTED STATEMENTS, FILING ADDITIONAL STATEMENTS.—

(1) IN GENERAL.—Any person making a statement required under this section may withdraw, replace, or otherwise correct the statement at any time if a change is made in the naming of the inventor requiring the filing of 1 or more additional statements under this section, the Director shall establish reasonable regulations which such additional statements may be filed.

(2) SUPPLEMENTAL STATEMENTS NOT REQUIRED.—If an individual has executed an oath or declaration meeting the requirements of subsection (a) or an assignment meeting the requirements of subsection (e) with respect to an application for patent, the individual facts and a showing that such action is necessary to comply with a requirement under this section to the earlier-filed application by the assignee of the entire invention.

(iii) cannot be found or reached after diligent effort; or

(ii) is under legal incapacity; or

(A) is unable to file the oath or declaration under paragraph (1) because the individual is named as the inventor of a claimed invention in the application filed under this section by a person to whom the inventor has assigned or is under an obligation to assign the invention.
consider only those methodologies and factors in making the determination of damages under this section. The court shall only permit the introduction of evidence relating to the amount of damages that is relevant to the methodologies and factors that the court determines may be considered in making the damages determination.

(c) Procedure. The court, in its discretion, may request that a patent-infringement trial be sequenced so that the trier of fact decides questions of infringement and validity before the issues of damages and willful infringement are tried to the court or the jury. The court shall grant such a request, unless it finds good cause to reject the request, such as the absence of issues of significant damages or infringement and validity. The sequencing of a trial pursuant to this subsection shall not affect other matters, such as the timing of discovery. This subsection does not authorize a party to request that the issues of damages and willful infringement be tried to a jury different than the one that will decide questions of the patent’s infringement and validity.

(d) WILLFUL INFRINGEMENT.—

(1) IN GENERAL.—The court may increase damages up to 3 times the amount found or assessed if the court or the jury, as the case may be, determines that the infringer of the patent was willful. Increased damages under this subsection shall not apply to pro- visonal rights under section 154(d). Infringe- ment of a patent shall be willful if the claimant proves by clear and convincing evidence that the accused infringer’s conduct with respect to the patent was objectively reckless. An accused infringer’s conduct was objectively reckless if the infringer was acting despite an objectively high likelihood that his actions constituted infringement of a valid patent, knowing or with willful blindness that such person’s actions constituted infringement of the patent, or that the infringer intended to induce infringement of the patent.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to any civil action commenced on or after the date of the enactment of this Act.

§ 298. Advice of Counsel

“The failure of an infringer to obtain the advice of counsel with respect to any allegedly infringed patent or the failure of the infringer to present such advice to the court or jury may not be used to prove that the ac- cused infringer willfully infringed the patent or that the infringer intended to induce infringe- ment of the patent.”.

§ 311. Inter partes review

(a) REQUIREMENTS OF PETITION.—A petition for inter partes review shall be in writing and identify—

(1) the patent that is the subject of the proceeding;

(2) each real party in interest;

(3) the grounds for the challenge to the patent under section 311; and

(4) the petition provides such other infor- mation as the Director may require by regu- lation;

(b) The petition provides copies of any of the documents required under paragraphs (2), (3), and (4) to the patent owner or, if applicable, the designated representative of the patent

owner.

(c) PUBLIC AVAILABILITY.—As soon as practicable after the receipt of a petition under section 311, the Director shall make the petition available to the public.

§ 313. Preliminary response to petition

(a) PRELIMINARY RESPONSE.—If an inter partes review petition is filed under section 311, the patent owner shall have the right to file a preliminary response to the petition within a time period set by the Director.

(b) CONTENT OF RESPONSE.—A preliminary response to a petition for inter partes review that forthrightly supports why no inter partes review should be instituted based upon the failure of the petition to meet any require- ment of this chapter.

§ 314. Institution of inter partes review

(a) THRESHOLD.—The Director may not authorize an inter partes review to commence unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reason- able likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

(b) TIMING.—The Director shall determine whether to institute an inter partes review under this chapter within 3 months after rec- eiving a preliminary response under section 313 or, if none is filed, within three months after the expiration of the time for filing such a response.

(c) NOTICE.—The Director shall notify the petitioner and patent owner, in writing, of the Director’s determination under subsection (a), and shall make such notice avail- able to the public as soon as is practicable. Such notice shall list the date on which the review shall commence.

(d) NO APPEAL.—The determination by the Director whether an inter partes review under this section shall be final and nonappealable.

§ 315. Relation to other proceedings or actions

(a) INFRINGER’S ACTION.—An inter partes review may not be instituted or maintained if the petitioner or real party in interest has filed a civil action challenging the validity of the patent at issue.

(b) PATENT OWNER’S ACTION.—An inter partes review may not be instituted if the petition requesting the proceeding is filed more than 3 months after the date on which the petitioner, real party in interest, or his or her privy is required to respond to a civil action alleging infringement of the patent.

§ 316. Conduct of inter parties review

(a) PRELIMINARY RESPONSE.—If an inter partes review petition is filed under section 311 and a response to such a petition is timely filed, the Director, in his discretion, may join as a party to that inter
S316  CONGRESSIONAL RECORD — SENATE  January 25, 2011

parties review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 315 or the expiration of the time for filing a response, determines that there is in existence of an inter partes review under section 314.

"(d) MULTIPLE PROCEEDINGS.—Nothing in sections 315(a), 251, 252, and chapter 30, during the pendency of an inter partes review, if another proceeding or matter involving the patent is before the Office, the Director may determine the manner in which the inter partes review or other proceeding or matter may proceed, including providing for stay, transfer, consolidation, or termination of any such matter or proceeding.

"(e) ESTOPPEL.—

"(1) PROCEEDINGS BEFORE THE OFFICE.—The petitioner in an inter partes review under this chapter, or his real party in interest or privy, may not request or maintain a proceeding before the Office with respect to a patent claim on any ground that the petitioner raised or reasonably could have raised during an inter partes review of the claim that resulted in a final written decision under section 318(a).

"(2) CIVIL ACTIONS AND OTHER PROCEEDINGS.—The petitioner in an inter partes review, or his real party in interest or privy, may not assert either in a civil action arising in whole or in part under section 1338 of title 28 or in a proceeding for judicial review under section 232, that a claim or patent in a patent in an inter partes review is invalid on any ground that the petitioner raised or reasonably could have raised during an inter partes review of the claim that resulted in a final written decision under section 318(a).

§ 316. Conduct of inter partes review

"(a) REGULATIONS.—The Director shall preside over the inter partes review and shall establish rules governing the procedures for conducting such review.

"(b) CONSIDERATIONS.—In prescribing regulations under this section, the Director shall consider the policy, the integrity of the patent system, and the public interest.

"(c) PATENT TRIAL AND APPEAL BOARD.—The Patent Trial and Appeal Board shall, in accordance with section 6, conduct each proceeding authorized by the Director.

"(d) AMENDMENT OF THE PATENT.—

"(1) IN GENERAL.—An inter partes review instituted under this chapter, the patent owner may file 1 motion to amend the patent in 1 or more of the following ways:

"(A) Cancel any challenged patent claim.

"(B) For each challenged claim, propose a reasonable number of substitute claims.

"(2) ADDITIONAL MOTIONS.—Additional motions to amend may be permitted upon the joint request of the petitioner and the patent owner to materially advance the settlement of a proceeding under section 317, or as permitted by regulations prescribed by the Director.

"(e) SCOPE OF CLAIMS.—An amendment under this subsection may not enlarge the scope of the claims of the patent or introduce new matter.

"(f) PATENT TRIAL AND APPEAL BOARD.—The Patent Trial and Appeal Board shall issue a final written decision in an inter partes review instituted under this chapter.

"(g) DECISION OF THE BOARD.—

"(1) IN GENERAL.—Upon the conclusion of an inter partes review, the Office shall issue a final written decision under section 318(a).

"(2) APPLICABILITY.—

"(A) The decision of the Board shall be final and conclusive as to patentability of any patent claim challenged by the petitioner.

"(B) The decision of the Board shall be final and conclusive as to patentability of any patent claim challenged by the patent owner.

"(C) The decision of the Board shall be final and conclusive as to patentability of any patent claim challenged by the patent owner.

"(D) The decision of the Board shall be final and conclusive as to patentability of any patent claim challenged by the patent owner.

"(3) DECISION OF THE BOARD.—

"(A) IN GENERAL.—An inter partes review instituted under this chapter shall be terminated with respect to any petitioner upon the joint request of the petitioner and the patent owner, unless the Office has decided that the merits of the proceeding before the request for termination is filed. If the inter partes review is terminated with respect to a petitioner under this section, no estoppel under section 315(e) shall apply to that petitioner. If no petitioner remains in the inter partes review, the Office may terminate the review or proceed to a final written decision under section 318(a).

"(B) AGREEMENTS IN WRITING.—Any agreement in writing between the patent owner and a petitioner, including any collateral agreements referred to in such agreement or understanding, made in connection with or in the course of or relating to the inter partes review under this section shall be in writing and a true copy of such agreement or understanding shall be filed with the Office at the termination of the inter partes review as between the parties. If any party filing such agreement or understanding so requests, the copy shall be kept separate from the file of the inter partes review, and shall be made available only to Federal Government agencies upon written request, or to any other person on a showing of good cause.

§ 318. Decision of the board

"(a) FINAL WRITTEN DECISION.—If an inter partes review is not terminated under this chapter, the Patent Trial and Appeal Board shall issue a final written decision with respect to the patentability of any patent claim challenged by the petitioner and any new claim added under section 316(d).

"(b) CERTIFICATE.—If the Patent Trial and Appeal Board issues a final decision under subsection (a) and the time for appeal has expired or any appeal has terminated, the Director shall issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable, confirming any claim of the patent determined to be patentable.

§ 319. Appeal

Any person dissatisfied with the final written decision of the Patent Trial and Appeal Board under section 316(a) may appeal the decision pursuant to sections 141 through 144. An appeal from the inter partes review shall have the right to be a party to the appeal.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—For purposes of this section, the table of chapters for part III of title 35, United States Code, is amended by amending subsection (a) of this section.

§ 320. Application

(c) REGULATIONS AND EFFECTIVE DATE.

(1) REGULATIONS.—The Director shall not later than the date that is 1 year after the date of the enactment of this Act, issue regulations that carry out chapter 31 of title 35, United States Code, as amended by subsection (a) of this section.

(2) APPLICABILITY.—

"(A) IN GENERAL.—The amended made by subsection (a) shall take effect on the date that is 1 year after the effective date of subsection (a).

"(B) EXCEPTION.—The provisions of chapter 31 of title 35, United States Code, as amended by subsection (a) shall continue to apply to requests for inter partes reexamination that are filed prior to the effective date of subsection (a) as if subsection (a) had not been enacted.

(2) GRADUATED IMPLEMENTATION.—The Director may impose a limit on the number of inter partes reviews that may be instituted during each of the first 4 years following the effective date of subsection (a), provided that such number shall in each year be equivalent to or greater than the number of inter partes reexaminations that are carried out under section 315(e) of such Code, as amended, in any full fiscal year prior to the effective date of subsection (a).

(4) TRANSITION.—

"(A) IN GENERAL.—Chapter 31 of title 35, United States Code, is amended—

"(i) in section 312—

"(ii) in subsection (a)—

"(aa) in the first sentence, by striking "substantial new question of patentability affecting any claim of the patent concerned is raised by the request," and inserting "the information presented in the request shows that there is a reasonable likelihood that the requester would prevail with respect to at least 1 of the claims challenged in the request;" and

"(bb) in the second sentence, by striking "The existence of a substantial new question
of patentability" and inserting "A showing that there is a reasonable likelihood that the requester would prevail with respect to at least 1 of the claims challenged in the request." or order a proceeding under this chapter, or that such a proceeding has been instituted, and requiring that such discovery shall be limited to evidence directly related to factual assertions advanced by either party in the proceeding; and (6) prescribing sanctions for abuse of discovery, abuse of process, or any other improper use of the proceeding, such as to harass or to cause unnecessary delay or an unnecessary increase in the cost of the proceeding; and (7) providing for protective orders governing the exchange and submission of confidential information; and (8) allowing the patent owner to file a response to the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.

(c) ESTOPPEL.—

(1) PROCEEDINGS BEFORE THE OFFICE.—The petitioner in a post-grant review under this chapter and his real party in interest or privy, may not request or maintain a proceeding before the Office with respect to a claim on any ground that the petitioner, or reasonably could have raised during a post-grant review of the claim that resulted in a final written decision under section 328(a).

(2) CIVIL ACTIONS AND OTHER PROCEEDINGS.—The petitioner in a post-grant review under this chapter, or his real party in interest or privy, may not assert either in a civil action arising in whole or in part under section 1338 of title 28 or in a proceeding before the International Trade Commission that a claim in a patent is invalid on any ground that the petitioner raised during a post-grant review of the claim that resulted in a final written decision under section 328(a).

(3) PRELIMINARY INJUNCTIONS.—If a civil action alleging infringement of a patent is filed within 3 months of the grant of the patent, and the court may not consider, in determining the patent owner’s motion for a preliminary injunction against infringement of the patent on the basis that a petition for a post-grant review has been filed or that such a proceeding has been instituted.

(g) REISSUE PATENTS.—A post-grant review may not be instituted if the petition requests cancellation of a claim in a reissue patent that is identical to or narrower than a claim in the original patent from which the reissue patent was issued, and the time period under section 328(c) would bar filing a petition for a post-grant review for such original patent.

§ 326. Conduct of post-grant review

(a) REGULATIONS.—The Director shall pre-scribe regulations—

(1) providing that the file of any proceeding under this chapter shall be made available to the public, except that any petition or document made available with the intent that it be sealed shall be accompanied by a motion to seal, and such petition or document shall be treated as sealed pending the outcome of the ruling on the motion;

(2) setting forth the standards for the showing of sufficient grounds to institute a review under subsections (a) and (b) of section 324;

(3) establishing procedures for the submission of supplemental information after the petition is filed;

(4) in accordance with section 2(b)(2), establishing and governing a post-grant review under this chapter and the relationship of such review to other proceedings under this title;

(5) setting forth standards and procedures for discovery of relevant evidence, including that such discovery shall be limited to evidence directly related to factual assertions advanced by either party in the proceeding;

(6) prescribing sanctions for abuse of discovery, abuse of process, or any other improper use of the proceeding, such as to harass or to cause unnecessary delay or an unnecessary increase in the cost of the proceeding; and

(7) providing for protective orders governing the exchange and submission of confidential information;

(8) allowing the patent owner to file a response to the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.
through affidavits or declarations, any addi-
tional factual evidence and expert opinions
on which the patent owner relies in support
of the response.

(9) The Director may, and in the discretion
of the Director shall, discontinue, in whole or
in part, the filing of the post-grant review,
and shall be made available only to Federal
Government agencies upon written request,
or to any other person on a showing of
good cause shown.

§ 328. Decision of the board

(a) Final written decision.—If a post-
grant review is instituted and not dismissed
under section 327, the Patent Trial and Ap-
peal Board shall issue a final written deci-
sion with respect to the patentability of any
claim of a particular patent challenged by
the petitioner and any new claim added under
section 326(d).

(b) Certificate.—If the Patent Trial and
Appeal Board issues a final written decision
under subsection (a) and the time for appeal
has expired or any appeal has terminated,
the Director shall issue and publish a certifi-
cate canceling any claim of the patent fi-
nally determined to be unpatentable, con-
firming any claim of the patent determined
as patentable, and incorporating in the
patent by operation of law certificates any
new or amended claim determined to be pat-
entable.

§ 329. Appeal

A party dissatisfied with the final written
decision of a post-grant review, or any ap-
peal to the United States Court of Federal
Claims, may file with the Patent Trial and
Appeal Board a written request for review
for the Office to determine whether or not to
allow review of any portion of the final
written decision. A party dissatisfied with
any decision of the Patent Trial and Appeal
Board may appeal to the United States Court
of Federal Claims. The parties may stipulate
that any information submitted by
the Office, and the ability of the Office to timely
issue a final written decision, the efficient administra-
tion of the Office, and the economy, the integrity of the patent sys-

(c) Additional information.—A party
that submits a written statement pursuant
to subsection (a)(2), and any new claim added
under section 326(d), shall become a part of the official
file of the patent.

(d) Limitations.—A written statement
submitted pursuant to subsection (a)(2), and additional
information submitted pursuant to subsection (c), shall be
considered evidence submitted by
the Office for any purpose other than to deter-
mine the proper meaning of a patent claim in a proceeding that is ordered or in
stitution pursuant to section 304, 305, or 324. If any such written statement or additional
information is subject to an applicable protective
order, it shall be redacted to exclude in-
fornation that is subject to such protective order.

(e) Confidentiality.—Upon the written
request of the person citing prior art or written
statements pursuant to subsection (a), that person’s identity shall be excluded from
the patent file and kept confidential.

(2) Effective date.—The amendment
made by this subsection shall take effect 1
year after the date of the enactment of this
Act and shall apply to patents issued before,
on, or after that effective date.

(b) Exemptions.—(1) Determination by director.

(A) In general.—Section 303(a) of title 35,
United States Code, is amended by striking
the first paragraph of section 303(a) and
inserting “section 301 or 302”.

(B) Effective date.—The amendment
made by this paragraph shall take effect 1
year after the date of the enactment of this
Act and shall apply to patents issued before,
on, or after that effective date.

(c) Citation of prior art and written
statements.

(1) In general.—Section 301 of title 35,
United States Code, is amended to read as
follows:

“§ 301. Citation of prior art and written
statements

“(a) In general.—Any person at any time
may cite to the Office in writing—
any prior art consisting of patents or
printed publications which that person be-
lieves to have a bearing on the patentability
of any claim of a particular patent; or

“(b) Official file.—If the person citing
prior art or written statements pursuant to
subsection (a) explains in writing the per-
tinence and manner of applying the prior art
or written statements to at least 1 claim of
the patent, the citation of the prior art or
written statements and the explanation
thereof shall become a part of the official
file of the patent.

(2) Regulations and effective date.

(a) Regulations.—The amendment
made by this paragraph shall take effect 1
year after the date of the enactment of this
Act and shall apply to proceedings that are
commenced before the effective date of
this Act.

(b) Effective date.—The amendment
made by this paragraph shall take effect 1
year after the date of the enactment of this
Act and shall apply to proceedings that are
commenced before the effective date of
this Act.
the administrative patent judges shall constitute the Patent Trial and Appeal Board. The administrative patent judges shall be persons of competent legal knowledge and scientific and technical ability, and are appointed by the Secretary, in consultation with the Director. Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, to the Patent Trial and Appeal Board or its members shall be deemed to refer to the Board of Patent Appeals and Interferences is deemed to refer to the Patent Trial and Appeal Board.

(b) The Patent Trial and Appeal Board shall—

(1) On a written appeal of an applicant, review adverse decisions of examiners upon applications for patents pursuant to section 314(a); (2) Review appeals of reexaminations pursuant to section 314(b); (3) Conduct derivation proceedings pursuant to section 313; and (4) Conduct inter partes reviews and post-grant reviews pursuant to chapters 31 and 32.

(c) Each appeal, derivation proceeding, post-grant review, and inter partes review shall be heard by at least 3 members of the Patent Trial and Appeal Board, who shall be designated by the Director. Only the Patent Trial and Appeal Board may grant rehearings.

(d) The Secretary of Commerce may, in his discretion, deem the appointment of an administrative patent judge who, before the date of the enactment of this subsection, held office pursuant to an appointment by the Director to take effect on the date on which the Director initially appointed the administrative patent judge. It shall be a defense to an action for removal of an administrative patent judge on the basis of the judge’s having been originally appointed by the Director that the administrative patent judge so appointed was acting as a de facto officer.

(e) Administrative Appeals.—Section 134 of title 35, United States Code, is amended—

(1) in subsection (a), by striking “any reexamination proceeding” and inserting “a reexamination”;

(2) by striking subsection (c);

(f) Circuit Appeals.—In general.—Section 143 of title 35, United States Code, is amended to read as follows:

“(a) Patent Trial and Appeal Board in a derivation proceeding, reexamination, post-grant review, and inter partes review shall have the right to intervene in an appeal from a decision entered by the Patent Trial and Appeal Board in a derivation proceeding under section 135 or in an inter partes or post-grant review pursuant to the patent, trademark and unfair competition acts, and shall apply to patent applications filed before, on, or after that effective date.

(g) Change of Venue.—Section 1400 of title 28, United States Code, is amended by adding at the end the following:

“(c) Change of Venue.—For the convenience of parties and witnesses, in the interest of justice, a district court shall transfer any civil action arising under any Act of Congress relating to patents upon a showing that the transferor venue is clearly more convenient than the venue in which the civil action is pending.”

(h) Technical Amendments Relating to Venue.—Sections 32, 145, 146, 154(b)(4)(A), and 299 of title 35, United States Code, and section 211(b)(4) of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1966 (commonly referred to as the “Trademark Act of 1946” or the “Lanham Act”); 15 U.S.C. 1071(b)(4), are each amended by striking “United States District Court for the District of Columbia” each place that term appears and inserting “United States District Court for the Eastern District of Virginia”.

(i) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to patent applications filed on or after that date.

SEC. 7. PREISSUANCE SUBMISSIONS BY THIRD PARTIES.

(a) In General.—Section 32 of title 35, United States Code, is amended by adding at the end the following:

“(e) Preissuance Submissions by Third Parties.—

(1) In General.—Any third party may submit for consideration and inclusion in the record of a patent application, any patent, published patent application, or other printed publication of potential relevance to the prosecution of certain international conventions, and for other purposes”, approved July 5, 1966 (commonly referred to as the “Trademark Act of 1946” or the “Lanham Act”); 15 U.S.C. 1071(b)(4), are each amended by striking “United States District Court for the District of Columbia” each place that term appears and inserting “United States District Court for the Eastern District of Virginia”.

(i) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to civil actions commenced on or after that date.

SEC. 8. VENUE.

(a) Change of Venue.—Section 1400 of title 28, United States Code, is amended by adding at the end the following:

“(c) Change of Venue.—For the convenience of parties and witnesses, in the interest of justice, a district court shall transfer any civil action arising under any Act of Congress relating to patents upon a showing that the transferor venue is clearly more convenient than the venue in which the civil action is pending.”

(b) Technical Amendments Relating to Venue.—Sections 32, 145, 146, 154(b)(4)(A), and 299 of title 35, United States Code, and section 211(b)(4) of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1966 (commonly referred to as the “Trademark Act of 1946” or the “Lanham Act”); 15 U.S.C. 1071(b)(4), are each amended by striking “United States District Court for the District of Columbia” each place that term appears and inserting “United States District Court for the Eastern District of Virginia”.

(i) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to patent applications filed on or after that date.
any submission to, and for all other services performed by or materials furnished by, the Office, provided that patent and trademark fee amounts are in the aggregate set to recovery costs to the Office for processing, activities, services and materials, including proportionate shares of the administrative costs of the Office.

(2) SMALL AND MICRO ENTITIES.—The fees established under paragraph (1) for filing, processing, issuing, and maintaining patent and trademark applications shall be reduced by 50 percent with respect to their application to any small entity that qualifies for reduced fees under section 41(d)(1)(A) of United States Code, and shall be reduced by 75 percent with respect to their application to any micro entity as defined in section 123 of that title.

(3) REDUCTION OF FEES IN CERTAIN FISCAL YEARS.—In any fiscal year, the Director—

(A) shall consult with the Patent Public Advisory Committee and the Trademark Public Advisory Committee on the advisability of reducing any fees described in paragraph (1); and

(B) in consultation required under subparagraph (A), may reduce such fees.

(4) ROLE OF THE PUBLIC ADVISORY COMMITTEE.—The Director shall—

(A) submit to the Patent Public Advisory Committee or the Trademark Public Advisory Committee, or both, as appropriate, any proposed fee under paragraph (1) not less than 60 days before conducting any proposed fee in the Federal Register;

(B) provide the relevant advisory committee described in subparagraph (A) a 30-day period following the submission of any proposed fee, on which to deliberate, consider, and comment on such proposal, and require the relevant advisory committee in carrying out such public hearing, including by offering the use of Office resources to notify and promote the hearing to the public and interested stakeholders;

(C) require the relevant advisory committee to make available to the public a written report detailing the comments, advice, and recommendations of the committee regarding any proposed fee;

(D) (i) through (v), analyze any comments, advice, or recommendations received from the relevant advisory committee before setting or adjusting any fee; and

(E) through the Chair and Ranking Member of the Senate and House Judiciary Committees, the Congress of any final rule setting or adjusting fees under paragraph (1).

(5) PUBLICATION IN THE FEDERAL REGISTER.—

(A) IN GENERAL.—Any rules prescribed under this subsection shall be published in the Federal Register.

(B) RATIONALE.—Any proposal for a change in fees under this section shall—

(i) be published in the Federal Register; and

(ii) include, in such publication, the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change.

(C) PUBLIC COMMENT PERIOD.—Following the publication of any proposed fee in the Federal Register pursuant to subparagraph (A), the Director shall seek public comment for a period of not less than 45 days.

(D) CONGRESSIONAL COMMENT PERIOD.—Following the notification described in paragraphs (1) and (2) of section 801(c) of title 35, United States Code, all fees paid under this subsection shall be deposited in the Treasury as an offsetting receipt that shall not be available for obligation or expenditure.

(E) EFFECTIVE DATE.—This subsection shall become effective 60 days after the date of the enactment of this Act.

(6) EFFECTIVE DATE.—Except as provided in subsection (h), the provisions of this subsection shall take effect upon the date of the enactment of this Act.

SEC. 10. SUPPLEMENTAL EXAMINATION.

(a) IN GENERAL.—Chapter 25 of title 35, United States Code, is amended by adding at the end the following:

"§ 257. Supplemental examination to consider reconsider, or correct information.

"(a) IN GENERAL.—A patent owner may request supplemental examination of a patent in the Office to consider, reconsider, or correct information believed to be relevant to the patent. Within 3 months of the date a request for supplemental examination meeting the requirements of this section is received, the Director shall conduct such supplemental examination and shall conclude such examination by issuing a certificate indicating whether the information present in the request raises a substantial new question of patentability.

"(b) REEXAMINATION ORDERED.—If a substantial new question of patentability is raised by 1 or more items of information in the request, the Director shall order reexamination of the patent. The reexamination shall be conducted according to procedures established by chapter 30, except that the patent owner shall not have the right to file a statement pursuant to section 304.

"(c) EFFECT.—

"(1) IN GENERAL.—A patent shall not be held unenforceable on the basis of conduct relating to information that had not been received by the patent owner under section 505(j)(2)(B)(v) of the Tariff Act of 1930 (19 U.S.C. 1337(a)), or section 337(a) of the Tariff Act of 1930, or the Patent Act of 1976, or patent application 2006, subsection'' and inserting ''Subsection''; and

"(ii) in section 304(a) of Public Law 108–447 is amended in title VIII of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 2005, in section 802(a) by striking ""During fiscal years 2005, 2006 and 2007, and inserting ""Until such time as the Director sets or adjusts the fees otherwise."

"(d) EFFECTIVE DATE, APPLICABILITY, AND TRANSITION PROVISIONS.—Division B of Public Law 108–447 is amended in title VIII of the Departments of Commerce, Justice, and the Judiciary and Related Agencies Appropriations Act, 2005, in section 803(a) by striking ""and shall apply only with respect to the remaining portion of fiscal year 2005, 2006 and 2007."

"(e) STATUTORY AUTHORITY.—Section 41(d)(1)(A) of title 35, United States Code, is amended by striking "", and the Director may not increase any such fee thereafter"".

"(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any other provision of Division B of Public Law 108–447, including section 801(c) of title VIII of the Departments of Commerce, Justice, and the Judiciary and Related Agencies Appropriations Act, 2005, in section 803(a) by striking ""and shall apply only with respect to the remaining portion of fiscal year 2005, 2006 and 2007"".

"(g) DEFINITIONS.—In this section, the following definitions shall apply:

(1) DIRECTOR.—The term ""Director"" means the Director of the United States Patent and Trademark Office.

(2) OFFICE.—The term ""Office"" means the United States Patent and Trademark Office.

(3) TRADEMARK ACT OF 1986.—The term ""Trademark Act of 1986"" means an Act entitled ""Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions relating thereto, to improve the registration system, and for other purposes"", approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the ""Trademark Act of 1946 or the Lanham Act.""

(4) ELECTRONIC SERVICES.—The term ""Electronic Services"" means services made available by or through the Internet and in other electronic means.

(1) IN GENERAL.—Notwithstanding any other provision of this section, a fee of $400 shall be established for each application for a reexamination request, for an oral reexamination proceeding, or for any other examination, that is not filed by electronic means as prescribed by the Director. The fee established by this subsection shall apply to any patent, small entity, or micro entity that qualifies for reduced fees under section 41(h)(1) of title 35, United States Code. All fee amounts are in the aggregate set to recovery costs to the Office in the absence thereof, shall not be relevant to enforcement of the patent under section 282.

"(2) REEXAMINATION ORDERED.—If a substantial new question of patentability is raised by 1 or more items of information in the request, the Director shall order reexamination of the patent. The reexamination shall be conducted according to procedures established by chapter 30, except that the patent owner shall not have the right to file a statement pursuant to section 304.

"(3) EFFECT.—

"(1) IN GENERAL.—A patent shall not be held unenforceable on the basis of conduct relating to information that had not been received by the patent owner under section 505(j)(2)(B)(v) of the Tariff Act of 1930 (19 U.S.C. 1337(a)), or section 337(a) of the Tariff Act of 1930, or patent application 2006, subsection'' and inserting ''Subsection''; and

"(ii) in section 304(a) of Public Law 108–447 is amended in title VIII of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005, in section 803(a) by striking ""and shall apply only with respect to the remaining portion of fiscal year 2005, 2006 and 2007."

"(e) STATUTORY AUTHORITY.—Section 41(d)(1)(A) of title 35, United States Code, is amended by striking "", and the Director may not increase any such fee thereafter"".

"(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any other provision of Division B of Public Law 108–447, including section 801(c) of title VIII of the Departments of Commerce, Justice, and the Judiciary and Related Agencies Appropriations Act, 2005, in section 803(a) by striking ""and shall apply only with respect to the remaining portion of fiscal year 2005, 2006 and 2007.""
to subsection (a), fees established and applicable to ex parte reexamination proceedings under chapter 30 shall be paid in addition to fees applicable to supplemental examination. The Director shall promulgate regulations governing the form, content, and other requirements of requests for supplemental examination, and establishing procedures for conducting a review of information submitted in such requests.

'(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

"(1) to limit the authority of the Director to investigate issues of possible misconduct and impose sanctions for misconduct in connection with matters or proceedings before the Office; or

"(2) to limit the authority of the Director to promulgate regulations under chapter 3 relating to sanctions for misconduct by representatives practicing before the Office.

"(f) EFFECTIVE DATE.—This section shall take effect 1 year after the date of enactment of this Act and shall apply to patents issued on or after that date.

SEC. 11. RESIDENCY OF FEDERAL CIRCUIT JUDGES.

(a) RESIDENCY.—The second sentence of section 44(c) of title 28, United States Code, is repealed.

(b) FACILITIES.—Section 44 of title 28, United States Code, is amended by adding at the end the following:

"(e) the Director of the Administrative Office of the United States Courts shall provide—

"(1) a judge of the Federal judicial circuit who lives within 50 miles of the District of Columbia with appropriate facilities and administrative support services; and

"(2) a judge of the Federal judicial circuit who does not live within 50 miles of the District of Columbia with appropriate facilities and administrative support services—

"(i) in the district and division in which that judge resides; or

"(ii) if appropriate facilities are not available in the division in which that judge resides, in the district and division closest to the residence of that judge in which such facilities are available, as determined in the first sentence.

"(2) Nothing in this subsection may be construed to authorize or require the construction of new facilities.

SEC. 12. MICRO ENTITY DEFINED.

(Chapter 11 of title 35, United States Code, is amended by adding at the end the following):

"§ 123. Micro entity defined

'(a) IN GENERAL.—For purposes of this title, the term ‘micro entity’ means an applicant who makes a certification under either subsection (b) or (c).

'(b) ASSUMPTION OF APPLICABILITY.—For an unassigned application, each applicant shall certify that the applicant—

"(1) qualifies as a small entity, as defined in regulations issued by the Director; and

"(2) has not been named on 5 or more previously filed patent applications;

"(3) has not assigned, granted, or conveyed an obligation by contract or law to assign, grant, or convey, a license or any other ownership interest in the particular application; and

"(4) has not had a gross income, as defined in section 61(a) of the Internal Revenue Code (26 U.S.C. 61(a)), exceeding 2.5 times the average gross income, as reported by the Department of Labor, in the calendar year immediately preceding the calendar year in which the examination fee is being paid.

"(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to patents issued on or after that date.

SEC. 13. FUNDING AGREEMENTS.

(a) IN GENERAL.—Section 202(c)(7)(E)(i) of title 35, United States Code, is amended—

"(1) by striking ‘‘75 percent’’ and inserting ‘‘15 percent’’; and

"(2) by striking ‘‘25 percent’’ and inserting ‘‘85 percent’’.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to patents issued on or after that date.

SEC. 14. TAX STRATEGIES DEEMED WITHIN THE COMPELLED DISCLOSURE OR DEDICATION.—In the manner prescribed in the first paragraph of section 112 of this title,

"(d) REISSUE OF DEFECTIVE PATENTS.—Section 251 of title 35, United States Code, is amended—

"(1) in the first paragraph—

"(A) by striking ‘‘Whenever’’ and inserting ‘‘(a) IN GENERAL.—Whenever’’; and

"(B) by striking ‘‘without any deceptive intention’’;

"(2) in the second paragraph, by striking ‘‘The Director’’ and inserting ‘‘(b) MULTIPLE REISSUED PATENTS.—The Director’’;

"(3) in the third paragraph, by striking ‘‘The provisions’’ and inserting ‘‘(c) APPLICABILITY OF THIS TITLE.—The provisions’’; and

"(4) in the last paragraph, by striking ‘‘No reissued patent’’ and inserting ‘‘a reissued patent’’.

SEC. 15. BEST MODE REQUIREMENT.

(a) IN GENERAL.—Section 282 of title 35, United States Code, is amended in its second undesignated paragraph by striking paragraph (3) and inserting the following:

"(3) Invalidity of the patent or any claim in suit for failure to comply with—

"(A) any requirement of section 112, except that the failure to disclose the best mode shall not be a basis on which any claim of a patent may be canceled or held invalid or otherwise unenforceable under section 266 (4) by striking the first paragraph of section 112 of this title and inserting ‘‘section 112(a) (other than the requirement in the second undesignated paragraph)’’;

"(B) any requirement of section 251.‘‘

(b) CONFORMING AMENDMENT.—Sections 118(e)(1) and 120 of title 35, United States Code, are each amended by striking ‘‘the first paragraph of section 112 of this title’’ and inserting ‘‘section 112(a) (other than the requirement in the second undesignated paragraph)’’.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the date of the enactment of this Act and shall apply to proceedings commenced on or after that date.

SEC. 16. TECHNICAL AMENDMENTS.

(a) JOINT INVENTIONS.—Section 116 of title 35, United States Code, is amended—

"(1) in the first paragraph, by striking ‘‘When’’ and inserting ‘‘(a) JOINT INVENTIONS.—When’’;

"(2) in the second paragraph, by striking ‘‘If a joint inventor’’ and inserting ‘‘(B) a judge of the Federal judicial circuit’’;

"(3) in the third paragraph—

"(A) by striking ‘‘Whenever’’ and inserting ‘‘(a) JOINT INVENTIONS.—Whenever’’;

"(B) by striking ‘‘and such error arose without any deceptive intent on his part.’’;

"(c) FILING IN APPLICATION IN FOREIGN COUNTRY.—Section 184 of title 35, United States Code, is amended—

"(1) in the first paragraph—

"(A) by striking ‘‘Except when’’ and inserting ‘‘(a) FILING IN FOREIGN COUNTRY.—Except when’’; and

"(B) by striking ‘‘and without deceptive intent’’;

"(3) in the second paragraph, by striking ‘‘The term’’ and inserting ‘‘(b) APPLICATION.—The term’’;

"(3) in the third paragraph, by striking ‘‘of section’’ and inserting ‘‘(c) SUBSEQUENT MODIFICATIONS, AMENDMENTS, AND SUPPLEMENTS.—The scope’’.

SEC. 17. PATENT VALIDITY.

(a) PATENT VALIDITY.—Section 282 of title 35, United States Code, is amended—

"(1) in the first paragraph—

"(A) by striking ‘‘Whenever’’ and inserting ‘‘(a) IN GENERAL.—Whenever’’;

"(B) by striking ‘‘without any deceptive intention’’;

"(2) in the second paragraph, by striking ‘‘Whenever, without any deceptive intention’’ and inserting ‘‘(b) IN GENERAL.—Whenever’’;

"(2) in the second paragraph, by striking ‘‘(b) ADDITIONAL DISCLAIMER OR DEDICATION.—In the manner set forth in subsection (a), the Director shall—

"(c) CORRECTION OF NAMED INVENTOR.—Section 256 of title 35, United States Code, is amended—

"(1) in the first paragraph—

"(A) by striking ‘‘Whenever’’ and inserting ‘‘(a) CORRECTION.—Whenever’’;

"(B) by striking ‘‘and such error arose without any deceptive intention on his part’’;

"(C) by striking the second paragraph, by striking ‘‘The error’’ and inserting ‘‘(b) PATENT VALID IF ERROR CORRECTED.—The error’’.

"(g) PRESUMPTION OF VALIDITY.—Section 282 of title 35, United States Code, is amended—

"(1) in the first undesignated paragraph—

"(a) by striking ‘‘A patent’’ and inserting ‘‘(a) IN GENERAL.—A patent’’; and

"(b) by striking the third sentence; and

"(2) in the second paragraph, by striking ‘‘The following’’ and inserting ‘‘(b) DEFENSES.—The following’’; and

"(d) PATENT LC.
(3) in the third undesignated paragraph, by striking “in actions” and inserting “(c) Notice of Actions; Actions During Extension of Patent Term.—In actions... "(e) Notice of Actions; Actions During Extension of Patent Term.—Section 328 of title 35, United States Code, is amended by striking ‘‘without deceptive intention’’.

(i) Section 3(e)(2) of title 35, United States Code, is amended by striking “this Act,” and inserting “that Act.”

(ii) Section 202(b)(3) of title 35, United States Code, is amended by striking “nontransferable”.

(iii) Section 208(d)(1) of title 35, United States Code, is amended by striking “any state” and inserting “any State”.

(iv) Section 371(b) of title 35, United States Code, is amended by striking “of the treaty” and inserting “of the treaty.”

(j) UNNECESSARY REFERENCES.—

(i) IN GENERAL.—Title 35, United States Code, is amended by striking “of this title” each place that term appears.

(ii) SECTION 101.—Section 101 of title 35, United States Code, is amended by striking “shall” and inserting “shall not”.

(iii) SUBSECTIONS (a) AND (b) OF SECTION 105.—The first instance of the use of such term in section 111(b)(8).

(k) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act and shall apply to proceedings commenced on or after that effective date.

SECTION 17. EFFECTIVE DATE; RULE OF CONSTRUCTION.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, the provisions of this Act shall take effect 1 year after the date of the enactment of this Act and apply to any patent issued on or after that effective date.

(b) CONTINUITY OF INTENT UNDER THE CREATE ACT.—The enactment of section 102(c) of title 35, United States Code, under section (2)(b) of this Act is done with the same intent to promote joint research activities that was expressed, including in the legislative history, through the enactment of the Cooperative Research and Technology Enhancement Act of 2004 (Public Law 108–453; the “CREATE Act”), the amendments of which are stricken by section 2(c) of this Act. The United States Patent and Trademark Office shall administer section 102(c) of title 35, United States Code, in a manner consistent with the legislative history of the CREATE Act that was relevant to its administration by the United States Patent and Trademark Office.

Mr. HATCH. Mr. President, I rise to express my support for the Patent Reform Act of 2011. S. 25, introduced today by Senate Judiciary Committee Chairman PATRICK LEAHY. Senator LEAHY and I, along with a number of our colleagues, have worked for years to enact much-needed reform to our Nation’s patent system.

Last Congress, the Managers’ Amendment to the Patent Reform Act of 2009, S. 515, enjoyed strong bipartisan support for critical floor consideration and passage; the momentum undoubtedly will continue under the leadership of Judiciary Committee Chairman LEAHY and Ranking Minority Member GRASSLEY. House Judiciary Committee Chairman SMITH and Ranking Minority Member JOHNSON are true partners in this important legislation. They share the same desire to streamline our patent system in a way that will improve the clarity and quality of patents issued by the U.S. Patent and Trademark Office, USPTO, which in return will provide greater confidence in their validity and enforcement.

I have said this before, but it bears repeating: we must ensure that our patent system is as strong and vibrant as possible, not only to protect our country’s premier position as the world leader in innovation, but also to secure our economic prosperity. I believe that no other legislation has more potential to ensure the long-term growth of our country than this legislation.

One single deployed patent has positive effects across almost all sectors of our economy. As a result, properly examined patents, promptly issued by the USPTO, creates jobs—jobs that are dedicated to developing and producing new products and services. Unfortunately, the current USPTO backlog of applications now exceeds 700,000 applications. The sheer volume of patent applications not only reflects the vibrant, innovative spirit that has made America a world-wide leader in science, engineering and technology, but also represents dynamic economic growth waiting to be unleashed.

If enacted, the Patent Reform Act of 2011 would move the United States to a first-inventor-to-file system, which will bring greater harmony and improve our competitiveness. Also, among other things, the bill would improve the system for administratively challenging the validity of a patent at the USPTO; improve patent quality; create a supplemental examination process for patent owners; prevent patents from being issued on claims for tax strategies; and provide fee-setting authority for the USPTO Director to ensure the Office is properly funded.

This bipartisan bill also contains provisions on venue; changes to the best mode; increased incentives for government laboratories to commercialize inventions; restrictions on false marking claims; and removes restrictions on the residency of Federal Circuit judges.

We have been working on this legislation since 2006. Reforming our patent system is a critical priority whose time has more than come. It is essential to growing our economy, creating jobs and promoting innovation in our Nation. I encourage my colleagues to join in this effort and help move this important legislation forward.

By Mrs. SHAHEEN (for herself, Mr. KIRK, and Mr. DURBAN): S. 25. A bill to phase out the Federal sugar program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

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

The text of the bill was ordered to be printed in the RECORD, as follows:

SEC. 1. SHORT TITLE. This Act may be cited as the “Stop Unfair Giveaways and Restrictions Act of 2011” or “SUGAR Act of 2011”.

SEC. 2. SUGAR PROGRAM.

(a) IN GENERAL.—Section 156 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7272) is amended—

(1) in subsection (d), by striking paragraph (1) and inserting the following:

“(1) LOANS.—The Secretary shall carry out this section through the use of recourse loans.”;

(2) by redesignating subsection (i) as subsection (j);

(3) by inserting after subsection (h) the following:

“(i) PHASED REDUCTION OF LOAN RATE.—For each of the 2012, 2013, and 2014 crops of sugar beets and sugarcane, the Secretary shall lower the loan rate for each succeeding crop in a manner that progressively and uniformly lowers the loan rate for sugar beets and sugarcane to 60 for the 2015 crop,”;

(4) in subsection (j) (as redesignated), by striking “2012” and inserting “2014”.

(b) PROSPECTIVE REPEAL.—Effective beginning with the 2015 crop, section 156 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7272) is repealed.

SEC. 3. ELIMINATION OF SUGAR PRICE SUPPORT AND PRODUCTION ADJUSTMENT PROGRAMS.

(a) IN GENERAL.—Notwithstanding any other provision of law—

(1) a processor of any of the 2015 or subsequent crops of sugarcane or sugar beets shall not be eligible for a loan under any provision of law with respect to the crop; and

(2) the Secretary of Agriculture may not make price support available, whether in the form of a loan, payment, purchase, or other option, for any of the subsequent crops of sugar beets and sugarcane by using the funds of the Commodity Credit Corporation or other funds available to the Secretary.

(b) TERMINATION OF MARKETING QUOTAS AND ALLOTMENTS.—

(1) IN GENERAL.—Part VII of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359aa et seq.) is repealed.

(2) CONSEQUENTIAL AMENDMENT.—Section 349(h)(2) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1344(f)(2)) is amended by striking “sugar cane for sugar, sugar beets for sugar,”.

(c) GENERAL POWERS.—

(1) SECTION 32 ACTIVITIES.—Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), is
amended in the second sentence of the first paragraph—
(A) in paragraph (1), by inserting "(other than sugar beets and sugarcane)" after "commodities"; and
(B) in paragraph (3), by inserting "(other than sugar beets and sugarcane)" after "commodity".
(2) PROVISIONS OF COMMODITY CREDIT CORPORATION.—Section 5(a) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c(a)) is amended by inserting "sugar beets, and sugarcane" after "beets".
(3) PRICE SUPPORT FOR NONAGRICULTURAL COMMODITIES.—Section 201(a) of the Agricultural Act of 1949 (7 U.S.C. 1446(a)) is amended by inserting "milk, sugar beets, and sugarcane" and inserting ""milk".
(4) COMMODITY CREDIT CORPORATION STORAGE PAYMENTS.—Section 167 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7237) is repealed.
5. SUSPENSION AND REPEAL OF PERMANENT PRICE SUPPORT AUTHORITY.—Section 171(a)(1) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7301(a)(1)) is amended—
(A) by striking subparagraph (E); and
(B) by redesignating subparagraphs (F) through (H) as subparagraphs (E) through (H), respectively.
6. STORAGE FACILITY LOANS.—Section 1402(c) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7971) is repealed.
7. FEEDSTOCK FLEXIBILITY PROGRAM FOR BIOMETHANE PRODUCERS.—Effective beginning with the 2013 crop of sugar beets and sugarcane, section 9301 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8119) is repealed.
8. TRANSITION PROVISIONS.—This section and the amendments made by this section shall not affect the liability of any person under any provision of law as in effect before the application of this section and the amendments made by this section.
SEC. 4. TARIFF-RATE QUOTAS.
(a) ESTABLISHMENT.—Except as provided in subsection (c) and notwithstanding any other provision of law, not later than October 1, 2011, the Secretary of Agriculture shall develop and implement a program to increase the tariff-rate quotas for raw cane sugar and refined sugars for a quota year in a manner that ensures—
(1) A robust and competitive sugar processing industry in the United States; and
(2) an adequate supply of sugar at reasonable prices in the United States.
(b) TRANSITION PROVISIONS.—In determining the tariff-rate quotas necessary to satisfy the requirements of subsection (a), the Secretary shall consider the following:
(1) The quantity and quality of sugar that will be subject to human consumption in the United States during the quota year.
(2) The quantity and quality of sugar that will be available from domestic processing of sugarcane, sugar beets, and in-process beet sugar.
(3) The quantity of sugar that would provide for reasonable carryover stocks.
(4) The quantity of sugar that will be available from carryover stocks for human consumption in the United States during the quota year.
(5) Consistency with the obligations of the United States under international agreements.
(c) EXEMPTION.—Subsection (a) shall not include specialty sugar.
(d) DEFINITIONS.—In this section, the terms "quota year" and "human consumption" have the meanings such terms had section 359k of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1339kk) (as in effect on the day before the date of the enactment of this Act).
SEC. 5. APPLICATION.
Except as otherwise provided in this Act, this Act and the amendments made by this Act shall apply to the 2012 crop of sugar beets and sugarcane.
By Mrs. SHAAHEEN:
S. 26. A bill to amend the Internal Revenue Code of 1986 to repeal the percentage depletion allowance for certain hardrock mines, and to use the resulting revenues from such repeal for deficit reduction; to the Committee on Finance.
Mrs. SHAAHEEN. 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. 26
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 “Elimination of Double Subsidies for the Hardrock Mining Industry Act of 2011”.
SECTION 2. REPEAL OF PERCENTAGE DEPLETION ALLOWANCE FOR CERTAIN HARDROCK MINES.
(a) IN GENERAL.—Section 613(a) of the Internal Revenue Code of 1986 is amended by inserting “(other than hardrock mines located on lands subject to the general mining laws or on land patented under the general mining laws)” after “in the case of the mines”.
(b) GENERAL MINING LAWS DEFINED.—Section 613 of the Internal Revenue Code of 1986 is amended by adding at the end the following:
“(d) GENERAL MINING LAWS.—For purposes of subsection (a), the term ‘general mining laws’ means those Acts which generally comprise chapters 2, 12A, and 16, and sections 161 and 162 of title 30 of the United States Code.”.
(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2011.
(d) USE OF RESULTING REVENUES FOR DEFICIT REDUCTION.—Revenues resulting from the amendment made by subsection (a) shall not be appropriated or otherwise made available for any fiscal year, resulting in a reduction of the Federal budget deficit for such fiscal year. If in any fiscal year there is no Federal budget deficit (determined without regard to such revenues), such revenues shall be used to reduce the Federal debt in such manner as the Secretary of the Treasury considers appropriate.
By Mr. KOHL (for himself, Mr. GRASSLEY, Mr. DURBIN, Ms. COLLINS, Ms. KLOBUCHAR, Mr. FRANKEN, Mr. BROWN of Ohio, and Mr. SANDERS):
S. 27. A bill to prohibit brand name drug companies from delaying generic drug companies to delay the entry of a generic drug into the market; to the Committee on the Judiciary.
Mr. KOHL. Mr. Chairman, I rise today to introduce the Preserve Access to Affordable Generics Act. This bipartisan legislation will dramatically reduce prescription drug costs by preventing one of the most egregious, anti-consumer tactics ever devised to keep generic drugs off the market.
This amendment would combat “pay-for-delay” agreements between brand name and generic drug companies which delay entry of low-cost generic competition.
Pay-for-delay agreements are estimated by the FTC to cost consumers $3.5 billion each year, and are estimated by the CBO estimates to cost the federal government more than $2.8 billion over the next decade in higher drug reimbursement payments.
In 2008, $235 billion were spent on prescription drugs in the United States. Generic drugs play a crucial role in containing rising prescription drug costs, by offering consumers therapeutically identical alternatives to brand-name drugs, at a significantly reduced cost. Studies have shown that generic competition to brand-name drugs can reduce drug prices by as much as 80 percent. However, in recent years generic entry has frequently been blocked by anti-competitive, anti-consumer agreements between brand-name and generic drug-makers that limit, delay, or otherwise prevent competition from generic drugs.
In pay-for-delay agreements, a brand-name drug manufacturer settles patent litigation by paying off a generic competitor within large amounts of cash, or other valuable consideration to stay off the market until expiration—or a time close to expiration—of the brand-name patent. For example, in 2006, the CEO of Cephalon, which makes the sleep disorder drug Provigil, deals his company made with four generic drug-makers to keep generic versions of Provigil off the market until 2012. “We were able to get six more years of patent protection,” he said. “That’s $4 billion in sales that no one expected.” Unfortunately, that $4 billion came from the pockets of American consumers.
At their core, pay-for-delay agreements commit brand-name drug companies to pay off competitors not to compete. The brand name drug company wins because it reaps the profits from eliminating competition. The generic drug company wins because they get paid millions of dollars to do nothing more than drop their patent challenge. But consumers and the American taxpayer loses, to the tune of billions of dollars in higher drug costs every year.
Agreements between competitors, like these, are a clear example of antitrust violation. Unfortunately, when the FTC has challenged “pay-for-delay” agreements, courts have favored big industry interests over consumers. Courts have wrongly concluded that brand-name drugs are not engaging in antitrust violation because they are not holding out regard to such revenues), such revenues shall be used for reducing the Federal debt in such manner as the Secretary of the Treasury considers appropriate.
By Mr. KOHL (for himself, Mr. GRASSLEY, Mr. DURBIN, Ms. COLLINS, Ms. KLOBUCHAR, Mr. FRANKEN, Mr. BROWN of Ohio, and Mr. SANDERS):
S. 27. A bill to prohibit brand name drug companies from delaying generic drug companies to delay the entry of a generic drug into the market; to the Committee on the Judiciary.
Mr. KOHL. Mr. Chairman, I rise today to introduce the Preserve Access to Affordable Generics Act. This bipartisan legislation will dramatically reduce prescription drug costs by preventing one of the most egregious, anti-consumer tactics ever devised to keep generic drugs off the market.
This amendment would combat “pay-
For years, we have seen the use of anticompetitive agreements increase. From 2000 to 2004, there were twenty settlements of drug patent litigation, but we saw no pay-for-delay agreements because drug companies assumed antitrust law would prevent them. But, these settlements became too prevalent following three courts of appeals decisions in 2005 which effectively found them to be per se legal and prevented the FTC from taking action on behalf of consumers against these settlements.

In the 2 years following these 2005 court decisions, 28 out of 61 patent settlements had provisions in which the brand name drug company made payments to the generic manufacturer in exchange for the generic manufacturer agreeing to delay entry of generic competition. Clearly, pay-for-delay agreements are not necessary to settle a case that could be settled in another way. Last fall, the FTC released a report which found a record 19 pay-for-delay settlements in 2008, the highest ever recorded in a single year. This report convincingly demonstrates the danger these deals pose to consumers. Each of these deals will lead to higher drug costs for millions of consumers. Each of these deals cost the Federal Government large sums in taxpayer money in higher drug reimbursement costs. Each of these deals deprive consumers of needed drug competition.

The time for action to stop these anticompetitive, anticompetitive back room deals is now.

Our legislation passed the Judiciary Committee last Congress with a strong bipartisan majority. The Judiciary Committee made several changes to the bill when it was introduced in the 111th Congress, and the legislation I am introducing today includes all of these changes. I believe the current version of this legislation represents a well balanced approach to this problem. My bill, the Pay-for-Delay Settlements Act of 2010, would presumptively define these agreements as anti-competitive and anticompetitive. If found illegal, the FTC would have the authority to assess civil penalties.

I urge my colleagues to support the Preserve Access to Affordable Generics Act.

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.

SECTION 1. SHORT TITLE

This Act may be cited as the "Preserve Access to Affordable Generics Act".

SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATIONS OF POLICY

(a) FINDINGS.—Congress finds the following:

(1) In 1984, the Drug Price Competition and Patent Term Restoration Act (Public Law 98–417) (referred to in this Act as "1984 Act"), was enacted with the intent of facilitating the early entry of generic drugs while preserving incentives for innovation.

(2) In recent years, the intent of the 1984 Act has been subverted by certain settlement agreements between brand companies and their potential generic competitors that make "reverse payments" which are payments by the brand company to the generic company.

(b) LIMITATIONS.—In determining whether the settling parties have met their burden under subsection (a)(2)(B), the fact finder shall consider—

(1) the length of time remaining until the end of the life of the relevant patent, compared with the agreed upon entry date for the ANDA product;

(2) the value to consumers of the competition from the ANDA product allowed under the agreement;

(3) the form and amount of consideration received by the ANDA filer in the agreement resolving or settling the patent infringement claim;

(4) the revenue the ANDA filer would have received by winning the patent litigation;

(5) the reduction in the NDA holder's revenues if it had lost the patent litigation; and

(6) the time period between the date of the agreement conveying value to the ANDA filer and the date of the settlement of the patent infringement claim; and

(c) LIMITATIONS.—In determining whether the settling parties have met their burden under subsection (a)(2)(B), the fact finder shall consider—

(1) that entry would not have occurred until the expiration of the relevant patent or statutory exclusivity; or

(2) that the agreement's provision for entry of the ANDA product prior to the expiration of the relevant patent or statutory exclusivity means that the agreement is procompetitive, although such evidence may be relevant to the fact finder's determination under this subsection.

(d) EXCLUSIONS.—Nothing in this section shall prohibit a resolution or settlement of a patent infringement claim in which the consideration granted by the NDA holder to the ANDA filer for entry of the ANDA product or other consideration includes only one or more of the following:

(1) to enhance competition in the pharmaceutical market by stopping anticompetitive agreements between brand name and generic drug companies that deny consumers the benefits of generic drug competition and costs consumers and the Federal Government billions of dollars. My legislation will give the FTC strong remedies to prevent these agreements when it concludes they harm competition. Millions and millions of Americans that struggle to pay their prescription drug costs and who need low priced generic alternatives are awaiting action on this amendment. I urge my colleagues to support the Preserve Access to Affordable Generics Act.

"(a) IN GENERAL.—The Federal Trade Commission Act (15 U.S.C. 44 et seq.) is amended by—"

(1) redesignating section 28 as section 29; and

(2) inserting before section 29, as redesignated, the following:

"(b) PRESERVING ACCESS TO AFFORDABLE GENERICS."

"(a) IN GENERAL.—"

(b) ENFORCEMENT PROCEEDING.—The Federal Trade Commission may initiate a proceeding to enforce the provisions of this section against the parties to any agreement resolving or settling, on a final or interim basis, a patent infringement claim, in connection with the sale of a drug product.

"(2) PERSUASION.—"

"(b) COMPETITIVE FACTORS.—In determining whether the settling parties have met their burden under subsection (a)(2)(B), the fact finder shall consider—"
“(1) The right to market the ANDA product in the United States prior to the expiration of—
(A) any patent that is the basis for the patent listing referred to in paragraph (2) of this section;
(B) any patent right or other statutory exclusivity that would prevent the marketing of such drug.
(2) the payment for reasonable litigation expenses not to exceed $7,500,000.
(3) A covenant not to sue on any claim that the ANDA product infringes a United States patent.

(e) Regulations and Enforcement.—
(1) Regulations.—The Federal Trade Commission, in accordance with section 553 of title 5, United States Code, regulations implementing and interpreting this section. These regulations may exempt certain types of agreements described in subsection (a) if the Commission determines such agreements will further market competition and benefit consumers. Judicial review of any such regulation shall be in the United States District Court for the District of Columbia pursuant to section 706 of title 5, United States Code.

(2) Enforcement.—A violation of this section shall be treated as a violation of section 5.

(3) Judicial Review.—Any person, partnership, or corporation that is subject to a final order of the Commission, issued in an administrative adjudicative proceeding under the authority of subsection (a)(1), may, within 30 days after receipt of such order, petition for review of such order in the United States Court of Appeals for the District of Columbia Circuit or the United States Court of Appeals for the circuit in which the ultimate parent entity, as defined at 16 C.F.R. 801.1(a)(3), of the NDA holder is incorporated. As of the date that the NDA is filed with the Secretary of the Food and Drug Administration, or the United States Court of Appeals for the circuit in which the ultimate parent entity of the ANDA filer is incorporated as of the date that the ANDA is filed with the Secretary of the Food and Drug Administration. In such a review proceeding, the findings of the Commission are conclusive.

(f) Antitrust Laws.—Nothing in this section shall be construed to modify, impair or supersede the applicability of the antitrust laws as defined in subsection (a) of the 1st section of the Clayton Act (15 U.S.C. 12(a)) and other provisions of the circuit in which the ultimate parent entity, as defined in section 5 applies to unfair methods of competition. Nothing in this section shall modify, impair, limit or supersede the right of an ANDA filer to assert claims or counterclaims against any person, under the antitrust laws or other laws relating to unfair competition.

(g) Perpetuation.—
(1) Forfeiture.—Each person, partnership, or corporation that violates or assists in the violation of this section shall forfeit and pay to the United States a civil penalty sufficient to deter violations of this section, but in no event greater than 3 times the value received by the party that is reasonably attributable to a violation of this section. If such value has been received by the NDA holder, the penalty to the NDA holder shall be sufficient to deter violations, but in no event greater than 3 times the value received by the party that is reasonably attributable to a violation of this section. If such value has been received by the ANDA filer, the penalty to the ANDA filer reasonably attributable to a violation of this section. Such penalty shall accrue to the United States and shall be payable in a civil action brought by the Federal Trade Commission, in its own name or by any of its attorneys designated by it for such purpose, in a district court of the United States, and upon a showing by the Commission, upon a showing by the Commission, in a civil action brought before the Federal Trade Commission, in its own name or by any of its attorneys designated by it for such purpose, in a district court of the United States, and upon a showing by the Commission, of a violation of this section. Such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem proper.

(2) Consent and Disest.—
(A) In General.—If the Commission has issued a cease and desist order with respect to a person, partnership or corporation in an administrative proceeding, under the authority of subsection (a)(1), an action brought pursuant to paragraph (1) may be commenced against such person, partnership or corporation at any time before the expiration of one year after such order becomes final pursuant to section 5(g).
(B) Exception.—In an action under subparagraph (A), the Commission as to the material facts in the administrative adjudicative proceeding with respect to such person’s, partnership’s or corporation’s violation of this section shall be conclusive unless—
(i) the terms of such cease and desist order expressly provide that the Commission’s findings shall not be conclusive; or
(ii) the order became final by reason of section 5(g)(1), in which case such finding shall be conclusive if supported by evidence.
(C) Court May Determine the Amount of the Civil Penalty.—The amount of the civil penalty described in this section, the court shall take into account—
(A) the nature, circumstances, extent, and gravity of the violation;
(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, any effect on the ability to continue doing business, profits earned by the NDA holder, compensation received by the ANDA filer, and the amount of commerce affected; and
(C) other factors that justice requires.

(3) Remedies in Addition.—Remedies provided in this subsection are in addition to, and not in lieu of, any other remedy provided by Federal law. Nothing in this paragraph shall be construed to affect any authority of the Commission under any other provision of law.

(h) Definitions.—In this section:
(1) AGREEMENT.—The term ‘agreement’ means anything that would constitute an agreement under section 1 of the Sherman Act (15 U.S.C. 1) or section 5 of this Act.
(2) AGREEMENT RESOLVING OR SETTLING A PATENT INFRINGEMENT CLAIM.—The term ‘agreement resolving or settling a patent infringement claim’ includes any agreement under section 1 of the Sherman Act (15 U.S.C. 1) or section 5 of this Act to the extent that such agreement is entered into within 30 days of the resolution or settlement of the claim, or any other agreement that is contingent upon, provides a contingent condition for, or is otherwise related to the resolution or settlement of the claim.
(3) ANDA.—The term ‘ANDA’ means an abbreviated new drug application, as defined under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).
(4) ANDA FILER.—The term ‘ANDA filer’ means a party who has filed an ANDA with the Food and Drug Administration.
(5) DRUG PRODUCT.—The term ‘drug product’ means the product to be manufactured under the ANDA that is the subject of the patent infringement claim.
(6) DRUG PRODUCT.—The term ‘drug product’ means a new drug application, as defined under section 505(a) of the Federal Food, Drug, and Cosmetic Act.
(7) NDA.—The term ‘NDA’ means a new drug application, as defined under section 505(b) of the Federal Food, Drug, and Cosmetic Act.
(8) NDA HOLDER.—The term ‘NDA holder’ means—
(A) the party that received FDA approval to market a drug product pursuant to an NDA;
(B) a party owning or controlling an entity that is the holder of an approved Drug Product With Therapeutic Equivalence Evaluations (commonly known as the ‘FDA Orange Book’) in connection with the NDA.
(C) the predecessors, subsidiaries, divisions, groups, and affiliates controlled by, controlling, or under common control with, or any entity that is a party to any agreements described in paragraphs (A) and (B) (such control to be presumed by direct or indirect share ownership of 50 percent or greater), as well as the liabilities, successors, and assigns of each of the entities.

(9) PATENT INFRINGEMENT.—The term ‘patent infringement’ means infringement of any patent or of any filed patent application, extension, reissue, renewal, division, continuation, continuation in part, reexamination, patent term restoration, patents of addition and extensions thereof.

(10) PATENT INFRINGEMENT CLAIM.—The term ‘patent infringement claim’ means any allegation made to an ANDA filer, whether or not included in a complaint with a court of law, that its ANDA or ANDA product may infringe any patent held by, or exclusively licensed to, the NDA holder of the drug product.

(11) STATUTORY EXCLUSIVITY.—The term ‘statutory exclusivity’ means those provisions of the Federal Food, Drug, and Cosmetic Act .”

SEC. 4. NOTICE AND CERTIFICATION OF AGREEMENTS.
(a) NOTICE OF AGREEMENTS.—Section 1112(c)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (29 U.S.C. 355 note) is amended by striking the “Commission the” and inserting the following: “the Commission—
(1) striking the period and inserting “;”;
(2) striking the period and inserting “;”;
and
(3) inserting at the end the following:
(2) any other agreement the parties enter into within 30 days of entering into an agreement covered by subsection (a) or (b).”.

(b) CERTIFICATION OF AGREEMENTS.—Section 1112 of such Act is amended by adding at the end the following:
(4) CERTIFICATION.—The Chief Executive Officer or the company official responsible for negotiating any agreement required to be filed under subsection (a), (b), or (c) shall execute and file with the Assistant Attorney General for the Antitrust Division of the Department of Justice under section 1112 of title XI of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, with respect to the agreement, a certification, as follows: I declare that the following is true, correct, and complete to the best of my knowledge: The materials filed with the Federal Trade Commission and the Department of Justice under section 1112 of title XI of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, with respect to the agreement, are true and correct; and I declare as follows: (1) the declaration that the following is true, correct, and complete to the best of my knowledge: The materials filed with the Federal Trade Commission and the Department of Justice under section 1112 of title XI of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, with respect to the agreement, are true and correct; (2) the declaration that the following is true, correct, and complete to the best of my knowledge: The materials filed with the Federal Trade Commission and the Department of Justice under section 1112 of title XI of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, with respect to the agreement, are true and correct; (3) the declaration that the following is true, correct, and complete to the best of my knowledge: The materials filed with the Federal Trade Commission and the Department of Justice under section 1112 of title XI of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, with respect to the agreement, are true and correct.
written descriptions of any oral agreements, representations, commitments, or promises between the parties that are responsive to subsection (a) or (b) of such section 1112 and have not been reduced to writing.’’

SEC. 5. FORFEITURE OF 180-DAY EXCLUSIVITY PERIOD.

Section 305(c)(5)(D)(i)(V) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)(5)(D)(i)(V)) is amended by inserting ‘‘section 28 of the Federal Trade Commission Act or’’ after ‘‘that the agreement has violated’’.

SEC. 6. COMMISSION LITIGATION AUTHORITY.

Section 18(a)(2) of the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is amended—

(1) in subparagraph (D), by striking ‘‘or’’ after the semicolon;

(2) in subparagraph (E), by inserting ‘‘or’’ after the semicolon; and

(3) inserting after subparagraph (E) the following:—

‘‘(F) under section 28;’’.

SEC. 7. STATUTE OF LIMITATIONS.

The Commission shall begin any enforcement proceeding described in section 28 of the Federal Trade Commission Act, as added by section 3, except for an action described in section 1112(a)(2) of the Federal Trade Commission Act, not later than 3 years after the date on which the parties to the agreement file the Notice of Agreement as provided by section 1112(a)(2) and (d) of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (21 U.S.C. 355 note).

SEC. 8. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such Act or amendments to any person or circumstance shall not be affected thereby.

By Mr. ROCKEFELLER (for himself, Mr. LAUTENBERG, Mr. NELSON of Florida, Ms. KLOBUCHAR, Mr. CARDIN, and Mr. HARKIN):

S. 28. A bill to amend the Communications Act of 1934 to provide public safety providers an additional 10 megahertz of spectrum to support a national, interoperable, wireless broadband network and authorize the Federal Communications Commission to hold incentive auctions to provide funding to support such a network, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. ROCKEFELLER. Mr. President, I rise today to reintroduce the Public Safety Spectrum and Wireless Innovation Act.

Radio spectrum is a tremendous resource. It can grow our economy and put innovative wireless services in the hands of consumers and businesses. It also can enhance our public safety by fostering communications between first responders when the unthinkable occurs. But it is also scarce. That is why we need a forward-thinking spectrum policy that promotes smart use of our airwaves—and provides public safety officials with the wireless resources they need to do their jobs.

For all of these reasons, I believe in the Public Safety Spectrum and Wireless Innovation Act and call on my colleagues to join me and support it. I commit to them that I am open to their input and will work tirelessly with the administration, my Senate and House colleagues, and public safety officials to pass this legislation this year.

The Public Safety Spectrum and Wireless Innovation Act does two things. First, as we approach the tenth anniversary of 9/11, this legislation will provide public safety officials with an additional 10 megahertz of spectrum known as the ‘‘D-block.’’ This spectrum will at long last, support a national, interoperable, wireless broadband network that will help first responders protect us from harm. I believe this is the right thing to do, because we owe those courageous individuals who wear the shield the resources they need to do their jobs.

Second, this legislation will promote smart spectrum policy and efficient use of our Nation’s wireless airwaves. It will do this by providing the Federal Communications Commission with the authority to hold voluntary incentive auctions. These auctions will help put valuable spectrum into the hands of companies that can create innovative new services for American consumers and businesses. This proposal will not require the return of spectrum from existing commercial users, but instead will provide them with a voluntary opportunity to realize a portion of auction revenues, and facilitate the putting spectrum to new and productive uses. Then the remaining revenues from these auctions will provide a revenue stream to assist public safety with the construction and maintenance of their spectrum network.

Marrying together these ideas—good spectrum policy and the right resources for our first responders—makes good sense. It is also the right thing to do. Because the American people deserve to have the best and most innovative uses of wireless networks anywhere. They deserve to know our first responders have access to the airwaves they need when tragedy strikes. So I urge my colleagues to join me and support this important legislation.

Mr. ROCKEFELLER. 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:

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 ‘‘Public Safety Spectrum and Wireless Innovation Act’’.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Title I.—NATIONWIDE INTEROPERABLE PUBLIC SAFETY BROADBAND NETWORK
Sec. 101. Establishment of network.
Sec. 102. Reallocations of D block to public safety.
Sec. 103. Flexible use of narrowband spectrum.
Sec. 104. Secondary use of public safety spectrum.
Sec. 105. Interoperability.
Sec. 106. Commercial network roaming and priority access.
Sec. 107. Advisory board.

TITLE II—FUNDING
Sec. 201. Establishment of funds.
Sec. 203. Public safety interoperable broadband network maintenance and operation.
Sec. 204. Incentive auction authority.
Sec. 205. Report on efficient use of public safety spectrum.
Sec. 206. GAO report on satellite broadband.
Sec. 207. Access to GSA schedules.
Sec. 208. Federal infrastructure sharing.
Sec. 209. Audits.

SEC. 2. DEFINITIONS.

In this Act:

(1) 700 MHZ BAND.—The term ‘‘700 MHZ band’’ means the portion of the electromagnetic spectrum between the frequencies from 698 megahertz to 806 megahertz.

(2) 700 MHZ D BLOCK SPECTRUM.—The term ‘‘700 MHZ D block spectrum’’ means the portion of the electromagnetic spectrum between the frequencies from 758 megahertz to 763 megahertz and between the frequencies from 789 megahertz to 793 megahertz.

(3) ASSISTANT SECRETARY.—The term ‘‘Assistant Secretary’’ means the Assistant Secretary of Commerce for Communications and Information.

(4) COMMISSION.—The term ‘‘Commission’’ means the Federal Communications Commission.

(5) CONSTRUCTION FUND.—The term ‘‘construction fund’’ means the fund established in section 201(a)(1)(A).

(6) EXISTING PUBLIC SAFETY BROADBAND SPECTRUM.—The term ‘‘existing public safety broadband spectrum’’ means the portion of the electromagnetic spectrum between the frequencies from 763 megahertz to 768 megahertz and between the frequencies from 793 megahertz to 798 megahertz.

(7) MAINTENANCE AND OPERATION FUND.—The term ‘‘maintenance and operation fund’’ means the fund established in section 201(a)(2)(A).

(8) NARROWBAND SPECTRUM.—The term ‘‘narrowband spectrum’’ means the portion of the electromagnetic spectrum between the frequencies from 769 megahertz to 775 megahertz and between the frequencies from 799 megahertz to 800 megahertz.

(9) NTIA.—The term ‘‘NTIA’’ means the National Telecommunications and Information Administration.

TITLE I—NATIONWIDE INTEROPERABLE PUBLIC SAFETY BROADBAND NETWORK

SEC. 101. ESTABLISHMENT OF NETWORK.

(a) IN GENERAL.—The Commission shall take all actions necessary to ensure the deployment of a nationwide public safety interoperable broadband network in the 700 MHz band, including—

(1) developing and implementing nationwide technical and operational requirements for the network;

(2) adopting any rules necessary to achieve interoperability in the network;

(3) adopting user authentication and encryption requirements for the network.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SAFETY BROADBAND SPECTRUM.—The Commission shall establish technical and operational rules to ensure nationwide interoperability, including rules that—

(A) establish requirements for nationwide roaming ability among any licensee, licensees, lessees, and lessees by owners; and

(B) will ensure the safety of State public safety networks, including requirements for protecting and monitoring the network to protect against cyberattack.

SEC. 102. REALLOCATION OF D BLOCK TO PUBLIC SAFETY.

(a) REALLOCATION OF D BLOCK.—

(1) IN GENERAL.—The Commission shall reallocate the 700 MHz D block spectrum for use by public safety entities in accordance with the plan developed by this Act.

(2) SPECTRUM ALLOCATION.—Section 337(a) of the Communications Act of 1934 (47 U.S.C. 337(a)) is amended—

(A) by striking “24” in paragraph (1) and inserting “34”; and

(B) by striking “36” in paragraph (2) and inserting “26”.

(b) INTEGRATION WITH EXISTING PUBLIC SAFETY BROADBAND SPECTRUM.—The Commission shall—

(1) determine the licensing for the 700 MHz D block spectrum to be compatible with the existing public safety spectrum; and

(2) determine whether the 20 megahertz of public safety broadband spectrum should be licensed, auctioned, or reserved for, on a regional or state-wide basis, or some combination thereof, in accordance with the public interest.

SEC. 103. FLEXIBLE USE OF NARROWBAND SPECTRUM.

The Commission shall allow the narrowband spectrum to be used in a flexible manner, including usage for public safety broadband networks, subject to such technical and interference protection measures as the Commission may require.

SEC. 104. SECONDARY USE OF PUBLIC SAFETY NETWORK.

(a) IN GENERAL.—Notwithstanding section 337 of the Communications Act of 1934 (47 U.S.C. 337), the Commission may authorize any public safety licensee or licensees to allow access to spectrum licensed to such licensee or licensees to non-public safety governmental users, commercial users, utilities, including organizations providing or operating critical infrastructure, including electric, gas, and water utilities, and other Federal agencies and departments.

(b) LIMITATIONS AND CONDITIONS.—The Commission shall—

(1) authorize the provision of access to such spectrum only on a secondary basis;

(2) ensure access agreements to be in writing and to be submitted to the Commission for review and approval;

(3) require that the public safety entity retain the right to use any such spectrum on a primary, preemptible basis;

(4) consider whether it is in the public interest to require multiple secondary leases per licensee;

(5) require that all funds received from such secondary access pursuant to such written agreements be reinvested in the public safety interoperable broadband network by using such funds only for constructing, maintaining, improving, or purchasing equipment to be connected to the network, by deposit into the Maintenance and Operation Fund established by section 201 or otherwise.

SEC. 105. INTEROPERABILITY.

(a) IN GENERAL.—The Commission shall ensure that the nationwide public safety broadband network is fully interoperable on a nationwide basis.

(b) TECHNICAL OPERATIONAL RULES.—

(1) INSURING INTEROPERABILITY.—The Commission shall establish technical and operational rules to ensure nationwide interoperability, including rules that—

(i) establish requirements for nationwide roaming ability among any licensee, licensees, lessees, and lessees by owners; and

(ii) will ensure the safety of State public safety networks, including requirements for protecting and monitoring the network to protect against cyberattack.

(iii) will promote competition in the device market for public safety communications by requiring devices for use on a public safety network to be—

(A) built to open standards;

(B) capable of being used by any vendor and across all public safety systems; and

(C) backward compatible with existing second and third generation commercial networks;

(2) REGULATIONS TO BE ISSUED.—The Commission shall—

(A) require contracts awarded through the request-for-proposals process in connection with the deployment phases with substantial rural coverage mile-stone as part of each phase where appropriate;

(b) TECHNICAL AND OPERATIONAL RULES.—

(1) IN GENERAL.—The Commission shall—

(i) authorize Statewide or multi-State public safety broadband networks, including targets for States or smaller areas;

(ii) require contracts awarded through the request-for-proposals process in connection with the deployment phases with substantial rural coverage mile-stones as part of each phase where appropriate;

(3) in collaboration with the Assistant Secretary, make funding for each build out phase after the first contingent on meeting build out targets for the preceding phase to the extent feasible.

(e) DEVELOPMENT AND MAINTENANCE OF INTEROPERABILITY, SECURITY, AND FUNCTIONALITY STANDARDS.—The Commission and through agreements executed with the National Institute of Standards and Technology, shall develop, maintain, and update such requirements and standards as may be necessary to ensure interoperability, security, and functionality.

(f) AUTHORIZATION OF APPROPRIATIONS.—The Commission is authorized to be appropriated to the Commission, for use by the Emergency Response and Interoperability Center in carrying out its responsibilities under this Act, $5,500,000 for each of fiscal years 2013 through 2018.

SEC. 106. COMMERCIAL NETWORK ROAMING AND PRIORITY ACCESS.

The Commission may adopt rules, if necessary in the public interest, to improve the ability of public safety networks to roam onto commercial networks and to gain priority access to commercial networks in an emergency if—

(1) the public safety entity equipment is technically compatible with the commercial network;

(2) the commercial network is reasonably compensated; and

(3) it is consistent with the public interest.

SEC. 107. PUBLIC SAFETY ADVISORY BOARD.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Commission shall establish a public safety advisory board to advise the Commission on—

(1) carrying out its duties under section 101; and

(2) the implementation of improvements to the public safety interoperable broadband network under that section.

(b) COMPOSITION.—The Commission shall determine the composition of the advisory board, which shall include, at a minimum, representatives from each of the following:

(1) State, local, and tribal governments.

(2) Public safety organizations.

(3) Providers of commercial mobile service.

(4) Manufacturers of communications equipment.

(c) DUTIES.—The Commission shall consult with the advisory board on any study or report on public safety spectrum.

(d) FACIA INAPPLICABLE.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory board.

(e) TERMINATION.—The advisory board shall terminate 10 years after the date of enactment of this Act.

TITLE II—FUNDING

SEC. 201. ESTABLISHMENT OF FUNDS.

(a) IN GENERAL.—
(1) CONSTRUCTION FUND.—
   (A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the Public Safety Interoperable Broadband Network Construction Fund.
   (B) PURPOSE.—The Assistant Secretary shall establish and administer the grant program under section 202 using the funds deposited in the Construction Fund.

(C) CREDIT.—
   (i) BORROWING AUTHORITY.—The Assistant Secretary may borrow from the general fund of the Treasury beginning on October 1, 2011, such sums as may be necessary, but not to exceed $2,000,000,000, to implement section 202.
   (ii) REIMBURSEMENT.—The Secretary of the Treasury shall reimburse the general fund of the Treasury, without interest, for any amounts borrowed under clause (i) as funds are deposited into the Construction Fund, but in no case later than December 31, 2015.

(2) MAINTENANCE AND OPERATION FUND.—
   (A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the Public Safety Interoperable Broadband Network Maintenance and Operation Fund.
   (B) PURPOSE.—The Commission shall transfer to the Maintenance and Operation Fund any funds remaining in the Construction Fund after the date of completion of the construction phase, as determined by the Assistant Secretary.

(c) MATCHING REQUIREMENTS.—
   (1) CONSTRUCTION FUND.—There are authorized to be appropriated to the Assistant Secretary for deposit in the Construction Fund in and after fiscal year 2013 such sums as necessary subject to paragraph (3).
   (2) MAINTENANCE AND OPERATION FUND.—
      There are authorized to be appropriated to the Commission for deposit in the Maintenance and Operation Fund in and after fiscal year 2013 such sums as necessary subject to paragraph (3).
   (3) AUTHORIZATION OF APPROPRIATIONS.—
      (A) CONSTRUCTION FUND.—There are authorized to be appropriated to the Assistant Secretary for deposit in the Construction Fund in and after fiscal year 2013 such sums as may be necessary for the construction of a public safety interoperable broadband network.
      (B) PROJECTS.—Grants may be made under this subsection to assist public safety entities to establish a nationwide public safety interoperable broadband network in 700 MHz band.
      (C) CONSTRUCTION GRANT PROGRAM ESTABLISHMENT.—The Assistant Secretary, in consultation with the Commission, shall take such action as is necessary to establish a grant program to assist public safety entities to establish a nationwide public safety interoperable broadband network in the 700 MHz band.
      (D) PROJECTS.—Grants may be made under this subsection to assist public safety entities to establish a nationwide public safety interoperable broadband network in the 700 MHz band.
      (E) MATCHING REQUIREMENTS.—(1) FEDERAL SHARE.—
         (A) IN GENERAL.—The Federal share of the cost of each project under this subsection may not exceed 80 percent of the eligible costs of carrying out a project, as determined by the Assistant Secretary in consultation with the Commission.
         (B) WAIVER.—The Assistant Secretary may waive, in whole or in part, the requirements of clause (A) if the Assistant Secretary determines that waiving such requirements is necessary to avoid significant delay in the construction of a public safety interoperable network.
      (F) INCENTIVE AUCTION AUTHORITY.—
         (1) AUTHORITY.—The Commission may, if the Commission determines that it is consistent with the public interest in utilization of the spectrum, auction 700 MHz band spectrum voluntarily some or all of its licensed spectrum usage rights in order to permit the assignment of new initial licenses subject to such terms and conditions as the Commission may impose.
         (2) BIDDERS.—Notwithstanding paragraph (A), the proceeds (including any deposits and up-front payments from successful bidders) from the use of a competitive bidding system under this subsection with respect to relinquished spectrum, after deduction of any amounts disbursed to the relinquishing licensees, shall be deposited as follows:
            (I) 100% of the proceeds from the auction shall be deposited in the Construction Fund.
         (3) DEFINING ENTITIES THAT ARE ELIGIBLE TO RECEIVE A GRANT.—The Assistant Secretary, in consultation with the Commission, shall establish grant program requirements including the following:
            (A) Determined compliance with applicable Commission request-for-proposal and license terms and service rules, including interoperability and technical rules, construction requirements, and secondary use rules.
            (B) Determining the scope of network infrastructure eligible for grant funding under this section.
      (5) PRIORITIZING GRANTS FOR PROJECTS THAT ENSURE COVERAGE IN RURAL AS WELL AS URBAN AREAS.—The Assistant Secretary, in consultation with the Commission, shall establish grant program requirements including the following:
         (A) The Commission shall administer a program through which not more than 50 percent of maintenance and operational expenses associated with the public safety interoperable broadband network may be reimbursed from the Maintenance and Operation Fund for those expenses that are attributable to the maintenance, operation, and improvement of the public safety interoperable broadband network.
         (B) REIMBURSEMENT.—The Commission shall administer a program to provide reimbursement for those expenses that are attributable to the maintenance, operation, and improvement of the public safety interoperable broadband network.

SEC. 203. PUBLIC SAFETY INTEROPERABLE BROADBAND MAINTENANCE AND OPERATION.
   (a) MAINTENANCE AND OPERATION REIMBURSEMENT PROGRAM.—The Commission shall administer a program through which not more than 50 percent of maintenance and operational expenses associated with the public safety interoperable broadband network may be reimbursed from the Maintenance and Operation Fund after the end of the 10-year period that begins after the date of completion of the construction phase, as determined by the Assistant Secretary.
   (b) TRANSFER OF FUNDS AT COMPLETION OF CONSTRUCTION.—The Secretary of the Treasury shall transfer to the Maintenance and Operation Fund any funds remaining in the Construction Fund after the date of completion of the construction phase as determined by the Assistant Secretary.

(c) EXTENSION OF AUCTION AUTHORITY.—Section 309(j)(11) of the Communications Act of 1934 (47 U.S.C. 309(j)(11)) is amended by striking “2012” and inserting “2020”.

(d) LIMITATION.—
   (1) IN GENERAL.—The Commission may not reclaim frequencies licensed to broadcast television licensees or other licensees, directly or indirectly, on an involuntary basis for purposes of section 309(j)(8)(F) of the Communications Act of 1934.
   (2) RULE OF CONSTRUCTION.—Nothing in this Act or in the amendments made by this Act shall be construed to permit the Commission to reclaim frequencies licensed to broadcast television licensees or other licensees directly or indirectly on an involuntary basis for purposes of the Communications Act of 1934.

SEC. 204. AUCTIOI N OF SPECTRUM.
   (a) IN GENERAL.—
      (1) IDENTIFICATION OF SPECTRUM.—Not later than 1 year after the date of enactment of this Act, the Assistant Secretary shall identify, at a minimum, 25 megahertz of contiguous spectrum at frequencies located between 175 megahertz and 1710 megahertz, inclusive, to be made available for immediate reallocation.
      (2) AUCTION.—Not later than January 31, 2014, the Commission shall conduct the auction of the licenses, by commencing the bidding, for the following:
         (A) The spectrum between the frequencies of 2155 megahertz and 2180 megahertz, inclusive.
         (B) The spectrum identified pursuant to paragraph (1).
   (3) PROCEEDS.—The proceeds (including deposits and up-front payments from successful bidders) from the auction shall be deposited in the Construction Fund.
   (b) INCENTIVE SPECTRUM AUCTION AUTHORITY.—
      (1) IN GENERAL.—(A) The Act is amended by striking “(b), (d), and (E),” in subpars. (A) and inserting “(b), (d), (E), and (F),” in subpar. (A).
      (B) By adding at the end thereof the following:
         (2) Aucti on.—Not later than 2 years after the date of enactment of this Act, the Assistant Secretary, in consultation with the Commission, shall take such action as is necessary to establish a grant program to assist public safety entities to establish a nationwide public safety interoperable broadband network.
   (c) BIDDERS.—Not later than 2 years after the date of enactment of this Act, the Assistant Secretary, in consultation with the Commission, shall take such action as is necessary to establish a grant program to assist public safety entities to establish a nationwide public safety interoperable broadband network.
   (d) MATCHING REQUIREMENTS.—(1) FEDERAL SHARE.—
      (A) IN GENERAL.—The Federal share of the cost of each project under this subsection may not exceed 80 percent of the eligible costs of carrying out a project, as determined by the Assistant Secretary in consultation with the Commission.
      (B) WAIVER.—The Assistant Secretary may waive, in whole or in part, the requirements of clause (A) if the Assistant Secretary determines that waiving such requirements is necessary to avoid significant delay in the construction of a public safety interoperable network.
      (2) NON-FEDERAL SHARE.—The non-Federal share of the costs and construction of new infrastructure to meet public safety requirements, as defined by the Commission in consultation with the Commission, shall be subject to the in-kind contribution.
      (3) REQUIREMENTS.—Not later than 6 months after the date of enactment of this Act, the Assistant Secretary, in consultation with the Commission, shall establish grant program requirements including the following:
         (A) Determined compliance with applicable Commission request-for-proposal and license terms and service rules, including interoperability and technical rules, construction requirements, and secondary use rules.
         (B) Defining entities that are eligible to receive a grant under this section.
         (C) Defining eligible costs for purposes of subsection (c)(1).
         (D) Determining the scope of network infrastructure eligible for grant funding under this section.
      (5) PRIORITIZING GRANTS FOR PROJECTS THAT ENSURE COVERAGE IN RURAL AS WELL AS URBAN AREAS.—The Assistant Secretary, in consultation with the Commission, shall establish grant program requirements including the following:
         (A) The Commission shall administer a program through which not more than 50 percent of maintenance and operational expenses associated with the public safety interoperable broadband network may be reimbursed from the Maintenance and Operation Fund for those expenses that are attributable to the maintenance, operation, and improvement of the public safety interoperable broadband network.
         (B) REIMBURSEMENT.—The Commission shall administer a program to provide reimbursement for those expenses that are attributable to the maintenance, operation, and improvement of the public safety interoperable broadband network.

SEC. 205. REPORT ON EFFICIENT USE OF PUBLIC SAFETY SPECTRUM.
   Not later than 5 years after the date of enactment of this Act and every 5 years thereafter, the Commission shall conduct a study and submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce on the spectrum held by the public safety entities. In the report the Commission shall—
      (1) examine how such spectrum is being used;
      (2) provide a recommendation for whether more spectrum needs to be made available to meet the needs of public safety entities; and
      (3) assess the opportunity for return of any spectrum to the Commission for auction to commercial providers to provide revenue to the Treasury of the United States.

SEC. 206. GAO REPORT ON SATELLITE BROADBAND.
   Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit to Congress a report on the current and future capabilities of fixed and mobile satellite broadband to assist public safety entities during an emergency.
SEC. 207. ACCESS TO GSA SCHEDULES.

The Administrator of General Services shall—

(1) establish rules under which public safety entities may access and use the rates offered for communications services and devices;

(2) develop and furnish to the Commission a model contract for public safety use under section 105; and

(3) develop a procedure under which public safety entities are authorized to purchase from available schedules.

SEC. 208. FEDERAL INFRASTRUCTURE SHARING.

The Administrator of General Services shall establish rules to allow any public safety licensee to have access to Federal infrastructure to construct and maintain the public safety interoperable broadband network.

SEC. 209. AUDITS.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, and every 3 years thereafter, the Comptroller General of the United States shall perform an audit of the financial statements, records, and accounts of the—

(1) Public Safety Interoperable Broadband Network Construction Fund established under section 201(a)(1);

(2) Public Safety Interoperable Broadband Network Operation and Operation Fund established under section 201(a)(2);

(3) construction grant program established under section 202; and

(4) Public Safety Interoperable Broadband Network program established under section 203.

(b) GAAP.—Each audit required under subsection (a) shall be conducted in accordance with generally accepted accounting procedures.

(c) REPORT TO CONGRESS.—A copy of each audit required under subsection (a) shall be submitted to the appropriate committees of Congress.

SEC. 210. ANTIDIVERSION PROHIBITION.

Except as provided in section 309(f)(8)(F)(i)(III) of the Communications Act of 1934, as added by this Act, no funds made available under this Act or any amendment made by this Act may be used for any purpose other than in support of the nationwide public safety interoperable broadband network established under this Act, including the acquisition, construction, or reconstruction of infrastructure and facilities, the purchase of equipment and services, including software, and training, in accordance with rules established by the Commission.

By Mr. REID (for Mrs. FEINSTEIN (for herself and Mrs. BOXER)):

S. 29. A bill to establish the Sacramento-San Joaquin Delta National Heritage Area; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I rise on behalf of myself and Senator BOXER to introduce legislation to establish a National Heritage Area in the California Sacramento-San Joaquin Delta. This legislation will create the first Heritage Area in California.

I am pleased that I have had the opportunity to work with Senator BOXER, Representative JOHN GARAMendi, and the County Supervisors from the 5 Delta Counties to prepare this legislation and support their efforts to fully partner with the State, the Federal agencies, and other local governments to implement the plan.

This bill will establish the Sacramento-San Joaquin Delta as a National Heritage Area.

The Delta Protection Commission, created by California law and responsible to the citizens of the Delta and California, will manage the Heritage Area. It will ensure an open and public process, working with all levels of Federal, State, local government, tribes, local stakeholders, private property owners as it develops and implements the management plan for the Heritage Area. The goal is to conserve and protect the Delta, its communities, and its resources forever.

It is also important to understand what this legislation will not do. It will not affect water rights. It will not affect water contracts. It will not affect private property.

Nothing in this bill gives any governmental agency any more regulatory power than it already has, nor does it take away regulatory agencies that have it.

In short, this bill does not affect water rights or water contracts, nor does it impose any additional responsibilities on local government or residents. Instead, it authorizes Federal assistance to a local process already required by State law that will elevate the Delta, providing a means to conserve and protect its valued communities, resources, and history.

The Sacramento-San Joaquin Delta is the largest estuary on the West Coast. It is the most extensive inland delta in the world, and a unique national treasure.

Today, it is a labyrinth of sloughs, wetlands, and deepwater channels that connect the waters of the high Sierra mountain streams to the Pacific Ocean through the San Francisco Bay. Its approximately 60 islands are protected by 1,100 miles of levees, and are home to 3,500,000,000, including 2,500 families. The Delta and its farmers produce some of the highest quality specialty crops in the United States.

The Delta offers recreational opportunities to the two million Californians who live in the State; it is also home to fishing, hunting, visiting historic sites, and viewing wildlife. It provides habitat for more than 750 species of plants and wildlife. These include sand hill cranes that migrate to the Delta from places as far away as Siberia. The Delta also provides habitat for 55 species of fish, including Chinook salmon—some as large as 60 pounds—that return each year to travel through the Delta to spawn in the tributaries.

These same waterways also channel fresh water to the Federal and State-owned pumps in the South Delta that provide water to 23 million Californians and 3 million acres of irrigated agricultural land elsewhere in the state.

Before the Delta was reclassified for farmland in the 19th Century, the Delta flooded regularly with snow melt each spring, and provided the rich environment that, by 1492, supported the largest settlement of Native Americans in North America.

The Delta was the gateway to the gold fields in 1849, after which Chinese workers built hundreds of miles of levees throughout the waterways of the Delta to make its rich peat soils available for farming and to control flooding.

Japanese, Italians, German, Portuguese, Dutch, Greeks, South Asians, and other immigrants began the farming legacy, and developed technologies specifically adapted to the unique environment, including the Caterpillar Tractor, which later contributed to agriculture and transportation internationally.

Delta communities created a river culture befitting their dependence on water transport, a culture which has attracted the attention of authors from Mark Twain and Jack London to Joan Didion.

The Delta is in crisis due to many factors, including invasive species, urban and agricultural run-off, wastewater discharges, channelization, dredging, water export operations, and other stressors.

Many of the islands of the Delta are between 10 and 20 feet below sea level, and the levee system is presently inadequate to provide reliable flood protection for historic communities, significant habitats, agricultural enterprises, water resources, transportation and other infrastructure.

Existing levees have not been engineered to withstand earthquakes. Should levees fail for any reason, a rush of seawater into the interior of the Delta could damage the already fragile ecosystem, contaminate drinking water for many Californians, flood agricultural land, inundate towns, and damage roads, power lines, and water project infrastructure.

The State of California has been working for decades on a resolution to the water supply and ecosystem crisis in the State, and has a long history of partnerships with Federal agencies, working together to resolve challenges to the Delta’s historic communities, ecosystem and the water it supplies so many Californians.

The Delta Protection Commission, established under state law, has been tasked by the California State Legislature with providing a forum for Delta residents to engage in decisions regarding actions to recognize and enhance the unique cultural, recreational, agricultural, cultural resources, infrastructure and legacy communities and to serve as the facilitating agency for the implementation of a National Heritage Area in the Delta.

This legislation will complement the broadly supported State Water Legislation of 2009, which called for a Heritage designation for the Delta.

This legislation authorizes the creation of the Delta Heritage Area and federal assistance to the Delta Protection Commission in implementing the Area. This legislation is just a small part of the commitment the Federal government must make to the Delta. I look forward to continuing to work with my colleagues at every level of
government to restore and sustain the ecosystem in the Delta, to provide for reliable water supply in the State of California, to recover the native species of the Delta, protect communities in the Delta from flood risk, ensure economic sustainability in the Delta, improve water quality in the Delta, and; sustain the unique cultural, historical, recreational, agricultural and economic values of the Delta.

The National Heritage Area designation for the Sacramento-San Joaquin Delta will help local governments develop and implement a plan for a sustainable future by providing Federal recognition, technical assistance and small amounts of funding to a community-based process already underway.

Through the Delta Heritage Area, local communities and citizens will partner with Federal, State and local governments to collaboratively work to promote conservation, community revitalization and economic development projects.

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

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

S. 29

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 “Sacramento-San Joaquin Delta National Heritage Area Establishment Act.”

SEC. 2. DEFINITIONS. In this Act:

(1) HERITAGE AREA.—The term “Heritage Area” means the Sacramento-San Joaquin Delta Heritage Area established by section 3(a).

(2) HERITAGE AREA MANAGEMENT PLAN.—The term “Heritage Area management plan” means the plan developed and adopted by the management entity under this Act.

(3) MANAGEMENT ENTITY.—The term “management entity” means a management entity for the Heritage Area designated by section 3(d).

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

(5) STATE.—The term “State” means the State of California.

SEC. 3. SACRAMENTO-SAN JOAQUIN DELTA HERITAGE AREA.

(a) ESTABLISHMENT.—There is established the “Sacramento-San Joaquin Delta Heritage Area” in the State.

(b) BOUNDARIES.—The boundaries of the Heritage Area shall be in the counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo, the State of California as generally depicted on the map entitled “Sacramento-San Joaquin Delta National Heritage Area Proposed Boundary,” numbered T27T36N,R5E,0000, and dated September 2010.

(c) AVAILABILITY OF MAP.—The map described in subsection (b) shall be on file and available for public inspection in the appropriate offices of the National Park Service and the Delta Protection Commission.

(d) MANAGEMENT ENTITY.—The management entity for the Heritage Area shall be the Delta Protection Commission established by section 29735 of the California Public Resources Code.

(e) DUTIES.—

(1) AUTHORITIES.—For purposes of carrying out the Heritage Area management plan, the Secretary, acting through the management entity, may use amounts made available under this Act to—

(A) make grants to the State or a political subdivision of the State, nonprofit organizations, and other persons;

(B) enter into cooperative agreements with, or provide technical assistance to, the State or a political subdivision of the State, nonprofit organizations, and other interested parties;

(C) hire and compensate staff, which shall include individuals with expertise in natural, cultural, and historical resources protection, and heritage programming;

(D) obtain services from any source including any that are provided under any other Federal law or program;

(E) contract for goods or services; and

(F) undertake to be a catalyst for any other activity that furthers the Heritage Area and is consistent with the approved Heritage Area management plan.

(2) DUTIES.—The management entity shall—

(A) in accordance with subsection (f), prepare and submit a Heritage Area management plan to the Secretary;

(B) assist units of local government, regional planning organizations, and nonprofit organizations in carrying out the approved Heritage Area management plan by—

(i) carrying out programs and projects that recognize, protect, and enhance important resources of the Delta and the Heritage Area;

(ii) establishing and maintaining interpretive exhibits and programs in the Heritage Area;

(iii) developing recreational and educational opportunities in the Heritage Area; and

(iv) promoting a wide range of partnerships among governments, organizations, and individuals to further the Heritage Area;

(C) consider the interests of diverse units of government, organizations, and individuals in the Heritage Area in the preparation and implementation of the Heritage Area management plan;

(D) conduct meetings open to the public at least semiannually regarding the development and implementation of the Heritage Area management plan;

(E) for any year that Federal funds have been received under this Act—

(i) submit an annual report to the Secretary that describes the activities, expenses, and income of the management entity (including grants to any other entities during the year that the report is made); and

(ii) make audit all records relating to the expenditure of the funds and any matching funds; and

(iii) require, with respect to all agreements authorizing expenditure of Federal funds by other organizations, that the organizations receiving the funds make available to the Secretary for audit all records concerning the expenditure of the funds; and

(F) encourage by appropriate means economic viability that is consistent with the Heritage Area.

(3) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity shall not use Federal funds made available under this Act to acquire real property or any interest in real property.

(4) COST-SHARING REQUIREMENT.—The Federal share of the cost of any activity carried out using any assistance made available under this Act shall be 50 percent.

(5) HERITAGE AREA MANAGEMENT PLAN.—

(I) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the management entity shall submit to the Secretary for approval a proposed Heritage Area management plan.

(II) REQUIREMENTS.—The Heritage Area management plan shall—

(A) incorporate an integrated and cooperative approach to agricultural resource conservation and activities, flood protection facilities, and other public infrastructure;

(B) emphasize the importance of the resources described in paragraph (A); and

(C) take into consideration State and local plans;

(D) include—

(i) a description of—

(I) the resources located in the core area described in subsection (b); and

(ii) any other property in the core area that—

(aa) is related to the themes of the Heritage Area; and

(bb) should be preserved, restored, managed, or maintained because of the significance of the property;

(ii) comprehensive policies, strategies, and recommendations for conservation, funding, management, and development of the Heritage Area;

(iii) a description of actions that government, private organizations, and individuals have agreed to take to protect the natural, historical, and cultural resources of the Heritage Area; and

(iv) a program of implementation for the Heritage Area management plan by the management entity that includes a description of—

(I) actions to facilitate ongoing collaboration among partners to promote plans for resource protection, restoration, and construction; and

(ii) specific commitments for implementation that have been made by the management entity or any government, organization, or individual for the first 5 years of operation;

(v) the identification of sources of funding for carrying out the Heritage Area management plan;

(vi) analysis and recommendations for means by which local, State, and Federal programs, including the role of the National Park Service in the Heritage Area, may be coordinated to carry out this Act; and

(vii) an interpretive plan for the Heritage Area; and

(E) recommend policies and strategies for resource management that consider and detail the application of appropriate land and water management techniques, including the development of intergovernmental and interagency cooperative agreements to protect the natural, historical, cultural, educational, scenic, and recreational resources of the Heritage Area.

(3) RESTRICTIONS.—The Heritage Area management plan submitted under this subsection shall—

(A) ensure participation by appropriate Federal, State, tribal, and local agencies, including the Delta Stewardship Council, special districts, natural and historical resource protection, and agricultural organizations, educational institutions, businesses, recreational organizations, community residents, and private property owners; and

(B) be approved late the Secretary has received certification from the Delta Protection Commission that the Delta Stewardship Council has reviewed the Heritage Area management plan.

(4) CONSTRUCTION AND MAINTENANCE.—In carrying out the activities described in paragraph (A), the management entity may use amounts made available under this Act to construct, reconstruct, operate, or maintain structures, facilities, and activities protected by this Act, the maximum Federal share of the cost of any such activity shall be 50 percent.
(4) Deadline.—If a proposed Heritage Area management plan is not submitted to the Secretary by the date that is 3 years after the date of enactment of this Act, the management entity is ineligible to receive additional funding under this Act until the date that the Secretary receives and approves the Heritage Area management plan.

(b) Private Property and Regulatory Protections.—

(1) In general.—Subject to paragraph (2), nothing in this Act—

(A) shall adversely affect the rights of any property owner (whether public or private), including the right to refrain from participating in any plan, project, program, or activity conducted within the Heritage Area;

(B) requires any property owner to permit public access (including access by Federal, State, or local agencies) to the property of the property owner, or to modify public access or use of property of the property owner under any other Federal, State, or local law;

(C) affects any land use regulation, approved land use plan, or other regulatory authority of any Federal, State, or local agency, or conveys any land use or other regulatory authority to the management entity;

(D) authorizes or implies the reservation or appropriation of water or water rights; or

(E) diminishes the authority of the Secretary to manage fish and wildlife, including the regulation of fishing and hunting within the Heritage Area; or

(F) creates, contributes to, or affects any liability under any other law, of any private property owner with respect to any person injured on the private property.

(2) Consultation and Coordination.—The Secretary shall consult with the following:

(i) the management entity has afforded the management entity an adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the Heritage Area management plan; and

(ii) the management entity has developed and implemented, if implemented, would adequately protect the natural, historical, and cultural resources of the Heritage Area.

(c) Action Following Disapproval.—If the Secretary disapproves the Heritage Area management plan under subparagraph (A), the Secretary shall—

(i) advise the management entity in writing of the reasons for the disapproval;

(ii) make recommendations for revisions to the Heritage Area management plan; and

(iii) not later than 180 days after the receipt of any proposed revision of the Heritage Area management plan from the management entity, approve or disapprove the proposed revision.

(d) Amendments.—

(1) In general.—The Secretary shall—

(A) advise the management entity in writing of any amendments made to the approved Heritage Area management plan under paragraph (1);

(B) make recommendations for revisions to the approved Heritage Area management plan; and

(C) not later than 180 days after the receipt of any proposed amendment, approve or disapprove the proposed amendment.

(e) Relationship to Other Federal Agencies.—

(1) In general.—Nothing in this Act affects the relationship of a Federal agency to provide technical or financial assistance under any other law, including public hearings, for public and governmental involvement in the preparation of the Heritage Area management plan; and

(ii) the management entity has afforded the management entity an adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the Heritage Area management plan; and

(iii) the management entity has afforded the management entity an adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the Heritage Area management plan.

(f) Other Federal Agencies.—

(1) In general.—The management entity shall not use Federal funds authorized by this Act to carry out any amendments to the Heritage Area management plan until the Secretary has approved the amendments.

(g) Relationship to Other Federal Agencies.—

(1) In general.—Nothing in this Act affects the relationship of a Federal agency to provide technical or financial assistance under any other law, including public hearings, for public and governmental involvement in the preparation of the Heritage Area management plan; and

(ii) the management entity has afforded the management entity an adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the Heritage Area management plan; and

(iii) the management entity has afforded the management entity an adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the Heritage Area management plan.

(h) Private Property and Regulatory Protections.—

(1) In general.—Subject to paragraph (2), nothing in this Act—

(A) shall adversely affect the rights of any property owner (whether public or private), including the right to refrain from participating in any plan, project, program, or activity conducted within the Heritage Area;

(B) requires any property owner to permit public access (including access by Federal, State, or local agencies) to the property of the property owner, or to modify public access or use of property of the property owner under any other Federal, State, or local law;

(C) affects any land use regulation, approved land use plan, or other regulatory authority of any Federal, State, or local agency, or conveys any land use or other regulatory authority to the management entity;

(D) authorizes or implies the reservation or appropriation of water or water rights; or

(E) diminishes the authority of the Secretary to manage fish and wildlife, including the regulation of fishing and hunting within the Heritage Area; or

(F) creates, contributes to, or affects any liability under any other law, of any private property owner with respect to any person injured on the private property.

(2) Consultation and Coordination.—The Secretary shall consult with the following:

(i) the management entity has afforded the management entity an adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the Heritage Area management plan; and

(ii) the management entity has afforded the management entity an adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the Heritage Area management plan.

(c) Action Following Disapproval.—If the Secretary disapproves the Heritage Area management plan under paragraph (1), the Secretary by the date that is 3 years after the date of enactment of this Act—

(A) conducts an evaluation of the accomplishments of the Heritage Area; and

(B) prepare a report in accordance with paragraph (3).

(2) Evaluation.—An evaluation conducted under paragraph (1)(A) shall—

(i) assess the progress of the management entity with respect to—

(II) accomplishing the purposes of this Act for the Heritage Area; and

(II) achieving the goals and objectives of the approved Heritage Area management plan;

(B) analyze the Federal, State, local, and private contributions in the Heritage Area to determine the leverage and impact of the investments; and

(C) review the management structure, partnerships, relationships, and funding of the Heritage Area for purposes of identifying the critical components for sustainability of the Heritage Area.

(3) Report.—

(A) In general.—Based on the evaluation conducted under paragraph (1)(A), the Secretary shall prepare a report that includes the recommendations for the future role of the National Park Service, if any, with respect to the Heritage Area.

(B) Required analyses.—If the report prepared under subparagraph (A) recommends that Federal funding for the Heritage Area be reauthorized, the report shall include an analysis of—

(i) the ways in which Federal funding for the Heritage Area may be reduced or eliminated; and

(ii) the appropriate time period necessary to achieve the recommended reduction or elimination.

(C) Submission to Congress.—On completion of the report, the Secretary shall submit the report to Congress.

(D) Committee on Natural Resources of the Senate; and

(ii) the Committee on Natural Resources of the House of Representatives.

(e) Effectiveness of Designation.—Nothing in this Act—

(1) includes the management entity from using Federal funds made available under other laws for the purposes for which those funds were authorized; or

(2) affects any water rights or contracts.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

(a) In general.—There is authorized to be appropriated to carry out this Act $10,000,000, of which not less than $1,000,000 may be made available for any fiscal year.

(b) Cost-Sharing Requirement.—The Federal share of the total cost of any activity under this Act shall not be less than 50 percent.

(c) Non-Federal Share.—The non-Federal share of the total cost of any activity under this Act may be in the form of in-kind contributions of goods or services.

SEC. 5. TERMINATION OF AUTHORITY.

(a) In general.—If a proposed Heritage Area management plan has not been submitted to the Secretary by the date that is 5 years after the date of enactment of this Act, the Heritage Area designation shall be rescinded.

(b) Funding Authority.—The authority of the Secretary to provide assistance under this Act to the Heritage Areas shall terminate 15 years after the date of enactment of this Act.

By Mr. FRANKEN.

S. 31. A bill to amend part D of title XVIII of the Social Security Act to authorize the Secretary of Health and Human Services to negotiate for lower prices for Medicare prescription drugs; and for other purposes.

Mr. FRANKEN. 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. 31

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 "Prescription Drug and Health Improvement Act of 2011".

SEC. 2. NEGOTIATING FAIR PRICES FOR MEDICARE PRESCRIPTION DRUGS.

(a) Negotiating Fair Prices.

(1) In general.—Section 1860D–11 of the Social Security Act (42 U.S.C. 1395w–11) is amended by striking subsection (i) (relating to noninterference) and by inserting the following:

"(i) Authority to Negotiate Prices With Manufacturers.—In order to ensure that beneficiaries enrolled in prescription drug plans and MA–PD plans pay the lowest possible price, the Secretary shall have authority similar to that of other Federal entities that purchase prescription drugs in bulk to negotiate contracts with manufacturers of covered Part D drugs, consistent with the requirements and in furtherance of the goals of providing quality care and containing costs under this part."

(2) Effective date.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act.

(b) Biannual Reports to Congress.—Not later than 1 year after the date of the enactment of this Act, and every 6 months thereafter, the Secretary shall submit to Congress a report on the negotiations conducted by the Secretary
Mr. WHITEHOUSE, Mr. President, from the Recovery Act to the Small Business Jobs Act, in the previous Congress we passed a number of substantial pieces of legislation to preserve, protect, and create American jobs. The Recovery Act provided between 2.7 and 3.7 million jobs, including 12,000 jobs in my home State of Rhode Island. This was vital in stemming the 700,000-per-month job loss rate we faced when the previous administration left office. Without the Recovery Act and the other fiscal stimulus we passed over the past 2 years, the economy would have been much worse.

While the Recovery Act protected our country from what would have been a far worse economic meltdown, the employment market is still weak and families are still hurting. Our national unemployment rate was 9.4 percent in December—an unacceptably high level. And it was higher still in harder hit States such as Rhode Island, where we have an unemployment rate in December. As we begin this new Congress, our No. 1 priority must remain job retention and creation.

The manufacturing industry has historically been the engine of growth for the American economy. The manufacturing economy has been especially important in the industrial Northeast, particularly in my State of Rhode Island. From Slater Mill in Pawtucket—to one of the first water-powered textile mills in the Nation and the birthplace of the Industrial Revolution—to high-tech modern submarine production at Quonset Point, the manufacturing sector has always been central to Rhode Island’s economy.

Unfortunately, as American companies have faced rising production costs and increased—and very often unfair—competition from foreign firms, U.S. manufacturing employment has plummeted. According to the Bureau of Labor Statistics, the number of manufacturing jobs declined by almost a third over the past decade, from 17.2 million people at work in 2000 to 11.7 million people at work in 2010. That is 6 million jobs lost. This decline has been felt most sharply in our old manufacturing centers, such as Rhode Island. In Rhode Island, the loss of manufacturing jobs in the past decade has topped 44 percent. The decline of the manufacturing sector—primarily for one good reason: Why Rhode Island has had greater difficulty than most other States in recovering from the recent recession.

Over and over I have traveled around Rhode Island to meet with local manufacturers, listening to their frustrations and discussing ideas to help their businesses grow. During these visits, I have heard one theme over and over: Unfair foreign competition is killing domestic industries. One Pawtucket manufacturer I visited last week told me that 80 percent of their business is now with a Chinese competitor. It is clear to me that if we want to keep manufacturing jobs in this country and in Rhode Island, we need to level the playing field for our manufacturing companies with their foreign competitors.

This week I introduced legislation that will remove one homegrown incentive that rewards companies for moving manufacturing jobs overseas. Under current law, an American company that manufactures goods in Rhode Island or Montana or Maine must pay Federal income tax on profits in the year the profits are earned. That is standard tax law. But if that same company moves its factory to another country, it is permitted to defer the payment of income taxes from that factory and declare the profits in a year that is more advantageous—for example, one in which the company has offsetting tax losses.

If an American company moves a plant offshore, it acquires this tax deferral advantage. It makes no sense that our Tax Code allows companies to delay paying income taxes on profits when made through overseas subsidiaries but charges those profits in the year they are made at home. My bill will put an end to this unfair tax advantage. The Offshoring Prevention Act is based on legislation Senator Byron Dorgan offered over the past two decades, again and again. We can all remember Senator Dorgan coming to this floor here with pictures of iconic American jobs—such as the brass pendant Patties, Radio Flyer red wagons, Fig Newton cookies, and Huffy bicycles, to highlight the fact that the production of these American classic products had moved to Mexico, to China, and elsewhere. On dozens, if not hundreds, of occasions, Senator Dorgan spoke passionately on this floor about the decline of American manufacturing. I am grateful to his leadership on this critical issue and for bringing our attention to an unfair tax advantage that rewards companies for moving manufacturing jobs overseas.

Last year, a version of Senator Dorgan’s bill was included in the Creating American Jobs and Ending Offshoring Act. While a majority of this body—53 were opposed to being precluded on the bill, we were not able to overcome a filibuster to have a chance to consider and pass this legislation. I am sorry we were not able to pass the bill last year, and I will do my best to bring it up for a vote in this new Congress. As the ranking Democrat, Mr. President, keeping jobs in America and providing a level playing field for American manufacturing should
Mr. INOUYE. Mr. President, I am pleased to introduce the Coral Reef Conservation Amendments Act, which I also introduced in the 111th Congress. This critical bill reauthorizes and strengthens the Coral Reef Conservation Act of 2000, a program that I was pleased to originally sponsor in the 106th Congress establishing the Coral Reef Conservation Program at the National Oceanic and Atmospheric Administration, NOAA.

Coral reefs are among the oldest and most economically and biologically important ecosystems in the world. They provide habitat for more than one million diverse aquatic species, a natural barrier for protection from coastal storms and erosion, and are a potential source of treatment for many of the world’s diseases. From a commerce perspective, reef-supported tourism is a $100 million industry worldwide, and the commercial value of United States fisheries from coral reefs is more than $100 million. However, our coral reef ecosystems face many threats including pollution, climate change and coral bleaching, and overfishing to name a few. Coral reefs cover only one-tenth of one percent of the ocean floor, yet provide habitat in twenty-five percent of all marine species.

The original Coral Reef Conservation Act of 2000 recognized the need to preserve, sustain and restore the condition of these valuable coral reef ecosystems. The Coral Reef Conservation Amendment Act of 2011 would strengthen NOAA’s ability to comprehensively address threats to coral reefs and empower the agency with tools to ensure that damage to our coral reef ecosystems is prevented or effectively mitigated. It also establishes consistent practices for maintaining data, products, and information, and promotes the widespread availability and dissemination of that environmental information.

Finally, the bill allows the Secretary to further develop partnerships with foreign governments and international organizations—partnerships that are critical not only to the understanding of our coral reef ecosystems, but also to their protection and restoration.

Thank you and I would urge you to support this important legislation to continue supporting NOAA’s leadership role in coral reef conservation.

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. 46

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Coral Reef Conservation Amendments Act of 2011”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 3. Purposes.
Sec. 4. National coral reef action strategy.
Sec. 5. Coral reef conservation program.
Sec. 6. Coral reef conservation fund.
Sec. 7. Agreements and cooperations.
Sec. 8. Emergency assistance.
Sec. 9. National program.
Sec. 10. Study of trade in corals.
Sec. 11. Implementation of coral reef conservation activities.
Sec. 12. Community-based planning grants.
Sec. 13. Vessel grounding inventory.
Sec. 14. Prohibited activities.
Sec. 15. Destruction of coral reefs.
Sec. 16. Enforcement.
Sec. 17. Permits.
Sec. 18. Regional, State, and Territorial coordination.
Sec. 19. Regulations.
Sec. 20. Effectiveness and assessment report.
Sec. 21. Authorization of appropriations.
Sec. 22. Judicial review.
Sec. 23. Definitions.

SEC. 2. AMENDMENT OF CORAL REEF CONSERVATION ACT OF 2000.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 et seq.).

SEC. 3. PURPOSES.

Section 202 (16 U.S.C. 6601) is amended to read as follows:

SEC. 202. PURPOSES.

The purposes of this Act are—

(1) to preserve, sustain, and restore the condition of coral reef ecosystems;

(2) to promote the wise management and sustainable use of coral reef ecosystems to benefit local communities, the Nation, and the world;

(3) to develop sound scientific information on the condition of coral reef ecosystems and the threats to such ecosystems;

(4) to assist in the preservation of coral reef ecosystems by supporting conservation programs, including projects that involve affected local communities and nongovernmental organizations;

(5) to provide financial resources for those programs and projects;

(6) to establish a formal mechanism for collecting and allocating monetary donations from the private sector to be used for coral reef conservation projects; and

(7) to provide mechanisms to prevent and minimize damage to coral reefs.

SEC. 4. NATIONAL CORAL REEF ACTION STRATEGY.

Section 203 (16 U.S.C. 6602) is amended to read as follows:

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of the Coral Reef Conservation Amendments Act of 2011, the Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and to the House of Representatives Committee on Natural Resources and publish in the Federal Register a national coral reef ecosystem action strategy, consistent with the purposes of this title. The Secretary shall periodically review and revise the strategy as necessary. In developing this national strategy, the Secretary may consult the Coral Reef Task Force established under Executive Order 13089 (June 11, 1996).

“(b) GOALS AND OBJECTIVES.—The action strategy shall include a statement of goals and objectives as well as an implementation plan, including a description of the funds obligated each fiscal year to advance coral reef conservation. The action strategy and implementation plan shall include discussion of—

“(1) coastal uses and management, including land-based sources of pollution;

“(2) climate change;

“(3) water and air quality;

“(4) mapping and information management;

“(5) research, monitoring, and assessment;

“(6) international and regional issues;

“(7) outreach and education; and

“(8) local strategies developed by the States or Federal agencies, including regional fishery management councils; and

“(9) conservation.”
further the purposes of this title and are consistent with the general authority provided by this title.

SEC. 8. EMERGENCY ASSISTANCE.

The Secretary, in cooperation with the Federal Emergency Management Agency, as appropriate, may provide assistance to any State, local, or territorial government agency with jurisdiction over coral reef ecosystems to address any unforeseen or disaster-related circumstance pertaining to coral reef ecosystems.

SEC. 9. NATIONAL PROGRAM.

(1) mapping, monitoring, assessment, restoration, socioeconomic and scientific research that benefit the understanding, sustainable use, biodiversity, and long-term conservation of coral reef ecosystems;

(2) enhancing public awareness, education, understanding, and appreciation of coral reef ecosystems;

(3) removing, and providing assistance to States in removing, abandoned fishing gear, marine debris, and abandoned vessels from coral reef ecosystems to conserve living marine resources;

(b) AUTHORIZED ACTIVITIES.—Activities authorized under subsection (a) include—

(1) mapping, monitoring, assessment, restoration, socioeconomic and scientific research that benefit the understanding, sustainable use, biodiversity, and long-term conservation of coral reef ecosystems;

(2) conducting public education and awareness programs for policy makers, resource managers, and the general public on coral reef ecosystems, best practices for coral reef and ecosystem management and conservation, their value, and threats to their sustainability;

(3) conduct public education and awareness programs for policy makers, resource managers, and the general public on coral reef ecosystems, best practices for coral reef and ecosystem management and conservation, their value, and threats to their sustainability.

(4) USE OF OTHER AGENCIES’ RESOURCES.—For purposes related to the conservation, protection, restoration, or replacement of coral reefs or coral reef ecosystems and the enforcement of this title, the Secretary is authorized to use, with their consent and with or without reimbursement, the land, services, equipment, personnel, and facilities of any Department, agency, or instrumentalities of the United States, or of any State, local government, tribal government, Territory or possession, or of any political subdivision thereof, or of any foreign government or international organization.

(5) AUTHORITY TO UTILIZE GRANT FUNDS.—

(1) Except as provided in paragraph (2), the Secretary may not accept, accept, and obligate research grant funding from any Federal or State or local agency or from any State, local government, Tribal government, or any foreign government or international organization.

(2) The Secretary may authorize to use, with their consent and with or without reimbursement, the land, services, equipment, personnel, and facilities of any Department, agency, or instrumentality of the United States, or of any State, local government, tribal government, Territory or possession, or of any foreign government or international organization.

(3) DATA ARCHIVE, ACCESS, AND AVAILABILITY.—The Secretary may authorize to use, with their consent and with or without reimbursement, the land, services, equipment, personnel, and facilities of any Department, agency, or instrumentality of the United States, or of any State, local government, Tribal government, or any foreign government or international organization.

(4) AUTHORITY TO UTILIZE GRANT FUNDS.—

(1) Except as provided in paragraph (2), the Secretary may not accept, accept, and obligate research grant funding from any Federal or State or local agency or from any State, local government, Tribal government, or any foreign government or international organization.

(2) The Secretary may authorize to use, with their consent and with or without reimbursement, the land, services, equipment, personnel, and facilities of any Department, agency, or instrumentality of the United States, or of any State, local government, Tribal government, or any foreign government or international organization.

(3) DATA ARCHIVE, ACCESS, AND AVAILABILITY.—The Secretary may authorize to use, with their consent and with or without reimbursement, the land, services, equipment, personnel, and facilities of any Department, agency, or instrumentality of the United States, or of any State, local government, Tribal government, or any foreign government or international organization.

(4) AUTHORITY TO UTILIZE GRANT FUNDS.—

(1) Except as provided in paragraph (2), the Secretary may not accept, accept, and obligate research grant funding from any Federal or State or local agency or from any State, local government, Tribal government, or any foreign government or international organization.

(2) The Secretary may authorize to use, with their consent and with or without reimbursement, the land, services, equipment, personnel, and facilities of any Department, agency, or instrumentality of the United States, or of any State, local government, Tribal government, or any foreign government or international organization.
“(3) develop standards, protocols, and procedures for sharing Federal data with State and local government programs and the private sector or academia; and
“(4) develop standards for coral reef ecosystems in accordance with Federal Geographic Data Committee guidelines.
(d) EMERGENCY RESPONSE, STABILIZATION, AND RESTORATION—
“(1) ESTABLISHMENT OF ACCOUNT.—The Secretary shall establish an account (to be called the Emergency Response, Stabilization, and Restoration Account) in the Damage Assessment Restoration Revolving Fund established by the Department of Commerce Appropriations Act, 1991 (33 U.S.C. 2706 note), for implementation of this subsection and for emergency actions. Amounts appropriated for the Account under section 219, and funds authorized by sections 213(d)(1)(C)(ii) and 214(e)(3)(B), shall be deposited into the Account and made available for use by the Secretary as specified in sections 213 and 214.
“(2) DEPOSIT AND INVESTMENT OF CERTAIN FUNDS.—Any amounts received by the United States pursuant to sections 213(d)(1)(C)(ii) and 214(e)(3)(B) shall be deposited into the Emergency Response, Stabilization, and Restoration Account, established under paragraph (1). The Secretary of Commerce may request the Secretary of the Treasury to invest such portion of the Damage Assessment Restoration Revolving Fund as is not, in the judgment of the Secretary of Commerce, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury in public debt securities, with maturities suitable to the needs of the fund, as determined by the Secretary of Commerce and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. Interest earned by such investments shall be available for use by the Secretary without further appropriation and remain available until expended.”.

SEC. 10. STUDY OF TRADE IN CORALS.

(a) IN GENERAL.—The Secretary of Commerce, in consultation with the Secretary of the Interior, shall conduct a study on the economic, social, and environmental values and impacts of the United States market in corals and coral products.

(b) CONTENTS.—The study shall—
“(1) assess the economic, social, and environmental values and impacts of the United States market in corals and coral products, including import and export trade;
“(2) identify primary coral species used in the coral and coral product trade and locations of wild harvest;
“(3) assess the environmental impacts associated with wild harvest of coral;
“(4) assess the effectiveness of current public and private programs aimed at promoting conservation in the coral and coral product trade;
“(5) identify economic and other incentives for coral reef conservation as part of the coral and coral product trade; and
“(6) identify additional actions, if necessary, to ensure that the United States market in coral and coral products does not contribute to the degradation of coral reef ecosystems.

(c) REPORT.—Not later than 30 months after the date of enactment of this Act, the Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Natural Resources a report of the study.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section $100,000.

SEC. 11. INTERNATIONAL CORAL REEF CONSERVATION ACTIVITIES.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 208, as redesignated by subsection (c), the following:

“(A) INTERNATIONAL CORAL REEF CONSERVATION ACTIVITIES.
“(1) IN GENERAL.—The Secretary shall carry out international coral reef conservation activities consistent with the purposes of the international coral reef ecosystems in waters outside the United States jurisdiction. The Secretary shall develop and implement an international coral reef ecosystem strategy developed pursuant to subsection (b).
“(2) COORDINATION.—In carrying out this subsection, the Secretary shall consult with the Secretary of State, the Administrator of the Agency for International Development, the Secretary of the Interior, and other relevant Federal agencies, and relevant United States stakeholders, and shall take into account coral reef ecosystem conservation initiatives of other nations, international agreements, and intergovernmental and non-governmental organizations so as to provide coordination, efficiency, and effectiveness in international coral reef conservation. The Secretary may consult with the Coral Reef Task Force in carrying out this subsection.

“(B) INTERNATIONAL CORAL REEF ECOSYSTEM STRATEGY.—
“(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Coral Reef Conservation Amendments Act of 2011, the Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Natural Resources, and publish in the Federal Register, an international coral reef ecosystem strategy, consistent with the purposes of this Act and the national coral reef conservation strategy developed pursuant to section 203(a). The Secretary shall periodically review and revise this strategy as necessary.
“(2) CONTENTS.—The strategy developed by the Secretary under paragraph (1) shall—
“(A) identify coral reef ecosystems throughout the world that are of high value for United States marine resources, that support high-seas resources of importance to the United States such as fisheries, or that support other interests of the United States;
“(B) summarize existing activities by Federal, State, or local entities described in subsection (a)(2) to address the conservation of coral reef ecosystems identified pursuant to subparagraph (A);
“(C) establish goals, objectives, and specific targets for conservation of priority international coral reef ecosystems;
“(D) describe appropriate activities to achieve the goals and targets for international coral reef conservation, in particular those that leverage activities already conducted under this Act; and
“(E) develop a coordinate implementation of the strategy with entities described in subsection (a)(2) in order to leverage current activities under this Act and other conservation efforts globally;
“(F) identify appropriate partnerships, grants, or other funding and technical assistance mechanisms to carry out the strategy; and
“(G) develop criteria for prioritizing partnerships under subsection (c).

“(C) INTERNATIONAL CORAL REEF ECOSYSTEM PARTNERSHIPS.—
“(1) IN GENERAL.—The Secretary shall establish an international coral reef ecosystem partnership program to provide support, in coordination with other Federal, State, and local, or international partners, for activities that implement the strategy developed pursuant to subsection (b).

“(2) MECHANISMS.—The Secretary shall provide such support through existing authorities, working in collaboration with the entities described in subsection (a)(2).

“(3) PROCUREMENT.—The Secretary may use existing authority to execute and perform such contracts, leases, grants, cooperative agreements, or other transactions as may be necessary to carry out the purposes of this section.

“(4) TRANSFER OF FUNDS.—To implement this section and subject to the availability of funds, the Secretary may transfer funds to a foreign government or international organization, and may accept transfers of funds from such entities, except that no more than 5 percent of funds appropriated to carry out this section may be transferred.

“(5) CRITERIA FOR APPROVAL.—The Secretary may not approve a partnership proposal under this section unless the partnership is consistent with the international coral reef conservation strategy developed pursuant to subsection (b), and meets the criteria specified in that strategy.

SEC. 12. COMMUNITY-BASED PLANNING GRANTS.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 209, as added by section 11 of this Act, the following:

“(a) IN GENERAL.—The Secretary may make grants to entities that have received grants under section 204 of the Act to provide additional funds to such entities to work with local communities and through appropriate Federal and State entities to prepare and implement plans for the increased protection of coral reef areas identified by the community and scientific experts as high priorities for focused attention. The plans shall—
“(1) support attainment of 1 or more of the criteria described in section 204(g);
“(2) be developed at the community level;
“(3) utilize watershed-based approaches;
“(4) incorporate measures to coordinate with Federal and State experts and managers; and
“(5) build upon local approaches, strategies, or models, including traditional or island-based resource management concepts.

“(b) TERMS AND CONDITIONS.—The provisions of subsections (b), (d), (f), and (h) of section 204 apply to grants under subsection (a) that, for the purposes of applying section 204(b)(1) to grants under this section, ‘75 percent’ shall be substituted for ‘50 percent’.

SEC. 13. VESSEL GROUNDING INVENTORY.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 210, as added by section 12 of this Act, the following:

“(a) IN GENERAL.—The Secretary may maintain an inventory of all vessel grounding incidents involving coral reefs, including a description of—
“(1) the impacts to affected coral reef ecosystems;
“(2) vessel and ownership information, if available;
“(3) the estimated cost of removal, mitigation, or restoration;
“(4) the response action taken by the owner, the Secretary, the Commandant of the Coast Guard, or other Federal or State agency representatives;
“(5) the status of the response action, including the dates of vessel removal and mitigation or restoration and any actions taken to prevent future grounding incidents; and
“(6) recommendations for additional navigational aids or other measures for preventing future grounding incidents.

“(b) IDENTIFICATION OF AT-RISK REEFS.—The Secretary may—
“(1) use information maintained under subsection (a) or any other available information source to identify
Coral reef ecosystems that have a high incidence of vessel impacts, including grounds and anchor damage;

(2) identify appropriate measures, including planning, placement and use of aids to navigation, moorings, designated anchorage areas, fixed anchors and other devices, to reduce the likelihood of such impacts; and

(3) adopt necessary measures within a reasonable time to implement such measures, including cooperative actions with other government agencies and non-governmental partners.

SEC. 14. PROHIBITED ACTIVITIES.

(a) In General.—The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 211, as added by section 13 of this Act, the following:

"(b) DESTRUCTION, LOSS, TAKING, OR INJURY.—(1) in General.—Except as provided in paragraph (2), it is unlawful for any person to determine, cause the loss of, injure any coral reef or any component thereof.

(2) Exceptions.—The destruction, loss, taking, injury, or destruction of, any coral reef or any component thereof is not unlawful if it:

"(A) was caused by the use of fishing gear used in a manner permitted under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) or other Federal or State law;

"(B) was caused by an activity that is authorized or allowed by Federal or State law (including lawful discharges from vessels, such as graywater, cooling water, engine exhaust, ballast water, or sewage from marine sanitation devices), unless the destruction, loss, or injury resulted from actions such as vessel groundings, vessel scrapings, anchor damage, excavation not authorized by Federal or State permit, or other similar activities;

"(C) was the necessary result of bona fide marine scientific research (including marine scientific research, such as sampling, collecting, or actions such as vessel groundings, vessel scrapings, anchor damage, excavation, or other similar activities);

"(D) was caused by a Federal government agency—

"(i) during—

"(I) an emergency that posed an unacceptable threat to human health or safety or to the marine environment;

"(II) an emergency that posed a threat to national security; or

"(III) an activity necessary for law enforcement or search and rescue; and

"(ii) during—

"(I) an activity necessary for law enforcement or search and rescue; and

"(ii) was caused by an action taken by the master of the vessel in an emergency situation to ensure the safety of the vessel or to save a life.

"(E) was caused by an action taken by the master of the vessel in an emergency situation to ensure the safety of the vessel or to save a life.

"(F) Interference With Enforcement.—It is unlawful for any person to interfere with the enforcement of this title by—

"(1) refusing to permit any officer authorized to enforce this title to board a vessel (other than a vessel operated by the Department of Defense or United States Coast Guard) or require a person’s control for the purposes of conducting any search or inspection in connection with the enforcement of this title;

"(2) attempting, opposing, impeding, intimidating, harassing, bribing, interfering with, or forcibly assaulting any person authorized by the Secretary to implement this title or any such authorized officer in the conduct of any search or inspection performed under this title;

"(3) submitting false information to the Secretary or any officer authorized to enforce this title in connection with any search or inspection conducted under this title.

"(b) EMISSIONS.—It is unlawful for any person to emit, discharge, release, or discharge in a manner prohibited under section 1005 of the Clean Air Act (42 U.S.C. 7405).

"(c) COMMENCEMENT OF CIVIL ACTION FOR RESPONSE COSTS AND DAMAGES.—The Attorney General, upon the request of the Secretary, may bring a civil action to recover costs, including the cost of damage assessment, for the same incident.

"(c) COMMENCEMENT OF CIVIL ACTION FOR RESPONSE COSTS AND DAMAGES.—The Attorney General, upon the request of the Secretary, may bring a civil action to recover costs, including the cost of damage assessment, for the same incident.

"(c) COMMENCEMENT OF CIVIL ACTION FOR RESPONSE COSTS AND DAMAGES.—The Attorney General, upon the request of the Secretary, may bring a civil action to recover costs, including the cost of damage assessment, for the same incident.

"(c) COMMENCEMENT OF CIVIL ACTION FOR RESPONSE COSTS AND DAMAGES.—The Attorney General, upon the request of the Secretary, may bring a civil action to recover costs, including the cost of damage assessment, for the same incident.

"(d) Use of Recovered Amounts.—(1) In General.—Any costs, including response costs and damages recovered by the Secretary under this section shall—

"(2) Deposits.—A person or vessel is not liable under this subsection if that person or vessel establishes that the destruction, loss, taking, or injury was caused solely by an act of God or by an act or omission of a third party (other than an employee or agent of the defendant or one whose act or omission occurs in connection with a contractual relationship with the defendant (directly or indirectly with the defendant), and the person or master of the vessel acted with due care.
“(ii) to be transferred to the Emergency Response, Stabilization and Restoration Account established under section 208(d) to reimburse that account for amounts used for authorized actions; and

“(iii) after reimbursement of such costs, to restore, replace, or acquire the equivalent of any coral reefs, or components thereof, including the costs of monitoring or to minimize or prevent threats of equivalent injury to, or destruction of coral reefs, or components thereof.

“(2) RESTORATION CONSIDERATIONS.—In development of restoration alternatives under paragraph (1)(C), the Secretary shall consider State and territorial preferences and, if appropriate, projects with geographic and ecological linkages to the injured resources.

“(e) STATUTE OF LIMITATIONS.—An action for response costs or damages under subsection (c) shall be barred unless the complaint is filed within 3 years after the date on which the Secretary completes a damage assessment and restoration plan for the coral reefs, or components thereof, to which the action relates.

“(f) FILING GOVERNMENT ACTIVITIES.—In the event of threatened or actual destruction of, loss of, or injury to a coral reef or component thereof resulting from an incident causing damage or injury to a Department or agency of the United States Government, the cognizant Department or agency shall satisfy its obligations under this section by promptly, in coordination with the Secretary, taking appropriate actions respond to and mitigate the harm and restoring or replacing the coral reef or components thereof and reimbursing the Secretary for all assessing actions.

“(g) UNIFORMED SERVICE OFFICERS AND EMPLOYEES.—No officer or employee of a uniformed service (as defined in section 101 of title 10, United States Code) shall be held liable under this section, either in such officer’s or employee’s personal or official capacity, for any violation of section 212 occurring during the performance of the officer’s or employee’s official governmental duties.

“(h) CONTRACT EMPLOYEES.—No contract employee of a uniformed service (as so defined, serving as vessel master or crew member, shall be liable under this section for any violation of section 212 if that contract employee—

“(1) is acting as a contract employee of a uniformed service under the terms of an operating contract for a vessel owned by a uniformed service, time charter for position vessels, special mission vessels, or vessels exclusively transporting military supplies and materials; and

“(2) is engaged in an action or actions over which such employee has given no discretion (e.g., anchoring or mooring at one or more designated anchorages or buoys, or executing safety or other elements of special mission activity), as determined by the uniformed service controlling the contract.

SEC. 16. ENFORCEMENT.

The Act (16 U.S.C. 601 et seq.) is amended by inserting after section 213, as added by section 15 of this Act, the following:

“SEC. 214. ENFORCEMENT.

“(a) IN GENERAL.—The Secretary shall conduct enforcement activities to carry out this title.

“(b) POWERS OF AUTHORIZED OFFICERS.—

“(1) IN GENERAL.—Any person who is authorized to enforce this title may—

“(A) board, search, inspect, and seize any vessel or other conveyance suspected of being used to violate this title, any regulation promulgated under this title, or any permit issued under this title, and any equipment, stores, and cargo of such vessel, except that such authority shall not exist with respect to vessels owned or time chartered by a uniformed service (as defined in section 101 of title 10, United States Code) as warships or naval auxiliaries;

“(B) seize wherever found any component of coral reef taken or retained in violation of this title, any regulation promulgated under this title, or any permit issued under this title;

“(C) seize any evidence of a violation of this title, any regulation promulgated under this title, or any permit issued under this title;

“(D) execute any warrant or other process issued by any court of competent jurisdiction;

“(E) exercise any other lawful authority; and

“(F) arrest any person, if there is reasonable cause to believe that such person has committed an act prohibited by section 212.

“(2) NAVAL AUXILIARY DEFINED.—In this subsection means a vessel, other than a warship, that is owned by or under the exclusive control of a uniformed service and used at the time of the violation as a support vessel for a warship, to support the provision of non-commercial service, including combat logistics force vessels, pre-positioned vessels, special mission vessels, or vessels exclusively used to transport military supplies and materials.

“(c) CIVIL ENFORCEMENT AND PERMIT SANCTIONS.—

“(1) CIVIL ADMINISTRATIVE PENALTY.—Any person subject to the jurisdiction of the United States who violates this title or any regulation promulgated or permit issued hereunder, shall be liable to the United States for a civil administrative penalty of not more than $230,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation. In determining the amount of civil administrative penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violations, the degree of culpability, and any history of prior violations, and such other matters as justice may require. In imposing such penalty, the district court may also consider factors related to the ability of the violator to pay.

“(2) PERMIT SANCTIONS.—For any person subject to the jurisdiction of the United States who has failed to apply for a permit under this title, and who violates this title or any regulation or permit issued under this title, the Secretary may,suspend, suspend or revoke, wholly or in part any permit issued or revoked under this title.

“(3) IMPOSITION OF CIVIL JUDICIAL PENALTIES.—Any person who violates any provision of this title, any regulation promulgated or permit issued thereunder, shall be subject to a civil judicial penalty not to exceed $250,000 for each such violation. Each day of a continuing violation shall constitute a separate violation. The Attorney General, upon the request of the Secretary, may commence a civil action in an appropriate district court of the United States, and such court shall have jurisdiction to award civil penalties and such other relief as justice may require. In determining the amount of a civil penalty, the court shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior violations, and such other matters as justice may require. In imposing such penalty, the district court may also consider factors related to the ability of the violator to pay.

“(4) NOTICE.—No penalty or permit sanction shall be assessed under this subsection unless notice is given to the violator, at a reasonable time, of the violation and an opportunity for a hearing.

“(5) IN REM JURISDICTION.—A vessel used in violating this title, any regulation promulgated or permit issued hereunder, shall be liable to the United States for any civil penalty assessed for such violation. Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

“(6) COLLECTION OF PENALTIES.—If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed and any other expenses incurred in the suit, including legal fees and costs. Such penalty shall be in an amount equal to 20 percent of the aggregate amount of such person’s penalties and non-judicial penalties that have become unpaid as of the beginning of such quarter.

“(7) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil administrative penalty or permit sanction which is or may be imposed under this section and that has not been referred to the Attorney General for further enforcement action.

“(8) JURISDICTION.—The several district courts of the United States, for the district where the violation first occurred, but also in any other district as authorized by law.

“(9) FORFEITURE.—

“(1) CRIMINAL FORFEITURE.—A person who is convicted of an offense in violation of this title shall forfeit to the United States—

“A) any property, real or personal, constituting or traceable to the gross proceeds taken, obtained, or retained, in connection with or as a result of the offense, including, without limitation, any vessel (including the vessel’s equipment, stores, cargo, and vessel), vehicle, aircraft, or other means of transportation.

Pursuant to section 266(c) of title 28, United States Code, the provisions of section 413 of
Any vessel (including the vessel's equipment, stores, catch and cargo), vehicle, aircraft, or other means of transportation.

(3) Application of the customs laws.—

All provisions of law relating to seizure, summary judgment, and judicial forfeiture and condemnation for violation of the customs laws, the disposition of the property forfeited or condemned, and the procedures for the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims shall apply to seizures and forfeitures incurred in violation of the provisions of this title, insofar as applicable and not inconsistent with the provisions hereof. For seizures and forfeitures of property under this section by the Secretary, such duties as are imposed on the customs officers or any other person with respect to the seizure and forfeiture of property under the customs laws may be performed by such officers as are designated by the Secretary or, upon request of the Secretary, by any other agency that has authority to manage and dispose thereof.

(4) Presumption.—For the purposes of this section there is a rebuttable presumption that all coral reefs, or components thereof, found on board a vessel that is used in storage, care, and maintenance of any property seized in connection with a violation of this title or of any regulation promulgated under this title or of any rule promulgated by the Secretary, shall be considered to have been transferred or as a result of a violation of this title, including, without limitation, any coral reef or coral reef component (or the fair market value thereof).

(5) Payment of storage, care, and other costs.—Any person assessed a civil penalty under this section who knowingly commits any act prohibited by section 110(b)(1) of this title shall be liable to pay the reasonable and necessary costs incurred by the Secretary in storage, care, and maintenance of any property seized in connection with the violation.

(6) Expenditures.—

(1) Notwithstanding section 3302 of title 31, United States Code, or section 311 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851), amounts received by the United States as civil penalties under subsection (c) of this section, forfeitures of property under subsection (d) of this section, and costs imposed under subsection (e) of this section, shall—

(A) be placed into an account;

(B) be available for use by the Secretary without further appropriation; and

(C) remain available until expended.

(2) Amounts received under this section for forfeitures under subsection (d) and costs imposed under subsection (e) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of seized property, and to maintain the coral reef, or both. The district courts shall have jurisdiction to grant such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to replace the coral reef, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

(2) Upon the request of the Secretary, the Attorney General may seek to enjoin any provision of this title, or any regulation or permit issued under this title, and the district courts shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(7) Area of application and enforceability.—The area of application and enforceability of this title includes the territories of the United States, the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, the Exclusive Economic Zone of the United States as described in Presidential Proclamation 5059 of March 10, 1993, and the continental shelf, consistent with international law.

(8) Uniformed service of process.—In any action by the United States under this title, process may be served in any district where the defendant is found, resides, transacts business, does business, in the case of an action against the United States, or in which there is an imminent risk of such destruction, loss, or injury, or in the United States district court for any district in which the vessel is located, in the case of an action against a vessel.

(9) Where some or all of the coral reef or component thereof that is the subject of the action is not within the territory covered by any United States district court, such action may be brought either in the United States district court for the district closest to the location where the destruction, loss, or injury occurred, or in the United States District Court for the District of Columbia.

(10) Uniformed service officers and employees.—No officer or employee of a uniformed service (as defined in section 101 of title 10, United States Code) shall be held liable under this section, either in such officer's or employee's official governmental duties, for any violation of section 212 occurring during the performance of the officer's or employee's official governmental duties.

(11) Contractor employees.—No contract employee of a uniformed service (as so defined), serving as vessel master or crew member in connection with the activities of a Department of Defense or other governmental unit under the provisions of this title, shall be held liable for any violation of section 212 if that contract employee—
SEC. 17. PERMITS.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 214, as added by section 16 of this Act, the following:

SEC. 171. PERMITS.

(a) IN GENERAL.—The Secretary may allow for the conduct of—

(1) bona fide research, and

(2) activities that would otherwise be prohibited by this title or regulations issued thereunder,

through issuance of coral reef conservation permits in accordance with regulations issued under this title.

(b) LIMITATION OF NON-RESEARCH ACTIVITIES.—The Secretary may not issue a permit for activities other than for bona fide research or for the Secretary finds—

(1) the activity proposed to be conducted is compatible with one or more of the purposes in section 202(b) of this title;

(2) the activity conforms to the provisions of all other laws and regulations applicable to the area for which such permit is to be issued; and

(3) no practicable alternative to conducting the activity in a manner that destroys, causes the loss of, or injures any coral reef or any component thereof.

(c) TERMS AND CONDITIONS.—The Secretary may allow for the conduct of any fishing activities not prohibited by this title or regulations issued thereunder, on a permit issued under this section that includes—

(1) bona fide research, and

(2) activities that would otherwise be prohibited by this title or regulations issued thereunder.

SEC. 18. REGIONAL, STATE, AND TERRITORIAL COORDINATION.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 215, as added by section 17 of this Act, the following:

SEC. 216. REGIONAL, STATE, AND TERRITORIAL COORDINATION.

(a) REGULATIONS.—The Secretary and other Federal members of the Coral Reef Task Force shall work in coordination and collaboration with other Federal agencies, States, and United States territories according to strategies developed under section 203, including regional and local strategies, to address multiple threats to coral reefs and coral reef ecosystems.

(b) RESPONSIBILITY AND RESTORATION ACTIVITIES.—The Secretary shall enter into written agreements with any States in which coral reefs are located regarding the manner in which response and restoration activities will be conducted within the affected State's waters. Nothing in this subsection shall be construed to limit Federal response and restoration activity authority before such agreement is final.

(c) COOPERATIVE ENFORCEMENT AGREEMENTS.—All cooperative enforcement agreements in place between the Secretary and States affected by this title shall be updated to include enforcement of this title where appropriate.

SEC. 19. REGULATIONS.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 216, as added by section 18 of this Act, the following:

SEC. 217. REGULATIONS.

The Secretary may issue such regulations as are necessary and appropriate to carry out the purposes of this title. This title and any regulations promulgated under this title shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

SEC. 20. EFFECTIVENESS AND ASSESSMENT REPORT.

Section 218 (formerly 16 U.S.C. 6407), as redesignated by section 7 of this Act, is amended to read as follows:

SEC. 218. EFFECTIVENESS AND ASSESSMENT REPORT.

(a) EFFECTIVENESS REPORT.—Not later than March 1, 2016, and every 3 years thereafter, the Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Natural Resources an assessment of the conditions of U.S. coral reefs, the effectiveness of management actions to address threats to coral reefs.

(b) ASSESSMENT REPORT.—Not later than March 1, 2013, and every 5 years thereafter, the Secretary will submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Natural Resources an assessment of the conditions of U.S. coral reefs, the effectiveness of management actions to address threats to coral reefs.

SEC. 21. AUTHORIZATION OF APPROPRIATIONS.

Section 219 (formerly 16 U.S.C. 6408), as redesignated by section 7 of this Act, is amended—

(1) by striking "$16,000,000 for each of fiscal years 2002, 2003, 2004, and 2005", in subsection (a) and inserting "$34,000,000 for fiscal year 2012, $36,000,000 for fiscal year 2013, $38,000,000 for fiscal year 2014, and $40,000,000 for each of fiscal years 2015 through 2016, of which no less than 24 percent per year (for each of fiscal years 2012 through 2016) shall be used for the grant program under section 204, no less than 6 percent shall be used for Fishery Management Councils, and up to 10 percent per year shall be used for the Fund established under section 206(a)";

(2) by striking "$1,000,000" in subsection (b) and inserting "$2,000,000";

(3) by striking subsection (c) and inserting the following:

(2) INTERNATIONAL CORAL REEF CONSERVATION PROGRAM.—There are authorized to be appropriated to the Secretary to carry out section 204 ($8,000,000 for each of fiscal years 2012 through 2016, to remain available until expended)."

SEC. 22. JUDICIAL REVIEW.

The Act (16 U.S.C. 6401 et seq.) is amended by inserting after section 219, as redesignated by section 7 of this Act, the following:

SEC. 220. JUDICIAL REVIEW.

(a) IN GENERAL.—Chapter 7 of title 5, United States Code, is not applicable to any action taken under this title, except that—

(1) review of any final agency action of the Secretary pursuant to sections 214(c)(1) and 214(c)(2) may be had only by the filing of a complaint by an interested person in the United States for the appropriate district; any such complaint must be filed within 30 days of the date such final agency action is taken; and

(2) review of any final agency action of the Secretary pursuant to section 215 may be had by the filing of a petition for review by an interested person in the Circuit Court of Appeals of the United States for the federal judicial district in which such person resides or transacts business which is directly affected by the action taken; such petition shall be filed within 60 days of the date such final agency action is taken.

(b) NO REVIEW IN ENFORCEMENT PROCEEDINGS.—Final agency action with respect to which judicial review cannot be carried under subsection (a)(2) shall not be subject to judicial review in any civil or criminal proceeding.

(c) COST OF LITIGATION.—In any judicial proceeding under subsection (a), the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing party whenever it determines that such award is appropriate.
S160
CONGRESSIONAL RECORD — SENATE
January 25, 2011

SEC. 221. DEFINITIONS.

"In this title:

"(1) BIODIVERSITY.—The term 'biodiversity' means the variability among living organisms from all sources including, inter alia, terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are part, including diversity within species, between species, and of ecosystems.

"(2) BONA FIDE RESEARCH.—The term 'bona fide research' means scientific research on corals, the results of which are likely to result in recognition of the need for inclusion of pharmacists in the National Health Services Corps, NHSC, student loan repayment program. It is imperative that our Nation focus its efforts on increased access to affordable, high quality healthcare for our Nation's under-served communities. Today's pharmacists graduate with a professional doctorate degree. My home State of Hawaii is home to our only school of pharmacy program located at the University of Hawaii at Hilo and this year will mark the school's very first graduating class. Pharmacists are vital to our interest of increasing access to patient-centered, team-based healthcare for all individuals. They collaborate with providers across the continuum of care to improve medication-use related outcomes, provides access to prevention and wellness screening that, among others, can reduce tobacco use and increase immunization rates all of which support provider effectiveness and organizational efficiencies. The integration of the pharmacist across the continuum of care helps increase access to primary and preventive care and allows for better management of chronic disease. Pharmacists support practices by fostering the management of medications preventing adverse events that lead to avoidable emergency room visits and hospital admissions. This collaborative effort among healthcare providers helps improve clinical and economic outcomes and increases patient satisfaction with their care.

The current approach of recruiting and retaining primary care practitioners may limit access to robust patient-centered, team-based care by patients in underserved communities. Today over 88 percent of pharmacy students borrow over $107,000 to help them pay for their education. The incorporation of comprehensive pharmacy services at these practice sites is a primary objective of the Health Resources and Services Administration patient-safety and clinical pharmacy services collaborative. Making pharmacists eligible to participate in NHSC loan repayment program will ensure that the reorganization of our healthcare system envisioned in legislation, federal action, and community-based models all benefit from patient-centered, team-based models of care that integrate comprehensive pharmacy services. I urge you to consider the benefits of including pharmacists in the NHSC loan repayment program.

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

Mr. INOUYE (for himself, Mr. REED, and Mr. BEGICH):

S. 48. A bill to amend the Public Health Service Act to provide for the participation of pharmacists in National Health Services Corps programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. INOUYE. Mr. President, today I rise to recognize the need for inclusion

"(G) the indirect costs associated with the costs listed in subparagraphs (A) through (F) of this paragraph.

"(9) EMERGENCY ACTIONS.—The term 'emergency actions' means any activity necessary to prevent or minimize the additional destruction or loss of, or injury to, coral reefs or components thereof, or to minimize the risk of such additional destruction, loss, or injury.

"(10) EXCLUSIVE ECONOMIC ZONE.—The term 'Exclusive Economic Zone' means the waters of the Exclusive Economic Zone of the United States under Presidential Proclamation 5038, dated March 10, 1983.

"(11) PERSON.—The term 'person' means any natural person or legal entity, including a corporation, partnership, trust, institution, association, any other public or private entity, whether foreign or domestic, private person or entity, or any officer, employee, agent, Department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

"(12) RESPONSE COSTS.—The term 'response costs' means the costs of actions taken or authorized by the Secretary to minimize destruction or loss of a coral reef or component thereof, or to prevent threats of, equivalent injury to, or component thereof, or the cost of activities to minimize or prevent threats of, equivalent injury to, or destruction of coral reefs or components thereof, pending restoration or replacement or the acquisition of an equivalent coral reef or component thereof;

"(b) the reasonable cost of damage assessments under section 213;

"(c) the reasonable costs incurred by the Secretary in implementing section 208(d);

"(d) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;

"(e) the reasonable cost of curation, conservation and loss of contextual information of any coral encrusted archaeological, historical, or cultural resource;

"(f) the cost of legal actions under section 213, undertaken by the United States, associated with the destruction or loss of, or injury to, a coral reef or component thereof, including the costs of attorney time and expert witness fees; and

By Mr. INOUYE (for himself, Mr. REED, and Mr. BEGICH):

I urge you to consider the benefits of including pharmacists in the NHSC loan repayment program. It is imperative that our Nation focus its efforts on increased access to affordable, high quality healthcare for our Nation's under-served communities. Today's pharmacists graduate with a professional doctorate degree. My home State of Hawaii is home to our only school of pharmacy program located at the University of Hawaii at Hilo and this year will mark the school's very first graduating class. Pharmacists are vital to our interest of increasing access to patient-centered, team-based healthcare for all individuals. They collaborate with providers across the continuum of care to improve medication-use related outcomes, provides access to prevention and wellness screening that, among others, can reduce tobacco use and increase immunization rates all of which support provider effectiveness and organizational efficiencies. The integration of the pharmacist across the continuum of care helps increase access to primary and preventive care and allows for better management of chronic disease. Pharmacists support practices by fostering the management of medications preventing adverse events that lead to avoidable emergency room visits and hospital admissions. This collaborative effort among healthcare providers helps improve clinical and economic outcomes and increases patient satisfaction with their care.

The current approach of recruiting and retaining primary care practitioners may limit access to robust patient-centered, team-based care by patients in underserved communities. Today over 88 percent of pharmacy students borrow over $107,000 to help them pay for their education. The incorporation of comprehensive pharmacy services at these practice sites is a primary objective of the Health Resources and Services Administration patient-safety and clinical pharmacy services collaborative. Making pharmacists eligible to participate in NHSC loan repayment program will ensure that the reorganization of our healthcare system envisioned in legislation, federal action, and community-based models all benefit from patient-centered, team-based models of care that integrate comprehensive pharmacy services.

I urge you to consider the benefits of including pharmacists in the NHSC loan repayment program.

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. 48. A bill to amend the Public Health Service Act to provide for the participation of pharmacists in National Health Services Corps programs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Pharmacist Student Loan Repayment Eligibility Act of 2011."
Mr. KOHL. Mr. President, I rise today to introduce legislation essential to restoring competition to the nation’s freight rail transportation. Freight railroads are essential to shipping a myriad of vital goods, everything from coal used to generate electricity to grain used for basic foodstuffs. But for decades the freight railroads have been insulated from the normal rules of competition followed by almost all other parts of our economy by an outdated and unwarranted antitrust exemption. So today I am introducing, along with my colleagues, the Full Eradication of Railroad Monopolies Act of 2011. This bipartisan legislation will eliminate the obsolete antitrust exemptions that protect freight railroads from competition. This legislation is identical to the legislation that was reported out of the Judiciary Committee of the last Congress by a unanimous 15-0 vote.

Our legislation will eliminate unwarranted and outdated antitrust exemptions that protect freight railroads from competition and result in higher prices to millions of consumers every day. Consolidation in the railroad industry in recent years has resulted in only four Class I railroads providing nearly 90 percent of the Nation’s freight rail transportation, as measured by revenue. The harmful result of this industry concentration for railroad shippers is well documented. A 2006 General Accounting Office Report found that shippers in many geographic areas “may be paying excessive rates due to a lack of competition in these markets.” These unjustified cost increases cause consumers to suffer higher electricity bills because a utility must pay the cost of transporting coal, result in higher prices for goods produced by manufacturers who rely on railroads to transport raw materials, and reduce earnings for American farmers who ship their products by rail and raise fuel prices paid by consumers.

A recent staff report, issued September 15, 2010, of the Committee on Commerce, Science, and Transportation also makes clear how railroads have benefited from the unique combination of deregulation and large-scale antitrust immunity, to the detriment of rail shippers and consumers.

Increased concentration and lack of antitrust scrutiny have had clear price effects—according to the Commerce Committee Report, since 2004, “Class I railroads have increased prices by an average of 5 percent a year above inflation.” The recent Commerce Committee Report concluded that “Class I freight railroads have regained the pricing power they lacked in the 1980s, and are the most profitable businesses in the U.S. economy.”

The ill-effects of railroad industry concentration are well documented. The four largest railroads nearly doubled their collective profit margins in the last decade to 13 percent ranking the railroad industry the fifth most profitable industry as ranking by Fortune magazine.

And similar stories exist across the country. In Wisconsin, victims of a lack of railroad competition abound. From Dairyland Power Cooperative in La Crosse to Wolf River Lumber in New London, companies in my state are feeling the crunch of years of railroad consolidation. In 2006, a 20 percent increase in shipping rates in 2006, Dairyland Power Cooperative had to raise electricity rates by 20 percent. The reliability, efficiency, and affordability of freight rail have all declined, and Wisconsin consumers feel the pinch.

While railroad legislation in recent decades—including most notably the Staggers Rail Act of 1980—deregulated other regulated industries, including aviation and trucking, railroads from antitrust law and are reviewed solely by the Surface Transportation Board. Railroads that engage in consolidating industry from antitrust law. Railroads subject to the regulation of the Surface Transportation Board are also exempt from private antitrust lawsuits seeking the termination of anti-competitive practices via injunctive relief. Our bill will eliminate these exemptions.

No good reason exists for them. While railroad legislation in recent decades—including most notably the Staggers Rail Act of 1980—deregulated other regulated industries, including aviation and trucking, the railroads have faced few antitrust challenges. They are the victims of monopolistic practices and price gouging by the single railroad that serves them, price increases which they are forced to pass along into the price of their products, leading directly to their consumers. And in many cases, the ordinary protections of antitrust law are unavailable to these captive shippers—instead, the railroads are protected by a series of outdated exemptions from the normal rules of antitrust law to which all other industries must abide.

These unwarranted antitrust exemptions have put the American consumer at risk, and in Wisconsin, victims of a lack of railroad competition abound. From Dairyland Power Cooperative in La Crosse to Wolf River Lumber in New London, companies in my state are feeling the crunch of years of railroad consolidation. In 2006, a 20 percent increase in shipping rates in 2006, Dairyland Power Cooperative had to raise electricity rates by 20 percent. The reliability, efficiency, and affordability of freight rail have all declined, and Wisconsin consumers feel the pinch.

And similar stories exist across the country. We held a hearing at the Anti-Trust Subcommittee in the 110th Congress which detailed numerous instances of anti-competitive conduct by the dominant freight railroads and at which railroad shippers testified as to the need to repeal the outdated and unwarranted antitrust exemptions which left them without remedies. Dozens of organizations, unions and trade groups affected by monopolistic rail- road conduct endorsed the Railroad Antitrust Enforcement Act in the last Congress.

The current antitrust exemptions protect a wide range of railroad industries from scrutiny by governmental antitrust enforcers. Railroad mergers and acquisitions are exempt from antitrust law and are reviewed solely by the Surface Transportation Board. Railroads that engage in consoli- dation of railroad industry from antitrust law. Railroads subject to the regulation of the Surface Transportation Board are also exempt from private antitrust lawsuits seeking the termination of anti-competitive practices via injunctive relief. Our bill will eliminate these exemptions.

No good reason exists for them. While railroad legislation in recent decades—including most notably the Staggers Rail Act of 1980—deregulated other regulated industries, including aviation and trucking, the railroads have faced few antitrust challenges. They are the victims of monopolistic practices and price gouging by the single railroad that serves them, price increases which they are forced to pass along into the price of their products, leading directly to their consumers. And in many cases, the ordinary protections of antitrust law are unavailable to these captive shippers—instead, the railroads are protected by a series of outdated exemptions from the normal rules of antitrust law to which all other industries must abide.

These unwarranted antitrust exemptions have put the American consumer at risk, and in Wisconsin, victims of a lack of railroad competition abound. From Dairyland Power Cooperative in La Crosse to Wolf River Lumber in New London, companies in my state are feeling the crunch of years of railroad consolidation. In 2006, a 20 percent increase in shipping rates in 2006, Dairyland Power Cooperative had to raise electricity rates by 20 percent. The reliability, efficiency, and affordability of freight rail have all declined, and Wisconsin consumers feel the pinch.
the Clayton Act, allowing the federal government, state attorneys general and private parties to file suit to enjoin anti-competitive mergers and acquisitions. It will restore the review of these mergers to the agencies where they belong—the Justice Department’s Antitrust Division and the Federal Trade Commission. It will eliminate the exemption that prevents FTC’s scrutiny of railroad common carriers. It will eliminate the antitrust exemption for railroad collective ratemaking. It will allow attorneys general and other private parties to sue railroads for treble damages and injunctive relief for violations of the antitrust laws, including collusion that leads to excessive and unreasonable rates. This legislation will force railroads to play by the rules of free competition like all other businesses.

Significantly, our bill will not affect in any way the jurisdiction of the Surface Transportation Board to regulate freight railroads. It will in no way limit the authority of the STB: the STB will continue to exercise full jurisdiction over the railroad industry. In sum, by clearing out this thicket of outmoded antitrust exemptions, railroads will be subject to the same laws as the rest of the economy. Government antitrust enforcers will finally have the tools to prevent anti-competitive transactions and practices by railroads. Likewise, private parties will be able to utilize the antitrust laws to promote competition and to seek redress for their injuries.

It is time to put an end to the abusive practices of the Nation’s freight railroads. On the Antitrust Subcommittee, we have seen that in industry after industry, vigorous application of our Nation’s antitrust laws is the best way to eliminate barriers to competition, to end monopolistic behavior, to keep prices low and quality of service high. The railroad industry is no different. All those who rely on railroads for treble damages products—whether it is an electric utility for its coal, a farmer to ship grain, or a factory to acquire its raw materials or ship out its finished product—deserve the full application of the antitrust laws to end the anti-competitive abuses all too prevalent in this industry today. I urge my colleagues support the Railroad Antitrust Enforcement Act of 2011.

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:

SEC. 1. SHORT TITLE.

This Act may be cited as the “Railroad Antitrust Enforcement Act of 2011”.

SEC. 2. INJUNCTIONS AGAINST RAILROAD COMMON CARRIERS.

The proviso in section 16 of the Clayton Act (15 U.S.C. 26) ending with “Code.” is amended to read as follows: “Provided, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit for injunctive relief against any common carrier that is not a railroad subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49, United States Code.”

SEC. 3. MERGERS AND ACQUISITIONS OF RAILROADS.

The sixth undesignated paragraph of section 7 of the Clayton Act (15 U.S.C. 18) is amended to read as follows: “Nothing contained in this section shall apply to transactions duly consummated pursuant to section 13, 15, or 16 of this Act, the district court shall not be required to defer to the primary jurisdiction of the Surface Transportation Board.”

SEC. 4. FEDERAL TRADE COMMISSION ENFORCEMENT.

(a) CLAYTON ACT.—Section 11(a) of the Clayton Act (15 U.S.C. 21(a)) is amended by striking “railroad common carrier under section 4, 4C, 15, or 16 of this Act” and inserting “common carrier railroad under section 4, 4C, 15, or 16 of this Act, the district court shall not be required to defer to the primary jurisdiction of the Surface Transportation Board”.

(b) FTC ACT.—Section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)) is amended by striking “common carriers subject” and inserting “common carriers, except for railroads, subject”.

SEC. 5. EXCLUSION OF TREBLE DAMAGES TO RAIL COMMON CARRIERS.

Section 4 of the Clayton Act (15 U.S.C. 15) is amended by—

(1) redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) inserting after subsection (a) the following:—

“(b) Subsection (a) shall apply to a common carrier by railroad subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49, United States Code, without regard to whether such railroad have filed rates or whether a complaint challenging a rate has been filed.”.

SEC. 6. APPLICATION OF ANTI TRUST LAWS TO RAIL COMMON CARRIERS.

(a) In general.—Section 10706 of title 49, United States Code, is amended by—

(1) redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) inserting after subsection (a) the following:

“(b) Subsection (a) shall apply to a common carrier by railroad subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49, United States Code, for the purpose of any provision of law described in section 11321 of that title.”.

(b) FTC ACT.—Section 3(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)) is amended by striking “common carriers subject” and inserting “common carriers, except for railroads, subject”.

SEC. 7. TERMINATION OF EXEMPTIONS IN TITLE 49.

(a) In general.—Section 10706 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)(A), by striking “, and the Sherman Act (15 U.S.C. 1 et seq.)” and all that follows through “or carrying out the agreement” in the third sentence; and

(B) in paragraph (4) by—

(i) striking the second sentence; and

(ii) striking “However, the” in the third sentence and inserting “The” and “and the antitrust laws set forth in paragraph (2) of this subsection do not apply to parties and other persons with respect to making or carrying out the agreement”;

(C) in paragraph (2), by striking “, and the antitrust laws set forth in paragraph (2) of this subsection do not apply to parties and other persons with respect to making or carrying out the agreement”;

(2) by striking subsection (e) and inserting the following:

“(e) APPLICATION OF ANTITRUST LAWS.—

“(1) IN GENERAL.—Nothing in this section exempts a transaction described in subsection (a) from the application of any provision of law described in paragraph (1), the Board shall take into account, among any other considerations, the impact of the proposed agreement on shippers, on consumers, and on affected communities.”.

(b) COMBINATIONS.—Section 11321 of title 49, United States Code, is amended—


(2) by striking “is exempt from the antitrust laws as defined in section 1 of the Clayton Act (15 U.S.C. 1)” and inserting “is exempt from all other law (other antitrust laws referred to in subsection (c))”,

and

(3) by adding at the end the following:

“(c) APPLICATION OF ANTITRUST LAWS.—


“(2) ANTITRUST ANALYSIS TO CONSIDER IMPACT.—In reviewing any such transaction for the purpose of any provision of law described in paragraph (1), the Board shall take into account, among any other considerations, the impact of the transaction on shippers and on affected communities.”.

(c) CONFORMING AMENDMENTS.—

(1) The heading for section 10706 of title 49, United States Code, is amended to read as follows: “Rate agreements”.

(2) The item relating to such section in the chapter analysis at the beginning of chapter 107 of such title is amended to read as follows: “10706. Rate agreements.”.

SEC. 8. EFFECTIVE DATE.

(a) In general.—Subject to the provisions of subsection (b), this Act shall take effect on the date of enactment of this Act.

(b) Conditions.—

(1) PREVIOUS CONDUCT.—A civil action under section 4, 15, or 16 of the Clayton Act (15 U.S.C. 15, 25, 26) or complaint under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) may not be filed with respect to any conduct or activity that occurred prior to the date of enactment of this Act that was previously exempted from the antitrust laws as defined in section 1 of the Clayton Act (15 U.S.C. 12) by orders of the Interstate Commerce Commission or the Surface Transportation Board issued pursuant to law.

(2) GRACE PERIOD.—A civil action or complaint described in paragraph (1) may not be filed with respect to any conduct or activity occurring prior to the date of enactment of this Act with respect to any previously exempted conduct or activity or
by Mr. INOUYE (for himself, Ms. SNOWE, and Mr. VITTER):

S. 50. A bill to strengthen Federal consumer product safety programs and activities with respect to commercially distributed seafood by directing the Secretary of Commerce to coordinate with the Federal Trade Commission and other appropriate Federal agencies to strengthen and coordinate those programs and activities; to the Committee on Commerce, Science, and Transportation.

Mr. INOUYE. I am pleased to introduce my Commercial Seafood Consumer Protection Act, Seafood Safety Act. The Seafood Safety Act will strengthen Federal consumer product safety programs and activities with respect to commercially distributed seafood by directing the Secretary of Commerce to coordinate with the Federal Trade Commission, the Secretary of Health and Human Services, HHS, the Secretary of the Department of Homeland Security, DHS, the Federal Trade Commission, FTC, and other appropriate Federal agencies to coordinate Federal activities for ensuring that commercially distributed seafood in the United States meets the food quality and safety requirements of Federal law. The bill provides for no new jurisdiction. It does not alter an existing jurisdiction given to FDA or any other agency. The bill does not include any authorization of appropriations, but seeks only to strengthen existing partnerships and share information.

The bill remains largely unchanged since I first introduced it in the 110th Congress, but this version, like the one I introduced in the 111th, incorporates the FTC as an additional partner because they have broad existing authority for consumer and interstate commerce fraud issues.

Specifically, the bill requires the Secretaries of Commerce, HHS, DHS, and the FTC to enter into agreements as necessary to strengthen cooperation on seafood safety, seafood labeling, and seafood fraud. Those agreements must address seafood testing and inspection; data standardization for seafood names; data coordination for the exportation, transportation, sale, harvest, or trade of seafood; seafood labeling compliance assurance; and information-sharing for observed non-compliance. The bill also increases the number of laboratories certified to inspection standards of the FDA and allows the Secretary of Commerce to increase the number and capacity of NOAA laboratories responsible for seafood safety testing. It allows for an increase in the percentage of seafood import shipments tested and inspected to improve detection of violations. Finally, the bill allows the Secretary of HHS to refuse entry of seafood imports from countries with known violations, and also allows the Secretary to permit individual seafood shipments from recognized and properly certified exporters.

For the safety of the American people, I remain committed to the Seafood Safety Act and look forward to continuing to work to ensure its passage.

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. 50

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Commercial Seafood Consumer Protection Act”.

SEC. 2. COMMERCIAL-DISTRIBUTED SEAFOOD CONSUMER PROTECTION SAFETY NET.

(a) In General.—The Secretary of Commerce shall, in coordination with the Federal Trade Commission and other appropriate Federal agencies, and consistent with the international obligations of the United States, strengthen Federal consumer protection activities for ensuring that commercially-distributed seafood in the United States meets the food quality and safety requirements of applicable Federal laws.

(b) INTERAGENCY AGREEMENTS.—

(1) General.—Within 180 days after the date of enactment of this Act, the Secretary and other appropriate Federal agencies shall execute memoranda of understanding or other agreements to strengthen interagency cooperation on seafood safety, seafood labeling, and seafood fraud.

(2) SCOPE OF AGREEMENTS.—The agreements shall include provisions, as appropriate for each such agreement, for—

(A) cooperative arrangements for examining and testing seafood imports that leverage the resources, capabilities, and authorities of each party to the agreement;

(B) coordination of inspections of foreign facilities to increase the percentage of imported seafood and seafood facilities inspected;

(C) standardizing data on seafood names, inspection results, and sea product testing to improve interagency coordination;

(D) coordination of the collection, storage, analysis, and dissemination of all applicable information, data related to the importation, exportation, transportation, sale, harvest, processing, or trade of seafood in order to detect and investigate violations under applicable Federal laws, and to carry out the provisions of this Act;

(E) developing a process for expediting imports of seafood into the United States from countries and exporters that consistently adhere to the highest standards for ensuring seafood safety;

(F) coordination to track shipments of seafood in the distribution chain within the United States;

(G) enhancing labeling requirements and methods of assuring compliance with such requirements and fraud to the Federal Trade Commission pursuant to an agreement under section (b).

(3) ANNUAL REPORTS ON IMPLEMENTATION OF AGREEMENTS.—The Secretary, the Chairman of the Federal Trade Commission, and the heads of other appropriate Federal agencies that are parties to agreements executed under paragraph (1) shall submit, jointly or severally, an annual report to the Congress concerning—

(A) specific efforts taken pursuant to the agreements;

(B) the budget and personnel necessary to strengthen seafood safety and labeling and prevent seafood fraud;

(C) any additional authorities necessary to improve seafood safety and labeling and prevent seafood fraud;

(D) MARKETING, LABELING, AND FRAUD REPORT.—Within 1 year after the date of enactment of this Act, the Secretary and the Chairman of the Federal Trade Commission shall submit a joint report to Congress on consumer protection and enforcement efforts with respect to seafood marketing and labeling in the United States. The report shall include—

(1) findings with respect to the scope of seafood fraud and deception in the United States market and its impact on consumers;

(2) information on how the National Oceanic and Atmospheric Administration and the Federal Trade Commission can work together more effectively to address fraud and unfair or deceptive acts or practices with respect to seafood;

(3) detailed information on the enforcement and consumer outreach activities undertaken by the National Oceanic and Atmospheric Administration and the Federal Trade Commission during the preceding year pursuant to this Act; and

(4) an examination of the scope of unfair or deceptive acts or practices in the United States market with respect to foods other than seafood and whether additional enforcement authority or activity is warranted.

(e) NOAA SEAFOOD INSPECTION AND MARKETING COORDINATION.—

(1) DECEPTIVE MARKETING AND FRAUD.—The National Oceanic and Atmospheric Administration shall report deceptive seafood marketing and fraud to the Federal Trade Commission pursuant to an agreement under section (b).

(2) APPLICATION WITH EXISTING AGREEMENTS.—Nothing in this Act shall be construed to impede, minimize, or otherwise affect any agreement or agreements regarding cooperation and information sharing in the inspection of fish and fishery products and establishments between the Department of Commerce and the Department of Health and Human Services in effect on the date of enactment of this Act.

(3) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

(4) INCLUSIVE DEFINITION.—In this section, the term "seafood" includes any aquatic animal or aquatic plant that—

(A) is, has been, or is intended for human consumption;

(B) has been provided for sale or consumption in the United States;

(C) is processed, prepared, or sold in the United States;

(D) is processed, preserved, or prepared by a commercial enterprise;

(E) includes a product of another country.

(f) REPORTS ON ENFORCEMENT ACTIVITIES.—

(1) REPORTS TO CONGRESS.—The Secretary of Commerce shall submit to the Congress joint reports on enforcement activities of the Federal Trade Commission, and the Federal Trade Commission, and the Secretary of Commerce, the Secretary of Health and Human Services, and the Secretary of Agriculture, as appropriate, on how these entities can work with appropriate Federal agencies, and consistent with existing jurisdiction given to FDA or any other agency, to improve seafood inspection and assist in detecting and preventing seafood fraud and mislabeling.

(2) ANNUAL REPORT TO THE CONGRESS.—The Secretary, the Chairman of the Federal Trade Commission, and the heads of other appropriate Federal agencies that are parties to agreements executed under paragraph (1) shall submit, jointly or severally, an annual report to the Congress concerning—

(A) specific efforts taken pursuant to the agreements;
Drug Administration has taken into consideration information resulting from inspections conducted by the Department of Commerce in making risk-based determinations such as the establishment of inspection priorities for laboratories operated by the National Oceanic and Atmospheric Administration in carrying out testing and other activities under this Act and as provided for in appropriations Acts.

SEC. 5. CONTAMINATED SEAFOOD.
(a) Refusal of Entry.—The Secretary of Health and Human Services may issue an order refusing admission into the United States of all imports of seafood or seafood products originating from a country or exporter that is the subject of the report. The Secretary may order an increase in the number of inspectors to a country or exporter that is the subject of the report. The Secretary may order an increase in the number of inspectors to a country or exporter that is the subject of the report.

(b) Notice to Exporter.—If the Secretary of Health and Human Services determines that seafood imports originating from a country may not meet the requirements of Federal law, and determines that there is a lack of adequate certified laboratories to provide for the entry of shipments pursuant to section 3, then the Secretary may order an increase in the number and capacity of laboratories operated by the National Oceanic and Atmospheric Administration involved in carrying out testing and other activities under this Act and as provided for in appropriations Acts.

(c) Lawfulness of Individual Shipments from Exporting Country or Exporter.—Notwithstanding an order under subsection (a), with respect to seafood originating from a country or exporter that is the subject of an order under subsection (b), the Secretary may permit individual shipments of seafood originating in that country or from that exporter to be admitted into the United States if:
(1) the exporter presents evidence from a laboratory certified to the standards of applicable Federal law.

(d) Cancellation of Order.—The Secretary may cancel an order under subsection (a) with respect to seafood exported from a country or exporter if all shipments into the United States of seafood products originating in that country or from that exporter more than 1 year after the date on which the order was issued meet the requirements of Federal law.

(e) Effect.—This section shall be in addition to, and shall have no effect on, the authority of the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) with respect to seafood, seafood products, or any other applicable Federal law.

SEC. 6. INSPECTION TEAMS.
(a) Inspection of Foreign Sites.—The Secretary, in cooperation with the Secretary of Health and Human Services, may send one or more inspectors to a country or exporter from which seafood exported to the United States originates. The inspection team shall be dispatched no later than 30 days after the date on which the order was issued.
(b) Publication of List.—The list of standardized names for seafood to be admitted into the United States and in countries that export seafood to the United States for the purpose of analyzing seafood and ensuring that the laboratories involved in analyzing seafood, including Federal, State, and private facilities, comply with applicable Federal laws. Within 1 year after the date of enactment of this Act, the Secretary Commerce shall publish in the Federal Register a list of certified laboratories. The Secretary shall update and publish the list no less frequently than annually.
(c) Coordination with Sea Grant Program.—The Administrator of the National Oceanic and Atmospheric Administration involved in carrying out testing and other activities under this Act shall make public a list of standardized names for seafood identification purposes at distribution, marketing, and consumer retail stages.

(d) Cancellation of Order.—The Secretary may cancel an order under subsection (a) with respect to seafood exported from a country or exporter if all shipments into the United States of seafood products originating in that country or from that exporter more than 1 year after the date on which the order was issued meet the requirements of Federal law.

(e) Effect.—This section shall be in addition to, and shall have no effect on, the authority of the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) with respect to seafood, seafood products, or any other applicable Federal law.

(f) Lawfulness of Individual Shipments from Exporting Country or Exporter.—Notwithstanding an order under subsection (a), with respect to seafood originating from a country or exporter that is the subject of the report, the Secretary may permit individual shipments of seafood originating in that country or from that exporter to be admitted into the United States if:
(1) the exporter presents evidence from a laboratory certified by the Secretary that a shipment of seafood meets the requirements of applicable Federal laws.

(2) the Secretary, or other agent of a Federal agency authorized to conduct inspections of seafood, has inspected the shipment and found the shipment and the conditions of manufacturing meet the requirements of applicable Federal laws.

(3) Coordination with Sea Grant Program.—The Administrator of the National Oceanic and Atmospheric Administration shall ensure that the NOAA Seafood Inspection Program is coordinated with the Sea Grant Program to provide outreach to States, consumers, and the seafood industry on seafood testing, seafood labeling, and seafood inspection, and to develop strategies to combat mislabeling and fraud.

SEC. 3. CERTIFIED LABORATORIES.
Within 180 days after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Health and Human Services, shall increase the number of laboratories certified to the standards of the Food and Drug Administration in the United States and in countries that export seafood to the United States for the purpose of analyzing seafood and ensuring that the laboratories involved in analyzing seafood, including Federal, State, and private facilities, comply with applicable Federal laws. Within 1 year after the date of enactment of this Act, the Secretary Commerce shall publish in the Federal Register a list of certified laboratories. The Secretary shall update and publish the list no less frequently than annually.

SEC. 4. NOAA LABORATORIES.
In any fiscal year beginning after the date of enactment of this Act, the Secretary may increase the number and capacity of laboratories operated by the National Oceanic and Atmospheric Administration involved in carrying out testing and other activities under this Act that the Secretary determines that increased laboratory capacity is necessary to carry out the provisions of this Act and as provided for in appropriations Acts.

SEC. 5. CONTAMINATED SEAFOOD.
(a) Refusal of Entry.—The Secretary of Health and Human Services may issue an order refusing admission into the United States of all imports of seafood or seafood products originating from a country or exporter if the Secretary determines that shipments of seafood products originating from a country or exporter do not meet the requirements established under applicable Federal law.

(b) Notice to Exporter.—If the Secretary of Health and Human Services determines that seafood imports originating from a country may not meet the requirements of Federal law, and determines that there is a lack of adequate certified laboratories to provide for the entry of shipments pursuant to section 3, then the Secretary may order an increase in the number and capacity of laboratories operated by the National Oceanic and Atmospheric Administration involved in carrying out testing and other activities under this Act that the Secretary determines that increased laboratory capacity is necessary to carry out the provisions of this Act and as provided for in appropriations Acts.

(c) Lawfulness of Individual Shipments from Exporting Country or Exporter.—Notwithstanding an order under subsection (a), with respect to seafood originating from a country or exporter that is the subject of an order under subsection (b), the Secretary may permit individual shipments of seafood originating in that country or from that exporter to be admitted into the United States if:
(1) the exporter presents evidence from a laboratory certified by the Secretary that a shipment of seafood meets the requirements of applicable Federal laws.

(2) the Secretary, or other agent of a Federal agency authorized to conduct inspections of seafood, has inspected the shipment and found the shipment and the conditions of manufacturing meet the requirements of applicable Federal laws.


(2) APPROPRIATE FEDERAL AGENCIES.—The term ‘‘appropriate agencies’’ includes the Department of Health and Human Services, the Federal Food and Drug Administration, the Department of Homeland Security, and the Department of Agriculture.

(3) SECRERTARY.—The term ‘‘Secretary’’ means the Secretary of Commerce.

By Mr. INOUYE (for himself, Mr. ROCKEFELLER, Mr. KERRY, Ms. SNOWE, and Ms. CANTWELL):
S. 32. A bill to establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. INOUYE. Mr. President, I am pleased to introduce the International Fisheries Stewardship and Enforcement Act, which I also introduced in the 111th. This bill would harmonize the enforcement provisions of the U.S. statutes for implementing international fisheries agreements to strengthen international fisheries enforcement.

Specifically it would grant the National Oceanic and Atmospheric Administration, NOAA, and the U.S. Coast Guard authority to implement international fisheries laws, expand their authorities in carrying out investigations and enforcement activities, and establish interference with investigations as a prohibited act. It would also amend the enforcement provisions of statutes for implementing international fisheries laws to conform to the Magnuson-Stevens Fishery Conservation and Management Act, while increasing both civil and criminal penalties for violating international fisheries laws.

The bill also authorizes the Secretary of Commerce to maintain and make public a list of vessels engaged in illegal, unreported, and unregulated, IUU, fishing and authorize appropriate agencies against lists against lists of IUU fishing vessel operators that will hopefully allow for strong strides in our fight against illegal activity.

Finally, by creating an International Cooperation and Assistance Program that will provide assistance for international capacity building efforts, training, outreach, and education, it is my hope that we are able to more-successfully combat IUU fishing and promote international marine conserva-

Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.
There be no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 52

Be it enacted by the Senate and House of Representa

tives of the United States of America in Congress convened:

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "International Fisheries Stewardship and Enforcement Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

1. Title I—Administration and Enforcement of Certain Fishery and Related Statutes.
   101. Authority of the Secretary to enforce statutes.
   102. Conforming, minor, and technical amendments.
   103. Illegal, unreported, or unregulated fishing.
   104. Liability.

2. Title II—Law Enforcement and International Operations.
   201. International fisheries enforcement program.
   202. International cooperation and assistance program.

3. Title III—Miscellaneous Amendments.
   302. Data Sharing.
   304. Committee on Scientific Cooperation for Pacific Salmon Agreement.
   305. Reauthorizations.

4. Title IV—Implementation of Antigua Convention.
   401. Short title.
   402. Amendment of the Tuna Conventions Act of 1950.
   403. Definitions.
   404. Commissioners; number, appointment, and qualifications.
   405. General advisory committee and scientific advisory subcommittee.
   406. Rulemaking.
   407. Prohibited acts.
   408. Enforcement.
   409. Reduction of bycatch.

D. Tuna Conventions Act of 1950 (16 U.S.C. 951 et seq.);
F. Central Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.);
I. The Northwest Atlantic Fisheries Conservation and Management Act (16 U.S.C. 1826d et seq.);
J. The Western and Central Pacific Fisheries Conservation Implementation Act (16 U.S.C. 6801 et seq.);
L. Any other Act in pari materia, so designated by the Secretary after notice and an opportunity for a hearing; and

(b) ADMINISTRATION AND ENFORCEMENT.—

The Secretary shall prevent any person from violating any Act to which this section applies in accordance with the provisions of this section.

(c) PENALTIES FOR VIOLATIONS.—

(1) IN GENERAL.—The Secretary shall have jurisdiction to enjoin or restrain any person, organization, or other association or other entity from violating any Act to which this section applies in accordance with the provisions of this section.

(2) PENALTIES FOR VIOLATIONS.—

(a) IN GENERAL.—The Secretary may assess a penalty of not more than $500,000, imprisonment for not more than 5 years, or both, for any person who violates any Act to which this section applies.

(b) MAXIMUM PENALTY.—In no event shall the maximum penalty for a violation of any Act to which this section applies exceed $250,000 for each violation.

(c) JUDICIAL RELIEF.—The Secretary shall have the right to seek judicial relief to prevent or restrain any person from violating any Act to which this section applies.

(3) JUDICIAL RELIEF.—The Secretary, or any other Federal agency, including all executive officers or agents, may proceed either by criminal prosecution or civil action to prevent or restrain any person from violating any Act to which this section applies.

(4) PENALTIES FOR VIOLATIONS.—

(a) IN GENERAL.—The Secretary may assess a penalty of not more than $500,000, imprisonment for not more than 5 years, or both, for any person who violates any Act to which this section applies.

(b) MAXIMUM PENALTY.—In no event shall the maximum penalty for a violation of any Act to which this section applies exceed $250,000 for each violation.

(c) JUDICIAL RELIEF.—The Secretary, or any other Federal agency, including all executive officers or agents, may proceed either by criminal prosecution or civil action to prevent or restrain any person from violating any Act to which this section applies.
or is committing a felony; may search and seize, in accordance with any guidelines which may be issued by the Attorney General and may execute and serve any subpoena. Section 553 of title 5, United States Code, as may be necessary to carry out this section or any Act to which this section applies.

(8) SUBPOENAS.—In addition to any subpoena authority pursuant to subsection (b), the Secretary may, for the purposes of conducting any investigation under this section, or any other statute administered by the Secretary, issue subpoenas for the production of relevant papers, photographs, records, books, and documents in any form, including those in electronic, electrical, or magnetic form.

(d) DISTRICT COURT JURISDICTION.—The several district courts of the United States shall have jurisdiction over any actions arising under this section. For the purpose of this section, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii. Each violation shall be a separate offense, and shall be deemed to have been committed not only in the district where the violation first occurred, but also in any other district as authorized by law. Any action authorized in any district shall be subject to the venue provisions of section 3238 of title 18, United States Code.

(e) PROHIBITED ACTS.—It is unlawful for any person—

(1) to violate any provision of this section or any Act to which this section applies or any regulation promulgated thereunder;

(2) to refuse to permit any authorized enforcement officer to board, search, or inspect a vessel, conveyance, or shoreside facility that is subject to the person’s control for purposes of conducting any search, investigation, or inspection in connection with the enforcement of this section or any Act to which this section applies or any regulation promulgated thereunder;

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, investigation, or inspection, or any description in paragraph (2);

(4) to resist a lawful arrest for any act prohibited by this section or any Act to which this section applies;

(5) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detention of another person, knowing that such person has committed any act prohibited by this section or any Act to which this section applies;

(6) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel under this section or any Act to which this section applies, or any data collector employed by or under contract to the National Marine Fisheries Service to carry out responsibilities under this section or any Act to which this section applies;

(7) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or fish product taken, possessed, transported, or sold in violation of any treaty or binding conservation measure adopted pursuant to an international agreement or organization to which the United States is a party; or

(8) to submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel, or location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce,

(f) REGULATIONS.—The Secretary may promulgate such regulations, in accordance with the provisions of section 806 of title 5, United States Code, as may be necessary to carry out this section or any Act to which this section applies.

SEC. 102. CONFORMING, MINOR, AND TECHNICAL AMENDMENTS.

(a) HIGH SEAS DRIFTNET FISHING MORATORIUM PROTECTION ACT.—

(1) Section 606 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826h) is amended—

(A) by inserting “DETECTING, MONITORING, AND PREVENTING VIOLATIONS.” before “The President”; and

(B) by adding at the end thereof the following:

“(b) ENFORCEMENT.—This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.”.

(2) Section 607(2) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826h(2)) is amended by striking “whose vessels” and inserting “that”.

(3) Section 609(a) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826h(a)) is amended to read as follows:

(a) IDENTIFICATION.—

“(1) IN GENERAL.—The Secretary shall identify, and list in the report under section 607, a nation that is engaged, or has been engaged at any time during the preceding 3 years, in illegal, unreported, or unregulated fishing and—

“A such fishing undermines the effectiveness of measures required under the relevant international fishery management organization;

“B the relevant international fishery management organization has failed to implement effective measures to reduce illegal, unreported, or unregulated fishing activity by vessels of that nation, or the nation is not a party to, or does not maintain cooperating status with, such organization; or

“C there is no international fishery management organization with a mandate to regulate the fishing activity in question.”

(2) OTHER IDENTIFYING ACTIVITIES.—The Secretary shall also include in the report under section 607, a nation if—

“A it is violating, or has violated at any time during the preceding 3 years, conserva- tion measures required under an international fishery management agreement; or

“B it is violating, or has violated at any time during the preceding 3 years, any regulations, measures, or standards adopted by an international fishery management organization, or any regulation promulgated by the Secretary under section 806 of title 5, United States Code, as may be necessary to carry out this Act or any Act to which this section applies; or

“C the Secretary determines that a nation conditions of fishing activity in question.

(3) TREATMENT OF CERTAIN ENTITIES AS IF THEY WERE NATIONS.—Where the provisions of this section apply to an entity that is not a party to, or does not maintain cooperating status with, any international fishery management organization, or any regulation promulgated by the Secretary under section 806 of title 5, United States Code, as may be necessary to carry out this Act or any Act to which this section applies; or

“D the Secretary determines that a nation conditions of fishing activity in question.

(4) TREATMENT OF CERTAIN ENTITIES AS IF THEY WERE NATIONS.—Where the provisions of this section apply to an entity that is not a party to, or does not maintain cooperating status with, any international fishery management organization, or any regulation promulgated by the Secretary under section 806 of title 5, United States Code, as may be necessary to carry out this Act or any Act to which this section applies; or

“E the Secretary determines that a nation conditions of fishing activity in question.

(5) TREATMENT OF CERTAIN ENTITIES AS IF THEY WERE NATIONS.—Where the provisions of this section apply to an entity that is not a party to, or does not maintain cooperating status with, any international fishery management organization, or any regulation promulgated by the Secretary under section 806 of title 5, United States Code, as may be necessary to carry out this Act or any Act to which this section applies; or

“F the Secretary determines that a nation conditions of fishing activity in question.

(6) TREATMENT OF CERTAIN ENTITIES AS IF THEY WERE NATIONS.—Where the provisions of this section apply to an entity that is not a party to, or does not maintain cooperating status with, any international fishery management organization, or any regulation promulgated by the Secretary under section 806 of title 5, United States Code, as may be necessary to carry out this Act or any Act to which this section applies; or

“G the Secretary determines that a nation conditions of fishing activity in question.

(h) REGULATIONS.—The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out this section or any Act to which this section applies.

(8) It is a violation of section 101 of the International Fisheries Stewardship and Enforcement Act for any person to assault, resist, oppose, or interfere with and authorized officer in the conduct of any search, investigation or inspection under this Act; and

(2) by striking subsection (e) and inserting the following:

“(e) ENFORCEMENT.—This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.”.

(9) TUNA CONVENTIONS ACT OF 1950.—Section 8 of the Tuna Conventions Act of 1950 (16 U.S.C. 857) is amended—

(1) by striking “purposes” in subsection (a) and inserting “search, inspection or purpose of conducting any search, inspection, or investigation in connection with the enforcement of this Act or any regulation promulgation or permit issued under this Act; or

“(2) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, inspection, or investigation described in paragraph (1); or

“(3) to resist a lawful arrest for any act prohibited by this section; or

“(4) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.”;

(3) by striking subsections (e) through (g) and redesignating subsection (h) as subsection (f); and

(4) by inserting after subsection (d) the following:

“(e) INTERNATIONAL AGREEMENTS.—The Secretary shall also include in the report under section 607, a nation if—

“A it is violating, or has violated at any time during the preceding 3 years, conserva- tion measures required under an international fishery management agreement to which the United States is a party and the violations undermine the effective- ness of measures required under the relevant international fishery management agreement.”;

(4) Section 609(d)(1) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826h(d)(1)) is amended by striking “its fishing vessels” each place it appears.

(5) Section 609(d)(2) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826h(d)(2)) is amended—

(A) by striking “procedures for certifica- tion,” and inserting “procedure,”; and

(B) by inserting “basis, for allowing importation of fish; and

(C) by striking “‘harvesting nation not certi- fied under paragraph (1)” and inserting “nation issued a negative certification under paragraph (1)”;

(6) Northern Pacific Anadromous Stocks Act of 1992.—

(a) UNLAWFUL ACTIVITIES.—Section 810 of the Northern Pacific Anadromous Stocks Act of 1992 (16 U.S.C. 5009) is amended—

(1) by striking “purchases” in paragraph (5) and inserting “purposes”;

(2) by striking “search or inspection” in paragraph (5) and inserting “search, investiga- tion, or inspection”;

(3) by striking “search or inspection” in paragraph (6) and inserting “search, investiga- tion, or inspection”; and

(4) by striking “search or inspection” in paragraph (6) and inserting “search, investiga- tion, or inspection”; and

(5) and inserting “purposes.”
(D) by striking "or" after the semicolon in paragraph (8); 
(E) by striking "title." in paragraph (9) and inserting "title; or"; and 
(F) by adding at the end thereof the following:

"(10) for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.";

(2) ADMINISTRATION AND ENFORCEMENT.—Section 811 of the Northern Pacific Anadromous Stocks Act of 1992 (16 U.S.C. 5010) is amended to read as follows:

"SEC. 811. ADMINISTRATION AND ENFORCEMENT.

"This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''

(e) PACIFIC SALMON TREATY ACT OF 1985.—Section 8 of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3637) is amended—

(1) by striking "search or inspection" in subsection (a)(2) and inserting "searching, investigating, or inspection";

(2) by striking "search or inspection" in subsection (a)(3) and inserting "searching, investigating, or inspection";

(3) by striking "or" after the semicolon in subsection (a)(5); 

(4) by striking "section." in subsection (a)(6) and inserting "section; or"; and 

(5) by adding at the end of subsection (a) the following:

"(7) for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce."; and 

(6) by striking subsections (b) through (f) and inserting the following:

"(b) ADMINISTRATION AND ENFORCEMENT.—

This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''

(f) SOUTH PACIFIC TUNA ACT OF 1988.—

(1) PROHIBITED ACTS.—Section 5(a) of the South Pacific Tuna Act of 1988 (16 U.S.C. 973a(a)) is amended—

(A) by striking "search or inspection" in paragraph (8) and inserting "searching, investigating, or inspection";

(B) by striking "search or inspection" in paragraph (10)(A) and inserting "searching, investigating, or inspection";

(C) by striking "or" after the semicolon in paragraph (12); 

(D) by striking " retained." in paragraph (13) and inserting "retained; or"; and 

(E) by adding at the end thereof the following:

"(14) for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.";

(2) ADMINISTRATION AND ENFORCEMENT.—The South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.) is amended—

(A) by striking sections 308 and 309 (16 U.S.C. 2437 and 2438);

(B) by striking subsection (b), (c), and (d) of section 304 (16 U.S.C. 2439) and redesignating subsection (e) as subsection (c); and 

(C) by inserting after subsection (a) the following:

"(b) ADMINISTRATION AND ENFORCEMENT.—

This title shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''

(g) ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984.—

(1) UNLAWFUL ACTIVITIES.—Section 306 of the Antarctic Marine Living Resources Convention Act (16 U.S.C. 101) is amended—

(A) by striking "which he knows, or reasonably should have known, was" in paragraph (3); 

(B) by striking "search or inspection" in paragraph (4) and inserting "search, investigating, or inspection";

(C) by striking "search or inspection" in paragraph (5) and inserting "search, investigating, or inspection";

(D) by striking "or" after the semicolon in paragraph (6); 

(E) by striking "section." in paragraph (7) and inserting "section; or"; and 

(F) by adding at the end thereof the following:

"(8) to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.";

(k) BAN ON FALSE NAME, ACCOUNT, OR LABEL.—Section 306(e) of the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 101) is amended—

(A) by redesignating subdivisions (a) and (b) as paragraphs (1) and (2), respectively, and subdivisions (1) through (6) of paragraph (1), as redesignated, as subparagraphs (A) through (F);

(B) by striking "search or inspection" in paragraph (1)(B), as redesignated, and inserting "search, investigating, or inspection";

(C) by striking "or" after the semicolon in paragraph (1)(C), as redesignated, and inserting "search, investigating, or inspection";

(2) ENFORCEMENT.—Section 307 of the Antarctic Marine Living Resources Convention Implementation Act (16 U.S.C. 101) is amended—

(A) by redesignating subdivisions (a) and (b) as paragraphs (1) and (2), respectively, and subdivisions (1) through (6) of paragraph (1), as redesignated, as subparagraphs (A) through (F); 

(B) by striking "search or inspection" in paragraph (1)(B), as redesignated, and inserting "search, investigating, or inspection";

(C) by striking "section." in paragraph (1)(C), as redesignated, and inserting "section; or"; and 

(D) by adding at the end of subsection (a) the following:

"(7) to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.";

(j) BAN ON FALSE NAME, ACCOUNT, OR LABEL.—Section 307(a) of the Antarctic Marine Living Resources Convention Implementation Act (16 U.S.C. 6906(a)) is amended to read as follows:

"(c) ADMINISTRATION AND ENFORCEMENT.—

This title shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.''

(k) NORTHERN PACIFIC HALIBUT ACT OF 1982.—

(1) PROHIBITED ACTS.—Section 7 of the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773d) is amended—

(A) by redesignating subdivisions (a) and (b) as paragraphs (1) and (2), respectively, and subdivisions (1) through (6) of paragraph (1), as redesignated, as subparagraphs (A) through (F); 

(B) by striking "search or inspection" in paragraph (1)(B), as redesignated, and inserting "search, investigating, or inspection";
(D) by striking “or” after the semicolon in paragraph (1)(E), as redesignated;

(E) by striking “section.” in paragraph (1)(F), as redesignated, and inserting “section.”;

(F) by adding at the end of paragraph (1), as redesignated, the following:

“(G) to make or submit any false record, document, or report, or to otherwise engage in illegal, unreported, or unregulated fishing by its nationals and vessels beyond the exclusive economic zone of any nation;

H. 00000 Frm 00098 Fmt 0624 Sfmt 0634 E:\RECORD11\RECFILES\S25JA1.REC S25JA1bjneal on DSK2TWX8P1PROD with CONG-REC-ONLINE

(2) AMENDMENT OF THE HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT ACT.

(A) Section 101 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826(e)) is amended by—

(i) by striking subsection (a)(2) and inserting the following:

“(2) DENIAL OF PORT PRIVILEGES.—The Secretary of Commerce, or the Secretary of the Treasury, shall, in accordance with recognized principles of international law—

(A) withhold or revoke the clearance required by section 80105 of title 46, United States Code, for—

(i) any large-scale driftnet fishing vessel that is documented under the law of the United States and to the navigable waters of the United States, except for the purpose of inspecting the vessel, conducting an investigation, or taking other appropriate enforcement action; (ii) by striking or illegal, unreported, or unregulated fishing” each place it appears in subsection (b)(1) and (2);

(ii) by striking “or” after the semicolon in subsection (b)(3)(A); and

(iii) by striking “nation.” in subsection (b)(3)(A)(i) and inserting “nation; or”;

(iv) by striking at the end of subsection (b)(3)(A) the following:

“(iii) upon receipt of notification of a negative certification under section 609(d)(1) or 610(c)(1) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826(d)(1) or 1826(k) (c)(1)).”; and

(v) by inserting “or after issuing a negative certification under section 609(d)(1) or 610(c)(1) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826(d)(1) or 1826(k)(c)(1),” after “paragraph (1),” in subsection (b)(4)(A); and

(vi) by striking subsection (b)(4)(A)(i) and inserting the following:

“(a) any prohibition established under paragraph (3) is insufficient to cause that nation—

(i) to terminate large-scale driftnet fishing conducted by its nationals and vessels beyond the exclusive economic zone of any nation;

(ii) to address illegal, unreported, or unregulated fishing activities for which a nation has been identified under section 609 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826); or

(iii) to address bycatch of a protected living marine resources beyond the exclusive economic zone of any nation;

(iv) the term “nation” as used in this section has been identified under section 610 of such Act (16 U.S.C. 1826c(1));

(B) Section 102 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826b) is amended by striking “such nation has terminated large-scale driftnet fishing or illegal, unreported, or unauthorized fishing by its nationals and vessels beyond the exclusive economic zone of any nation.” and inserting “such nation has—

(i) terminated large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation;

(ii) addressed illegal, unreported, or unauthorized fishing activities for which a nation has been identified under section 609 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826); or

(iii) addressed bycatch of a protected living marine resources beyond the exclusive economic zone of any nation that has been identified under section 610 of such Act (16 U.S.C. 1826c(1)).”;

C. 00000 Frm 00106 Fmt 1210 Sfmt 1210 P:\RECORD11\RECFILES\S25JA1.REC S25JA1bjneal on DSK2TWX8P1PROD with CONG-REC-ONLINE

(2) SECTION 103. ILLEGAL, UNREPORTED, OR UNREGULATED FISHING.

(a) In General.—Section 609 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826b), as amended by section 302(a) of this Act, is further amended by adding at the end of the following:

“VESSELS AND VESSEL OWNERS ENGAGED IN ILLEGAL, UNREPORTED, OR UNREGULATED FISHING.—The Secretary may—

(1) develop, maintain, and make public a list of vessels and vessel owners engaged in illegal, unreported, or unregulated fishing, including oil and gas facilities, that are identified by an international fishery management organization or arrangement made pursuant to an international fishery agreement, whether or not the agreement is a party to such organization or arrangement;

(2) take appropriate action against listed vessels and vessel owners, including action against fishing, fish parts, or fish products from such vessels, in accordance with applicable United States law and consistent with applicable international law, including principles, rights, and obligations established by applicable international fishery management and trade agreements; and

(3) provide notice to the public of vessels and vessel owners identified by international fishery management organizations or arrangements made pursuant to an international fishery agreement as having engaged in illegal, unreported, or unregulated fishing, as well as any measures adopted by such organizations or arrangements to address illegal, unreported, or unregulated fishing.

(b) Restrictions on Port Access or Use.—(A) Section 610 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826c) is amended by striking “that has not been certified by the Secretary under this subsection, or” in subparagraph (A)(i).

(C) by agreeing, on a reimbursable basis or otherwise, participate in staffing the Program;

(D) by agreement, on a reimbursable basis or otherwise, share personnel, services, equipment (including aircraft and vessels), and facilities with the Program; and

(E) to the extent possible, and consistent with other applicable law, provide for the extension of the enforcement authorities provided by their enabling legislation to other departments and agencies participating in the Program for purposes of carrying out international joint investigations and activities to detect and investigate illegal, unreported, or unregulated fishing activity and enforcing the provisions of this Act.

(b) Program Actions.—(1) STAFFING AND OTHER RESOURCES.—The Secretary may submit the following:

(1) a 5-year plan .—Within 180 days after the date on which the Program is established under subsection (a), the Secretary shall develop a 5-year strategic plan for guiding interagency and intergovernmental international fisheries enforcement efforts to carry out the provisions of this Act. The Secretary shall update the plan periodically as necessary, but at least once every 5 years.

(2) COOPERATIVE ACTIVITIES.—The Secretary, in coordination with the heads of other departments and agencies providing staff for the Program, may, at their discretion, develop interagency plans and budgets to engage in interagency financing for such purposes.

(2) DUTY TO CONDUCT INVESTIGATION.—The Secretary, in coordination with the heads of other departments and agencies providing staff for the Program, may carry out the provisions of this Act. The Secretary shall update the plan periodically as necessary, but at least once every 5 years.
(B) enter into agreements with other Federal, State, or local governments as well as with the governments of other nations, on a reimbursable basis or otherwise, for such purpose as: (c) Powers of Authorized Officers.—Notwithstanding any other provision of law, while operating under an agreement with the Secretary, entered into under section 101 of this Act, and conducting joint operations as part of the Program for the purposes of detecting and investigating illegal, unreported, or unregulated fishing activity and enforcing the provisions of this Act, authorized officers shall have the powers and authority provided in that section.

(d) Information Collection, Maintenance and Use.—(1) In General.—The Secretary and the heads of other departments and agencies providing staff for the Program shall, to the maximum extent allowable by law, share all applicable information, intelligence and data, related to the harvest, transportation or trade of fish and fish product in order to detect and investigate illegal, unreported, or unregulated fishing activity and to carry out the provisions of this Act.

(2) Coordination of Data.—The Secretary, through the Program, shall coordinate the collection, storage, analysis, and dissemination of all applicable information, intelligence, and data related to the harvest, transportation, or trade of fish and fish product collected or maintained by the member agencies of the Program.

(3) Confidentiality.—The Secretary, through the Program, shall ensure the protection and confidentiality required by law for information, intelligence, and data related to the harvest, transportation, or trade of fish and fish product obtained by the Program.

(4) Data Standardization.—The Secretary and the heads of other departments and agencies providing staff for the Program shall, to the maximum extent practicable, develop data standardization for fisheries related data for Program agencies and with international fisheries enforcement data bases as appropriate.

(5) Assistance from Intelligence Community.—The Secretary, through the Program, shall provide assistance to any department of the intelligence community (as defined in section 3(i) of the National Security Act of 1947 (50 U.S.C. 401a(i))) to collect information, intelligence, and data related to illegal, unreported, or unregulated fishing activity outside the United States about individuals who are not United States persons as defined in section 103A(c)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 401-403(c)(1)). Such elements of the intelligence community shall collect and share such information with the Secretary through the Program for law enforcement purposes in order to detect and investigate illegal, unreported, or unregulated fishing activities and to carry out the provisions of this Act. All collection and sharing shall be in accordance with the National Security Act of 1947 (50 U.S.C. 401 et seq.).

(f) Information Sharing.—The Secretary, through the Program, shall have authority to share fisheries-related data with other Federal or State government agency, foreign government, the Food and Agriculture Organization of the United Nations, or any international organization or equivalent of an international fisheries management organization or arrangement made pursuant to an international fisheries management agreement:

(A) such governments, organizations, or arrangements have policies and procedures to safeguard such information from unintended or unauthorized disclosure; and

(B) the exchange of information is necessary—

(i) to ensure compliance with any law or regulation enforced or administered by the Secretary;

(ii) to administer or enforce treaties to which the United States is a party;

(iii) to administer or enforce binding conservation measures adopted by any international organization or arrangement to which the United States is a party; or

(iv) to assist in investigative, judicial, or administrative enforcement proceedings in the United States; or

(v) to provide assistance to any fisheries or living marine resource related law enforcement action undertaken by a law enforcement agency of a foreign government, or in relation to a legal proceeding undertaken by a foreign government.

(e) Authorization of Appropriations.—There are authorized to be appropriated $30,000,000 to the Secretary for each of fiscal years 2012 through 2017 to carry out this section.

SEC. 202. INTERNATIONAL COOPERATION AND ASSISTANCE PROGRAM.

(a) International Cooperation and Assistance Program.—The Secretary may establish an international cooperation and assistance program, including provisions for—

(1) to ensure compliance with any law or regulation enforced or administered by the Secretary;

(2) to administer or enforce treaties to which the United States is a party;

(3) to administer or enforce binding conservation measures adopted by any international organization or arrangement to which the United States is a party;

(4) to assist in investigative, judicial, or administrative enforcement proceedings in the United States; or

(5) to provide assistance to any fisheries or living marine resource related law enforcement action undertaken by a law enforcement agency of a foreign government, or in relation to a legal proceeding undertaken by a foreign government.

(b) Authorized Activities.—In carrying out the program, the Secretary may:

(1) provide funding and technical expertise to other nations to assist them in addressing illegal, unreported, or unregulated fishing activities;

(2) provide funding and technical expertise to other nations to assist them in reducing the loss and environmental impacts of destructive fishing practices; to maintain the scientific base; and support international cooperation in maintaining the scientific base;

(3) provide funding, technical expertise, and training to nations in cooperation with the International Fisheries Enforcement Program under section 201 of this Act, to other nations to aid them in building capacity for enhanced fisheries management, fisheries monitoring, catch and trade tracking activities, enforcement, and international marine resource conservation;

(4) establish partnerships with other Federal agencies, as appropriate, to ensure that fisheries development assistance to other nations is directed toward projects that promote sustainable fisheries; and

(5) conduct outreach and education efforts in order to promote public and private sector awareness of international sustainable use of living marine resources, and promoting international marine resource conservation;

(c) Guidelines.—The Secretary may establish guidelines necessary to implement the program.

(d) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary $5,000,000 for each of fiscal years 2012 through 2017 to carry out this section.

TITLE III—MISCELLANEOUS AMENDMENTS

SEC. 301. ATLANTIC TUNAS CONVENTION ACT OF 1975.

(a) Elimination of Annual Report.—Section 11 of the Atlantic Tuna Conventions Act of 1975 (16 U.S.C. 971) is repealed.

(b) Certain Regulations.—Section 971(d)(2) of the Atlantic Tuna Conventions Act of 1975 (16 U.S.C. 971d(c)(2)) is amended—

(1) by inserting ‘‘(A)’’ after ‘‘(2)’’;

(2) by striking ‘‘(A) submission’’ and inserting ‘‘the Secretary’’; and

(3) by striking ‘‘arguments, and (B) oral’’ and inserting ‘‘written or oral statements at a public hearing. After consideration of such presentations, the ’’; and

(4) by adding at the end thereof the following:

‘‘(B) The Secretary may issue final regulations to implement Commission recommendations referred to in paragraph (1) of this subsection concerning trade restrictive measures against nations or fishing entities without regard to the requirements of subparagraph (A) of this paragraph and subsection (c) of section 553 of title 5, United States Code.’’.

SEC. 302. DATA SHARING.

(a) High Seas Driftnet Fishing Moratorium Protection Act.—Section 608 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826i) is amended—

(1) by inserting ‘‘(a) IN GENERAL.—’’ before ‘‘The Secretary,’’;

(2) by striking ‘‘organizations’’ the first place it appears and inserting, ‘‘organizations, or arrangements made pursuant to an international fishery agreement (as defined in section 3(24) of the Magnuson-Stevens Fishery Conservation and Management Act),’’;

(3) by striking ‘‘and’’ after the semicolon in paragraph (2)(C);

(4) by striking ‘‘territories.’’ in paragraph (3) and inserting ‘‘territories; and’’; and

(5) by adding at the end thereof the following:

‘‘(4) urging other nations, through the regional fishery management organizations of which the United States is a member, bilaterally and otherwise to seek and foster the sharing of accurate, relevant, and timely information to improve the scientific understanding of marine ecosystems;’’;

‘‘(B) to improve fisheries management decisions;’’;

‘‘(C) to promote the conservation of protected living marine resources;’’;

‘‘(D) to combat illegal, unreported, and unregulated fishing; and’’;

‘‘(E) to improve compliance with conservation and management measures in international waters.’’

(b) Information Sharing.—In carrying out the program, the Secretary may disclose, as necessary and appropriate, information to the Food and Agriculture Organization of the United Nations, international fishery management organizations, or arrangements made pursuant to an international fisheries management agreement (as defined in section 3(24) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801a(b)(1))), or any international fisheries management organization or arrangement made pursuant to an international fisheries management agreement (as defined in section 3(24) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801a(b)(1)) is amended—

(1) by striking ‘‘or’’ after the semicolon in subparagraph (G);

(2) by redesignating subparagraph (H) as subparagraph (J); and

(3) by inserting after subparagraph (G) the following:

‘‘(H) to the Food and Agriculture Organization of the United Nations, international fishery management organizations, or arrangements made pursuant to an international fisheries management agreement (as defined in section 3(24) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801a(b)(1))), or any international fisheries management organization or arrangement made pursuant to an international fisheries management agreement (as defined in section 3(24) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801a(b)(1))),’’.

(c) High Seas Driftnet Fishing Moratorium Protection Act.—Section 608 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826i) is amended by striking ‘‘or’’ after the semicolon in paragraph (2)(C).

SEC. 303. AMENDMENTS TO TULLIUM PROTECTION ACT.

(a) Tullium Moratorium.—Section 607 of the Tullium Protection Act (16 U.S.C. 1814) is amended—

(1) by striking ‘‘1981a’’ and inserting ‘‘1981a(1)’’;

(2) by redesignating subsection (1) as subsection (2); and

(3) by inserting at the end thereof the following:

‘‘(1) The Secretary may—

(A) terminate the moratorium and, in that case, shall, by the date of the moratorium termination, issue a moratorium termination notice, and

(B) by the date of the moratorium termination, the United States and other nations shall—

(i) discontinue, and

(ii) rescind their respective moratoriums. ’’.
Fisheries Stewardship and Enforcement Act; or.


Section 15 of the High Seas Fishing Compliance Act (16 U.S.C. 5503(c)) is amended to read as follows:

'(f) Validity.—A permit issued under this section shall—

'(1) 1 or more permits or authorizations required for a vessel to fish, in addition to the permit issued under this section, expire, are revoked, or are suspended;

'(2) the vessel is no longer eligible for United States documentation, such documentation is revoked or denied, or the vessel is deleted from such documentation.

SEC. 304. COMMITTEE ON SCIENTIFIC COOPERATION FOR PACIFIC SALMON AGREEMENTS.

Section 11 of the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3640) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and inserting after subsection (b) the following:

'(c) SCIENTIFIC COOPERATION COMMITTEE.—Members of the Committee on Scientific Cooperation who are not State or Federal employees shall receive compensation at a rate equivalent to the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, when engaged in actual performance of duties for the Commission.

SEC. 305. REAUTHORIZED.

(a) INTERNATIONAL DOLPHIN CONSERVATION PROGRAM.—Section 304(c)(1) of the Marine Mammal Protection Act (16 U.S.C. 1314a(c)(1)) is amended by adding at the end thereof the following:

'(B) $1,000,000 for each of fiscal years 2009 through 2013.''


TITLE IV—IMPLEMENTATION OF THE ANTIGUA CONVENTION

SEC. 401. SHORT TITLE.

This title may be cited as the ‘‘Antigua Convention Implementing Act of 2011.’’


Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Tuna Convention Act of 1950 (16 U.S.C. 951 et seq.).

SEC. 403. DEFINITIONS.

Section 2 (16 U.S.C. 951) is amended to read as follows:

'SEC. 2. DEFINITIONS.


'(2) COMMISSION.—The term ‘‘Commission’’ means the Inter-American Tropical Tuna Commission as so organized or by the Convention.

'(3) CONVENTION.—The term ‘‘Convention’’ means—

'(A) the Convention for the Establishment of an Inter-American Tropical Tuna Commission, signed at Washington, May 31, 1949, by the United States of America and the Republic of Costa Rica;

'(B) the Antigua Convention, upon its entry into force for the United States, and any amendments thereto that are in force for the United States;

'(C) both such Conventions, as the context requires.

'(4) IMPORT.—The term ‘‘import’’ means to land on, bring into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

'(5) PERSON.—The term ‘‘person’’ means an individual, partnership, corporation, or association subject to the jurisdiction of the United States.

'(6) UNITED STATES.—The term ‘‘United States’’ includes all areas under the sovereignty of the United States.

'(7) U.S. COMMISSIONERS.—The term ‘‘U.S. commissioners’’ means the members of the Commission.

'(8) U.S. SECTION.—The term ‘‘U.S. section’’ means the U.S. Commissioners to the Commission and a designee of the Secretary of State.

SEC. 404. COMMISSIONERS, NUMBER, APPOINTMENT, AND QUALIFICATIONS.

Section 3 (16 U.S.C. 952) is amended to read as follows:

'SEC. 3. COMMISSIONERS.

'(a) COMMISSIONERS.—The United States shall be represented on the Commission by 5 U.S. Commissioners. The President shall appoint individuals to serve on the Commission at the pleasure of the President. In making the appointments, the President shall choose among individuals who are knowledgeable or experienced concerning highly migratory fish stocks in the eastern tropical Pacific Ocean, one of whom shall be an officer or employee of the Department of Commerce, one of whom shall be the chairman or a member of the Western Pacific Fishery Management Council, one of whom shall be the chairman or a member of the U.S. Fishery Management Council. Not more than 2 Commissioners may be appointed who reside in a State other than a State that maintains a substantial fishery in the area of the Convention.

'(b) ALTERNATE COMMISSIONERS.—The Secretary, or in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternative United States Commissioners to the Commission. An Alternative United States Commissioner may exercise, at any meeting of the Commission or of the General Advisory Committee or Scientific Advisory Subcommittee, all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section who will not be present at such meeting.

'(c) ADMINISTRATIVE MATTERS.—

'(1) EMPLOYMENT STATUS.—Individuals serving as such Commissioners, other than officers or employees of the United States Government who are considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

'(2) COMPENSATION.—The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners or Alternate Commissioners.

'(3) TRAVEL EXPENSES.—

'(A) The Secretary of State shall pay the necessary travel expenses of United States Commissioners and Alternate Commissioners to meetings of the IATTC and other meetings the Secretary deems necessary to fulfill their responsibilities under the Federal Travel Regulation and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

'(B) The Secretary of State shall reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.’’

SEC. 405. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.

Section 4 (16 U.S.C. 953) is amended—

'(1) APPOINTMENTS; PUBLIC PARTICIPATION; COMPENSATION.—

'(A) The Secretary, in consultation with the Secretary of State, shall appoint a General Advisory Committee which shall consist of not more than 25 individuals who shall be representative of the various groups concerned with the fisheries covered by the Convention, including nongovernmental conservation organizations, providing for the maximum extent practicable an equitable balance among such groups. Members of the General Advisory Committee will be eligible to participate as members of the U.S. delegation to the Commission and its working groups to the extent the Convention rules and regulations authorize for delegation.

'(B) The chair of the Pacific Fishery Management Council’s Advisory Subpanel for Highly Migratory Fisheries and the chair of the Western Pacific Fishery Management Council’s Advisory Committee shall be members of the General Advisory Committee by virtue of their positions in those Councils; and

'(C) the Advisory Committee appointed under subparagraph (A) shall serve for a term of 3 years and is eligible for reappointment.

The General Advisory Committee shall be invited to attend all non-executive meetings of the United States Section and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission.

The General Advisory Committee shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this chapter, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the Convention. The General Advisory Committee shall publish and make available to the public a statement of its organization, practices and procedures. Meetings of the General Advisory Committee, except when in executive session, shall be open to the public; notice of meetings shall be made public in timely fashion. The General Advisory Committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

'(2) INFORMATION SHARING.—The Secretary and the Secretary of State shall furnish the General Advisory Committee with relevant information on fisheries and international fishery agreements.

'(3) ADMINISTRATIVE MATTERS.—
“(A) The Secretary shall provide to the General Advisory Committee in a timely manner such administrative and technical support services as are necessary for its effective functioning.

“(B) Individuals appointed to serve as a member of the General Advisory Committee—

“(1) shall serve without pay, but while away from their homes or regular places of business to attend meetings of the General Advisory Committee shall be allowed travel expenses and per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code; and

“(2) shall not be considered Federal employees except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code;”;

and

(2) by striking so much of subsection (b) as precedes paragraph (2) and inserting the following:

“(b) SCIENTIFIC ADVISORY COMMITTEE.—(1) The Secretary, in consultation with the Secretary of Commerce, shall appoint a Scientific Advisory Subcommittee of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations.

“SEC. 406. RULEMAKING.

Section 6 (16 U.S.C. 955) is amended—

(1) in paragraph (1), by striking “10” and inserting “2”;

(2) in subsection (b), by striking “the Secretary may” and inserting “The Secretary shall”;

(3) in paragraph (2), by striking “and” and inserting “may”;

(4) in paragraph (3), by striking “the Secretary shall provide to the General” and inserting “the Secretary shall provide to the Commission, during the period such fish are liable to be”;

(5) by striking “may” and inserting “may not”; and

(6) by striking “in violation of any regulation adopted pursuant to section 6(c) of this Act;” and inserting “in violation of any regulation adopted pursuant to this Act to be made, kept, or furnished to any person other than the Secretary, or any data collector employed by the Secretary, the National Marine Fisheries Service, or any person under contract to any person to carry out responsibilities under this Act;”.

“SEC. 407. PROHIBITED ACTS.

This Act shall be enforced under section 8 (16 U.S.C. 957) is amended to read as follows:

“It is unlawful for any person—

“(1) to refuse to permit any officer authorized to make inquiries or inspection under the provisions of this Act (as provided for in section 10) to board a fishing vessel subject to such person’s control for the purposes of conducting any search, investigation or inspection in connection with the enforcement of this Act or any regulation, permit, or the Convention;

“(2) to falsely assay, contest, oppose, impede, intimidate, sexually harass, bribe, or interfere with any such authorized officer in the conduct of any such search, investigations or inspections or in the enforcement of this Act or any regulation, permit, or the Convention;

“(3) to resist a lawful arrest for any act prohibited by this Act;

“(4) to fail to stop a vessel upon being hailed and instructed to stop by a duly authorized official of the United States; or

“(5) to resist a lawful arrest for any act prohibited by this Act;”.

“SEC. 408. ENFORCEMENT.

This Act shall be enforced under section 8 (16 U.S.C. 957) is amended—

(1) to refuse to permit any officer authorized to make inquiries or inspection under the provisions of this Act to be made, kept, or furnished to any person other than the Secretary, or any data collector employed by the Secretary, the National Marine Fisheries Service, or any person under contract to any person to carry out responsibilities under this Act;”.

“SEC. 10. ENFORCEMENT.

This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.

“SEC. 409. REDUCTION OF BYCATCH.


By Mr. INOUYE:

S. 57. A bill to amend the Internal Revenue Code of 1986 to modify the application of the tonnage tax on certain vessels; to the Committee on Finance.

Mr. INOUYE. Mr. President, foreign registered ships now carry 97 percent of the imports and exports moving in United States international trade. These foreign vessels are held to lower standards than United States registered ships, and are virtually untaxed. Their costs of operation are, therefore, lower than United States ship operating costs, which explains their 97 percent market share.

Three years ago, it was necessary to help level the playing field for United States-flag ships that compete in international trade, Congress enacted, under the American Jobs Creation Act of 2004, Public Law 108-357, Subchapter IV, “tonnage tax” that is based on the tonnage of a vessel, rather than taxing international income at a 35 percent corporate income tax rate. However, during the House and Senate conference, language was included, which stated that a United States vessel cannot use the tonnage tax on international income if that vessel also operates in United States domestic commerce for more than 30 days per year.

The 30-day limit automatically limits the availability of the tonnage tax for those United States ships that operate in both domestic and international trade and, accordingly, severely hinders their competitiveness in foreign commerce. It is important not to recognize that ships operating in United States domestic trade already have significant cost disadvantages. Specifically, they are built in higher priced United States shipyards; do not receive Maritime Security Payments, even when operated in international trade; and are owned by United States-based American corporations. The inability of these domestic operators to use the tonnage tax for their international operations, when compared to foreign operators, places a necessary burden on their competitive position in foreign commerce.

When windows of opportunity present themselves in international trade, American tax policy and maritime policy are hindered by failure to recognize the potential benefit of these American-built ships. Instead, the 30-day limit makes them ineligible to use the tonnage tax, and further handicaps American vessels when competing for international cargo. Denying the tonnage tax to coastwise qualified ships further stymies the operation of American built ships in international commerce, and further exacerbates America’s 97 percent reliance on foreign ships to carry its international cargo.

These concerns were of sufficient importance that in December 2006 Congress repealed the 30-day limit on domestic trading—but only for approxi- mately 50 ships operating in the Great Lakes. These ships primarily operate in domestic trade on the Great Lakes, but also carry cargo between the United States and Canada in international trade, Section 415 of P.L. 109- 402, the Tax Relief and Health Care Act of 2006.

The identifiable universe of remaining ships other than the Great Lakes...
ships that operate in domestic trade, but that may also operate temporarily in international trade, totals 13 United States flag vessels. These 13 ships normally operate in domestic trades that involve Washington, Oregon, California, Hawaii, Alaska, Florida, Mississippi, and Louisiana. In the interest of providing tax equity to the United States corporations that own and operate these 13 vessels, my bill would repeal the tonnage tax 30-day limit on domestic operations and enable these vessels to operate temporarily outside the United States flag international operations. I stress that, under my bill, these ships will continue to pay the normal 35 percent United States corporate tax rate on their domestic income.

Repeal of the tonnage tax’s 30-day limit on domestic operations is a necessary step toward providing tax equity between United States flag and foreign flag vessels. I strongly urge the tax writing committees of the U.S. Congress to give this legislation their expedited consideration and approval.

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:

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

SECTION 1. MODIFICATION OF THE APPLICATION OF THE TONNAGE TAX ON VESSELS OPERATING IN THE UNITED STATES DOMESTIC AND FOREIGN TRADES.

(a) In General.—Subsection (f) of section 1355 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended to read as follows:

(1) Section 1355(a)(4) of the Internal Revenue Code of 1986 is amended by striking “exclusively”;

(2) Section 1355(b)(1)(B) of such Code is amended by striking “as a qualifying vessel” and inserting “in the transportation of goods or passengers”;

(3) Section 1355 of such Code is amended—

(A) by redesignating subsection (g) as subsection (h),

(B) by redesignating subsection (h) as subsection (g),

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

By Mr. INOUYE:

S. 59. A bill to treat certain hospital support organizations as qualified organizations for purposes of determining acquisition indebtedness; to the Committee on Finance.

Mr. INOUYE. Mr. President, the legislation I am reintroducing today will extend to qualified teaching hospital support organizations the existing debt-financed safe harbor rule. Congress has recognized the importance of public service activities of tax-exempt schools, universities, pension funds, and consortia of such institutions. Our teaching hospitals require similar support.

As a result, non-profit hospitals are moving from older areas to affluent locations where residents can afford to pay for treatment. These private hospitals typically have no mandate for community service. In contrast, non-profit hospitals fulfill a community service requirement. They must stretch their resources to provide increased charitable care, update their facilities, and maintain skilled staffing resulting in closures of non-profit hospitals due to this financial strain.

The problem is particularly severe for teaching hospitals. Non-profit hospitals provide nearly all the postgraduate medical education in the United States. Post-graduate medical instruction is including generating revenue. Instruction in the treatment of mental disorders and trauma is especially costly.

Despite their financial problem, the Nation’s non-profit hospitals strive to deliver a very high level of service. A study in the December 2006 issue of Archives of International Medicine had surveyed hospital’s quality of care in four areas of treatment. It found that non-profit hospitals consistently out-performed for-profit hospitals. The study also found that teaching hospitals had a higher level of performance in treatment and diagnosis, and that investments in technology and staffing leads to better care. In addition, it recommended that alternative payments and sources of payments be considered to finance these improvements.

The success and financial constraints of non-profit teaching hospitals is evident in work of the Queen’s Health Systems in my State. This 151-year-old organization maintains the largest, private, nonprofit hospital in Hawaii. The Queen’s Health Systems serve as the primary clinical teaching facility for the University of Hawaii’s medical residency program in medicine, general surgery, orthopedic surgery, pathology, psychiatry, and is a clinical teaching facility for obstetrics-gynecology. It conducts educational training programs for nurses and allied health personnel. The Queen’s Health Systems operate the only trauma unit as well as the chief behavioral health program in the State. It maintains clinics throughout Hawaii, health programs, for Native Hawaiian and other small hospitals in the rural, economically depressed island of Molokai. Furthermore, the Queen’s Health Systems annually provides millions of dollars in uncompensated health services. To help pay for these community benefits, the Queen’s Health Systems, as other non-profit teaching hospitals, relies significantly on income from its endowment.

In the past, the Congress has allowed teaching hospitals, schools, universities, and pension funds to invest their endowment in real estate so as to better meet their financial needs. Under the tax code, these organizations can incur debt for real estate investments without triggering the tax on unrelated business activities.

If the Queen’s Health Systems were part of a university, it could borrow without incurring an unrelated business income tax. Not being part of a university, however, a teaching hospital and its support organization run into the tax code’s debt financing prohibition. Non-profit teaching hospitals have the same if not more pressing needs as that of universities, schools, and pension trusts. The same safe harbor rule should be extended to teaching hospitals.

My bill would allow the support organizations for qualified teaching hospitals to engage in limited borrowing to enhance their endowment income. The proposal for teaching hospitals is actually more restricted than current law for schools, universities and pension trusts. Under safeguards developed by the Joint Committee on Taxation staff, a support organization for a teaching hospital cannot buy and develop land on a commercial basis. The proposal is tied directly to the organization endowment. The staff’s revenue estimates show that the provision will pay for itself over several years, will help a number of teaching hospitals.

The U.S. Senate has several times before acted favorably on this proposal. The Senate adopted a similar provision in H.R. 1836, the Economic Growth and Tax Relief Act of 2001. The House conference on that bill, however, objected that the provision was unrelated to the bill’s focus on individual tax relief and the conference deleted the provision from the final legislation. Subsequently, the Finance Committee included the provision in H.R. 7, the CARE Act of 2002, and in S. 476, the CARE Act of 2003, which the Senate passed. In a previous Congress’ S. 6, the
By Mr. INOUYE:

S. 60. A bill to provide relief to the Pottawatomi Nation in Canada for settlement of certain claims against the United States; to the Committee on the Judiciary.

Mr. President, nearly 16 years ago I stood before you to introduce a bill "to provide an opportunity for the Pottawatomi Nation in Canada to have the merits of their claims against the United States determined by the United States Court of Federal Claims."

That bill was introduced as Senate Resolution 223, which referred the Pottawatomi's claim to the Chief Judge of the U.S. Court of Federal Claims and required the Chief Judge to report back to the Senate and provide sufficient findings of fact and conclusions of law to enable the Congress to determine whether the claim of the Pottawatomi Nation in Canada is legal or equitable in nature, and the amount of damages, if any, which may be legally or equitably due from the United States.

Over a decade ago, the Chief Judge of the Court of Federal Claims reported back that the Pottawatomi Nation in Canada had a credible legal claim. Thereafter, by settlement stipulation, the United States has taken the position that it would be "fair, just and equitable" to settle the claims of the Pottawatomi Nation in Canada for the sum of $1,830,000. This settlement amount was reached by the parties after seven years of extensive, fact-intensive litigation. Independently, the court concluded that the settlement amount is "not a gratuity" and that the "settlement was predicated on a credible legal claim." Pottawatomi Nation in Canada, et al. v. United States, Cong. Ref. 94–1037X at 28, Ct. Fed. Cl., September 15, 2000, Report of Hearing Officer on Settlement.

The bill I introduce today is to authorize the appropriation of those funds that the United States has concluded would be "fair, just and equitable" to satisfy this legal claim. If enacted, this bill will finally achieve a measure of justice for a tribal nation that has for far too long been denied.

For the information of our colleagues, this is the historical background that informs the underlying legal framework of the Canadian Pottawatomi Nation. The members of the Pottawatomi Nation in Canada are one of the descendant groups—successors-in-interest—of the historical Pottawatomi Nation and their claim originates in the latter part of the 18th century. The historical Pottawatomi Nation was aboriginal to the United States. They occupied and possessed a vast expanse in what is now the States of Ohio, Michigan, Indiana, Illinois, and Wisconsin. From 1795 to 1833, the Pottawatomie ceded most of the traditional land of the Pottawatomi Nation through a series of treaties of cession—many of these cessions were made under extreme duress and the threat of military action. In exchange, the Pottawatomie were repeatedly made promises that the remainder of their lands would be secure and, in addition, that the United States would convey certain annuities to the Pottawatomie.

In 1829, the United States formally adopted a Federal the policy of removal; an effort to remove all Indian tribes from their traditional lands east of the Mississippi River to the west. As part of that effort, the government increasingly pressured the Pottawatomie to cede the remainder of their traditional lands, some five million acres in and around the city of Chicago, and remove their nation west. For years, the Pottawatomie steadfastly refused to cede the remainder of their tribal territory. Then in 1833, the United States, pressed by settlers seeking more land, sent a Treaty Commission to the Pottawatomie with orders to extract a settlement of the remaining lands. The Treaty Commissioners spent 2 weeks using extraordinarily coercive tactics—including threats of war—in an attempt to get the Pottawatomie to agree to cede their territory. Finally, representatives of the Pottawatomie signed the agreement, which was ratified and on September 26, 1833, they ceded their remaining tribal estate through what would be known as the Treaty of Chicago. Seventy-seven members of the Pottawatomie Nation signed the document. The signatures of the "Wisconsin Band" were not present and did not assent to the cession.

In exchange for their land, the Treaty of Chicago provided that the United States would give to the Pottawatomie 5 million acres of comparable land in what is now Missouri. The Pottawatomie were familiar with the Missouri land, aware that it was similar to their homeland. However, the United States refused to hold a negotiated agreement and unilaterally switched the land to five million acres in Iowa. The Treaty Commissioners were sent back to acquire Pottawatomie assent to the Iowa land. All but seven of the original 77 signatories refused to accept the change even with promises that if they were dissatisfied "justice would be done."

Nevertheless, the Treaty of Chicago was ratified as amended by the Senate and the subsequent Pottawatomie sent a delegation to evaluate the land in Iowa. The delegation reported back that the land was "not fit for snakes to live on."

While some Pottawatomie moved westward, many of the Pottawatomie, particularly the Wisconsin Band, whose leaders never agreed to the Treaty, refused to do so. By 1836, the United States began to forcefully remove Pottawatomie who remained in the east with devastating consequences. As is with many other Indian tribes, the forced removal westward came at great human cost. Many of the Pottawatomie were forcefully removed.
by mercenaries who were paid on a per capita basis government contract. Over one-half of the Indians removed by these means died en route. Those who reached Iowa were almost immediately removed further in inhospitable parts of Kansas against their will and without their consent.

After learning of these conditions, many of the Pottawatomi, including most of the Wisconsin Band, vigorously resisted forced removal. To avoid Federal troops and mercenaries, most of the Wisconsin Band ultimately found it necessary to flee to Canada. They were often pursued to the border by government troops, government-paid mercenaries or both. Official files of the Canadian and United States governments disclose that many Pottawatomi were forced to leave their homes without their horses or any of their possessions other than the clothes on their backs.

By the late 1830s, the government refused annuities to the Pottawatomi groups that had not removed west. In the 1860s, members of the Wisconsin Band—those still in their traditional territory and those forced to flee to Canada—petitioned Congress for the payment of their treaty annuities. The Pottawatomi were among the eldest tribes in the United States, and the federal government had never paid their share of the tribal funds.

Since that time, the Pottawatomi Nation in Canada has diligently and continuously sought to enforce their treaty rights, although until this Congressional reference, they had never been provided their day in court. In 1910, the United States and Great Britain entered into an agreement for the purpose of dealing with claims between both countries, including claims of Indian tribes to specific treaty jurisdiction, by creating the Pecuniary Claims Tribunal. From 1910 to 1938, the Pottawatomi Nation in Canada diligently sought to have their claim heard in this international forum. Overlooked for more pressing international matters, including the intervention of World War I, the Pottawatomi then came to the U.S. Congress for redress of their claim.

In 1946, the Congress waived its sovereign immunity and established the Indian Claims Commission for the purpose of granting tribes their long-delayed day in court. The Indian Claims Commission Act, ICCA, granted the Commission jurisdiction over claims such as the type involved here. In 1948, the Wisconsin Band Pottawatomi from both sides of the border brought suit together in the Indian Claims Commission for recovery of damages.

Hannahville Indian Community v. U.S., No. 28 (Ind. Cl. Comm. Filed May 4, 1948) the Indian Claims Commission dismissed Pottawatomi Nation in Canada's part of the claim ruling that the Commission had no jurisdiction to consider claims of Indians living outside territorial limits of the United States. Hannahville Indian Community v. U.S., 115 Ct. Cl. 823, 1950. The claim of the Wisconsin Band residing in the United States that was filed in the Indian Claims Commission was finally decided in favor of the Wisconsin Band by the United States Court of Claims in 1983. Hannahville Indian Community v. United States, 4 Ct. Cl. 445, 1983. The Court of Claims concluded that the Wisconsin Band was owed a member's proportionate share of unpaid annuities from 1838 through 1907 due under various treaties, including the Treaty of Chicago and entered judgment for the American Wisconsin Band Pottawatomi for any monies not paid. Still the Pottawatomi Nation in Canada was excluded because of the jurisdiction of the ICCA.

Undaunted, the Pottawatomi Nation in Canada came to the Senate, and after careful consideration, we finally gave them their long-awaited day in court through the Congressional reference process. The court has now reported back to us that their claim is meritorious and that the payment that this bill would make constitutes a "fair, just and equitable" resolution to this claim.

The Pottawatomi Nation in Canada has sought justice for over 150 years. They have done all that we asked in order to establish their claim. Now it is time for us to finally live up to the promise our government made many years ago. It will not correct all the harms of the past, but it is a demonstration that this government is willing to admit when it has left an unfulfilled obligation, and that the United States is willing to do what we can to see that justice, so long delayed, is not now denied.

Finally, I would just note that the claim of the Pottawatomi Nation in Canada is supported through specific resolutions by the National Congress of American Indians, the oldest, largest and most-representative tribal organization here in the United States, the Assembly of First Nations, which includes all recognized tribal entities in Canada, and the Assembly of First Nations of the Pottawatomi tribal groups they remain in the United States today.

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. 60

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

SECTION 1. SETTLEMENT OF CERTAIN CLAIMS.

(a) AUTHORIZATION FOR PAYMENT.—Notwithstanding any other provision of law, subsection (a) of section 1304 of title 31, United States Code, (b) PAYMENT IN ACCORDANCE WITH STIPULATION FOR RECOMMENDATION OF SETTLEMENT.—The payment under subsection (a) shall be made in accordance with the terms and conditions of the Stipulation for Recommendation of Settlement dated May 22, 2000, entered into between the Pottawatomi Nation in Canada and the United States (referred to in this section as the "Stipulation for Recommendation of Settlement"); and

(b) PAYMENT IN ACCORDANCE WITH STIPULATION FOR RECOMMENDATION OF SETTLEMENT.—The payment under subsection (a) shall—

(1) be made in accordance with the Stipulation for Recommendation of Settlement dated May 22, 2000, entered into between the Pottawatomi Nation in Canada and the United States (referred to in this section as the "Stipulation for Recommendation of Settlement"); and

(2) be included in the report of the Chief Judge of the United States Court of Federal Claims regarding Congressional Reference No. 94–1037X, submitted to the Senate on January 4, 2001, in accordance with sections 1304 and 2669 of title 31, United States Code.

(c) FULL SATISFACTION OF CLAIMS.—The payment under subsection (a) shall be in full satisfaction of all claims of the Pottawatomi Nation in Canada that are referred to or described in the Stipulation for Recommendation of Settlement.

(d) NONAPPLICABILITY.—Notwithstanding any other provision of law, the use of the Pottawatomi Tribal Judgment Funds under the Tribal Judgment Funds Act of 26 U.S.C. 1901 et seq., does not apply to the payment under subsection (a).

By Mr. INOUYE (for himself, Ms. MUKOWSKI, and Mr. BEGICH):
S. 61. A bill to establish a Native American Economic Advisory Council, and for other purposes; to the Committee on Indian Affairs.

Mr. INOUYE. Mr. President, I rise to introduce a bill that would establish a Native American Economic Advisory Council. This Council’s primary duties would be to consult, coordinate, and make recommendations to Federal agencies for the purpose of improving the standard economic conditions that exist in our Native communities.

Currently, there is no Council, and despite the Federal Government’s “trust” relationship with Native American tribes, Native Americans themselves continue to rank lowest in quality of life standings. As a nation we need to preserve our Native communities as they are rich with cultural significance and living history.

Native communities are considered “emerging economies” that have stalled because of the current economic situation. This bill is an attempt to keep these communities moving by educating, empowering, and encouraging our future leaders to create sustainable economic growth programs in their own communities.

In Hawaii, the cost of living ranges from 30 percent to 60 percent higher than the national average. We have started on paying the cost of economic stability in the future and this bill provides an opportunity to do so. I look forward to working with my colleagues on reinvesting in our Nation’s future.

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:

SEC. 1. SHORT TITLE. This Act may be cited as the “Native American Economic Advisory Council Act of 2011.”

SEC. 2. FINDINGS.

(a) The Congress finds—

(1) the United States has a special political and legal relationship to the Native American people of the United States; and

(2) economic stimulus programs to help Native American communities generate jobs and stronger economic performance will require United States financial and tax incentives to be focused on investment that is tailored to the unique needs and circumstances of Native American communities;

(3) the impacts of the ongoing recession and the near collapse of the financial and banking systems require a review of assumptions about the future, the need for new growth strategies, and the need for the groundwork for economic success in the 21st century;

(4) there is a continuing need for direct economic stimulus, including needs for improving rural infrastructure and alternative energy in rural and Native American communities of the United States and providing select Native Americans leaders with the tools to create jobs and improve economic conditions; and

(5) in light of the role of Native American communities as emerging markets within the United States, there are opportunities and needs that should be addressed, including consideration of United States support and policies to create an Indigenous Sovereign Wealth Fund that is similar to those Funds created around the world to diversify revenue streams, attract more resources, invest more wisely, and create jobs;

(6) Native Americans should be participants when major economic decisions are made that affect the property, lives, and future of Native Americans; and

(7) economic development programs to help Native American communities generate jobs and improve living conditions in Native American communities;

(8) to build and expand on the capacity of leaders in Native American organizations and communities to take positive and innovative steps—

(A) to create jobs;

(B) to establish stable and profitable business enterprises;

(C) to enhance economic conditions; and

(D) to use Native American-owned resources for the benefit of members; and

(9) Native Americans, like other people in the United States, have been hit hard by the deepest economic recession of the United States economy in over 50 years, causing a significant decline in employment and economic activity across the United States;

(b) The Congress finds—

(1) the United States has a special political and legal relationship to the Native American people of the United States; and

(2) economic stimulus programs to help Native American communities generate jobs and stronger economic performance will require United States financial and tax incentives to be focused on investment that is tailored to the unique needs and circumstances of Native American communities;

(3) the impacts of the ongoing recession and the near collapse of the financial and banking systems require a review of assumptions about the future, the need for new growth strategies, and the need for the groundwork for economic success in the 21st century;

(4) there is a continuing need for direct economic stimulus, including needs for improving rural infrastructure and alternative energy in rural and Native American communities of the United States and providing select Native Americans leaders with the tools to create jobs and improve economic conditions; and

(5) in light of the role of Native American communities as emerging markets within the United States, there are opportunities and needs that should be addressed, including consideration of United States support and policies to create an Indigenous Sovereign Wealth Fund that is similar to those Funds created around the world to diversify revenue streams, attract more resources, invest more wisely, and create jobs;

(6) Native Americans should be participants when major economic decisions are made that affect the property, lives, and future of Native Americans; and

(7) economic development programs to help Native American communities generate jobs and improve living conditions in Native American communities;

(8) to build and expand on the capacity of leaders in Native American organizations and communities to take positive and innovative steps—

(A) to create jobs;

(B) to establish stable and profitable business enterprises;

(C) to enhance economic conditions; and

(D) to use Native American-owned resources for the benefit of members; and

(9) Native Americans, like other people in the United States, have been hit hard by the deepest economic recession of the United States economy in over 50 years, causing a significant decline in employment and economic activity across the United States;

SEC. 2. FINDINGS.

(a) The Congress finds—

(1) the United States has a special political and legal relationship to the Native American people of the United States; and

(2) economic stimulus programs to help Native American communities generate jobs and stronger economic performance will require United States financial and tax incentives to be focused on investment that is tailored to the unique needs and circumstances of Native American communities;

(3) the impacts of the ongoing recession and the near collapse of the financial and banking systems require a review of assumptions about the future, the need for new growth strategies, and the need for the groundwork for economic success in the 21st century;

(4) there is a continuing need for direct economic stimulus, including needs for improving rural infrastructure and alternative energy in rural and Native American communities of the United States and providing select Native Americans leaders with the tools to create jobs and improve economic conditions; and

(5) in light of the role of Native American communities as emerging markets within the United States, there are opportunities and needs that should be addressed, including consideration of United States support and policies to create an Indigenous Sovereign Wealth Fund that is similar to those Funds created around the world to diversify revenue streams, attract more resources, invest more wisely, and create jobs;

(6) Native Americans should be participants when major economic decisions are made that affect the property, lives, and future of Native Americans; and

(7) economic development programs to help Native American communities generate jobs and improve living conditions in Native American communities;

(8) to build and expand on the capacity of leaders in Native American organizations and communities to take positive and innovative steps—

(A) to create jobs;

(B) to establish stable and profitable business enterprises;

(C) to enhance economic conditions; and

(D) to use Native American-owned resources for the benefit of members; and

(9) Native Americans, like other people in the United States, have been hit hard by the deepest economic recession of the United States economy in over 50 years, causing a significant decline in employment and economic activity across the United States;

(b) The Congress finds—

(1) the United States has a special political and legal relationship to the Native American people of the United States; and

(2) economic stimulus programs to help Native American communities generate jobs and stronger economic performance will require United States financial and tax incentives to be focused on investment that is tailored to the unique needs and circumstances of Native American communities;

(3) the impacts of the ongoing recession and the near collapse of the financial and banking systems require a review of assumptions about the future, the need for new growth strategies, and the need for the groundwork for economic success in the 21st century;

(4) there is a continuing need for direct economic stimulus, including needs for improving rural infrastructure and alternative energy in rural and Native American communities of the United States and providing select Native Americans leaders with the tools to create jobs and improve economic conditions; and

(5) in light of the role of Native American communities as emerging markets within the United States, there are opportunities and needs that should be addressed, including consideration of United States support and policies to create an Indigenous Sovereign Wealth Fund that is similar to those Funds created around the world to diversify revenue streams, attract more resources, invest more wisely, and create jobs;

(6) Native Americans should be participants when major economic decisions are made that affect the property, lives, and future of Native Americans; and

(7) economic development programs to help Native American communities generate jobs and improve living conditions in Native American communities;

(8) to build and expand on the capacity of leaders in Native American organizations and communities to take positive and innovative steps—

(A) to create jobs;

(B) to establish stable and profitable business enterprises;

(C) to enhance economic conditions; and

(D) to use Native American-owned resources for the benefit of members; and

(9) Native Americans, like other people in the United States, have been hit hard by the deepest economic recession of the United States economy in over 50 years, causing a significant decline in employment and economic activity across the United States;
SEC. 5. DUTIES. The Council shall—
(a) in general.—The Council shall advise and make recommendations to Federal agencies on—
(1) proposing sustainable economic growth and poverty reduction policies in a manner that promotes self-determination, self-sufficiency, and independence in urban and remote Native American communities; and preserving the traditional cultural values of those communities;
(2) training Native Americans (including Native American communities and organizations) to provide access to economic, employment, medical, and social needs of Native American communities;
(3) developing economic growth strategies, finance, and tax policies that will enable Native American organizations to stimulate the local economies of Native Americans and create meaningful new jobs in Native American communities;
(4) increasing the effectiveness of Federal programs to address the economic, employment, medical, and social needs of Native American communities;
(5) administering Federal economic development programs with an understanding of the unique needs of Native American communities with the objectives of—
(A) making Native American leaders knowledgeable about best business practices and successful economic and job growth strategies;
(B) promoting investment and economic growth in Native American communities;
(C) enhancing governance, entrepreneurship, and self-determination in Native American communities;
(D) fostering demonstrations of transformational changes in remote Native American communities through innovative technology, targeted investments, and the use of Native American-owned natural and scenic resources;
(E) improving the effectiveness of economic development assistance programs through the coordination and coordination of assistance to Native American communities;
(F) recommending educational and business training programs for Native Americans that increase the capacity of Native Americans for economic well-being and to further the purposes of this Act; and
(G) initiating proposals, as needed, for fellowship and mentoring programs to meet the economic development needs of Native American communities;
(b) ADDITIONAL DUTIES.—The Council shall—
(1) prepare a compilation of successful business enterprises and joint ventures conducted by Native American organizations, including tribal enterprises and the commercial ventures of Native Corporations (as defined in section 102 of the Alaska Native Interest Lands Conservation Act (16 U.S.C. 3102(d)) in the State of Alaska); and
(2) sponsor and arrange conferences and training workshops on Native American business activities, including providing mentors, resource people, and speakers to address financing, management, marketing, resource development, and best business practices in Native American business enterprises.

SEC. 6. ASSESSMENT OF IMPACTS OF LEGISLATIVE PROPOSALS ON NATIVE AMERICAN ECONOMIC PROSPECTS AND OPPORTUNITY.
In preparing and communicating the comments and recommendations of the President on proposed legislation to committees and leaders of the Senate, the Director of the Office of Management and Budget and the head of a Federal agency shall include an assessment of the impacts of the proposed legislation on the economic and employment prospects and opportunities provided in the proposed legislation to improve the quality of living conditions of Native American communities, organizations, and members to the levels enjoyed by most people of the United States.

SEC. 7. REPORTS. The Council shall—
(1) prepare periodic reports on the activities of the Council; and
(2) make the reports available to—
(A) Native American communities, organizations, and members;
(B) the General Services Administration;
(C) the Office of Management and Budget;
(D) the Domestic Policy Council;
(E) the National Economic Council;
(F) the Council of Economic Advisers;
(G) the Secretary of the Treasury;
(H) the Secretary of Commerce;
(I) the Secretary of Labor;
(J) the Secretary of the Interior;
(K) the Secretary of Energy; and
(L) members of the public.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.
There are authorized to be appropriated to carry out this Act such sums as are necessary.

By Mr. INOUYE:
S. 62. A bill to amend the Federal Deposit Insurance Act to modify requirements relating to the location of branch banks on Indian reservations, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.
Mr. INOUYE. Mr. President, I rise to introduce a bill that would provide authority for the establishment of branch banking facilities on Indian reservations so that the Federally-chartered Native American Bank could enable access to financial services to Indian tribes and their citizens.
Many years ago, as part of my service as Chairman of the Senate Indian Affairs Committee, I met with tribal leaders to discuss the challenges of economic development in Indian country. At that time, I suggested that they might give consideration to a means by which tribal governments could pool their resources and thereby provide the capital that other tribal governments could employ on a short-term loan basis to undertake reservation-based projects that held the potential of stimulating economic growth in their tribal communities.
The tribal leaders with whom I met were very interested in this idea, and in the ensuing years, went forward and established the Native American Bank—which is headquartered in Denver—but continues to manage its first affiliated bank on the Blackfeet Indian Reservation in Montana.
As my colleagues know, there are few financial institutions located either on or near Indian reservations, and sadly, there is evidence that some financial institutions have found it necessary to charge very high rates that they associate with the risk of doing business with Indian country, or to deny financial assistance altogether.
The Native American Bank has stepped into that latter void and has been providing meaningful financial services to tribal governments and their citizens for a number of years.
This bill contains amendments to the McPadden Act that have carefully sculpted to address only this narrow expansion of capacity on the part of financial institutions serving Indian country.
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. 62
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Indian Reservation Bank Branch Act of 2009”.

SEC. 2. REGULATIONS GOVERNING INSURED DEPOSITORY INSTITUTIONS.
Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by adding at the end the following:

“*Electron by Indian Tribes to Permit Branching of Banks on Indian Reservations—*

“(a) DEFINITIONS.—In this paragraph, the following definitions shall apply:

“(1) DE NOVO BRANCH.—The term ‘de novo branch’ means a branch of a State bank that—

“(i) is originally established by the State bank as a branch; and

“(ii) does not become a branch of the State bank as a result of—

“(aa) the acquisition by the State bank of an insured depository institution (or a branch of an insured depository institution); or

“(bb) the conversion, merger, or consolidation of any such institution or branch.

“(2) HOME STATE.—

“(i) IN GENERAL.—The term ‘home State’ means the State in which the main office of a State bank is located.

“(ii) BRANCHES ON INDIAN RESERVATIONS.—

“(AA) ‘Indian reservation’ means the area of land occupied by a tribe or tribes in connection with a State bank, the main office of which is located within the boundaries of an Indian reservation (in a case in which State law permits the chartering of such a main office on an Indian reservation), and includes—

“(aa) the State in which the Indian reservation is located; or

“(bb) for an Indian reservation that is located in more than 1 State, the State in which the portion of the Indian reservation containing the main office of the State bank is located.

“(ii) HOST RESERVATION.—The term ‘host reservation’, with respect to a bank, means an Indian reservation located in a State other than the home State of the bank in which the bank maintains, or seeks to establish, and maintain, a branch.

“(iv) INDIAN RESERVATION.—

“(AA) ‘Indian reservation’ means land subject to the jurisdiction of an Indian tribe.

“(II) INCLUSIONS.—The term ‘Indian reservation’ includes any public domain Indian allotment; and

“(BB) any land area located within the outer geographic boundaries recognized as an Indian reservation by a Federal treaty, Federal regulation, decision or order of the Bureau of Indian Affairs or any successor agency thereto, or statute in force with respect to a federally recognized tribal nation; and

“(CC) any former Indian reservation in the State of Oklahoma; and
“(dd) any land held by a Native village, Native group, Regional Corporation, or Village Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);”

“(vv) the term ‘tribal government’ has the same meaning as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 1603(b)).”

“(III) for an Indian reservation that is located within the boundaries of a State other than the home State of the national bank in which the applicable law is in effect, the Comptroller may approve an application to establish and operate a de novo branch within the boundaries of the State in which the applicable law is in effect.”

“(I) the acquisition by the national bank of an insured depository institution (or a branch of an insured depository institution); or

“(II) the conversion, merger, or consolidation of any such institution or branch.”

“(I) the State in which the Indian reservation is located; or

“(ii) for an Indian reservation that is located in more than 1 State, the State in which the portion of the Indian reservation containing the main office of the national bank is located.”

“(II) any land area located within the outer geographic boundaries recognized as an Indian reservation by a Federal treaty, Federal regulation, decision or order of the Bureau of Indian Affairs or any successor agency thereto, or statute in force with respect to a federally recognized tribal nation.”

“(III) any former Indian reservation in the State of Oklahoma; and

“(IV) any land held by a Native village, Native group, Regional Corporation, or Village Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).”

“(E) INDIAN TRIBE.—The term ‘Indian tribe’ has the same meaning as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 1603(b)).”

“(F) TRIBAL GOVERNMENT.—

“(i) IN GENERAL.—The term ‘tribal government’, with respect to an Indian reservation (regardless of whether the Indian reservations are located within the boundaries of an Indian reservation, the Corporation may approve an application of a State bank to establish and operate a de novo branch within the boundaries of 1 or more Indian reservations (regardless of whether the Indian reservations are located within the boundaries of the State bank), if there is in effect within the host reservation a law enacted by the tribal government of the host reservation that—

“(i) applies with equal effect to all banks located within the host reservation; and

“(ii) specifically permits any in-State or out-of-State bank to establish within the host reservation a de novo branch.”

“(i) DEFINITIONS.—In this subsection, the following definitions shall apply:

“(A) DE NOVO BRANCH.—The term ‘de novo branch’ means a branch of a national bank that—

“(I) is originally established by the national bank as a branch; and

“(ii) does not become a branch of the national bank before.

“(I) the acquisition by the national bank of an insured depository institution (or a branch of an insured depository institution); or

“(II) the conversion, merger, or consolidation of any such institution or branch.”

“(B) HOST RESERVATION.—

“(I) the State in which the Indian reservation is located; or

“(ii) for an Indian reservation that is located in more than 1 State, the State in which the portion of the Indian reservation containing the main office of the national bank is located.”

“(III) BRANCH RESERVATIONS.—The term ‘host reservation’, with respect to a national bank, means an Indian reservation located in a State other than the home State of the national bank in which the applicable law is in effect, that establishes or operates a branch on 1 or more Indian reservations solely pursuant to subsection (h) may establish any additional branch outside of such Indian reservation in the State in which the Indian reservation is located.”

“(II) any public domain Indian allotment;”

“(i) IN GENERAL.—Except as provided in clause (ii), no national bank that establishes or operates a branch on 1 or more Indian reservations solely pursuant to subsection (h) may establish any additional branch outside of such Indian reservation in the State in which the Indian reservation is located.”

“(ii) EXCEPTION.—Clause (i) shall not apply if a national bank described in that clause would be permitted to establish and operate an additional branch under any other provision of this section or other applicable law, without regard to the establishment or operation by the national bank of a branch on the subject Indian reservation.”

“By Mr. INOUYE.

S. 63. A bill to require the Secretary of the Army to determine the validity of the claims of certain Filipinos that they performed military service on behalf of the United States during World War II; to the Committee on Veterans’ Affairs.

Mr. INOUYE. Mr. President, I am reintroducing legislation today that would direct the Secretary of the Army to determine whether certain nationals of the Philippine Islands performed military service on behalf of the United States during World War II.

Our Filipino veterans fought side by side with Americans and sacrificed their lives on behalf of the United States. This legislation would confirm the validity of their claims and further allow qualified individuals the opportunity to apply for military and veterans benefits that, I believe, they are entitled to. As this population becomes older, it is important for our Nation to extend its firm commitment to the Filipino veterans and their families who participated in making us the great Nation that we are today.

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. 63

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

SECTION 1. DETERMINATIONS BY THE SECRETARY OF THE ARMY.

(a) In General.—Upon the written application of any person who is a national of the Philippines, the Secretary of the Army shall determine whether such person performed any military service in the Philippine Islands in aid of the Armed Forces of the United States in World War II; qualifies such person to receive any military, veterans', or other benefits under the laws of the United States.

(b) Information to be Considered.—In making a determination for the purpose of subsection (a), the Secretary shall consider all information and evidence (relating to service referred to in subsection (a)) that is available to the Secretary, including information and evidence submitted by the applicant, if any.

SEC. 2. CERTIFICATE OF SERVICE.

(a) Issuance of Certificate of Service.—The Secretary of the Army shall issue a certificate of service to each person determined by the Army to have performed military service described in section 1(a).

(b) Effect of Certificate of Service.—A certificate of service issued to any person under subsection (a) shall, for the purposes of any law of the United States, conclusively establish the period, nature, and character of the military service described in the certificate.

SEC. 3. APPLICATIONS BY SURVIVORS.

An application submitted by a surviving spouse, child, or parent of a deceased person described in section 1(a) shall be treated as an application submitted by such person.

SEC. 4. LIMITATION PERIOD.

The Secretary of the Army may not consider for the purpose of this Act any application received by the Secretary more than two years after the date of the enactment of this Act.

SEC. 5. PROSPECTIVE APPLICATION OF DETERMINATIONS BY THE SECRETARY OF THE ARMY.

No benefits shall accrue to any person for any period before the date of the enactment of this Act as a result of the enactment of this Act.

SEC. 6. REGULATIONS.

(a) The Secretary shall prescribe regulations to carry out sections 1, 3, and 4.

SEC. 7. RESPONSIBILITIES OF THE SECRETARY OF VETERANS AFFAIRS.

Any entitlement of a person to receive veterans' benefits by reason of this Act shall be administered by the Department of Veterans Affairs pursuant to regulations prescribed by the Secretary of Veterans Affairs.

SEC. 8. DEFINITIONS.

In this Act the term “World War II” means the period beginning on December 7, 1941, and ending on December 31, 1946.

By Mr. INOUYE.

S. 64. A bill to establish a fact-finding Commission to extend the study of a prior Commission to investigate and determine facts and circumstances surrounding the relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February 1948, and the impact of those actions by the United States, and to recommend appropriate remedies, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. INOUYE. Mr. President, I rise today in support of the Commission on Wartime Internment of Latin Americans of Japanese Descent Act.

The story of U.S. citizens taken from their homes on the west coast and confined in camps is a story that was made known after a fact-finding study by a Commission that Congress authorized in 1980. That study was followed by a formal apology by President Reagan and a bill for reparations. Far less known, and indeed, I myself did not initially know, is the story of Latin Americans of Japanese descent taken from their homes in Latin America, stripped of their passports, brought to the U.S., and interned in American camps.

This is a story about the U.S. government’s act of reaching its arm across international borders, into a community that did not pose an immediate threat to our Nation, in order to use them, devoid of passports or any other proof of citizenship, for exchange with Axis internment camps.

Between the years 1941 and 1945, our Government, with the help of Latin American officials, arbitrarily arrested persons of Japanese descent from streets, homes, and workplaces. Approximately 2,300 undocumented persons were brought to camp sites in the U.S., where they were held under armed watch, and then held in reserve for prisoner exchange.

Those used in an exchange were sent to Japan, a foreign country that many never set foot on since their ancestors’ immigration to Latin America.

Despite their involuntary arrival, Latin American internees of Japanese descent were considered by the Immigration and Naturalization Service as illegal entrants. By the end of the war, some Japanese Latin Americans had been sent to Japan. Those who were not used in a prisoner exchange were cast out into a new and English-speaking country, and subject to deportation proceedings. Some returned to Latin America. Others remained in the U.S., because their country of origin in Latin America refused their re-entry, because they were unable to present a passport.

When I first learned of the wartime experiences of Japanese Latin Americans, it seemed unbelievable, but indeed, it happened. It is a part of our national history, and it is a part of the living histories of the many families whose lives are forever tied to internment camps and internment camps.

The outline of this story was sketched out in a book published by the Commission on Wartime Relocation and Internment of Civilians formed in 1980. This Commission had set out to learn about Japanese Americans. Towards the close of their investigations, the Commissioners stumbled upon this extraordinary effort by the U.S. Government to relocate, intern, and deport Japanese persons formerly living in Latin America. Because this finding surfaced late in its study, the Commission was unable to fully uncover the facts, but found them significant enough to include in its published study, urging a deeper investigation.

I rise today to introduce the Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act, which would establish a fact-finding Commission to extend the study of the 1980 Commission. The Commission’s act would have the authority to determine facts surrounding the U.S. government’s actions in regards to Japanese Latin Americans subject to a program of relocation, internment, and deportation. I believe that examining this extraordinary program would give finality to, and complete the account of Federal actions to detain and intern civilians of Japanese ancestry.

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. 64

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Commission on Wartime Relocation and Internment of Latin Americans of Japanese Descent Act”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Based on a preliminary study published in December 1982 by the Commission on Wartime Relocation and Internment of Civilians, Congress finds the following:

(1) During World War II, the United States—

(A) expanded its internment program and national security investigations to conduct the program and investigations in Latin America; and

(B) financed relocation to the United States, and internment, of approximately 2,300 Latin Americans of Japanese descent, for the purpose of exchanging the Latin Americans of Japanese descent for United States citizens held by Axis countries.

(2) Approximately 2,300 men, women, and children of Japanese descent from 13 Latin American countries were held in the custody of the Department of State in internment camps operated by the Immigration and Naturalization Service from 1941 through 1948.

(3) Those men, women, and children either—

(A) were arrested without a warrant, hearing, or indictment by local police, and sent to the United States for internment; or

(B) in some cases involving women and children, voluntarily entered internment camps to remain with their arrested husbands, fathers, and other male relatives.

(4) Passports held by individuals who were Latin Americans of Japanese descent were routinely confiscated before the individuals arrived in the United States, and the Department of State ordered United States consuls in Latin American countries to refuse to issue visas to the individuals prior to departure.

(5) Despite their involuntary arrival, Latin American internees of Japanese descent were
considered to be and treated as illegal entrants by the Immigration and Naturalization Service. Thus, the internees became illegal aliens in United States custody who were subject to deportation proceedings for immediate removal from the United States. In some cases, Latin American internees of Japanese descent were deported to Axis countries of Latin American domicile. The United States Department of Justice took action against the Commission on Wartime Relocation and Internment of Civilians to bring charges against the United States Government for violations of the War Powers Act.

Members shall be appointed for the life of the Commission. All members of the Commission shall be reimbursed for official travel expenses at rates authorized for employees of the Federal Government.

The Commission shall constitute a quorum, but a lesser number of members may hold hearings.

The Chairperson and Vice Chairperson shall serve as officers of the Commission.

The Commission shall hold hearings, at which the United States Government, other parties, and the public may have an opportunity to be heard, and shall have the power to take any other action necessary to perform its duties.

The Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5316 of title 5, United States Code, for each member of the Commission who is not an officer or employee of the Federal Government.

The Chairperson of the Commission shall have the power to appoint such personnel as the Chairperson considers advisable; and

The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to perform the request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission.

The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

The Commission may, without regard to the civil service laws and regulations, appoint and terminate the employment of such personnel as may be necessary to enable the Commission to perform its duties.

The Chairperson of the Commission may fix the compensation of the personnel without regard to chapter 51 and subchapter III of chapter 55 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the personnel of the Commission shall not exceed the rate of pay for level V of the Executive Schedule under section 5316 of title 5, United States Code.

Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

The Chairperson of the Commission may fix the compensation of the personnel without regard to chapter 51 and subchapter III of chapter 55 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the personnel of the Commission shall not exceed the rate of pay for level V of the Executive Schedule under section 5316 of title 5, United States Code.

Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

The Chairperson of the Commission may fix the compensation of the personnel without regard to chapter 51 and subchapter III of chapter 55 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the personnel of the Commission shall not exceed the rate of pay for level V of the Executive Schedule under section 5316 of title 5, United States Code.

Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.
and other activities necessary to enable the Commission to perform its duties.

SEC. 7. TERMINATION.
The Commission shall terminate 90 days after the date on which the Commission submits its report to Congress under section 4(b).

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.
(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out this Act.

(b) AVAILABILITY.—Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

By Mr. INOUYE.

S. 65. A bill to reauthorize the programs of the Department of Housing and Urban Development for housing assistance for Native Hawaiians; to the Committee on Indian Affairs.

Mr. INOUYE. Mr. President, I rise to introduce a bill to reauthorize Title VIII of the Native American Housing Assistance and Self-Determination Act. Title VIII provides authority for the appropriation of funds for the construction of low-income housing for Native Hawaiians. It further provides authority for access to loan guarantees associated with the construction of housing to serve Native Hawaiians.

Three studies have documented the acute housing needs of Native Hawaiians—which include the highest rates of overcrowding and homelessness in the State of Hawaii. Those same studies indicate that inadequate housing rates for Native Hawaiians are amongst the highest in the Nation. The reauthorization of Title VIII will support the continuation of efforts to assure that the native people of Hawaii may one day have access to housing opportunities that are comparable to those now enjoyed by other Americans.

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:

SEC. 1. SHORT TITLE.
This Act may be cited as the “Hawaiian Homeownership Opportunity Act of 2011”.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR HOUSING ASSISTANCE.
Section 824 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4243) is amended by striking “fiscal years” and all that follows and inserting the following: “fiscal years 2012, 2013, 2014, and 2015.”

SEC. 3. LOAN GUARANTEES FOR NATIVE HAWAIIAN HOUSING.
Section 184A of the Housing and Community Development Act of 1992 (22 U.S.C. 1715z-13b) is amended—

(a) in subsection (b), by striking “or as a result of a lack of access to private financial markets”;

(b) in subsection (c), by striking paragraph (2) and inserting the following:

(2) ELIGIBLE HOUSING.—The loan will be used for the purchase, refinancing, or rehabilitation 1- to 4-family dwellings that are—

(A) standard housing; and

“(B) located on Hawaiian Home Lands;”;

and

(3) in subsection (j)(7), by striking “fiscal years” and all that follows and inserting “fiscal years 2011, 2012, 2013, 2014, and 2015.”

SEC. 4. ELIGIBILITY OF DEPARTMENT OF HAWAIIAN HOME LANDS FOR TITLE VIII LOAN GUARANTEES.
Title VI of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4191 et seq.) is amended—

(1) in the title heading, by inserting “AND NATIVE HAWAIIAN” after “TRIBAL”; and

(2) in section 601 (25 U.S.C. 4191)—

(A) in subsection (a)—

(1) by striking “or tribally designated housing entities with tribal approval” and inserting “, tribally designated housing entities with tribal approval, or by the Department of Hawaiian Home Lands;”;

and

(ii) by inserting “or 810, as applicable,” after “section 202”;

and

(B) in subsection (c), by inserting “or title VIII, as applicable” before the period at the end;

(3) in section 602 (25 U.S.C. 4192)—

(A) in subsection (i)—

(1) in the matter preceding paragraph (1), by striking “or housing entity” and inserting “, housing entity, or Department of Hawaiian Home Lands”; and

(ii) in paragraph (3)—

(I) by inserting “or Department” after “tribe”; and

(II) by inserting “or title VIII, as applicable,” after “title I”; and

(III) by inserting “or 811, as applicable,” before the semicolon at the end; and

(B) in subsection (j)(7), by striking “or housing entity” and inserting “, housing entity, or the Department of Hawaiian Home Lands;”;

and

(4) in the first sentence of section 603 (25 U.S.C. 4193), by striking “or housing entity” and inserting “, housing entity, or the Department of Hawaiian Home Lands;”;

and

(5) in section 606(b) (25 U.S.C. 4196(b)), by striking “2009 through 2013” and inserting “2011 through 2015”.

By Mr. INOUYE.

S. 67. A bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total to travel, in the same manner and to the same extent as retired members of the armed forces, on unscheduled military flights within the continental United States and on scheduled overseas flights operated by the Air Mobility Command. The Secretary of Defense shall permit such travel on a space-available basis.

By Mr. INOUYE:

S. 655. A bill to authorize certain disabled former members of the armed forces to travel on military aircraft: certain disabled former members of the armed forces.

Mr. President, I ask unanimous consent that the text of my 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:

SEC. 1. TRAVEL ON MILITARY AIRCRAFT OF CERTAIN DISABLED FORMER MEMBERS OF THE ARMED FORCES.
(a) IN GENERAL.—Chapter 53 of title 10, United States Code, is amended by inserting after section 1060b the following new section:

“1060c. Travel on military aircraft: certain disabled former members of the armed forces
“The Secretary of Defense shall permit any former member of the armed forces who is entitled to compensation under the laws administered by the Secretary of Veterans Affairs for a service-connected disability rated as total to travel, in the same manner and to the same extent as retired members of the armed forces, on unscheduled military flights within the continental United States and on scheduled overseas flights operated by the Air Mobility Command. The Secretary of Defense shall permit such travel on a space-available basis.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 53 of such title is amended by inserting after the item relating to section 1060b the following new item:

“1060c. Travel on military aircraft: certain disabled former members of the armed forces.”.

By Mr. INOUYE:

S. 68. A bill to amend title 10, United States Code, to authorize certain disabled former prisoners of war to use Department of Defense commissary and exchange stores; to the Committee on Armed Services.

Mr. INOUYE. Mr. President, today I am reintroducing legislation to enable those former prisoners of war who have been separated honorably from their respective services and who have been rated as having a 30 percent service-connected disability to have the use of both the military commissary and post exchange privileges. While I realize it is impossible to adequately compensate one who has endured long periods of incarceration at the hands of our Nation’s enemies, I do feel this gesture is both meaningful and important to those concerned because it serves as a reminder that our nation has not forgotten their sacrifices.

Mr. President, I ask unanimous consent that the text of my 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:
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. USE OF COMMISSARY AND EXCHANGE STORES BY CERTAIN DISABLED FORMER PRISONERS OF WAR.

(a) IN GENERAL.—Chapter 54 of title 10, United States Code, is amended by inserting after section 1064 the following new section:

§ 1064a. Use of commissary and exchange stores; certain disabled former prisoners of war.

''(a) IN GENERAL.—Under regulations prescribed by the Secretary of Defense, former prisoners of war described in subsection (b) may use commissary and exchange stores for the purchase of food, clothing, household supplies, and certain vehicles from the Armed Forces Inventory.

(b) COVERED INDIVIDUALS.—Subsection (a) applies to any former prisoner of war who—

(1) has a service-connected disability rated by the Secretary of Veterans Affairs at 30 percent or more;

(2) has a service-connected disability rating by the Secretary of Veterans Affairs at 10 percent or more; and

(c) DEFINITIONS.—In this section:

(1) The term ‘‘former prisoner of war’’ has the meaning given that term in section 101(32) of title 38.

(2) The term ‘‘service-connected disability’’ has the meaning given that term in section 101(16) of title 38.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 54 of such title is amended by inserting after the item relating to section 1064 the following new item:

``1064a. Use of commissary and exchange stores; certain disabled former prisoners of war.''

By Mr. TESTER:

S. 69. A bill to amend the Consumer Product Safety Improvement Act of 2008 to exclude secondary sales, repair services, and certain vehicles from the ban on lead in children’s products, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. TESTER. Mr. President, I rise today to introduce the Common Sense in Consumer Products Act of 2011 on behalf of the folks across America who are outdoor enthusiasts and budding sportsman and women. This bill will bring a common sense approach to restrictions we place upon access to products that may include lead are not exclusively internal components and therefore don’t pass the inaccessibility standard required by law. As a result of this requirement, a number of ATV sales and retail establishments have halted the sale of all ATVs for kids. In an abundance of caution, they have also refused to repair any equipment intended for kids use.

I have heard from many Montanans—consumers and retail sales people alike—expressing their concern about the impact of the legislation upon outdoor motor sports. A few years ago I worked with the Consumer Product Safety Commission to successfully provide a two year waiver for child-sized motorized vehicles. However, that stay of enforcement expires this May. Therefore today, I am reintroducing this bill to provide a permanent exception for vehicles intended to be used by children between the ages of 6 and 12. In addition to manufacturers and merchants, thrift stores, and other retail establishments are also implicated because of the wide-reaching scope of the legislation. It is possible that even holding a yard sale can lead folks astray from the new law. Therefore, my bill also removes liability for lead paint content in any product that is returned by thrift stores, flea markets or at yard sales. The liability in place at the time of primary sale of these products is sufficient and it could cripple the profitability of the secondary merchants if they were to be liable for testing the products they resell or repair.

In this tough economy, second-hand resellers simply can’t afford the third-party testing requirement put in place by the bill. At the same time, more and more of Montana’s families are finding their budgets tighten and are relying upon thrift and resale stores for toys, children’s clothing and other household goods. I want to make sure that laws intended to keep our kids safe end up doing more harm than good.

This a very important bill, bringing a dose of common sense to the very important goal of protecting our kids from lead paint and other substances that will harm their health. I urge my colleagues to join me in this effort.

By Mr. INOUYE:

S. 70. A bill to restore the traditional day of observance of Memorial Day, and for other purposes; to the Committee on the Judiciary.

Mr. INOUYE. Mr. President, in our effort to accommodate many Americans by making Memorial Day the last Monday in May, we have lost sight of the significance of this day to our nation. My bill would restore Memorial Day to May 30 and authorize our flag to fly at half mast on that day. In addition, this legislation would authorize the President to issue a proclamation designating Memorial Day and Veterans Day as days for prayer and ceremonies. This legislation would help restore the recognition our veterans deserve for the sacrifices they have made on behalf of our Nation.

Mr. President, I ask unanimous consent that the text of my 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. 70

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

SECTION 1. RESTORATION OF TRADITIONAL DAY OF OBSERVANCE OF MEMORIAL DAY.

(a) DESIGNATION OF LEGAL PUBLIC HOLIDAY.—Section 6103(a) of title 5, United States Code, is amended by striking ‘‘Memorial Day, the last Monday in May,’’ and inserting the following:

‘‘Memorial Day, May 30.’’

(b) OBSERVANCES AND CEREMONIES.—Section 116 of title 36, United States Code, is amended—

(1) in subsection (a), by striking ‘‘The last Monday in May’’ and inserting ‘‘May 30’’;

(2) in subsection (b)—

(A) by striking ‘‘and’’ at the end of paragraph (3); and

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by inserting after paragraph (3) the following:

‘‘(4) calling on the people of the United States to observe Memorial Day as a day of solemnity and a day of ceremonies to show respect for United States veterans of wars and other military conflicts and’’;

(c) DISPLAY OF FLAG.—

(1) TIME AND OCCASIONS FOR FLAG DISPLAY.—Section 6(d) of title 4, United States Code, is amended by striking ‘‘the last Monday in May’’ and inserting ‘‘May 30’’.

(2) NATIONAL LEAGUE OF FAMILIES POW/MIA FLAG.—Section 902(c)(1)(B) of title 36, United States Code, is amended by striking ‘‘the last Monday in May’’ and inserting ‘‘May 30’’.

By Ms. CANTWELL (for herself and Mr. FRANKEN):

S. 74. A bill to preserve the free and open nature of the Internet, expand the benefits of broadband, and promote
universally available and affordable broadband service; to the Committee on Commerce, Science, and Transportation.

Ms. CANTWELL. Mr. President, I rise today to introduce legislation that will preserve the free and open Internet that has led to the growth of broadband.

The broadband Internet is integral to U.S. job creation, economic growth, education, civic engagement, and innovation.

The network design principles fostering the development of the broadband Internet to date, an end-to-end design, layered architecture, and open standards, promotes innovation at the edge of the network and gives end users choice and control of their online activities.

These network design principles have led to the network neutrality of the Internet, where there are no paid-for premium fast lanes and best-effort slow lanes.

Today, broadband providers have access to technology and an economic incentive to favor their own or affiliated services, content, and applications; and discriminate against other providers of services, content, and applications.

If our Nation is to achieve the ambitious broadband goals put forward in the National Broadband Plan, the U.S. needs a clear Federal policy that preserves the historically free and open nature of the Internet.

The policy must apply to all broadband Internet access service providers regardless of the means by which they reach the end user.

As you know, the FCC released its net neutrality rules last fall.

I consider the Commission's actions to be completely within the bounds of its authority.

The Chevron deference courts give agencies is rather broad. A quick read of the 2005 U.S. Supreme Court's Brand X decision tells you all you need to know.

Former FCC Chairman Powell was very creative in his approach to de-regulating broadband over cable modem in 2002.

As you remember, one of the most conservative justices on the Supreme Court, Justice Scalia, voted against the FCC action saying more or less that what Chairman Powell did was an overreach.

Even so, the final decision was six to three in favor of the FCC. That is how broad the Chevron deference is.

And because of the meticulous way Chairman Genachowski conducted the Commission's process, in the end, I am confident the court system will uphold its actions.

My issue with the Commission's net neutrality rules is that I do not think the Chairman was bold enough.

The Commission should have issued one set of rules that covered broadband delivered over wireline, wireless, or some combination of the two. Everyone realizes that the future of broadband is wireless. And with the rollout of 4-G wireless services, that future is with us now.

The Commission should not have kept open the door for any pay-for-priority schemes. It will lead to a tiered Internet, where broadband Internet service providers will have an incentive to create artificial bandwidth shortages to maximize profits, rather than invest in new capacity.

The Commission also needed to get the definitions of broadband and reasonable network management right. One was too broad and one too narrow. The wording in definitions is negotiated over fiercely because, if not crafted properly, it can lead to loopholes that severely undercut the effectiveness of the rules.

More fundamentally, the Commission should have reclassified broadband Internet access into Title II of the communications act and forebear from regulation all of the elements more appropriate to Title I. It would have taken the Commission a lot more time and resources, but getting net neutrality right is that important, because this is the foundation that all broadband rules and regulations will be built on.

It is surprising that as weak as these rules are they have stirred up so much vitriol.

I know this body will be taking up this matter another day.

My legislation, as statutory strong net neutrality protections, takes steps to promote broadband adoption, and provides consumer protection for broadband end users.

First I want to acknowledge the leadership of our former colleague Senator Dorgan on this issue.

The bill builds on what we started working together on last fall.

It also borrows some of the good ideas of Mr. MARKER and Ms. Eshoo in the House.

At a high level my legislation creates a new section in Title II of the Communications Act that codifies the six net neutrality principles in the FCC's November 2009 notice of proposed rulemaking for preserving the open Internet.

My legislation adds a few things to the FCC's list. For example, my legislation also prohibits broadband operators from requiring content, service, or application providers from paying for prioritized delivery of their IP packets; more commonly referred to as pay-for-priority. It also requires broadband providers to interconnect with middle-mile broadband providers on just and reasonable terms and conditions.

All of this is subject to reasonable network management as defined. And it applies to all broadband Internet platforms—wireline and wireless.

My legislation takes several steps to promote the addition of broadband, steps such as requiring broadband providers to provide service upon reasonable request by an end user; and requiring broadband providers to offer stand-alone broadband at reasonable rates, terms and conditions.

My legislation increases consumer protections because all charges, practices, classifications, regulations, for and in connection with the broadband Internet access service must be just and reasonable.

My legislation directs the FCC to come up with enforcement mechanisms. End users, who include individuals, businesses of all sizes, non-profit organizations, and others, can file a complaint either at the FCC or at a U.S. District Court, but not both. Additionally, State Attorneys General can file on behalf of their residents and seek either to enforce the act or to seek civil penalties.

My legislation supports continued broadband investment, innovation, and jobs.

Let me explain.

First innovation. With the Internet's end-to-end design, innovation is at the edge of the network in the hands of the end users. New ideas for online content, application, and services do not need the permission of the centralized network operator to become successful. Without net neutrality protections, I fear situations arising that will chill innovation.

For example, if a broadband provider has a partnership with company A to provide end users a certain on-line service, and new company B comes up within the partnership to provide that same on-line service, how many believe that the broadband provider will allow company B get access to its end users with the same bandwidth or quality-of-service assurances, particularly if Company A gives a portion of its revenues from that on-line service to the broadband provider.

Experience has taught me that the most promising path to developing an innovation into a new on-line product over the Internet is hard to do if you can do it at all. If broadband Internet access service provider end up on the critical path for successful commercialization of on-line innovations, the path to success will be all the much harder. The language in my bill tries to prevent these types of situations from happening.

This leads to my second point, the chilling of investment without effective net neutrality rules.

To a better sign, whenever an early stage online company is seeking venture capital investments. The first question any responsible VC will ask is whether the following list of large broadband providers are on-board with the online product or service. Because if there is a situation, as in my example on innovation, where the large broadband provider has a partnership with the early stage companies' entrenched competitor, it is going to be difficult, if not impossible, to raise funds. The breathing of broadband providers will become essential to obtaining VC investment of any magnitude. How to get large broadband

January 25, 2011
providers on board will become a key part of every business plan. Broadband providers would then become gatekeepers to online innovation and investment.

Broadband investment can also be chilling. The logical extension of pay-for-priority is a tiered Internet with premium fast lanes and best effort slow lanes. With a tiered Internet, it becomes more profitable to create an artificial bandwidth shortage rather than in investing to increase broadband capacity of the local network.

The reason is that it is easier to adjust pricing policies than forecast the optimum level of investment and be able to finance it at favorable rates. Recall the Internet bubble about a decade ago. That is why I believe that if pay-for-priority exists, it will ultimately lead to a lower level of broadband investment that would occur otherwise.

I agree with the need for broadband providers to upgrade the quality of their network and increase the available bandwidth to meet the anticipated market demand. If end users want more bandwidth or quality-of-service assurance they should be willing to pay for it. It is that simple. I have no issue with allowing broadband providers explore different pricing options for consumers. My bill doesn’t prevent that.

Third jobs. Since the advent of the broadband age, there have been more high-value-added, high-paying jobs created by companies operating at the edge of the network than companies at the center of the network. And because of chilled investment and other restrictions, without net neutrality rules, I believe we will experience a lower rate of growth of broadband-enabled jobs.

Let me close by saying that I bring a unique perspective to the policy discussion. As a former not neutrality by virtue of working in the tech industry during the dial-up age and early years of broadband.

To put things in perspective, the ideas and language that became the Telecommunications Act of 1996 was coming together around the time Netscape 1.0 was being introduced commercially.

Whether intentionally or unintentionally, that 1996 Telecom Act accelerated the broadband, even though the word Internet appeared less than one dozen times. It set the wheels in motion by allowing local competition to the offspring of Ma Bell, allowing telecom companies to offer video programming, and allowing cable companies to offer telecom services.

Cable companies responded to this competitive threat, and that from the satellite TV companies due to the Satellite Home Viewing Act, by making infrastructure investments that allowed them to offer new broadband service over cable modem.

Competitive Local Exchange Carriers, taking advantage of their new ability to line share and access unbundled network elements, also saw the competitive benefits of offering broadband service.

The traditional telecom companies, well, at the time they seemed focused on trying to reassemble Ma Bell and retaining all the extra, dedicated landline or two for dial up service.

Eventually, the competitive pressure did drive them to make the necessary investment to offer broadband.

The business model for delivering broadband Internet access differed than that of dial-up. In their heyday, ISPs such as AOL, Compuserve, and Prodigy did not own their own infrastructure; they leased telecom transmission capacity from third parties telecom companies. With broadband, for a number of reasons, there came the much greater vertical integration of the ISP and transmission capacity.

Looking back, broadband over cable modem flourished under Title II through 2004 until the FCC deregulated it. Similarly, broadband over landslines flourished under Title II through 2005, until Chairman Martin’s deregulated it in the wake of the Brand X decision.

As Senator Dorgan used to say, having broadband under Title II ensured that there was a broadband cop on the beat.

If there were functioning local markets for broadband services, consumers would be able to choose, and I might think differently about the need for legislation. Unfortunately end users in most communities have a limited number of choices at best when it comes to broadband Internet access services.

At its most basic, that is why we need to return that broadband cop to the beat. My bill will do that, and do that without regulating the Internet.

It will achieve the regulatory certainty industry seems to clamoring for by putting the protection in statute rather than left to agency rule and the politics of each succeeding administration.

I don’t claim that this bill is a perfect bill. It lays down a marker for where we should start the discussion.

Given the complexity of the Internet ecosystem, any legislation will have to be worked through by the Commerce Committee. There are always details, details, and more details with respect to broadband. This bill does not need to be an end-all, and I might think differently about the need for legislation. For these reasons I recognize that the Commission will need some flexibility in implementing the statute and I believe my language will provide them with just enough.

My bill will preserve an open and free Internet, allow for broadband’s continued growth, and the economic growth and jobs that it will create.

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:

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Two-way communications networks constitute basic infrastructure that is as essential to our national economy as roads and electricity.

(2) The broadband Internet constitutes the most important two-way communications infrastructure of our time.

Access to the broadband Internet is critical for job creation, economic growth, and technological innovation.

(4) Access to the broadband Internet creates opportunity for more direct civic engagement, increased educational attainment, and enables free speech.

(5) The network design principles fostering the development of the broadband Internet date to, an end-to-end design, layered architecture, and open standards, promotes innovation at the edge of the network and gives end users choice and control of their online activities.

(6) These network design principles have led to the network neutrality of the Internet, where there are no premium fast lanes and best effort slow lanes.

(7) According to the Federal Communications Commission in 2009, technologies now allow network operators to distinguish different classes of Internet traffic, to offer different qualities-of-service, and to charge different prices to each class of Internet traffic.

(8) Broadband Internet access service providers have an economic interest to discriminate in favor of their own or affiliated services, content, and applications and against other providers of such services, content, and applications.

(9) Broadband Internet access service providers have an economic interest to discriminate in favor of their own or affiliated services, content, and applications and against other providers of such services, content, and applications.

(10) The market for broadband today demonstrates substantial obstacles to effective competition, to the protection of users, and to the continued viability of a free and open Internet.

(11) These obstacles impede the universal deployment and adoption of broadband, impeding the progress of the National Broadband Plan, and perpetuates a digital divide.

(12) The United States needs clear Federal policy that preserves the historically free and open nature of the Internet, expands the benefits of broadband, and promotes universally available and affordable broadband Internet access services, regardless of whether those services use wire, radio, or some combination of those means to reach the end user.

SEC. 3. INTERNET FREEDOM.

Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end the following:

"SEC. 250. INTERNET FREEDOM AND BROADBAND PROMOTION.

(1) PURPOSES.—The purposes of this section are—

"(1) to promote increased availability and adoption of broadband for all Americans;"
“(2) to promote consumer choice and competition among broadband Internet access service providers and among providers of lawful content, applications, and services; and

“(3) to protect consumers, innovators and entrepreneurs from harmful, discriminatory, or anti-competitive behavior by providers of broadband Internet access service.

“(b) Broadband Internet Access Service and Charges.—

“(1) It shall be the duty of every broadband Internet access service provider to furnish such broadband Internet access service to end users upon reasonable request.

“(2) Broadband Internet access service providers may offer end users the following: purchase voice grade telephone service, commercial mobile radio voice services, or multichannel-video programming distribution services; or other specialized services as a condition on the purchase of any broadband Internet access service.

“(3) All charges, practices, classifications, and regulations for and in connection with broadband Internet access service shall be just and reasonable.

“(4) If a broadband Internet access service provider allows its end users to request quality-of-service assurances for the transmission of Internet Protocol packets associated with its own applications, services, or content or that of its affiliates, then—

“(A) the broadband Internet access service provider shall permit such assurances for all Internet Protocol packets chosen by the end user, without regard to the content, applications, or services involved; and

“(B) any quality-of-service assurance shall not block, interfere with, or degrade, any other content, application, or service provider's content, applications, or services of its choice.

“(c) Ensuring Open Access to the Broadband Internet.—A broadband Internet access service provider may not unjustly or unreasonably—

“(1) block, interfere with, or degrade an end user's ability to access, use, send, post, receive, or offer lawful content (including fair use), applications, or services of the end user's choice;

“(2) block, interfere with, or degrade an end user's ability to connect to the content, applications, and services of any lawful Internet access service provider for a broadband Internet access service provider unless the end user's choice of legal devices that do not harm the network;

“(3) prevent or interfere with competition among transmission applications, service or content providers;

“(4) engage in discrimination against any lawful Internet content, application, service, or service provider, with respect to the network management practices, network performance characteristics, or commercial terms and conditions;

“(5) give preference to affiliated content, applications, or services with respect to network management practices, network performance characteristics, or commercial terms and conditions;

“(6) charge a content, application, or service provider for access to the broadband Internet access service provider's end users based on differing levels of quality of service or prioritized delivery of Internet protocol packets;

“(7) prioritize among or between content, applications, and services, or among or between different types of content, applications, and services unless the end user requests to have such prioritization;

“(8) require any lawful Internet access service provider to provide network features, functions, or capabilities that prevent or interfere with compliance with the requirements of this section; or

“(9) the undue advantage on just and reasonable terms and conditions.

“(d) Reasonable Network Management.—

“(1) In General.—Nothing in this section shall prohibit a broadband Internet access service provider from engaging in reasonable network management.

“(2) Rebuttable Presumption.—For purposes of this section, a network management practice is presumed to be reasonable for a broadband Internet access service provider only if it is—

“(A) essential for a legitimate network management purpose assuring the operation of the network;

“(B) appropriate for achieving the stated purpose;

“(C) narrowly tailored; and

“(D) among the least restrictive, least discriminatory, and least constraining of consumer choice available.

“(3) Factors to be Considered.—In determining whether a network management practice is reasonable, the Commission shall take into account the particular network architecture and any technology and operational limitations of the broadband Internet access service provider.

“(4) Limitation.—A network management practice may not be considered to be a reasonable network management if the broadband Internet access service provider charges content, applications, or other online service providers for differing levels of quality of service or prioritized delivery of Internet Protocol (IP) services or multichannel-video programming distribution services regulated under title VI of this Act that are also used by broadband Internet access service providers.

“(e) Other Regulated Services.—This section shall not be construed to prevent broadband Internet access service providers from offering interconnected Voice over Internet Protocol (VoIP) services or multichannel-video-programming distribution services regulated under title VI of this Act if such services are also used by other Internet access service providers.

“(f) Transparency.—

“(1) In General.—A provider of broadband Internet access service shall—

“(A) shall disclose publicly on its external website and at the point of sale accurate information regarding the network management practices, network performance, and commercial terms of its broadband Internet access service in plain language sufficient for end users to make informed choices regarding the purchase of such service and the content, applications, service, and device providers to develop, market, and maintain Internet offerings; and

“(B) shall disclose publicly on its external website and at the point of sale any other practices that affect communications between a user and a content, application, or service provider, including, but not limited to, an ordinary, routine use of such broadband service.

“(g) Exemptions.—The Commission may exempt certain kinds of information disclosure on the grounds that it is competitively sensitive or could compromise network security. Within 90 days after the date of enactment of the Internet Freedom, Broadband Promotion, and Consumer Protection Act of 2011, the Commission shall conclude a rulemaking proceeding to implement this subsection.

“(h) Stand-Alone Internet Access Service.—

“(1) In General.—Within 180 days after the date of enactment of the Internet Freedom, Broadband Promotion, and Consumer Protection Act of 2011, the Commission shall promulgate rules to ensure that broadband Internet access service providers do not require the purchase of voice grade telephone service, commercial mobile radio voice services, or multichannel-video-programming distribution services as a condition of purchasing any lawful Internet access service, and that the rates, terms, and conditions for providing such service are just and reasonable.

“(2) Report.—In the report required by section 706 of the Telecommunications Act of 1996 (47 U.S.C. 1302), the Commission shall collect information on the availability, pricing, and average speed and pricing of stand-alone broadband Internet access service offered by broadband Internet access providers.

“(i) Eligibility to Access Any Universal Service Fund for Broadband.—If the Commission establishes a universal service fund for broadband Internet access services, only broadband Internet access service providers that offer stand-alone broadband service shall be eligible to participate in the fund.

“(j) Enforcement, Liability, and Recovery of Damages.—

“(1) Expeditious Complaint Process.—Within 180 days after the date of enactment of the Internet Freedom, Broadband Promotion, and Consumer Protection Act of 2011, the Commission shall prescribe rules to permit any aggrieved person to file a complaint with the Commission concerning a violation of subsections (b), (c), or (g) of this section, and establish enforcement and expedited adjudicatory review procedures including the resolution of complaints not later than 90 days after the filing of a complaint, except for good cause shown.

“(2) Liability of Broadband Internet Access Service Providers for Damages.—If a broadband Internet access service provider does, or causes or permits to be done, any act, matter, or thing that is prohibited under this section, or fails to do any act, matter, or thing required by this section, then the provider shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this section, together with a reasonable counsel or attorney's fee, as determined by the Commission.

“(3) Venue.—Any person claiming to be damaged by any broadband Internet access service provider subject to the provisions of this section may either make a complaint to the Commission as provided for in paragraph (1), or may bring suit for the recovery of the damages in a district court of the United States that meets applicable requirements of title 28, United States Code. A claimant may not bring an action in a Federal district court if the claimant has filed a complaint with the Commission under paragraph (1) with respect to the same violation.

“(j) Enforcement by States.—

“(1) In General.—The chief legal officer of any State, or any other State officer authorized by law to bring actions on behalf of the residents of a State, may bring a civil action, as parens patriae, on behalf of the residents of that State in an appropriate district court of the United States to enforce this section or to impose civil penalties for violation of this section, whenever the chief legal officer or other State officer reasonably believes that the interests of the residents of the State have been or are being threatened or adversely affected by a violation of this section.

“(2) Notice.—The chief legal officer or other State officer shall serve written notice on the Commission of any civil action under paragraph (1) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

“(3) Authority to Intervene.—Upon receipt of the notice described in paragraph (2), the Commission shall have the right—

“(A) to intervene in the action;
“(B) upon so intervening, to be heard on all matters arising therein; and
“(C) to file petitions for appeal.

“(4) RULE OF CONSTRUCTION.—For purposes of this Act, a relationship under paragraph (1), nothing in this subsection shall prevent the chief legal officer or other State officer from exercising the powers conferred on that officer with respect to Wall Street industry investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

“(5) VENUE; SERVICE OF PROCESS.—
“(A) VENUE.—An action brought under paragraph (1) shall be brought in a district court that makes applicable requirements relating to venue under section 1391 of title 28, United States Code.

“(B) SERVICE OF PROCESS.—In an action brought under paragraph (1)—
“(i) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and
“(ii) a person who participated in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

“(j) COMMISSION AUTHORITY.—The Commission shall have the power and authority and all acts, make such rules and regulations and issue such orders, not inconsistent with this section, as may be necessary to implement the purposes of this section.

“(k) OTHER LAWS AND CONSIDERATIONS.—
“(1) Nothing in this section supersedes any obligation or authorization a provider or broadband Internet access service may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with the law or applicable law, or limits the provider’s ability to do so.

“(2) Nothing in this section authorizes a provider of broadband Internet access service to address copyright infringement or other unlawful activity of providers, subscribers, or users, beyond its obligations under the Digital Millennium Copyright Act (17 U.S.C. 101 note), the amendments made by that Act, and consistent other applicable laws.

“(l) STUDIES.—Within one-year after the date of enactment of this Act the Government Accountability Office shall complete and submit reports to the Senate Committee on Commerce, Science, and Transportation, and to the Committee on Energy and Commerce, on the evolution of commercial and other arrangements by which broadband Internet access service providers connect to Internet backbone providers and intermediary networks, and assess whether, as the volume and mix of Internet Protocol traffic requested by and transported to and from the customers of broadband Internet access service providers has changed over time, there is a market failure with respect to the existing market mechanisms of transit costs and non-settlement peering agreements.

“(m) DEFINITIONS.—In this section:
“(1) AFFILIATED.—The term ‘affiliated’ includes—
“(A) a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person; and
“(B) a person that has a contract or other arrangement with a contract, application, or service, or the public switched telephone network, to contribution of such content, application or services over the Internet.

“(2) BROADBAND INTERNET ACCESS.—The term ‘broadband Internet access’ means—
“(A) the ability for an end user to transmit and receive data to the Internet using Internet Protocol at peak download data transfer rates in excess of 200 kilobits per second, through an always-on connection; but
“(B) does not include dial-up access requiring an end user to initiate a call across the public switched telephone network to establish a connection.

“(3) BROADBAND INTERNET ACCESS SERVICE.—The term ‘broadband Internet access service’ means any communications service by wire or radio that provides broadband Internet access for a fee, to such classes of users as to be effectively available directly to the public.

“(4) BROADBAND INTERNET ACCESS SERVICE PROVIDER.—The term ‘broadband Internet access service provider’ means a person or entity that operates or resells and controls any facility used to provide a broadband Internet access service directly to the public, whether provided for a fee or for free, and whether provided via wire or radio, except when such service is offered as an incidental component of a communications contractual relationship.

“(5) END USER.—The term ‘end user’ means any person who, by way of a broadband service, takes and utilizes Internet services, whether provided for a fee, in exchange for an explicit benefit, or for free.

“(6) INTERNET.—The term ‘Internet’ means a system of interconnected networks that use the Internet Protocol for communications, with resources or endpoints reachable, directly or indirectly, through a global or unique Internet address assigned by the Internet Assigned Numbers Authority or any successor thereto.

“(7) INTERCONNECTED VOICE OVER INTERNET PROTOCOL (VOIP) SERVICE.—The term ‘Interconnected VoIP service’ means a service that enables real-time, two-way voice communications; requires a broadband connection from the user’s location; requires Internet protocol compatible customer premises equipment; and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network subject to section 9.3 of the Commission’s regulations (47 C.F.R. 9.3).

By Mr. KOHL (for himself, Mrs. FEINSTEIN, Mr. DURBIN, Mr. WHITEHOUSE, Ms. KLOBUCAR, Mr. FRANKEN, and Mr. WYDEN):

S. 75, a bill to require that agreements between manufacturers and retailers, distributors, or wholesalers to set the minimum price below which the manufacturer’s product or service cannot be sold violates the Sherman Act; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to introduce legislation essential to consumers receiving the best prices on every product, from electronics to clothing to groceries. My bill, the Discount Pricing Consumer Protection Act, will restore the nearly century old rule that it is illegal under antitrust law for a manufacturer to sell a minimum price to a retailer cap to sell the manufacturer’s product, a practice known as "resale price maintenance" or "vertical price fixing." This bill will ensure that consumers can obtain the discounts at the very time they need them the most.

In June 2007, overturning a 96-year-old precedent, a narrow 5-4 Supreme Court majority in the Leegin case turned the Sherman Act on its head to overturn this basic rule of the marketplace which has served consumers well for nearly a century. My bill—identical to legislation I introduced in the last Congress—will correct this misinterpretation of antitrust law and restore the per se ban on vertical price fixing. My bill has been endorsed by the National Association of Attorneys General, 38 state attorneys general, as well as numerous antitrust experts, including former FTC Chairman Pitofsky and former FTC Commissioner Harboun, and the leading consumer groups, including Consumers Union, the Consumers Federation of America, and the American Antitrust Institute. This legislation passed the Judiciary Committee last year.

The reasons for this legislation are compelling. Allowing manufacturers to cut off that prices were put threat- en the very existence of discounting and discount stores, and lead to higher prices for consumers. For nearly a century the rule against vertical price fix- ing has kept price down at the most competitive price. Many credit this rule with the rise of today’s low prices, discount retail giants—stores like Target, Best Buy, Walmart, and the Internet sites Amazon and eBay, which offer consumers a wide array of highly desired products at dis- count prices.

Ample evidence exists of the per- nicious effect of allowing vertical price fixing. For nearly 40 years until 1975 when the Congress passed the Consumer Goods Pricing Act, Federal law per- mitted States to enact so-called "fair trade" laws legalizing vertical price fixing. Studies the Department of Jus- tice conducted in the late 1960s indi- cated that prices were 18-27 percent higher in the States that al- lowed vertical price fixing than the States that had not passed such "fair trade" laws, costing consumers at least $2.1 billion per year at that time. The trend of economic growth in the intervening decades, the likely harm to consumers if vertical price fixing were permitted is even greater today. In his dissenting opinion in the Leegin case, Justice Breyer esti- mated that if only 10 percent of manu- facturers engaged in vertical price fix- ing, the volume of commerce affected today would be $300 billion, translating into retail bills that would average $750 to $1,000 higher in the average family of four every year.

The experience of the last three years since the Leegin case has begun to confirm our fears regarding the dan- gers from permitting vertical price fix- ing. Wall Street banks and investment companies reported that more than 5,000 companies have implemented minimum pricing policies. A new business—known as "internet monitors"—has materialized for companies that scour the Internet in search of retailers selling products at a bargain. When such bargain sellers are detected, the manufacturer is alert- ed so that they can demand the sell-
end its discounting. There have been many reports of everything from consumer electronics and video games to baby products and toys, rental cars and bicycles being subject to minimum retail pricing policies.

Defenders of the Leegin decision argue that today's giant retailers such as Wal-Mart, Best Buy or Target can “take care of themselves” and have sufficient market power to fight manufacturer efforts to impose retail prices. Whatever the merits of that argument, I am particularly worried about the effect of this new rule permitting minimum vertical price fixing on the next generation of discount retailers. If new discount retailers can be prevented from selling products at a discount at the behest of an established retailer worried about the competition, we will imperil an essential element of retail competition so beneficial to consumers.

In overturning the per se ban on vertical price fixing, the Supreme Court in Leegin announced this practice should instead be evaluated under what is known as the “rule of reason.” Under the rule of reason, a business practice is illegal only if it imposes an “unreasonable restraint of competition.” The burden is on the party challenging the practice to prove in court that the anti-competitive effects of the practice outweigh its justifications. In the words of the Supreme Court, the party challenging the practice must establish the restraint’s “history, nature and effect.” Whether the businesses involved possess market power “is a further, significant consideration” under the rule of reason.

In short, establishing that any specific example of vertical price fixing violates the rule of reason is an onerous and difficult burden for a plaintiff in an antitrust case. Parties complaining about vertical price fixing are likely to be small discount stores or consumers with limited resources to engage in lengthy and complicated antitrust litigation. These plaintiffs are unlikely to possess the facts and complicated economic evidence necessary to make the extensive showing necessary to prove a case under the “rule of reason.” In the words of former FTC Commissioner Pamela Jones Harbour, applying the rule of reason to vertical price fixing “is a virtual suicide for per se legality.”

Our Antitrust Subcommittee conducted two extensive hearings into the Leegin decision and the likely effects of abolishing the ban on vertical price fixing in the last two Congresses. Both former FTC Chairman Robert Pitofsky and former FTC Commissioner Harbour strongly endorsed restoring the ban on vertical price fixing. Marcy Syms, CEO of the Syms discount clothing stores, and a senior executive of the Burlington Coat Factory discount chain testified about the dangers to the ability of discounters such as Syms to survive after abolition of the rule against vertical price fixing.

Ms. Syms also stated that “it would be very unlikely for her to bring an antitrust suit” challenging vertical price fixing under the rule of reason because her company “would not have the resources, knowledge or a strong enough position in the market place to make such an action financially viable.” Our examination of this issue has produced compelling evidence for the continued necessity of a ban on vertical price fixing to protect discounting and low prices for consumers.

The Discount Pricing Consumer Protection Act will accomplish this goal. My legislation is quite simple and direct. It would simply add one sentence to Section 1 of the Sherman Act—the basic provision addressing combines in restraint of trade—a statement that any agreement with a retailer, wholesaler or distributor setting a price below which a product or service cannot be sold violates the law. No balancing or protracted legal proceedings will be necessary to make a manufacturer enter into such an agreement it will unquestionably violate antitrust law. The uncertainty and legal impediments to antitrust enforcement of vertical price fixing will be replaced by simple and clear legal rule—a legal rule that will promote low prices and discount competition to the benefit of consumers every day.

In the last few decades, millions of consumers have benefited from an explosion of retail competition from new manufacturers efforts to impose retail prices. In the last few decades, millions of consumers have benefited from an explosion of retail competition from new manufacturers efforts to impose retail prices. I urge my colleagues 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:

SEC. 2. STATEMENT OF FINDINGS AND DECLARATION OF PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) From 1911 in the Dr. Miles decision until June 2007 in the Leegin decision, the Supreme Court had ruled that the Sherman Act forbid in all circumstances the practice of a manufacturer setting a minimum price below which a retailer or which any retailer or distributor could not sell the manufacturer’s product (the practice of “resale price maintenance” or “vertical price fixing”)

(2) The rule as illegal for forcing resale price maintenance promoted price competition and the practice of discounting all to the substantial benefit of consumers and the health of the economy.

(3) Many economic studies showed that the rule against resale price maintenance led to lower prices and promoted consumer welfare.

(4) Abandoning the rule against resale price maintenance will likely lead to higher prices paid by consumers and substantially lower economic growth.

(5) The 5-4 decision of the Supreme Court majority in Leegin incorrectly interpreted the Sherman Act and improperly disregarded 96 years of antitrust law precedent in overturning the per se rule against resale price maintenance.

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

(1) to correct the Supreme Court’s mistaken interpretation of the Sherman Act in the Leegin decision; and

(2) to restore the rule that agreements between manufacturers and retailers, distributors or wholesalers to set the minimum price below which the manufacturer’s product or service cannot be sold violates the Sherman Act.

SEC. 3. PROHIBITION ON VERTICAL PRICE FIXING.

(a) AMENDMENT TO THE SHERMAN ACT.—Section 1 of the Sherman Act (15 U.S.C. 1) is amended by adding after the first sentence the following: “Any contract, combination, conspiracy or agreement setting a minimum price below which a product or service cannot be sold by a retailer, wholesaler, or distributor shall violate this Act.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 90 days after the date of enactment of this Act.

By Mrs. Hutchison (for herself, Mr. Begich, Mr. Barrasso, Mr. Cornyn, Mr. Alexander, and Mr. Thune).

S. 80. A bill to provide a permanent deduction for State and local general sales taxes; to the Committee on Finance.

Mrs. Hutchison. Mr. President, I am pleased to introduce a bill to permanently correct an injustice in the tax code that has harmed citizens in many States of this great Nation.

State and local governments have various alternatives for raising revenue. Some levy income taxes, some use sales taxes, and some combine the two. The citizens who pay State and local income taxes have been able to offset some of their Federal income taxes by receiving a deduction for those State and local income taxes. Before 1986, taxpayers also had the ability to deduct their sales taxes.

Unfortunately, citizens of some States were treated differently after
1986 when the deduction for State and local sales taxes was eliminated. This discriminated against those living in States, such as my home State of Texas, with no income taxes. It is important to remember the lack of an income tax does not mean citizens in these States do not pay State taxes; revenues are simply collected differently.

It is unfair to give citizens from some States a deduction for the revenue they provide their State and local governments, while not doing the same for citizens in other States. Federal tax law should not treat people differently on the basis of State residence and differing tax collection methods, and it should not provide an incentive for States to establish income taxes over sales taxes. Furthermore, the Texas Comptroller estimates this inequity has a significant impact on Texas. According to the Texas Comptroller, extending the deduction would save Texans a projected $1.2 billion a year, or an average of $520 per filer claiming the deduction. The Texas Comptroller also estimates the federal tax deduction is associated with 15,700 to 25,700 Texas jobs and $1.1 billion to $1.4 billion in gross state product. Recognizing the inequity in the tax code, Congress reinstated the sales tax deduction in 2004 and authorized it for 2 years. Congress further extended the sales tax deduction in 2006 and 2008, respectively. On January 1, 2010, however, the sales tax deduction expired, and for much of this past year, many Americans once again faced the prospect of paying Federal income taxes on their State and local sales taxes. Fortunately, under the recent agreement to extend the broader tax relief for all Americans, Congress staved off the return of the sales tax deduction by extending it for 2 years, retroactive to January 1, 2010. However, this deduction will not be extended through 2012 and we must act to prevent the inequity from returning.

The legislation I am offering today will fix this problem for good by making the State and local sales tax deduction permanent. This will permanently end the discrimination suffered by my fellow Texans and citizens of other States who do not have the option of an income tax deduction.

This legislation is about reestablishing equity to the tax code and defending the important principle of eliminating taxes on taxes. I hope my fellow Senators will support this effort and pass this legislation, and I appreciate the backing of Senators BARRASSO, BEGICH, CORYN, ALFORD, ENZI and THUNE who have already signed on as co-sponsors.

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. 97**

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 “San Francisco Bay Restoration Act”.

**SEC. 2. SAN FRANCISCO BAY RESTORATION GRANT PROGRAM.**

Title I of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) is amended by adding at the end the following:

"(a) Definitions.—In this section:

"(1) ANNUAL PRIORITY LIST.—The term ‘annual priority list’ means the annual priority list compiled under subsection (c).

"(2) COMPREHENSIVE PLAN.—The term ‘comprehensive plan’ means—

(A) the comprehensive conservation and management plan approved under section 320 for the San Francisco Bay estuary; and

(B) any amendments to that plan.

"(3) ESTUARY PARTNERSHIP.—The term ‘Estuary Partnership’ means the San Francisco Estuary Partnership, the entity that is designated as the management conference under section 320.

(B) ANNUAL PRIORITY LIST.—

(1) IN GENERAL.—After providing public notice, the Administrator shall annually complete a priority list identifying and prioritizing the activities, projects, and studies intended to be funded with the amounts made available under subsection (c).

(2) INCLUSIONS.—The annual priority list compiled under paragraph (1) shall include—

(A) information on the activities, projects, programs, or studies specified under subparagraph (A), including a description of—

(i) the identities of the financial assistance recipients; and

(ii) the communities to be served; and

(C) any amendments to that plan.

"(3) ESTUARY PARTNERSHIP.—The term ‘Estuary Partnership’ means the San Francisco Estuary Partnership, the entity that is designated as the management conference under section 320.

(1) FUNDING.—

(A) MAXIMUM AMOUNT OF GRANTS; NON-FEDERAL SHARE.—

(i) not less than 25 percent; and

(ii) provided from non-Federal sources.

(B) NON-FEDERAL SHARE.—The non-Federal share of the total cost of any eligible activities that are carried out using amounts provided under this section shall be—

(1) not less than 25 percent; and

(2) provided from non-Federal sources.

(C) AMOUNTS PROVIDED.—Of the amount made available to carry out this section for a fiscal year, the Administrator
shall use not more than 5 percent to pay ad-
ministrative expenses incurred in carrying out this section.
"(3) RELATIONSHIP TO OTHER FUNDING.—
Nothing in this section limits the eligibility of the Estuary Partnership to receive fund-
ing under section 320(g).
"(4) PROHIBITION.—No amounts made avail-
able under subsection (c) may be used for the administration of a management conference under section 320.".

By Mr. BINGAMAN (for himself and Ms. MURKOWSKI):
S. 99. A bill to promote the produc-
tion of molybdenum-99 in the United States for medical isotope production, and to phase out the import of highly enriched uranium for the production of medical isotopes; to the Committee on Energy and Natural Re-
sources.

Mr. BINGAMAN. Mr. President, today I am introducing the American Medical Isotopes Production Act of 2011. The purpose of the bill is to pro-
vide certainty in developing a domestic supply of molybdenum-99, which is used to produce technetium-99m, the most widely used medical isotopes in the United States. Right now we im-
port all of our molybdenum-99 from outside the United States, primarily Canada and the Netherlands, from re-
actors that are old and that will most likely be shut down within the 10 years. In addition, this bill moves us away from using highly enriched bomb-
grade uranium targets to those that are low-enriched; that is, that are less than 20 percent in the fissile isotope uranium-235. I think this is a very im-
portant nonproliferation goal because the world is currently in discussion with Iran on replacing fuel and targets from their medical isotopes reactor; we should lead by example in dealing in this area with countries like Iran that can now enrich nuclear fuel.

The Committee on Energy and Nat-
ural Resources held a very detailed 
workshop on this issue today, and I am very pleased by the progress made in achieving the program goals.

(1) The Secretary of Energy certifies to the Committee on Energy and Commerce of the House of Representa-
tives and the Committee on Energy and Nat-
ural Resources of the Senate that—
(A) there is insufficient supply of molybdenum-99 produced with the use of highly enriched uranium available to satisfy the domestic United States market; and
(B) the export of United States-origin highly enriched uranium for the purposes of medical isotope production is the most effective temporary means to increase the supply of molybdenum-99 to the domestic United States market.

"d. To ensure public review and comment, the development of the certification de-
scribed in subsection c. shall be carried out through announcement in the Federal Reg-
ister.

"e. At any time after the expiration of export licenses provided for in subsection b, be-
comes effective, if there is a critical short-
age in the supply of molybdenum-99 avail-
able to satisfy the domestic United States medical isotope needs, the Secretary and the Committee on Energy and Commerce may request that the period of no more than 12 months, if-
the Secretary of Energy certifies to the Congress that the export of United States-origin highly enriched uranium for the purposes of medical isotope production is the only effective temporary means to in-
ccrease the supply of molybdenum-99 nec-

tary to meet United States medical isotope needs during that period; and

"(2) the Congress on not later than 30 days after consideration of a joint resolution approving the temporary suspension of the restriction of export licenses.

"f. As used in this section—
(1) the term ‘alternative nuclear reactor fuel or target’ means a nuclear reactor fuel or target which is enriched to less than 20 percent in the isotope U-235;
(2) the term ‘highly enriched uranium’ means uranium enriched to 20 percent or more in the isotope U-235;
(3) a fuel or target ‘can be used’ in a nu-
clear research or test reactor and ‘will lead to a large per-
centage increase in the total cost of oper-
ating the reactor; and

S188
CONGRESSIONAL RECORD — SENATE
January 25, 2011

Mr. President, I ask unanimous con-
sent that the text of the bill and let-
ters of support be printed in the 
RECORD.

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

S. 99

Be it enacted by the Senate and House of Repre-
sentatives of the United States of America in Congress assembled,
“(4) the term ‘medical isotope’ includes molybdenum-99, iodine-131, xenon-133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.”

SEC. 4. REPORT ON DISPOSITION OF EXPORTS.
Not later than 1 year after the date of the enactment of this Act, the Chairman of the Nuclear Regulatory Commission, after consulting with other relevant agencies, shall submit to the Congress a report detailing the current disposition of previous United States exports of highly enriched uranium, including—

(1) their location;
(2) whether they are irradiated;
(3) whether they have been used for the purpose stated in their export license;
(4) whether they have been used for an alternative purpose; if so, whether such alternative purpose has been explicitly approved by the Commission;
(5) the year of export, and reimportation, if applicable;
(6) their current physical and chemical forms; and
(7) whether they are being stored in a manner which adequately protects against theft and unauthorized access.

SEC. 5. DOMESTIC MEDICAL ISOPODE PRODUCTION TARGETS
(a) IN GENERAL.—Chapter 10 of the Atomic Energy Act of 1954 (42 U.S.C. 2131 et seq.) is amended by adding at the end the following new subchapter:

“SEC. 112. DOMESTIC MEDICAL ISOPODE PRODUCTION.—a. The Commission may issue a license or grant an amendment to an existing license, for the use in the United States of highly enriched uranium as a target for medical isotope production in a nuclear reactor, only if—

(1) the Commission determines that—
(A) there is no alternative medical isotope production target, enriched in the isotope U-235 to less than 20 percent, that can be used in that reactor; and
(B) the proposed recipient of the medical isotope production target has provided assurances that, whenever an alternative medical isotope production target can be used in that reactor, it will use that alternative in lieu of highly enriched uranium; and

(2) the Secretary of Energy has certified that the United States Government is actively supporting the development of an alternative medical isotope production target that can be used in that reactor.

b. As used in this section—

(1) the term ‘alternative medical isotope production target’ means a nuclear reactor target which is enriched to less than 20 percent of the isotope U-235;

(2) the term ‘medical isotope production target’ means a nuclear reactor target which is enriched to less than 20 percent of the isotope U-235; and

(3) the term ‘medical isotope’ includes molybdenum-99, iodine-131, xenon-133, and other radioactive materials used to produce a radiopharmaceutical for diagnostic, therapeutic procedures or for research and development.

(b) TABLE OF CONTENTS.—The table of contents for the Atomic Energy Act of 1954 is amended by inserting the following new item at the end of the items relating to chapter 10 of title I:

“Sec. 112. Domestic medical isotope production targets.”

SEC. 6. ANNUAL DEPARTMENT OF ENERGY REPORTS.
The Secretary of Energy shall report to Congress no later than one year after the date of enactment of this Act, and annually thereafter for 5 years, on Department of Energy actions to support the production in the United States, without the use of highly enriched uranium, of molybdenum-99 for medical uses. These reports shall include the following:

(1) For medical isotope development projects—
(A) the names of any recipients of Department of Energy support under section 2 of this Act;
(B) the amount of Department of Energy funding committed to each project;
(C) the milestones to be reached for each project during the year for which support is provided;
(D) how each project is expected to support the increased production of molybdenum-99 for medical uses;
(E) the findings of the evaluation of projects under section 2(a)(2) of this Act; and
(F) that any Department of Energy funds used to support projects under section 2 of this Act.

(2) A description of actions taken in the previous year by the Secretary of Energy to ensure the safe disposition of radioactive waste from use of molybdenum-99 targets.

SEC. 7. NATIONAL ACADEMY OF SCIENCES REPORT.
The Secretary of Energy shall enter into an arrangement with the National Academy of Sciences to conduct a study of the state of molybdenum-99 production and utilization, to be provided to the Congress not later than 5 years after the date of enactment of this Act. This report shall include the following:

(1) For molybdenum-99 production—
(A) a list of all facilities in the world producing molybdenum-99 for medical uses, including an indication of whether these facilities use highly enriched uranium in any way;
(B) a review of international production of molybdenum-99 over the previous 5 years, including—
(i) whether any new production was brought online;
(ii) whether any facilities halted production unexpectedly; and
(iii) whether any facilities used for production were decommissioned or otherwise permanently removed from service; and
(C) an assessment of progress made in the previous 5 years toward establishing domestic production of molybdenum-99 for medical uses, including the extent to which other medical isotopes that have been produced with molybdenum-99, such as iodine-131 and xenon-133, are being used for medical purposes.

(2) An assessment of the progress made by the Department of Energy and others to eliminate all worldwide use of highly enriched uranium in reactor fuel, reactor targets, and medical isotope production facilities.

SEC. 8. DEFINITIONS.
In this Act the following definitions apply:

(1) HIGHLY ENRICHED URANIUM.—The term “highly enriched uranium” means uranium enriched to 20 percent or more in the isotope U-235; and

(2) LOW ENRICHED URANIUM.—The term “low enriched uranium” means uranium enriched to less than 20 percent in the isotope U-235.

SEC. 9. BUDGETARY EFFECTS.
The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation for this Act,” submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Hon. Harry Reid, Senate Majority Leader, U.S. Senate, U.S. Capitol, S-227, Washington, DC.
Hon. Jeff Bingaman, Chairman, Senate Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.
Hon. Lisa Murkowski, Ranking Member, Senate Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MAJORITY LEADER REID, MINORITY LEADER MCCONNELL, CHAIRMAN BINGAMAN, AND RANKING MEMBER MURKOWSKI: The Societal of Nuclear Medicine (SNM), a leading, multidisciplinary international scientific and professional organization representing more than 17,000 physician, technologist, and scientist members dedicated to promoting the science, technology, and practical applications of molecular imaging and cancer testing, respectfully requests that the Senate to take up and pass the American Medical Isotopes Production Act of 2009 (H.R. 3276) as a stand-alone bill or as an amendment to an appropriate legislative vehicle. Recent disruptions in the international supply of Molybdenum-99 (Mo-99) have highlighted the urgent need to ensure supply security for the U.S. H.R. 3276 would help to ensure a domestic supply of Mo-99 over the long term and curtail the use of highly-enriched uranium (HEU) in radionuclide production as a non-proliferation strategy to deter terrorism.

As you know, the House of Representatives approved this bill by an overwhelming vote of 409—17 on November 5, 2009 and the Senate Energy and Natural Resources Committee reported this bill favorably with amendment on January 25, 2011. You have stated that rapid passage of this legislation is essential to ensure Americans’ access to vital medical radionuclides and give patients timely access to the appropriate healthcare, specifically imaging.

Molybdenum-99 (Mo-99) decays into Technetium-99m (Tc-99m), which is used in approximately 16 million nuclear medicine procedures each year in the U.S. To-99m is used in the detection and staging of cancer, detection of heart disease, detection of thyroid disease, study of brain and kidney function, and imaging of stress fractures. In addition to improving the understanding of disease, physicians can actually see how a disease is affecting other functions in the body. Imaging with Tc-99m is an important part of nuclear medicine care. SNM, along with thousands of nuclear medicine physicians in the U.S., has, over the course of the last two years, been disturbed about supply interruptions of Mo-99 and then stored for long periods of time. Un-

SNM,
counter, nuclear reactors produce radioactive isotopes that are processed and provided to hospitals and other nuclear medicine facilities based on demand. Any disruption to this supply chain can wreak havoc on patient access to important medical imaging procedures.

In order to ensure that patient needs are not compromised, a continuous reliable supply of medical radioisotopes is essential.

Currently there are no facilities in the U.S. that are dedicated to manufacturing Mo–99 for Mo–99/Tc–99m generators. The United States must develop domestic capabilities to produce Mo–99 and not rely solely on foreign suppliers. The legislation encourages domestic production of Mo–99 for medical isotopes without HEU in two different ways. First, it would facilitate the operation of new facilities by granting the government the ability "to retain responsibility for the final disposition of radioactive waste" under uranium-lease agreements. The Department of Energy (DoE) does not currently have this ability and cannot assume the responsibility for domestic supply of medical radioisotopes.

The bill also authorizes government cost-sharing which would subsidize construction of production facilities. Without the multi-year authorization that is included in H.R. 3276, investments in domestic productive facilities will be prohibitively uncertain.

There is significant support for passing this piece of legislation, which has been endorsed by a variety of organizations. Further, in a House Energy and Environment Subcommittee on September 9, 2009, Parrish Staples, the U.S. official who oversees medical isotope production at DoE’s National Nuclear Security Administration (NNSA) testified as follows: "NNSA is working on several Cooperative Agreements to potential commercial Mo–99 producers, whose projects are in the most advanced stages of development, accelerating their efforts to begin producing Mo–99 in quantities adequate to the U.S. medical community’s demand by the end of 2013. . . . The American Medical Isotopes Production Act of 2009 is crucial to ensuring the success of these efforts to create development of a domestic supply of Mo–99 with the use of HEU.

At the subsequent Senate hearing, Dr. Staples stated: "Currently, we are working or we would intend to work that we would develop four independent technologies, each capable of supplying up to 50 percent of the U.S. demand. Obviously, in theory, that means that if each of these are successful, we could supply the global requirement for this isotope."—roughly twice the U.S. domestic demand under the legislation. If each of the projected U.S. domestic production capacity could satisfy U.S. demand prior to the cutoff of HEU exports, even if only half of the four main projects succeed." Passage of this legislation is necessary to address the future needs of patients by promoting the production of Mo–99 in the United States. We thank you for your efforts and look forward to continuing to work with you on this important issue. Should you have any further questions, please contact Cindy Tomlinson, Associate Director, Health Policy and Regulatory Affairs at either ctomlinson@snm.org or 703.336.1187.

Sincerely,

DOMINIQUE DELBEKE,
President.
short six-hour half-life of Tc–99m, while benefi
tial to patients and health care profes-
sionals, precludes any efforts to maintain an
inventory. In addition, the domestic supply of
Mo–99 — used in the production of Tc–99m—gen-
erators is entirely dependent upon aging foreign reac-
tors that have faced extended shutdowns for repair and maintenance.

As a consequence, the U.S. supply has been repeatedly and significantly disrupted. Many patients who need imaging with Tc–99m-based radiopharmaceuticals are now facing lengthy delays in the availability of nuclear medicine imaging, or being forced to resort to alternative diagnostic and therapeutic procedures due to the potential of more invasive procedures (with possible higher clinical risks to patients), greater radio-
dation dosage, lower accuracy, and higher costs.

Additionally, the reliance on foreign reac-
tors for the supply of Mo–99 requires the U.S.
to ship high-enriched uranium, material of interest for use in nuclear terrorism, out of the country. Domestic production of Mo–99 will eliminate the risk that this nuclear ma-
terial can be diverted for terrorists’ use, thus increasing the effectiveness of the U.S. pro-
gram for non-proliferation of nuclear mate-
rials.

The coalition believes the initiative being
led by the National Nuclear Security Admin-
istration through the Global Threat Reduc-
tion Initiative with oversight and inter-
agency coordination by the Office of Science and Technology Policy has the capability to
achieve the establishment of a reliable do-

mestic production of Mo–99 within the next ten
years. The Congress has appropriated suf-
ficient support for fiscal year 2010. The re-

main ing task is to obtain congressional sup-
port through authorizing legislation that will allow the administration’s program into the future.

In order to avoid compromising patient
care and increasing medical costs, a continuous and reliable supply of medical radioisotopes is clearly essential. It is also critical that domestic production capability for Mo–99 be developed. H.R. 3276 provides the needed support to accelerate the process of conversion so that the industry can move more aggressively in this direction and be able to meet the time frame highlighted in this bill.

Senator, we hope you will join the pa-
tients, physicians, nuclear non-proliferation community, patient advocates, and our coalition of professional organizations to
quickly enact H.R. 3276. We would welcome the opportunity to answer any question you or your staff may have about the bill or the medical isotope industry. Thank you.

Sincerely,
Michael G. Graham, MD, President, SNM; Michael G. Herman, Ph.D, FAAPM, FACMP, President, The American Association of Physicians in Medicine, AAFPM; James H. Thrall, MD, FACR, Chairman, Board of Chancellors, ASCPT; Chairman, University of Texas at Austin; Howard W. Dickson, CHF, President, Health Physics Society, HPS; Marvin S. Fortel, President and Chief Execu-

tive Officer, American Society for Radiation Oncology, ASTRO; Thomas Sanders, PhD, President, American Nuclear Society, ANS; Myron C. Cohen, MD, MPH, President, American Society of Nuclear Cardi-

ology, ASNC; Laura T. Thevenot, CAE, Chief Executive Officer, American Society for Radiation Oncology, ASTRO; Howard W. Dickson, CHF, President, Health Physics Society, HPS; Marvin S. Fortel, President and Chief Execu-
tive Officer, American Society for Radiation Oncology, ASTRO; Myron C. Cohen, MD, MPH, President, American Society of Nuclear Cardi-

ology, ASNC; Laura T. Thevenot, CAE, Chief Executive Officer, American Society for Radiation Oncology, ASTRO; Howard W. Dickson, CHF, President, Health Physics Society, HPS; Marvin S. Fortel, President and Chief Execu-
tive Officer, American Society for Radiation Oncology, ASTRO; Myron C. Cohen, MD, MPH, President, American Society of Nuclear Cardi-

ology, ASNC; Laura T. Thevenot, CAE, Chief Executive Officer, American Society for Radiation Oncology, ASTRO; Howard W. Dickson, CHF, President, Health Physics Society, HPS; Marvin S. Fortel, President and Chief Execu-
tive Officer, American Society for Radiation Oncology, ASTRO; Myron C. Cohen, MD, MPH, President, American Society of Nuclear Cardi-

ology, ASNC; Laura T. Thevenot, CAE, Chief Executive Officer, American Society for Radiation Oncology, ASTRO; Howard W. Dickson, CHF, President, Health Physics Society, HPS; Marvin S. Fortel, President and Chief Execu-
tive Officer, American Society for Radiation Oncology, ASTRO; Myron C. Cohen, MD, MPH, President, American Society of Nuclear Cardi-

ology, ASNC; Laura T. Thevenot, CAE, Chief Executive Officer, American Society for Radiation Oncology, ASTRO; Howard W. Dickson, CHF, President, Health Physics Society, HPS; Marvin S. Fortel, President and Chief Execu-
tive Officer, American Society for Radiation Oncology, ASTRO; Myron C. Cohen, MD, MPH, President, American Society of Nuclear Cardi-

ology, ASNC; Laura T. Thevenot, CAE, Chief Executive Officer, American Society for Radiation Oncology, ASTRO; Howard W. Dickson, CHF, President, Health Physics Society, HPS; Marvin S. Fortel, President and Chief Execu-
tive Officer, American Society for Radiation Oncology, ASTRO; Myron C. Cohen, MD, MPH, President, American Society of Nuclear Cardi-

ology, ASNC; Laura T. Thevenot, CAE, Chief Executive Officer, American Society for Radiation Oncology, ASTRO; Howard W. Dickson, CHF, President, Health Physics Society, HPS; Marvin S. Fortel, President and Chief Execu-
tive Officer, American Society for Radiation Oncology, ASTRO; Myron C. Cohen, MD, MPH, President, American Society of Nuclear Cardi-

ology, ASNC; Laura T. Thevenot, CAE, Chief Executive Officer, American Society for Radiation Oncology, ASTRO; Howard W. Dickson, CHF, President, Health Physics Society, HPS; Marvin S. Fortel, President and Chief Execu-
tive Officer, American Society for Radiation Oncology, ASTRO; Myron C. Cohen, MD, MPH, President, American Society of Nuclear Cardi-

ology, ASNC; Laura T. Thevenot, CAE, Chief Executive Officer, American Society for Radiation Oncology, ASTRO; Howard W. Dickson, CHF, President, Health Physics Society, HPS; Marvin S. Fortel, President and Chief Execu-
tive Officer, American Society for Radiation Oncology, ASTRO; Myron C. Cohen, MD, MPH, President, American Society of Nuclear Cardi-

ology, ASNC; Laura T. Thevenot, CAE, Chief Executive Officer, American Society for Radiation Oncology, ASTRO; Howard W. Dickson, CHF, President, Health Physics Society, HPS; Marvin S. Fortel, President and Chief Execu-
tive Officer, American Society for Radiation Oncology, ASTRO; Myron C. Cohen, MD, MPH, President, American Society of Nuclear Cardi-

ology, ASNC; Laura T. Thevenot, CAE, Chief Executive Officer, American Society for Radiation Oncology, ASTRO; Howard W. Dickson, CHF, President, Health Physics Society, HPS; Marvin S. Fortel, President and Chief Execu-
tive Officer, American Society for Radiation Oncology, ASTRO; Myron C. Cohen, MD, MPH, President, American Society of Nuclear Cardi-

ology, ASNC; Laura T. Thevenot, CAE, Chief Executive Officer, American Society for Radiation Oncology, ASTRO; Howard W. Dickson, CHF, President, Health Physics Society, HPS; Marvin S. Fortel, President and Chief Execu-
tive Officer, American Society for Radiation Oncology, ASTRO; Myron C. Cohen, MD, MPH, President, American Society of Nuclear Cardi-

ology, ASNC; Laura T. Thevenot, CAE, Chief Executive Officer, American Society for Radiation Oncology, ASTRO; Howard W. Dickson, CHF, President, Health Physics Society, HPS; Marvin S. Fortel, President and Chief Execu-
tive Officer, American Society for Radiation Oncology, ASTRO; Myr
parallel just a few miles away. During the span of the pilot program, the number of northbound trucks on Route 201 decreased by roughly 90 percent. These trucks were using the interstate where they belong.

I will tell you that since the pilot project expired, so many of my constituents have talked to me about the return of these heavy trucks to the residential neighborhoods in which they live for years. Our downtown Portland, Orono, Brewer, Freeport, and other towns throughout our State. The fact is, this kind of road congestion caused by diverting these heavy trucks into downtowns and along secondary roads can lead to tragedy. A study conducted by a nationally recognized traffic consulting firm found that the crash rate of semitrailer trucks on Maine’s secondary roads were 7 to 10 times higher than on the turnpike. It estimated that allowing these trucks back to the interstate would result in three fewer fatal crashes each year. Public safety agencies in Maine, including the Maine State Police, have long supported my efforts to bring about this change. In fact, the State Police chief joined me at a press conference last week where he spoke eloquently about the safety implications for downtown Bangor.

In 2010, as a result of this pilot project, people throughout our State saw their roads less congested, our States safer, our air cleaner, and, most important, our businesses more competitive. That is why I am so committed to ensuring that these improvements are also allowed to continue and are made permanent.

This legislation simply is common sense. It will benefit our economy as well as lower fuel costs and make our roads safer for both tourists and pedestrians. In fact, last summer, we were able to provide concrete evidence from this pilot project showing why this bill should become law.

I am grateful for the support and leadership of a colleague from Vermont and the steadfast support from Maine’s senior Senator as well. I urge its swift passage. This is the highest priority I have for the State of Maine this year.

Mr. President, I ask unanimous consent to have printed in the RECORD a number of letters I have received endorsing this bill. These letters are from the Maine Motor Transport Association, the City of Bangor’s chief of police, the Maine Chamber of Commerce, the Northeast Region for the Forest Resources Association, and from a well-known trucking firm in Maine, H.O. Bouchard.

In addition, I expect to have a letter from the Governor of Maine later today that I will also ask unanimous consent to have printed in the RECORD.

MAINE MOTOR TRANSPORT ASSOCIATION,
Augusta, Maine, January 21, 2011.

Hon. Susan Collins,
U.S. Senate, Dirksen Senate Office Building.
Washington, D.C.

DEAR SENATOR COLLINS: Your introduction of the bill to permanently increase the truck weight limit on Maine highways comes as great news for the trucking industry, for shippers and consumers who rely on efficient transportation of goods and for the people of our state. We have heard from many of our members who were thrilled to operate on the entire interstate system in Maine under the recently-expired pilot project. There were frustrations with the number of vehicles who live along the previously traveled truck routes who were happy to have them off Maine’s secondary roads. Your support for this bill is crucial. The improvements from the pilot project have been tremendous and we very much appreciate your continued efforts to educate your peers in the Senate.

As you know, when Federal Highway froze interstate weight limits in 1998 and allowed the Maine Turnpike and southern portions of the interstates to increase their weight limits, it was much much about the same things that concern some people from other states now—safety and the impact on our infrastructure. Results in Maine have shown these concerns were unnecessary as there is ample proof of the improved safety and infrastructure costs and all we ask is for Maine to close the donut hole that puts us at a competitive disadvantage with our neighbors all around us. New Hampshire, Massachusetts and Canada already have higher weight limits on their entire interstate system which put our businesses at a disadvantage, a fact not lost on the hundreds of small trucking companies materials to the few mills still left in this state. A strong argument can be made that this is an economic development issue with many jobs at stake for the mills that rely on efficient transportation with both their inbound freight and the outbound movement of goods to markets outside Maine.

Your proposal to replace two trucks operating at 60,000 pounds to replace two trucks operating at 100,000 pounds to haul the same amount of freight.

In fact, a study by the American Transportation Research Institute (ATRI) that was completed by the Maine DOT found that the fuel efficiency of these rigs would improve up to 21 percent by allowing state weight limits on the entire highway system and emissions would decrease from 6 to 11 percent. Extrapolating their findings over an entire week resulted in savings of as much as 675 gallons of fuel, up to 4,132 pounds to replace two trucks operating at 100,000 pounds to haul the same amount of freight.

Safety, however, is the most important reason to embrace this pilot project and we are proud that the safety record of the trucking industry continues to improve. Federal Highway Administration statistics show that crashes have decreased 33 percent and the number of fatalities have decreased 37 percent compared to the old safety records in 1975. Not resting on our accomplishments, the trucking industry is actively working on ways we can improve highway safety by improving driver performance, their attention to vehicle productivity. The Maine Motor Transport Association, our members and our partner trade associations will work diligently to provide you with additional statistics and information as they become available. Your work on this issue, especially getting the pilot project implemented last year, shows how not only you but other members and we continue to appreciate your efforts to address it in your recently proposed bill.

If Maine is going to be able to compete in a regional and global economy, it is essential that we encourage efficient, effective transportation such as the one you have proposed. Thank you.

Sincerely,

BRIAN D. PARKE
President and CEO.

CITY OF BANGOR, MAINE,
POLICE DEPARTMENT,
January 24, 2011.

Hon. SUSAN COLLINS,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR COLLINS: First and foremost, thank you again for being a champion for the effort to increase the truck weight limits on Maine’s interstate highways. Without your diligence and dedication to this extremely important matter, any further progress to correct the inconceivable injustice of the current law would be most assuredly abandoned for the foreseeable future. Your legislation, which would allow trucks weighing up to 100,000 pounds on all of Maine’s Interstate highways, would correct this injustice once and for all.

I would like to reiterate what I have previously stated regarding the present law that trucks weighing over 80,000 pounds of Maine’s interstate highways. These trucks do not belong on Maine’s city streets and secondary roads, just as they do not belong on those of New Hampshire, Massachusetts, and New York. I, along with other Maine chiefs of police across the state, believe that these trucks pose a significant risk to the safety of citizens as they travel upon the populated city streets and narrow and winding rural roads of Maine’s cities and towns.

We have seen, first hand, the dangers these trucks pose to Maine citizens as they travel throughout our State. The fact is, this is an economic development issue with many jobs at stake for the mills that rely on efficient transportation with both their inbound freight and the outbound movement of goods to markets outside Maine. Your proposal to replace two trucks operating at 60,000 pounds to replace two trucks operating at 100,000 pounds to haul the same amount of freight.

It’s hard to find a topic that garners wide-spread and bipartisan support these days when partisan bickering and political polarization are the norm. This issue is not only strongly supported by the trucking industry, it is also supported by public safety officials, lawmakers, and the residents of Maine. Your work on this issue, especially getting the pilot project implemented last year, shows how not only you but other members and we continue to appreciate your efforts to address it in your recently proposed bill.

If Maine is going to be able to compete in a regional and global economy, it is essential that we encourage efficient, effective transportation such as the one you have proposed. Thank you.

Sincerely,

BRIAN D. PARKE
President and CEO.

CITY OF BANGOR, MAINE,
POLICE DEPARTMENT,
January 24, 2011.

Hon. SUSAN COLLINS,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR COLLINS: First and foremost, thank you again for being a champion for the effort to increase the truck weight limits on Maine’s interstate highways. Without your diligence and dedication to this extremely important matter, any further progress to correct the inconceivable injustice of the current law would be most assuredly abandoned for the foreseeable future. Your legislation, which would allow trucks weighing up to 100,000 pounds on all of Maine’s Interstate highways, would correct this injustice once and for all.

I would like to reiterate what I have previously stated regarding the present law that trucks weighing over 80,000 pounds of Maine’s interstate highways. These trucks do not belong on Maine’s city streets and secondary roads, just as they do not belong on those of New Hampshire, Massachusetts, and New York. I, along with other Maine chiefs of police across the state, believe that these trucks pose a significant risk to the safety of citizens as they travel upon the populated city streets and narrow and winding rural roads of Maine’s cities and towns.

We have seen, first hand, the dangers these trucks pose to Maine citizens as they travel throughout our State. The fact is, this is an economic development issue with many jobs at stake for the mills that rely on efficient transportation with both their inbound freight and the outbound movement of goods to markets outside Maine. Your proposal to replace two trucks operating at 60,000 pounds to replace two trucks operating at 100,000 pounds to haul the same amount of freight.

It’s hard to find a topic that garners wide-spread and bipartisan support these days when partisan bickering and political polarization are the norm. This issue is not only strongly supported by the trucking industry, it is also supported by public safety officials, lawmakers, and the residents of Maine. Your work on this issue, especially getting the pilot project implemented last year, shows how not only you but other members and we continue to appreciate your efforts to address it in your recently proposed bill.

If Maine is going to be able to compete in a regional and global economy, it is essential that we encourage efficient, effective transportation such as the one you have proposed. Thank you.

Sincerely,

BRIAN D. PARKE
President and CEO.

CITY OF BANGOR, MAINE,
POLICE DEPARTMENT,
January 24, 2011.
During the winter months, Maine’s secondary roads become much narrower, rural roads are more slippery, and speed limits are reduced, thereby increasing the danger to pedestrians and other drivers. No matter how experienced the truck driver may be, they cannot stop these trucks on a dime; they cannot anticipate every situation that can occur, especially in isolated areas; and they cannot prevent the shifting of their heavy loads from occurring.

It is important to do everything possible to insure safety for the public. Therefore, I offer my utmost support for your legislation that will keep these heavy loads on Maine’s interests where they belong. I continue to encourage you and others, like Senator Leahy of Vermont, to continue your efforts to keep these 100,000 pound trucks on Interstate roads, and off our local streets and rural roads.

Sincerely,

RONALD K. GASTIA, Chief of Police.

PROFESSIONAL LOGGING CONTRACTORS,

Hon. SUSAN COLLINS,
U.S. Senate, Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR COLLINS: I am writing to express the Professional Logging Contractors of Maine’s full support for your proposed legislation to permanently allow trucks weighing up to 100,000 pounds to use federal Interstate highways in Maine and Vermont.

Our member companies, landowners, loggers, truckers, wood-using mills, and associated businesses, as well as our families and neighbors—all rely on safe and efficient transportation of goods and services by truck for our livelihoods.

Our industry relies on trucks to deliver raw materials from the forest to our mills and shipment of finished product to market. We are surrounded by states and provinces which allow higher Interstate truck weights, putting our industry in rural Maine at a significant disadvantage.

The federal Interstate system is designed and built to handle these loads, as are Maine highways. Given that trucks should be able to utilize this system, taking unnecessary traffic off of state and local highways and out of communities.

The National Forest Resource Association presented testimony on the pilot’s benefits. The loss of the pilot in December was a real blow to our industry and rural communities.

Restoring the terms of the pilot project in Maine and Vermont allowing these trucks to access Interstate highways was tremendously successful. Attached is a Forest Resources Association Technical Release presenting testimony on the pilot’s benefits.

The future of our nation must include increased transportation productivity to keep from clogging highways and slowing the economic recovery. Using 2 trucks to haul the freight of 3 is a simple, safe, cost effective way to accomplish this. Your proposal to allow 6-axle vehicles weighing up to 100,000 pounds to use the interstate system in Maine and Vermont (99,000 lbs) is all benefit at no cost.

Thank you for your support in helping with this important legislation.

Sincerely,

BRIAN BOUCHARD, President.

Mr. LEAHY. Mr. President, I rise today with my good friends and neighbors from New England—Senators SUSAN COLLINS and OLYMPIA SNOWE from Maine, and myself—from New York, New Hampshire, Massachusetts, and Quebec have enjoyed the economic benefits that come with higher highway truck weight limits. Due to these restrictions, the heaviest truck traffic in Vermont and New York must travel over smaller and narrower roadways, creating significant safety concerns for pedestrians and motorists and putting pressure on our already overburdened secondary roads and bridges.

That is why Senator COLLINS and I included language in the 2010 transportation funding bill to implement pilot programs that allowed heavier trucks on interstates in Vermont and Maine for one year and studied the impacts of the policy change on highway safety, bridge and road durability, commerce, truck volumes, and energy use in Vermont.

During the past year I have heard from a number of Vermont truckers, business owners, and state and local officials why support extending the pilot program because of the economic and safety benefits they saw when the trucks were on the Interstates. Most importantly, many Vermonters reported a significant reduction of heavy truck traffic in communities and villages.

Unfortunately, last month the leadership on the other side of the aisle...
The bill I introduce today seeks to address these widely recognized needs. It requires that all forensic science laboratories that receive Federal funding or Federal business be accredited according to rigorous standards. It requires all relevant personnel who perform forensic work for any laboratory or agency that gets Federal money to become certified in their fields, which will mean meeting basic proficiency, education, and training requirements.

The bill sets up a rigorous process to determine the most serious needs for reform and establishes the basic validity of the forensic sciences and establishes grant programs to provide for peer-reviewed scientific research to answer fundamental questions and promote innovation. It also sets up a process for this research to lead to appropriate standards and best practices in each discipline. The bill funds research into new technologies and techniques that will allow forensic testing to be done more quickly, more efficiently, and more accurately. I believe these proposals that will be widely supported by those on all sides of this issue.

There have been of course some areas of disagreement, particularly as to who should oversee these vital reforms to the field of forensics. Some have argued that, because the purpose of forensic science is primarily to produce evidence that is accurate and reliable, prosecutors and law enforcement officers want evidence that can be relied upon to determine guilt and prove it beyond a reasonable doubt in a court of law. Defense attorneys want strong evidence that can be used to exclude innocence—or fault. Forensic science practitioners want their work to have as much certainty as possible and to be given deserved deference. All scientists and all attorneys who care about these issues want the science that is admitted as evidence in the courtroom to match the science that is proven through rigorous testing and research in the laboratory.

It is beyond question that everyone recognizes the need for forensic evidence that is accurate and reliable. There are proposals that will be widely supported by those on all sides of this issue. Others have argued that, for forensic science to truly engender our trust and confidence, its validity must be established by independent scientific research and standards. Others have argued that, for forensic science to truly engender our trust and confidence, its validity must be established by independent scientific research and standards.
I find both of these arguments persuasive. I know firsthand the importance of understanding how the criminal justice system works when evaluating the needs and practices in forensic science. I also understand that it is absolutely critical that forensic science be grounded in independent scientific research in order to avoid any question of convictions being based on faulty forensic work.

This legislation attempts to address both of these concerns with a hybrid structure that ensures both criminal justice expertise and scientific independence. It establishes an Office of Forensic Science in the Office of the Deputy Attorney General within the Department of Justice. That office will have a Director who will make all final decisions about research priorities, standards, and structure and who will implement and enforce the systems set up by the legislation.

It also establishes a Forensic Science Board composed of forensic and academic scientists, prosecutors, and defense attorneys, and other key stakeholders. The Board will have a careful balance, and a majority of its members will be scientists. It will recommend all rules, standards, and other key definitions and structures before the Director of the Office of Forensic Science makes a decision.

The bill will include important protections to encourage the Director to defer to the recommendations of the Board and to ensure that he or she explains to Congress and to the public, with opportunities for comment, any decision to disregard the Board’s recommendations.

The bill also establishes committees of scientists to examine each individual forensic science discipline to determine research needs and standards. It includes protections to ensure that the committees’ recommendations receive appropriate deference, and the committees will be overseen by the National Institute of Standards and Technology. NIST will also implement grant programs for research into the forensic sciences premised on the research priorities established by the Office of Forensic Science.

I hope all Senators will join me in advancing bipartisan legislation to bolster confidence in the forensic sciences and the criminal justice system.

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. 132

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 “Criminal Justice and Forensic Science Reform Act of 2011.”  

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.  
Sec. 2. Definitions.  
Sec. 3. Purpose.  

TITLE I—STRUCTURE AND OVERSIGHT  

Sec. 102. Forensic Science Board.  
Sec. 103. Committees.  
Sec. 104. Authorization of appropriations.  

TITLE II—ACREDITATION OF FORENSIC SCIENCE LABORATORIES  

Sec. 201. Accreditation of forensic science laboratories.  
Sec. 203. Administration and enforcement of accreditation program.  

TITLE III—CERTIFICATION OF FORENSIC SCIENCE PERSONNEL  

Sec. 301. Definitions.  
Sec. 302. Certification of forensic science personnel.  
Sec. 303. Standards for certification.  
Sec. 304. Administration and review of certification program.  
Sec. 305. Grants and technical assistance.  

TITLE IV—RESEARCH  

Sec. 401. Research strategy and priorities.  
Sec. 402. Oversight and review.  
Sec. 403. Public-private collaboration.
Section 102. FORENSIC SCIENCE BOARD

(a) In General.—There is established a Forensic Science Board to serve as an advisory board regarding forensic science in order to strengthen and promote confidence in the criminal justice system by promoting standards and best practices and ensuring consistency, scientific validity, and accuracy with respect to forensic testing, analysis, identification, and comparisons, the results of which may be interpreted, presented, or otherwise used during the course of a criminal investigation or criminal court proceeding.

(b) Appointment.—

(1) IN GENERAL.—The Board shall be composed of 19 members, who shall—

(A) be appointed at the conclusion of the term of the President, or at such earlier time as the President may appoint a member to fill the remainder of the term.

(B) serve for a term of 6 years, including an initial term of 2 years, and all subsequent terms of 4 years.

(c) Terms.—

(1) IN GENERAL.—The Board shall hold not less than 10 days after the date of enactment of this Act; and

(B) come from professional communities that are relevant with respect to forensic testing, analysis, identification, and comparisons, the results of which may be interpreted, presented, or otherwise used during the course of a criminal investigation or criminal court proceeding.

(3) Review and update, as appropriate, any recommendations made under paragraph (1); and

(4) perform all other functions of the Board under this Act and such other related functions as are necessary to perform the functions of the Board described in this Act.

(d) Responsibilities.—The Board shall—

(A) make recommendations to the Director relating to research priorities and needs, accreditation and certification standards, standards and protocols for forensic science disciplines, and any other issue consistent with this Act;

(B) monitor and evaluate—

(1) the administration of accreditation, certification, and all other programs and procedures established under this Act; and

(C) the operation of the Committees; and

(d) Consultation.—The Board shall—

(1) appoint a member to fill the remainder of the term of a member who may have been wrongly convicted; and

(2) review and update, as appropriate, any recommendations made under paragraph (1); and

(3) perform all other functions of the Board under this Act and such other related functions as are necessary to perform the functions of the Board.

(e) Consultation.—The Board shall consult as appropriate with the Deputy Attorney General, the Director of the National Institute of Justice, the President of the National Academy of Sciences, the Director of the Centers for Disease Control and Prevention, and other Federal agencies, and relevant officials of State and local government.

(f) Meetings.—

(A) IN GENERAL.—The Board shall hold not fewer than 4 meetings of the Board each year.

(B) NOTICE.—The Board shall provide public notice of any meeting of the Board a reasonable period in advance of the meeting.
shall be recorded.

(4) Whether any field should be added to the list submitted under paragraph (1) because of insufficient scientific basis on the date of the recommendation of the Board, the Board shall publish an explanation of the recommendation, which—

(i) shall be published on the website of the Board; and

(ii) may include a finding that a field could be recognized as a forensic science discipline, based on extensive experience or background in scientific research;

(5) ANNUAL EVALUATION.—On an annual basis, the Board shall—

(A) evaluate—

(i) whether any field should be added to the list of forensic science disciplines established under paragraph (4); and

(ii) whether any field on the list of forensic science disciplines established under paragraph (4) should be modified or removed; and

(B) submit the evaluation conducted under subparagraph (A), including any recommendations, to the Director.

(1) IN GENERAL.—The Board may, without regard to the civil service laws and regulations, appoint and terminate an executive director, Deputy Director, and other additional personnel as may be necessary to enable the Board to perform the duties of the Board.

(2) COMPENSATION.—The Board may fix the compensation of the executive director and other personnel appointed under paragraph (1) without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) PERSONNEL AS FEDERAL EMPLOYEES.—(A) General.—Any personnel of the Board who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 24 85, 87, 89, 89A, 89B, and 90 of that title.

(B) MEMBERS OF THE BOARD.—Subparagraph (A) shall not be construed to apply to members of the Board.

(4) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Board may procure temporary and intermittent services under section 3361(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(5) VOLUNTARY SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Board may accept and use voluntary and uncompensated services for the Board as the Board determines necessary.

(I) REPORTS TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, the Board shall submit to Congress a report describing the work of the Board and the work of each Committee, which shall include a description of any recommendations, decisions, and other significant materials generated during the 2-year period.

(k) APPLICABILITY OF THE FEDERAL ADVISORY COMMITTEE ACT.—(1) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.), shall apply to the Board.

(2) TERMINATION.—Section 14(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Board.

(3) COMPENSATION OF MEMBERS.— Members of the Board shall serve without compensation for services to the Board.

(1) TRAVEL EXPENSES.—The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(5) DESIGNATED FEDERAL OFFICER.—In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), the Director shall—

(A) serve as the designated Federal officer; and

(B) designate a committee management officer for the Board.

SEC. 103. COMMITTEES.

(a) ESTABLISHMENT AND MAINTENANCE OF COMMITTEES.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Board shall issue recommendations to the Director relating to—

(A) the number of Committees that shall be established; examine research needs, standards and best practices, and certification standards for the forensic science disciplines, which shall be—

(i) not fewer than 1; and

(ii) sufficient to allow the Committees to function effectively;

(b) the scope of responsibility for each Committee recommended to be established, which shall ensure that each forensic science discipline is addressed by a Committee; and

(c) whether the Committees and any scientific working group or technical working group that has a similar scope of responsibility are necessary.

(D) whether any Committee should consider any field not recognized as a forensic science discipline for the purpose of determining whether there is research that could be conducted and used to form the basis for establishing the field as a forensic science discipline.

(2) ESTABLISHMENT.—After the Director receives the recommendations of the Board under paragraph (1), the Director, in coordination with the Senate, shall—

(A) in accordance with section 101(e)(4), establish—

(i) Committees to examine research needs, standards, and best practices, and certification standards for the forensic science disciplines, which shall be not fewer than 1; and

(ii) a clear scope of responsibility for each Committee;

and

(B) publish a list of the Committees and the scope of responsibility for each Committee on the website for the Office.

(3) ANNUAL EVALUATION.—The Board, on an annual basis, shall—

(A) evaluate—

(i) whether any new Committees should be established; and

(ii) whether the scope of responsibility for any Committee should be modified; and

(iii) whether any Committee should be discontinued;

and

(B) publish any recommendations relating to the evaluation conducted under subparagraph (A) to the Senate.

(4) UPDATES.—Upon receipt of any recommendations from the Board under paragraph (3), the Senate shall, in accordance with section 101(e)(4), determine whether to establish, modify, or discontinue any Committee.

(b) MEMBERSHIP.—

(1) IN GENERAL.—Each Committee shall—

(A) be a list of not more than 21 members—

(i) each of whom shall be a scientist with knowledge relevant to a forensic science discipline addressed by the Committee; and

(ii) not less than 50 percent of whom shall have extensive experience or background in scientific research;

(B) have a number of members who have extensive experience or background in the forensic sciences sufficient to ensure that the Committee has an adequate understanding of the factors and needs unique to the forensic sciences; and

(C) have a membership that represents a variety of scientific disciplines, including the forensic sciences.

(d) DEFINITION.—In this subsection, the term "scientist" includes—

(A) a statistician with a scientific background; and

(B) a physician with expertise in forensic sciences.

(c) APPOINTMENT.—

(1) IN GENERAL.—The Senate, in consultation with the Board, shall appoint the members of each Committee.

(2) CONSIDERATION.—In appointing members to a Committee under paragraph (1), the Senate shall consider—

(A) the importance of analysis from scientists with academic backgrounds; and

(B) the importance of input from experienced forensic practitioners.

(3) VACANCIES.—In the event of a vacancy, the Senate, in consultation with
the Board, may appoint a member to fill the remainder of the term.

(4) HOLDOVERS.—If a successor has not been appointed at the conclusion of the term of a member of the Committee, the member of the Committee may continue to serve until—

(A) a successor is appointed; or

(B) the member of the Committee is re-appointed.

(d) TERMS.—A member of a Committee shall serve for renewable terms of 4 years.

(2) REMOVAL OF MEMBER.—If a member of a Committee commits an act that may result in removal or disapproval of a Committee, the member of the Committee shall cease to serve without compensation for services performed for the Committee.

(3) TRAVEL EXPENSES.—The members of a Committee shall serve without compensation for services performed for the Committee.

(h) VOTES.—In any of the following actions, the Board shall require a quorum of the members of the Committee voting—

(A) over the phone or through electronic means, if the vote is scheduled to take place during a time other than a full meeting of the Committee; and

(B) over the phone or by proxy if the vote is scheduled to take place during a full meeting of the Committee.

(2) VOTING PROCEDURES.—In any of the following actions, the Board shall—

(A) RECORD.—All votes taken by a Committee shall be recorded.

(B) REMOTE AND PROXY VOTING.—If necessary, a member of the Committee may cast a vote—

(i) over the phone or through electronic means, if the vote is scheduled to take place during a time other than a full meeting of the Committee; and

(ii) over the phone or by proxy if the vote is scheduled to take place during a full meeting of the Committee.

(3) APPLICABILITY OF THE FEDERAL ADVISORY COMMITTEE ACT.—

(1) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to a Committee.

(2) COMPENSATION OF MEMBERS.—Any member of the Board shall serve without compensation for services performed for the Committee.

(3) TRAVEL EXPENSES.—The members of the Board shall serve without compensation for services performed for the Committee.

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

(A) $15,000,000 for each of fiscal years 2012 through 2016 for the operation and staffing of the Office.

(B) $5,000,000 for each of fiscal years 2012 through 2016 for the operation and staffing of the Board.

(C) $15,000,000 for each of fiscal years 2012 through 2016 for the operation and staffing of the Committees; and

(D) $5,000,000 for each of fiscal years 2012 through 2016 to the National Institute of Standards and Technology for the oversight, support, and staffing of the Committees.

SEC. 202. STANDARDS FOR LABORATORY ACREDITATION.

(a) STANDARDS.—The standards for the accreditation of forensic science laboratories shall—

(1) be approved by a Committee;

(2) be established and maintained by the Board through the standards developed by the Board;

(3) be submitted to the Director after written notice to the public of the development of the standards;

(4) include—

(A) procedures for the Director to verify that laboratories have been accredited in accordance with the standards and procedures established under this title;

(B) procedures for the accreditation of forensic science laboratories; and

(C) procedures for the accreditation of forensic science laboratories that were in effect before the date of enactment of this Act and that the Board, in consultation with qualified professional organizations, has determined are necessary to maintain the quality of forensic science laboratories.

(b) PROHIBITION OF MODIFICATION OF DECISIONS AND RECOMMENDATIONS.—Any recommendation of a Committee and any recommended standard, protocol, or other material developed by a Committee may not be modified by the Board.

(c) APPLICABILITY OF THE FEDERAL ADVISORY COMMITTEE ACT.—In any of the following actions, the Board shall require a quorum of the members of the Committee voting—

(1) over the phone or through electronic means, if the vote is scheduled to take place during a time other than a full meeting of the Committee; and

(2) over the phone or by proxy if the vote is scheduled to take place during a full meeting of the Committee.

(D) DISAPPROVAL OF DECISIONS AND RECOMMENDATIONS.—If the Board disapproves of any recommendation of a Committee or any recommended standard, protocol, or other material developed by a Committee—

(i) the Board shall provide in writing the reason for the disapproval of the recommendation or recommended standard, protocol, or other material;

(ii) the Board shall withdraw the recommendation or recommended standard, protocol, or other material developed by the Committee; and

(iii) the Committee may submit a revised recommendation or recommended standard, protocol, or other material.

(E) APPLICABILITY TO FEDERAL AGENCIES.—On and after the date established under paragraph (1), a Federal agency may not use any forensic science laboratory during the course of a criminal investigation or criminal court proceeding unless the forensic science laboratory meets the standards of accreditation and certification established by the Office under this Act.

SEC. 203. ACCREDITATION OF FORENSIC SCIENCE LABORATORIES.

(a) IN GENERAL.—On and after the date established under paragraph (1), a forensic science laboratory may not receive, directly or indirectly, any Federal funds, unless the Director has verified that the laboratory has been accredited in accordance with the standards and procedures established under this title.

(b) PROCEDURES FOR ACCREDITATION.—

(1) RECOMMENDATIONS.—Not later than 3 years after the date of enactment of this Act, the Board shall submit to the Director—

(A) the procedures for the accreditation of forensic science laboratories that are consistent with the recommended standards and criteria developed by the Board under paragraph (3); and

(B) any recommendations for the periodic review and updating of the accreditation status of forensic science laboratories; the

(2) APPLICABILITY TO FEDERAL AGENCIES.—A forensic science laboratory shall—

(A) be accredited in accordance with the standards and procedures established under this title; and

(B) be subject to the procedures for the periodic review and updating of the accreditation status of forensic science laboratories; the
(i) educational and training requirements for relevant laboratory personnel;
(ii) proficiency and competency testing requirements for relevant laboratory personnel;
(iii) maintenance and auditing requirements for accredited forensic science laboratories;

(b) REVIEW OF STANDARDS.—
(1) IN GENERAL.—Not less frequently than once every 5 years—
(A) the Board shall—
(i) review the relevance and effectiveness of the accreditation standards established under subsection (a);
(ii) submit recommendations to the Director relating to the reevaluation of the standards as necessary to—
(I) account for developments in relevant scientific research and technological advances;
(II) ensure adherence to the standards and best practices established under title V; and
(III) address any other issue identified during the course of the review conducted under clause (i); and
(B) the Director shall, as necessary and in accordance with section 101(e)(4), update the accreditation standards established under subsection (a).

(2) PROCEDURES FOR OPEN AND TRANSPARENT REVIEW OF STANDARDS.—The Director, in consultation with the Board, shall establish procedures to ensure that the process for developing, reviewing, and updating accreditation standards under this section—
(A) is open and transparent to the public; and
(B) includes an opportunity for the public to comment on proposed standards with sufficient notice.

SEC. 203. ADMINISTRATION AND ENFORCEMENT OF ACCREDITATION PROGRAM.

(a) ADMINISTRATION AND ENFORCEMENT OF ACCREDITATION PROGRAM.—
(1) IN GENERAL.—The Director shall determine whether a forensic science laboratory is eligible to receive, directly or indirectly, Federal funds under section 201(a).

(2) ADMINISTRATION.—
(A) IN GENERAL.—The Director may identify 1 or more qualified accrediting entities with experience and expertise relevant to the accreditation of forensic science laboratories, the accreditation of a forensic science laboratory by which shall constitute accreditation standards established under subsection (a).

(B) OVERSIGHT.—The Director shall periodically reevaluate whether accreditation by a qualified accrediting entity identified under subparagraph (A) is adequate to ensure compliance with the standards and procedures established under this title.

(C) REPORTING.—The Director shall provide regular reports to the Board regarding the accreditation of forensic science laboratories by qualified accrediting entities identified under subparagraph (A) and reevaluations of accreditation by qualified accrediting entities under subparagraph (B), which shall be published on the website of the Office.

(b) REVIEW OF ELIGIBILITY.—Not less frequently than once every 5 years, the Director shall evaluate whether a forensic science laboratory that has been determined to be ineligible to receive Federal funds under section 201(a) is still in effect.

(c) WEBSITE.—The Director shall develop and maintain on the website of the Office an updated list of—
(I) forensic science laboratories that are eligible for Federal funds under section 201(a);
(II) the forensic science laboratories that have been determined to be ineligible to receive Federal funds under section 201(a); and
(III) the forensic science laboratories that are required to undergo reevaluation of their eligibility to receive Federal funds under section 201(a).

TITLE III—CERTIFICATION OF FORENSIC SCIENCE PERSONNEL

SEC. 301. DEFINITIONS.

(a) COVERED ENTITY.—In this title, the term ‘‘covered entity’’ means an entity that—
(I) is not a forensic science laboratory; and
(II) conducts forensic testing, analysis, identification, or comparisons, the results of which may be interpreted, presented, or otherwise used during the course of a criminal investigation or criminal court proceeding.

(b) RELEVANT PERSONNEL.—
(1) IN GENERAL.—The Director shall, not later than 1 year after the date of enactment of this Act, submit to the Director a recommendation for purposes of this Act, the term ‘‘relevant personnel’’ shall include individuals who—
(A) conduct forensic testing, analysis, identification, or comparisons, the results of which may be interpreted, presented, or otherwise used during the course of a criminal investigation or criminal court proceeding; or
(B) testify about evidence prepared by an individual described in paragraph (A).

(2) REQUIREMENTS.—In developing recommendations under paragraph (1), the Director shall, in accordance with subsection (b), the Director shall submit to the Board a recommendation for purposes of this title.

(c) STANDARDS FOR CERTIFICATION.

(1) IN GENERAL.—Not later than 2 years after the date on which all members of a Committee have been identified, the Committee shall make recommendations to the Board relating to standards for the certification of relevant personnel in each forensic science discipline addressed by the Committee.

(2) REQUIREMENTS.—In developing recommended standards under paragraph (1), a Committee shall—
(A) consult with qualified professional organizations;
(B) consider relevant certification standards and best practices developed by qualified professional or scientific organizations;
(C) consider any standards or best practices established under title V; and
(D) consider—
(i) whether certain minimum standards should be established for the education and training of relevant personnel;
(ii) whether there should be an alternative process to enable relevant personnel who were hired before the date established under subsection (c)(1), to obtain certifications, including—
(I) testing that demonstrates proficiency in a specific forensic science discipline that is at least of a level greater than the level of proficiency required by the standards for certification; and
(II) a waiver of certain educational and training requirements;
(iii) whether and under what conditions relevant personnel should be allowed to per-
qualified professional organizations identified under paragraph (1) is adequate to ensure compliance with the standards established under this title.

(3) REQUIREMENT.—The Director shall provide regular reports to the Board regarding the certification of relevant personnel by qualified professional organizations identified under paragraph (2), which shall be published at the discretion of the Office.

(c) IMPLEMENTATION OF CERTIFICATION REQUIREMENTS.—

(1) IN GENERAL.—After consultation with the Board, the Director shall establish the date on which forensic science laboratories and covered entities shall be in compliance with the certification requirements of this title.

(2) GRADUAL IMPLEMENTATION.—The Director shall, in consultation with the Board and each Committee, establish policies and procedures to enable the gradual implementation of the certification requirements that—

(A) include a reasonable schedule to allow relevant personnel to obtain certifications; and

(B) allow for partial compliance with the requirements of section 302 for a reasonable period of time after the date established under paragraph (1).

(d) REVIEW OF CERTIFICATION REQUIREMENTS.—The Director shall establish policies and procedures for periodic review of the implementation, administration, and enforcement of the certification requirements established under this title.

SEC. 302. GRANTS AND TECHNICAL ASSISTANCE.

(a) IN GENERAL.—The Director of the National Institute of Justice, in consultation with the Director, may make grants and provide technical assistance described in subsection (c) to eligible entities to conduct peer-reviewed scientific research relating to the forensic science disciplines.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) $75,000,000 to the National Institute of Standards and Technology to conduct peer-reviewed scientific research relating to the forensic science disciplines.

(2) $15,000,000 to the National Institute of Justice, in consultation with the certification requirements of this title and title II to establish a comprehensive strategy for fostering and improving peer-reviewed scientific research relating to the forensic science disciplines.

(3) REVIEW.—

(A) BOARD REVIEW.—Not less frequently than once every 5 years, the Board shall—

(i) review the comprehensive strategy established under paragraph (2); and

(ii) recommend any necessary updates to the comprehensive strategy.

(B) RESEARCH FUNDING PRIORITIES.—

(1) RECOMMENDATION.—Not later than 18 months after the date of enactment of this Act, the Board shall recommend to the Director a list of priorities for forensic science research funding.

(2) ESTABLISHMENT.—After the Director receives the list from the Board under paragraph (1), the Director shall, in accordance with section 101(e)(4), establish a list of priorities for forensic science research funding.

(3) REVIEW.—Not less frequently than once every 2 years, the Board shall—

(A) review—

(i) the list of priorities established under paragraph (2); and

(ii) the findings of the relevant Committees made under subsection (c); and

(B) recommend any necessary updates to the list of priorities, incorporating, as appropriate, the findings of the Committees under subsection (c).

(4) UPDATES.—After the Director receives the recommendations from the Board under paragraph (3), the Director, in accordance with section 101(e)(4), update the list of priorities for forensic science research funding.

(c) EVALUATION OF RESEARCH NEEDS.—Not later than 2 years after the date on which all members of a Committee have been appointed under section 103, and periodically thereafter, the Committee shall—

(1) examine the scientific research in each forensic science discipline within the responsibility of the Committee;

(2) conduct comprehensive surveys of scientific research in each forensic science discipline within the responsibility of the Committee;

(3) examine the research needs in each forensic science discipline within the responsibility of the Committee and identify key areas in which further scientific research is needed; and

(4) develop and submit to the Board a list of research needs and priorities.

(d) CONSIDERATION.—In developing the initial research strategy, research priorities, and surveys required under this section, the Board and the Director shall consider any findings, surveys, and analyses relating to research in forensic science disciplines, including those made by the Subcommittee on Forensic Science of the National Science and Technology Council.

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

(1) $75,000,000 to the National Institute of Standards and Technology for each of fiscal years 2012 through 2016 for grants under subsection (a)(1); and

(2) $15,000,000 to the National Institute of Standards and Technology for each of fiscal years 2012 through 2016 for grants under subsection (a)(2).

SEC. 402. RESEARCH GRANTS.

(a) COMPETITIVE GRANTS.—

(1) DEFINITION.—In this subsection, the term ‘eligible entity’ means—

(A) a nonprofit academic or research institution; and

(B) any other entity designated by the Director of the National Institute of Standards and Technology.

(2) PRIORITY FOR RESEARCH GRANTS.—

(A) IN GENERAL.—The Director of the National Institute of Standards and Technology may, on a competitive basis, make grants to eligible entities to conduct peer-reviewed scientific research.

(B) CONSIDERATION.—In making grants under this paragraph, the Director of the National Institute of Standards and Technology shall—

(i) ensure that grants made under this paragraph are for peer-reviewed scientific research in areas that are consistent with the research priorities established by the Director under section 401(b); and

(ii) take into consideration the research needs identified by the Committees under section 401(c).

(3) DEVELOPMENT OF NEW TECHNOLOGIES.—

The Director of the National Institute of Standards and Technology may, on a competitive basis, make grants to eligible entities to conduct peer-reviewed scientific research to develop new technologies and processes to increase the efficiency, effectiveness, and accuracy of forensic testing procedures.

(4) COORDINATION WITH DIRECTOR.—In making grants under this subsection, the Director of the National Institute of Standards and Technology shall—

(A) coordinate with the Director; and

(B) consider the plan established under section 401.

(5) COORDINATION WITH THE NATIONAL SCIENCE FOUNDATION.—The Director of the National Institute of Standards and Technology shall consult and coordinate with the National Science Foundation to ensure—

(A) the integrity of the process for reviewing funding proposals and awarding grants under this subsection; and

(B) that the grant-making process is not subject to any undue bias or influence.

(b) REPORT.—

(1) IN GENERAL.—

(A) SUBMISSION.—The Director of the National Institute of Standards and Technology shall, on an annual basis, submit to the Board and the Director a report that describes—

(i) the application process for grants under this section;

(ii) the rules governing the use of grants under this section; and

(iii) as appropriate, the status and results of grants previously described in a report submitted under this subsection.

(B) PUBLICATION.—The Director shall publish the report submitted under subparagraph (A) on the website of the National Institute of Standards and Technology.

(2) EVALUATION.—The Board and the Director shall evaluate each report submitted under paragraph (1) and consider the information provided in each report in reviewing the research strategy and priorities established under section 401.

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

(1) $75,000,000 to the National Institute of Standards and Technology for each of fiscal years 2012 through 2016 for grants under subsection (a)(1); and

(2) $15,000,000 to the National Institute of Standards and Technology for each of fiscal years 2012 through 2016 for grants under subsection (a)(2).

SEC. 403. OVERSIGHT AND REVIEW.

(a) REPORTS.—Not later than 3 years after the date on which the first grant is awarded under paragraph (2) of section 402(a), and not later than 2 years after the date on which the first report under this subsection is submitted, the Inspector General of the Department of Justice, in coordination with the Inspector General of the Department of Commerce, shall submit to Congress a report that describes the status and results of the grant programs described in section 402(a).
(b) Requirements.—Each report submitted under this section shall evaluate—
(1) whether any undue biases or influences affected the integrity of the solicitation, award, or administration of research grants; and
(2) whether there was any unnecessary duplication, waste, fraud, or abuse in the grants education plan mentioned in paragraph (1), the Director shall—
(a) consider the recommendations; and
(b) submit to the Director recommendations for—
(1) the evaluation and training of judges, attorneys, and law enforcement personnel in the forensic sciences and fundamental scientific principles, which shall include education on the collection, use, and evaluation of forensic science evidence; and
(2) developing a standardized curriculum for education and training described in subparagraph (A).
(2) Establishment.—Upon receipt of the recommendation from the Board under paragraph (1), the Director shall establish, in accordance with section 101(e)(4), and implement a plan for—
(A) supporting the education and training of judges, attorneys, and law enforcement personnel in the forensic sciences and fundamental scientific principles, which shall include education in the forensic sciences and fundamental scientific principles, including the competent use and evaluation of forensic science evidence; and
(B) developing a standardized curriculum for education and training described in subparagraph (A).
(3) Oversight.—The Director, in consultation with the Board, shall periodically evaluate and, as necessary, update the plan established under paragraph (2).
(b) Grant Program.—The Director may, in consultation with the Director of the National Institute of Justice, may, in consultation with the Director of the National Institute of Justice, may develop a recommended plan for—
(1) supporting the education and training of judges, attorneys, and law enforcement personnel in the forensic sciences and fundamental scientific principles, which shall include education in the forensic sciences and fundamental scientific principles, including the competent use and evaluation of forensic science evidence.
(2) Requirement.—On and after the date on which the Board establishes the plan for supporting the education and training of judges, attorneys, and law enforcement personnel in the forensic sciences and fundamental scientific principles, the Director of the National Institute of Justice may, in consultation with the Director of the National Institute of Justice, may, in consultation with the Director of the National Institute of Justice, may, in consultation with the Director of the National Institute of Justice, may develop a recommended plan for—
(a) supporting the education and training of judges, attorneys, and law enforcement personnel in the forensic sciences and fundamental scientific principles, which shall include education in the forensic sciences and fundamental scientific principles, including the competent use and evaluation of forensic science evidence; and
(b) developing a standardized curriculum for education and training described in subparagraph (A).
(c) Establishment and Implementation.—After receiving the recommendation of the Board under subsection (a), the Director shall establish, in accordance with section 101(e)(4), and implement a plan for encouraging collaboration among universities, nonprofit research institutions, State and local forensic science laboratories, private corporations, and the Federal Government to develop and perform cost-effective and reliable research in the forensic sciences, consistent with the research priorities established under section 401(b)(2).
(3) Updates.—The Director shall, in consultation with the Board, periodically evaluate and, as necessary, update the plan established under subsection (a).
(b) Requirements.—The plan recommended under subsection (a) shall include—
(1) incentives for nongovernmental entities to invest significant resources into conducting necessary research in the forensic sciences;
(2) procedures for ensuring the research described in paragraph (1) will be conducted with the specific rigor that the research can be relied upon by—
(A) the Committees in developing standards under this Act; and
(B) forensic science personnel; and
(3) clearly defined requirements for disclosure of the sources of funding by nongovernmental entities for forensic science research conducted in collaboration with governmental entities and safeguards to prevent conflicts of interest or undue bias or influence.
(c) Establishment and Implementation.—After receiving the recommended plan of the Board under subsection (a), the Director shall establish, in accordance with section 101(e)(4), and implement a plan for encouraging collaboration among universities, nonprofit research institutions, State and local forensic science laboratories, private corporations, and the Federal Government to develop and perform cost-effective and reliable research in the forensic sciences, consistent with the research priorities established under section 401(b)(2).
(1) a plan for supporting the development of undergraduate and graduate educational programs in the forensic science disciplines and related fields; and
(2) any standards or requirements for education programs in the forensic science disciplines and related fields established by the Director to be appropriate.
(c) In consultation with the Board, the Director, in consultation with the Board, shall—

(1) oversee the implementation of any standards or requirements established under subsection (b); and
(2) periodically update and, as necessary, update the plan, standards, or requirements established under subsection (b).

SEC. 604. INTER-GOVERNMENTAL COORDINATION.
The Board and the Director shall regularly—

(1) coordinate with relevant Federal agencies, including the National Science Foundation, the Department of Defense, and the National Institutes of Health, as appropriate, to make efficient and appropriate use of research expertise and funding; and
(2) coordinate with the Department of Homeland Security and other relevant Federal agencies in ways in which the forensic science disciplines may assist in homeland security and emergency preparedness.

SEC. 605. ANONYMOUS REPORTING.
Not later than 3 years after the date of enactment of this Act, the Director shall develop a system for any individual to provide information relating to compliance, lack of compliance, with the requirements, standards, and regulations established under this Act, which may include a hotline or website that has appropriate guarantees of anonymity and confidentiality and protections for whistleblowers.

SEC. 606. INTEROPERABILITY OF DATABASES AND TECHNOLOGIES.
(a) Recommendations.—Not later than 3 years after the date of enactment of this Act, the Board shall submit to the Director a recommended plan to require interoperability among databases and technologies in each of the forensic science disciplines among all States, and with the private sector.
(b) Establishment and Implementation.—Upon receipt of the recommendation from the Board, the Director shall establish, in accordance with section 101(e)(4), and implement a plan to encourage interoperability among databases and technologies in each of the forensic science disciplines among all levels of Government, in all States, and with the private sector.
(c) Oversight.—In consultation with the Board, the Director shall evaluate and, as necessary, update the plan established under subsection (b).

SEC. 607. CODE OF ETHICS.
(a) Recommendations.—

(1) In General.—Not later than 3 years after the date of enactment of this Act, the Board shall submit to the Director a recommended code of ethics for the forensic science disciplines.
(2) Requirements.—In developing a recommended code of ethics under paragraph (1), the Board shall—
(A) consult with relevant qualified professional organizations; and
(B) consider all recommendations relating to a code of ethics or code of professional responsibility developed by the Subcommittee on Forensic Science of the National Science Foundation.

SEC. 608. OVERSIGHT.
The Director, in consultation with the Board, shall—

(1) oversee the implementation of any standards or requirements established under subsection (b); and
(2) periodically update and, as necessary, update the plan, standards, or requirements established under subsection (b).

By Mr. BINGAMAN (for himself and Mr. Udall of New Mexico):
S. 134. A bill to authorize the Mescalero Apache Tribe Leasing Authorization Act; and to lease adjudicated water rights; to the Committee on Indian Affairs.

Mr. BINGAMAN. Mr. President, today I am introducing a bill entitled the Mescalero Apache Tribe Leasing Authorization Act to allow the Mescalero Apache Tribe in New Mexico to lease certain adjudicated water rights to other communities in need of water. My colleague Senator Tom Udall is co-sponsoring this measure and I am looking forward to working with him on this issue.

As competition for limited water supplies increases and water supplies become more uncertain as a result of a changing climate and more flexibility in water management strategies is essential. This bill will enable the Mescalero Apache Tribe to lease certain unused water rights adjudicated to the Tribe to other communities in New Mexico that have significant water needs. Through this bill, communities including the Village of Ruidoso, the Village of Cloudcroft and the City of Alamogordo would be able to negotiate with the Mescalero Apache Tribe to lease water through a process overseen by the New Mexico State Engineer. These mutually beneficial transactions will provide additional water to communities in times of need and will promote economic benefits to the Tribe. Allowing these types of transactions to occur will also help to strengthen the relationship between Indian and non-Indian communities that co-exist in many parts of New Mexico.

This bill will greatly benefit the Mescalero Apache Tribe and its surrounding neighbors and it is my hope that my colleagues will ultimately support its enactment. 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:

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

SECTION 1. SHORT TITLE.
In this Act:
(A) ADJUDICATED WATER RIGHTS.—The term ‘‘adjudicated water rights’’ means water rights that were adjudicated to the Tribe in State with respect to the leasing or transfer of water rights by a lessee or contractor shall not result in the forfeiture, abandonment, or other loss or other detriment resulting from a relinquishment, or other loss of all or any portion of the adjudicated water rights by a lessee or contractor.
(B) STATE LAW.—In carrying out any action under subsection (a), the Tribe may lease, enter into a contract with respect to, or otherwise transfer to another party, for another purpose, or to another place of use in the State, all or any portion of the adjudicated water rights.
(C) PURCHASES OR GRANTS OF LAND FROM INDIANS.—The authorization provided by this Act for the leasing, contracting, and transfer of adjudicated water rights may not be considered to satisfy any requirement for authorization of the action by treaty or convention imposed by section 2116 of the Revised Statutes (25 U.S.C. 177).

(f) PROHIBITION ON FOREFURTHER.—The non-use of any or all portion of the adjudicated water rights by a lessee or contractor shall result in the forfeiture, relinquishment, or other loss of all or any portion of the adjudicated water rights.
By Mr. REID (for Mrs. FEINSTEIN (for herself, Mr. SCHUMER, Mr. KERRY, Mr. SANDERS, and Mr. FRANKEN)):

S. 136. A bill to establish requirements with respect to bisphenol A; to the Committee on Health, Education, Labor, and Pensions.

Mrs. FEINSTEIN. Mr. President, today I am introducing the “Ban Poisonous Additives Act of 2011,” a bill that would ban the chemical Bisphenol A, known as BPA, from all children’s feeding products. I thank my cosponsors Senators SCHUMER, KERRY, SANDERS, and FRANKEN for their support.

I voted in the last Congress not to give up, and this is why I am introducing a bill that bans the use of BPA in baby bottles, sippy cups, infant formula, and baby food containers: the products used to provide food and beverages to the most vulnerable.

I have a deep, abiding concern regarding the presence of toxins and chemicals in the daily lives of Americans. BPA is an endocrine disruptor, which means that it interferes with the way hormones work in the body.

The evidence against BPA is mounting, especially its harmful effects on babies and children who are still developing.

I believe we have an obligation to safeguard babies and children from unnecessary exposure to this chemical that is linked to so many health problems.

Over 200 scientific studies show that even at low doses, BPA is linked to serious health problems including: Cancer, Diabetes, Heart Disease, Early puberty, Behavioral problems, Obesity. This chemical is so widespread it has been found in 93 percent of Americans.

Babies and children are particularly at risk to the exposure of BPA because when they are developing, any small change can cause dramatic consequences.

It may not surprise you that the chemical industry continues to insist that BPA is not harmful. According to at least one study, there is reason to be skeptical about research coming from chemical companies.

In 2006, the journal Environmental Research published an article comparing the results of government funded studies on BPA to BPA studies funded by industry.

The difference is glaring.

Ninety-two percent of the government funded studies found that exposure to BPA caused health problems. Overwhelmingly, government studies found harm. None of the industry funded studies identified health problems as a result of BPA exposure. Not one.

Clearly, serious questions are raised about the validity of the chemical industry’s studies. The results also illustrate why our nation’s regulatory agencies should not and cannot solely rely on chemical companies to conduct research on their own products.

The fact that so many adverse health effects are linked to this chemical, the fact that this chemical is so present in our bodies, and the fact that babies are more at risk from its harmful effects leads me to believe that there is no good reason to expose our children to BPA.

This is why we are introducing legislation that protects all babies across the country, no matter which state they happen to live.

This bill will ensure that parents no longer have to wonder whether products they buy for their babies and children will harm them now or later in life.

This bill: Bans the use of BPA in baby bottles and sippy cups within 6 months; Bans the use of BPA in infant formula within 18 months; Requires that the FDA issue a revised safety assessment on BPA by December 1, 2012; And includes a savings clause to allow states to enact their own legislation.

This bill makes sense. It’s a reasonable step forward to protecting our children’s health.

Major manufacturers are already phasing out products made with BPA.

Food and beverage products for children all have safe, alternative, BPA-free packaging available right now.

Major baby food and formula manufacturers offer BPA-free alternatives including: Nestle’s GOOD START, Similac powdered infant formula, Enfamil powdered infant formula, Nestle liquid formula, and Similac liquid formula.

At least 14 manufacturers of baby bottles either offer some BPA-free alternatives or have completely banned its use. They are: Avent, Born Free, Disney First Years, Dr. Brown’s, Evenflo, Gerber, Green to Grow, Klean Kanteen, Medala, Munchkin, Nuby Sippy Cups, Playtex, Think Baby, and Weil Baby.

Many major retailers have taken action and sell BPA-free baby bottles and sippy cups: CVS, Kmart, Kroger, Rite Aid, Safeway, Sears, Toys “R” Us and Babies “R” Us, Wal-Mart, Wegmans, and Whole Foods.

Eight states have already enacted laws banning BPA from children’s products: Connecticut, Maryland, Massachusetts, Minnesota, New York, Vermont, Washington, and Wisconsin.

Other countries have already moved forward to restrict this chemical. Canada declared BPA a toxic substance, and banned it from all baby bottles and sippy cups. Denmark and France have national bans on BPA in certain children’s products.

The European Commission banned BPA from baby bottles, protecting consumers in the European Union. Clearly, the problem has been recognized and steps are being taken by countries, states, companies, and retailers to remove this harmful chemical.

Let me briefly explain what BPA is. BPA is a synthetic estrogen. As I stated previously, it is a hormone disruptor and interferes with how hormones work in the body. This chemical is used in thousands of consumer products to harden plastics, line tin cans, and make CDs. It is even used to coat airline tickets, grocery store receipts, and to make dental sealants.

It is one of the most pervasive chemicals in modern life. And, as with so many other chemicals in consumer products, BPA has been added to our products without us knowing whether it was safe or not.

Alternatives exist because there is growing concern about the harmful effects of BPA. The chemical industry continues to try to quiet criticism by reassuring consumers that BPA is safe. I don’t buy it.

As I previously stated, over 200 scientific studies show that exposure to BPA, particularly during prenatal development and early infancy, are linked to a wide range of adverse health effects in later life.

Because of their smaller size and stage of development, babies and children are particularly at risk from the harmful health effects of BPA. These serious effects include: increased risk of breast and prostate cancer; genital abnormalities in males; infertility in men; sexual dysfunction; early puberty in girls; metabolic disorders such as insulin resistant Type 2 diabetes and obesity; and behavioral problems such as attention deficit hyperactivity disorder, ADHD.

It continues to astound me how, even with this extensive list of potentially serious health effects, we continue to allow this chemical to be put in our products.

Moreover, additional science continues to be released, confirming the potential for BPA to cause severe problems.

Recently, the University of California, San Francisco published a small scale study finding that human exposure to BPA may compromise the quality of a woman’s eggs retrieved for in vitro fertilizations.

A study of over 200 Chinese factory workers found evidence that high levels of BPA exposure to adversely affect sperm quality in humans.

Researchers at the University of Nebraska Medical Center recently published a study concluding that BPA has biochemical properties similar to human carcinogens.

I want to underscore the importance and the urgency of withdrawing BPA from these children’s products.

Well-known and respected organizations and Federal agencies also have expressed concern about BPA.

The President’s Cancer Panel Annual Report released in April 2010 concluded that there is growing evidence of a link between BPA and several diseases, such as cancer.

The Panel recommended using BPA-free containers to limit chemical exposure.

A 2008 study by the American Medical Association suggested links between exposure to BPA and diabetes,
heart disease and liver problems in humans.

The National Health and Nutrition Examination Survey (NHANES) linked BPA in high concentrations to cardiovascular Type II diabetes.

Given these conclusions, it is critical we act now to protect the most vulnerable, our infants and toddlers from this chemical.

Children receive no benefit by having a baby bottle or cup coated with BPA.

In the last Congress, I vowed not to give up in my fight to ban BPA. After working hard for many months to reach an agreement with Senator Enzi on a more limited ban, I was sincerely disappointed that this agreement was blocked by the chemical industry from being included in the food safety bill.

I want to reiterate the importance of this legislation. I strongly believe we need to take action on this.

I don’t think we can take a chance with our children’s health.

BPA has been linked to developmental disorders, cancer, cardiovascular complications, and diabetes by credible scientific bodies. The evidence that BPA is unacceptable dangerously mounting. Yet it remains in thousands of household and food products.

This is a reasonable, common sense bill.

Now, the time comes again for this body to take a stand and move forward to protect the health of America’s children.

I urge my colleagues to join me in supporting my legislation, the Ban Poisonous Additives Act of 2011.

I look forward to working with my colleagues on this important issue.

Mr. President, I seek 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. 136

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 “Ban Poisonous Additives Act of 2011”.

SEC. 2. REQUIREMENTS WITH RESPECT TO BISPHENOL A.

(a) BAN ON USE OF BISPHENOL A IN FOOD AND BEVERAGE CONTAINERS FOR CHILDREN.—

(1) BAN ON USE OF BISPHENOL A IN FOOD AND BEVERAGE CONTAINERS FOR CHILDREN.—Section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) is amended by adding at the end the following:

(2) EFFECTIVE DATE.—(A) BABY FOOD.—Section 402(j)(1) of the Federal Food, Drug, and Cosmetic Act, as added by paragraph (1), shall take effect 1 year after the date of enactment of this Act.

(B) UNFILLED BABY BOTTLES AND CUPS.—Section 402(j)(2) of the Federal Food, Drug, and Cosmetic Act, as added by paragraph (1), shall take effect 18 months after the date of enactment of this Act.

(b) BAN ON USE OF BISPHENOL A IN INFANT FORMULA CONTAINERS.—

(1) IN GENERAL.—Section 412(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(a)) is amended—

(A) by striking “(1),” and inserting “(1),”;

(B) in paragraph (3), by striking the period at the end and inserting “;”.

(c) REGULATION OF OTHER CONTAINERS COMPOSED OF BISPHENOL A.—(1) SAFETY ASSESSMENT.—

The Secretary shall conduct an assessment of the safety of bisphenol A, taking into consideration potential adverse effects from low dose exposure of bisphenol A through food containers or other items composed, in whole or in part, of bisphenol A, taking into consideration different types of such food containers and the use of such food containers with respect to different foods, as appropriate.

(2) SAFETY STANDARD.—Through the safety assessment described in paragraph (1), and taking into consideration the requirements of section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) and section 170.3(i) of title 21, Code of Federal Regulations, the Secretary shall determine whether there is a reasonable certainty that no harm will result from aggregate exposure to bisphenol A through food containers or other items composed, in whole or in part, of bisphenol A, taking into consideration different types of such food containers and the use of such food containers with respect to different foods, as appropriate.

(d) SAVINGS PROVISION.—Nothing in this section shall affect the right of a State, political subdivision of a State, or Indian Tribe to adopt or enforce any regulation, requirement, liability, or standard of performance that is more stringent or preemptive of a regulation, requirement, liability, or standard of performance under this section or that—

(1) applies to a product category not described in this section; or

(2) requires the provision of a warning of risk, illness, or injury associated with the use of food containers composed, in whole or in part, of bisphenol A.

(e) DEFINITION.—For purposes of this section, the term “container” includes the lining of a container.

By Mr. REID (for Mrs. FEINSTEIN (for herself, Mr. BOXER, Mr. SANDERS, Mr. WHITEHOUSE, Mr. CASEY, and Mr. LAUTENBERG)):

S. 137. A bill to amend the Public Health Service Act to provide protections for consumers against excessive, unjustified, or unfairly discriminatory increases in premium rates; to the Committee on Health, Education, Labor, and Pensions.

Mrs. FEINSTEIN. Mr. President, in passing the Patient Protection and Affordable Care Act, PPACA, on March 23, 2010, the 111th Congress made great strides towards protecting consumers from egregious health insurance company practices. However, despite the passage of this historic legislation, the urgent need to protect Americans from unfair health insurance rate increases remains.

Health insurance premiums have been spiraling upwards nationally at out-of-control rates—10, 20, 30 percent every year—all while big national insurance companies enjoy increasing profits.

BPAs without further legislative action, health insurance companies will continue to do what they have done for far too long: put their profits ahead of people.

Over the past decade, family health insurance premium increases have more than doubled, growing a shocking 130 percent, while workers’ hourly earnings rose by only 38 percent, and inflation rose just 29 percent.

From 2000–2008, individuals in the employer-sponsored market saw premium increases an average of 90 percent.

The cost of health insurance continues to outpace income and inflation for other goods and services, and these rapidly escalating costs strain businesses, families, and individuals.

In 2009, 57 percent of people attempting to purchase insurance in the individual market found it difficult or impossible to afford coverage.

All the while, in the third quarter of 2010, five of the nation’s largest investor-owned health insurance companies (Aetna, Coventry Health, United Health, Humana, WellPoint, and Cigna) saw a 22 percent increase in combined net income, putting them on pace to break their own profit record.

The problem is that the health care reform law did not go far enough to control these unfair premium increases, it leaves a loophole.

Simply stated, there is no federal authority to do anything about these rate increases, even if they are unfair.

We need to close this loophole.

This is why today I am introducing, with Senators BOXER and INOUYE, the Health Insurance Rate Review Act of 2011. Representative SCHAROWSKY is introducing companion legislation in the House of Representatives.

This legislation creates a federal fallback rate review process, and grants regulatory authority to block or modify rate increases that are excessive, unjustified, or unfairly discriminatory.

This legislation is a simple, commonsense solution: for States where the insurance commissioner does not have or
use authority to block unfair rate increases, the Secretary of Health and Human Services can do so.

On March 4, 2010, I introduced similar legislation to what I am introducing today. I worked with the Administration and the Finance Committee in putting it together, and with Representative SCHAROWSKY.

President Obama included it in his health reform proposal, but unfortunately, it did not meet the criteria for reconciliation.

The time has come now to take action.

This legislation is necessary in order to protect consumers from the egregious abuses of insurance companies, especially before the majority of the consumer protections included in health reform are fully in place in 2014.

It is disturbing that year after year, health insurance premiums spiral out of control, all while insurance companies enjoy increasing profits.

Insurance premiums make up a higher percentage of household income than ever before, meaning that more and more families have to choose between health care and daily living expenses, saving for retirement, and education.

This is unacceptable, and more must be done to protect consumers.

Everyone by now is familiar with the increases that Anthem/Blue Cross, a subsidiary of WellPoint, was set to impose—as much as 39 percent—for 800,000 Californians.

It turns out that Anthem Blue Cross used flawed data to calculate health insurance premium increases to hundreds of thousands of policyholders in California, resulting in increases that were larger than necessary.

According to an independent analysis, the 25 percent average increase proposed by Anthem should have only been 15.2 percent.

What is most disturbing is that Anthem’s case is not an aberration. Far from it.

This is not a problem unique to California. In the spring of 2010, health insurance companies pursued rate hikes in a number of States: as much as 60 percent in Illinois; 72 percent in Georgia; 50 percent in New Jersey; and 40 percent in Virginia, to name a few.

The White House reports that premium rates have been rising across the Nation with substantial geographic variation.

For employer-sponsored family coverage, premiums increased 88 percent in Michigan over the past decade compared to a 145 percent increase in Alaska.

A report by the Center for American Progress Action Fund found that this summer, WellPoint pursued double digit increases in the individual market for 10 other States: Colorado, Connecticut, Georgia, Indiana, Maine, Nebraska, New Hampshire, New York, Virginia, and Wisconsin.

The reporting requirements in the health reform law will improve the information available, but right now, comprehensive data on the premium increases insurers are imposing does not exist.

In 2009, despite the worst economic downturn since the Great Depression, the five largest for-profit health insurance companies, WellPoint Inc., United Health Group Inc., Aetna Inc., Humana Inc., and Cigna Corp., set a full-year profit record. These companies saw a 56 percent increase in profits from 2008 to 2009, from $78.1 billion.

Furthermore, when many Americans were experiencing double-digit premium increases in 2009, high unemployment, and an average wage growth of only 2 percent, insurance CEOs gave themselves a 167 percent raise.

CEO pay for the 10 largest for-profit health insurance companies was $239.1 million in 2009, up from $85.5 million in 2008.

This doesn’t even include the tens of millions more dollars in exercised stock options, and means that these CEOs raked in nearly $1 billion in total compensation.

In the first three months of 2010, the five largest for-profit health insurance companies, WellPoint Inc., United Health Group Inc., Aetna Inc., Humana Inc., and Cigna Corp., recorded a combined net income of $3.2 billion—a 31 percent jump over the same period in 2009.

Meanwhile, large insurance companies now insure 2.8 million fewer Americans than they did on December 31, 2008. An estimated 59.1 million Americans were uninsured in the first quarter of 2010.

The California HealthCare Foundation reported that 6.8 million Californians lack health coverage.

That is 20 percent of the State’s residents who are not able to afford health insurance.

All the while, insurance companies have been reducing the amount they spend on actual health care. As profits and CEO pay increased, the amount of money insurers spent on medical care went down.

The top six insurers drove down the portion of premiums spent on medical care. For example, the share of premium dollars that CIGNA spent on medical care decreased 6.4 percent in the second quarter of 2010 compared to the prior year, and Humana’s decreased 7.4 percent.

Now, because of legislation in the health reform law, insurance companies have to spend 80–85 percent of premiums on medical care and quality improvement services, not on profits.

This will go a long way to keeping insurance company greed in check, but we need to go farther.

Clearly without additional legislative requirements, health insurance companies are not going to change.

The Department of Health and Human Services recently published proposed rules defining the rate review process. These regulations are a first step towards protecting consumers and keeping insurers in check.

But they fall short of creating a strong rate review system, and rely too heavily on the notion that public disclosure of rates will cause insurance companies to change their behavior.

The regulations do not grant explicit regulatory authority—either State or Federal—to deny, modify, or block rate increases that are excessive, unjustified, or unfairly discriminatory.

The health reform law requires insurance companies to provide justification for unreasonable premium increases to the Secretary of Health and Human Services and post them on their Web sites.

The regulations subject rate increases of 10 percent or greater to additional scrutiny and review, but the State-specific thresholds in 2012 could sanction increases higher than 10 percent.

Transparency and increased scrutiny are steps forward, but there is still this loophole where there is no authority to block or modify rate hikes that are excessive, unjustified, and unfairly discriminatory.

This is why I am again introducing my rate review legislation, which will grant this authority.

I believe there needs to be a Federal fallback in States that lack the legal authority, capacity, or resources to conduct strong rate review.

This legislation gives the Secretary of Health and Human Services the authority to block for-profit or other rate increases that are excessive, unjustified, or unfairly discriminatory.

In some States, insurance commissioners already have that authority, and that is fine. The bill doesn’t touch them.

In Maine, for example, the State superintendent of insurance was able to block Anthem’s proposed 18.5-percent increase last year. She approved only a 10.9-percent increase.

In at least 17 States, including my own—California—companies are not required to receive prior approval for rate increases before they take effect.

In these States, the Secretary would review potentially excessive, unjustified, or unfairly discriminatory rate increases and take corrective action. This could include blocking an increase, providing rebates to consumers, or adjusting an increase.

Under this proposal, the Secretary would work with the National Association of Insurance Commissioners to implement the rate review process. States already doing this work will continue to do so unabated and unfettered. The legislation would not affect them.

However, for the consumers in the other 17 States with no authority, such as California, protection from unfair rate hikes would be provided.

Given the variation in State rate review authority and process, I think this proposal strikes the right balance. The legislation would not affect the authority—either State or Federal—in States with insurance commissioners that are able to protect consumers.

So the legislation I am introducing simply
provides Federal protection for consumers who are currently at the mercy of large health insurance companies whose top priority is their bottom line.

This legislation is particularly important given a recent report by the Kaiser Family Foundation showing that many States lack the capacity and resources to conduct adequate rate review, regardless of the State's statutory authority to review rates.

I strongly believe that we need to take action on this. The health reform law makes strides towards holding companies and shareholders accountable for providing health care at a reasonable rate.

However, there is this loophole.

So this bill becomes very necessary. Premiums are increasing every day, and people in many States have no recourse, and no way to know if a particular increase is unfair.

There needs to be a Federal fallback in States that lack the legal authority, capacity, or resources to conduct strong rate review. In States where the Insurance Commissioner is not equipped to review, modify, and block unreasonable rates, my legislation would grant the Secretary of Health and Human Services the authority to do so.

I urge my colleagues to join me in supporting this legislation, the Health Insurance Rate Review Act of 2011, which will close this loophole.

I look forward to working with my colleagues on this important issue.

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. 137

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 “Health Insurance Rate Review Act”.

SEC. 2. PROTECTION OF CONSUMERS FROM EXCESSIVE, UNFAIRLY DISCRIMINATORY RATES.

(a) PROTECTION FROM EXCESSIVE, UNJUSTIFIED, OR UNFAIRLY DISCRIMINATORY RATES.—The first section 2794 of the Public Health Service Act (42 U.S.C. 300gg–94), as added by section 1083 of the Patient Protection and Affordable Care Act (Public Law 111–148), is amended by adding at the end the following new subsection:

“(C) in subparagraph (A), by striking “premium increases” each time it appears and inserting “rates”; and

(b) by inserting “that satisfy the condition” in subsection (c)(1)—

(i) in paragraph (1), by inserting “such increases” and inserting “such rates”; and

(ii) in paragraph (2)—

(I) in paragraph (1), by inserting “or section 2794” after “set forth in this part”; and

(II) in paragraph (2), by inserting “and section 2794” after “this part”;

and

(c) in subsection (b)—

(i) by inserting “and section 2794” after “this part”;

and

(ii) by inserting “and section 2794” after “part A”.

(d) APPLICABILITY TO GRANDFATHERED PLANS.—Section 1251(a)(4)(A) of the Patient Protection and Affordable Care Act (Public Law 111–148), as added by section 2301 of the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152), is amended by adding at the end the following:

“(v) Section 2794 (relating to reasonable-ness of rates with respect to health insurance coverage).”.

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

By Mr. REID (for Mrs. FEINSTEIN): S. 138. A bill to provide for conservation, enhanced recreation opportunities, and development of renewable energy in the California Desert Conservation Area, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce the California Desert Protection Act of 2011.

This bill is an effort to plan for the competing uses—such as conservation, off-highway vehicle recreation, development, and military training—that are now being proposed for the desert. These uses of our public lands can co-exist through comprehensive planning, but in the absence of such planning, it’s quite possible that none will thrive.

During the previous Congress I introduced similar legislation to help preserve pristine desert lands that were donated to the Federal Government for permanent conservation a decade ago, but that more recently have come under threat of development because of a flawed bureaucratic process that failed to protect them.

Over the last year the bill was endorsed by more than 100 organizations and agencies, and it has a hearing in the Energy and Natural Resources Committee.

I am grateful to Senator BINGAMAN and his staff for working with me to prepare the bill for further action in the Energy and Natural Resources Committee. I believe we can revise the bill to address further the needs of renewable energy developers, the Department of Defense, off-road recreation enthusiasts, local government and others, and I look forward to continuing that effort in the new Congress.

I strongly believe that conservation, renewable energy development and recreation can and must co-exist in the California Desert—and this legislation strikes a carefully conceived balance between these sometimes competing concerns.

The key provisions of this bill would designate two new national monuments—the Mojave Trails and the Sand dunes of the United States of America in the Mojave Trails and the Sand dunes. Thank you.
to Snow National Monuments; add adjacent lands to the Joshua Tree and Death Valley National Parks and the Mojave National Preserve; designate 5 new BLM wilderness areas and protect 4 important waterways—including the Amargosa River and Denio Creek—as Wild and Scenic Rivers—enhance recreational opportunities in the desert and ensure that the training needs of the military are met.

This bill is the product of painstaking discussions with key stakeholders, environmental groups, local and State government, off-highway recreation enthusiasts, hunters, cattle ranchers, mining interests, the Department of Defense, wind and solar energy companies, California’s public utility companies, and many others. I am grateful for all of their efforts.

The previous version of my bill proposed specific improvements to the Department of the Interior’s rules governing the development of renewable energy on public lands. I’m pleased that the Department has instituted a number of new policies over the last year which have greatly improved the process. Consequently, the current bill focuses primarily on conservation, recreation and other important uses of the California desert.

However, I intend to work with my colleagues from the West on separate legislation to further expedite the development of wind and solar energy in California and the West.

The California Desert Protection Act, which was enacted in 1994, was a sweeping piece of legislation aimed at conserving some of the most beautiful and ecologically significant lands in my home State.

The law created Death Valley National Park, Joshua Tree National Park and the Mojave National Preserve, as well as 69 desert wilderness areas managed by the Bureau of Land Management, BLM.

Collectively, it protected more than 7 million acres of desert lands, making it the largest land conservation bill in the lower 48 States in U.S. history.

To this day, it remains one of my proudest accomplishments since joining this body.

Much has changed since the passage of the California Desert Protection Act. Many of the impediments that prevented conservation of other pristine desert lands in the area no longer exist.

For example the Department of Defense concerns with designating some wilderness areas near Fort Irwin have been resolved; many mining areas inside national parks and potential wilderness have closed; grazing allotments on both BLM and National Park Service land have been retired by willing sellers; hundreds of thousands of acres of privately owned land have been donated or acquired by the Federal Government.

Yet even as these issues were resolved, new challenges have emerged. There are now competing demands over how best to manage hundreds of thousands of acres of public lands in the desert.

Some believe the lands should be used for large-scale solar and wind facilities. Some would like to conserve critical habitat for threatened and endangered species. Some would like more acreage available for grazing or for off-road recreation.

Finally, some would like to see additional lands made available for military training and base expansion.

Two years ago, I learned that BLM had accepted applications to build vast solar and wind energy projects on former railroad lands previously owned by the Catellus Corporation. These lands had been donated to the Federal Government or acquired with taxpayer funds with the explicit goal of conservation.

Approximately $45 million of private donations—including a $5 million land discount from Catellus Corporation—and $18 million in Federal Land and Water Conservation grants was spent to purchase these lands, with the intent of conserving them in perpetuity.

As an added incentive, BLM included in the legislative provisions that helped secure the deal to acquire the roughly 600,000 acres of former private land, I found the BLM’s actions unacceptable.

We have an obligation to honor our commitment to conserve these lands—and I believe we can still accomplish that goal while also fulfilling California’s commitment to develop a clean energy portfolio.

I believe the development of these new cleaner energy sources is vital to addressing climate change, yet we must be careful about selecting where these facilities are located.

I plan to work with senators from Western States to improve the renewable energy permitting process to allow quicker development of renewable energy projects on private and disturbed public land. This effort likely requires separate legislation and improved regulation.

I applaud the Department of the Interior’s efforts over the last year to address this problem, especially Interior’s proposed designation of 24 solar energy zones encompassing 677,000 acres of public land in 6 Western States. By designing these areas in appropriate areas and streamlining the permitting process for projects proposed there, the Department has helped ensure that sensitive areas of the desert can be preserved.

As BLM finalizes the creation of those Zones and its new Solar Energy Program, I will push BLM to create a development zone in the West Mojave, conduct sufficient study of zones to ensure projects in these locations can be permitted quickly, and establish the program’s rules as expeditiously as possible.

I will continue to suggest ways that the U.S. Fish and Wildlife Service can improve permitting on private lands, the Defense Department can welcome development on its bases, and the Forest Service can utilize its own lands. These matters may require legislation.

There is enough land in California’s desert to protect these precious areas of the Mojave and aggressively develop renewable resources where permitting will be rapid. California must develop 15,000 to 20,000 megawatts of renewable power to meet its climate goals by 2020, and its permitting process will need to vastly improve for the state to meet this goal.

First, this bill will ensure that hundreds of thousands of acres of land donated to the federal government for conservation will be protected by creating the Mojave Trails National Monument. This new monument would cover approximately 941,000 acres of federal land, which includes approximately 266,000 acres of the former Catellus-owned railroad lands along historic Route 66. I visited the area and was amazed by the beauty of the massive valleys, pristine dry lakes, and rugged mountains.

In addition to its iconic sweeping desert vistas and majestic mountain ranges, this area of the Eastern Mojave also contains critical wildlife corridors linking Joshua Tree National Park and the Mojave National Preserve. It also encompasses hundreds of thousands of acres designated as areas of critical environmental concern, critical habitat for the threatened desert tortoise, and ancient lava bed flows and craters. It is surrounded by more than a dozen BLM wilderness areas.

The BLM would be given the authority to both conserve the monument lands, and also to maintain existing recreational uses, including hunting, vehicle travel, and other uses, camping, horseback riding and rockhounding.

The bill also creates an advisory committee to help develop and oversee the implementation of the monument management plan. The plan is comprised of representatives from local, state and federal government, conservation and recreation groups, and local Native American tribes.

Before I go on to the other conservations provisions in the bill, I would like to address one important issue—and that is what should be done about some of the proposed renewable energy development projects proposed for lands included in this monument.

Although it is true that the monument will prevent further consideration of some applications to develop solar and wind energy projects on former Catellus lands or adjoining lands, it is important to note that of the proposals in question, not a single one has been granted a permit, nor is a single one under review at the California Energy Commission or under formal NEPA, National Environmental Policy Act, review at BLM.

To ensure that creation of the monument does not unnecessarily harm the
The lesson learned from Johnson Valley is that, despite its ecological significance, this area is not particularly well-known—largely because it is managed by a number of distinct entities, including the BLM, Forest Service, National Park Service and private preservation groups. So, the monument designation would help to attract more attention to one of California’s natural gems. The boundaries of this second, smaller new monument would include two areas of special concern: Big Morongo Canyon and White-water Canyon, the BLM and U.S. Forest Service San Gorgonio Wilderness, the Wildlands Conservancy’s Pipe’s Canyon and Mission Creek Preserves, and additional public and private conservation lands, including two wildlife movement corridor areas connecting the Peninsular Ranges with the Transverse Ranges. This area is truly remarkable, and would arguably be the most environmentally diverse national monument in the country. It serves as the intersection of three converging ecological systems—the Mojave Desert, the Colorado River, and the San Bernardino mountains—and is one of the most important wildlife corridors in Southern California. This monument designation would protect 23.6 miles of the Pacific Crest Trails and nearly 240 species of migrating and breeding birds, the second highest density of nesting birds in the United States. It also serves as a home and a crucial migration corridor for animals traveling from Joshua Tree National Park, the oasis at Big Morongo, and the higher elevations of the San Bernardino Mountains. I’d like to make one additional point, and that is that despite its ecological significance, this area is not particularly well-known—largely because it is managed by a number of distinct entities, including the BLM, Forest Service, National Park Service and private preservation groups.

The 1994 California Desert Protection Act extended wilderness protection to many areas in the desert, yet several areas near Fort Irwin were designated as wilderness study areas in order to allow the base to expand. Now that Fort Irwin’s expansion is complete, it is time to consider these areas for permanent wilderness designation. The bill protects approximately 250,000 acres of BLM land as wilderness in five areas. These areas contain some of the most pristine and rugged landscapes in California.

Beyond Fort Irwin, the bill also expands wilderness areas in Death Valley National Park, 90,000 acres, and the San Bernardino National Forest, 4,300 acres, inside the Sand to Snow National Monument by this bill.

The bill also releases 126,000 acres of land from their existing wilderness study area designation in response to requests from local government and recreation users. This will allow the land to be made available for other purposes, including recreational off-highway vehicle use on designated routes.

Fourth, this bill would create the Vinagre Wash Special Management Area.

The agreed-upon designation for this area in Imperial County, near the Colorado River, was reached after careful discussion with key stakeholders. Although the land possesses some wilderness characteristics, there are concerns that the Navy and the Marine Corps need this area for training purposes. The bill sets a process by which the Department of Defense will either purchase or lease the land.

Of these, 49,000 acres are designated as potential wilderness and only be considered for designation when the Department of Defense determines these lands are no longer needed for Navy Seal training. This designation will permit the area to continue to be accessed by vehicles and be used for camping, hiking, mountain biking, sightseeing, and off-highway vehicle use on designated routes and protect tribal cultural assets in the area.

Fifth, the bill adds to or designates four new Wild and Scenic Rivers, totaling 76 miles in length. These designations will ensure the rivers remain clean and free-flowing and that their immediate environments are protected. These beautiful waterways are Deep Creek and the Whitewater River in and near the San Bernardino National Forest, as well as the Amargosa River and Surprise Canyon Creek near Death Valley National Park.

Sixth, the bill adds approximately 74,000 acres of additional lands to the three National Parks established by the 1994 California Desert Protection Act: 41,000 acres in Death Valley National Park. This includes former mining areas where the claims have been retired and a narrow strip of BLM land between National Park and Defense Department boundaries that has made BLM management difficult; almost 30,000 acres in the Mojave National Preserve. This land was not included in the Sand to Snow National Monument because of the former Viceroy gold mine. However, the mining operations ceased several years ago and the reclamation process is nearly complete. Additionally, a 2007 analysis by the Interior Department recommended that this land should be suitable to add to the Preserve; 2,900 acres in Joshua Tree National Park.

This includes multiple small parcels of BLM land identified for disposal on its periphery. Transferring this land to the Park Service would help protect Joshua Tree by preserving these undeveloped areas that border residential communities.

Seventh, the bill designates new lands as Off-Highway Vehicle Recreation Areas.

Of the key goals I have strive for in this bill is to find balance to ensure that the many different needs and uses in the desert are accommodated with the least possible conflict. Some of the most frequent visitors to the desert are the off-highway recreation enthusiasts. In California alone, there are over 1 million registered off-highway vehicles, many of which can be found exploring thousands of miles of desert trails or BLM designated open areas.

However, in order to meet military training needs, the Marine Corps is studying the potential expansion of Marine Corps Air Ground Combat Center at Twentynine Palms into Johnson Valley, the largest OHV area in the country. I strongly support providing our troops with the best possible training, but if the Marines need to expand the base into Johnson Valley, this could have potentially resulted in the loss of tens of thousands of acres of OHV recreation lands.

In 2009 I met with Major General Eugene Payne, Assistant Deputy Commandant for Installations and Logistics, and Brigadier General Melvin Spiese, Commanding General, Training and Education Command, to discuss this issue, and I am very grateful for their efforts to consider base expansion options that would preserve much of Johnson Valley for recreation.

As a result of those meetings, the Marine Corps has committed to studying an alternative that would allow for a portion of Johnson Valley to be used exclusively for military training, another portion to be used exclusively for continued OHV recreation and a third area for joint use. While the environmental review process must first be completed, I am hopeful that this option will prevail for the benefit of the Marines and recreational users of Johnson Valley.

The lesson learned from Johnson Valley is that, despite the vast size of the California desert, there are relatively...
few areas dedicated to OHV recreation, and even those areas face increasing competition from other types of uses. These areas are important not only to the hundreds of thousands of visitors who enjoy them, but also to the local economy that depends on their tourist dollars. In addition to protecting these areas, we also protect conservation areas by providing appropriate places for OHV recreation.

This bill will designate five existing OHV areas in the Mojave desert as permanent OHV areas, providing off-highway groups some certainty that these uses will be protected as much as conservation areas. Collectively, these areas could be as much as 314,000 acres, depending on what, if any, of Johnson Valley is ultimately needed by the Marines.

This section of the bill also requires the Secretary of the Interior to conduct a study to determine which, if any, lands adjacent to these recreation areas could be suitable for addition. This will help make up for some of the lost acres in Johnson Valley should the Marines decide to expand there.

Finally, this bill includes other key provisions that address various challenges and opportunities in the California desert, including state land exchanges. There are currently about 370,000 acres of state lands spread across the California desert in isolated 640 acre parcels. Because many of these acres are inside national parks, wilderness, the proposed monuments or conservation areas, they are largely unusable. The bill seeks to remedy that problem by requiring the Department of the Interior to develop and implement a plan with the state to complete the exchange of these lands for other BLM or GSA owned property in the next ten years. These land exchanges will help consolidate the state lands into larger, more usable areas that could potentially provide the state with viable sites for renewable energy development, off-highway vehicle recreation or other commercial purposes.

Military activities. The bill ensures the right of the Department of Defense to conduct low-level overflights over wilderness, national parks and national monuments.

Climate change and wildlife corridors. The bill requires the Department of the Interior to study the impact of climate change on California desert species migration, incorporate the study’s results and recommendations into land use management plans, and consider the study’s findings when making decisions granting rights of way or access to federal lands.

Tribal uses and interests. The bill requires the Secretary to ensure access for tribal cultural activities within national parks, monuments, wilderness and other areas designated within the bill. It also requires the Secretary to develop a cultural resources management plan to protect a sacred tribal trail along the Colorado River between southern Nevada and the California-Baja border.

Prohibited uses of donated and acquired lands. In order to ensure that donated and acquired Catellus lands outside the Mojave Trails National Monument are maintained for conservation, the bill prohibits their use for development, mining, off-highway vehicle use, except designated routes, grazing, military training and other surface disturbing activities. The Secretary of the Interior is authorized to make limited exceptions in cases where it is deemed in the public interest, but comparable lands would have to be purchased and donated to the federal government as mitigation for lost acreage.

All of these provisions, when taken together, would serve to complement the lasting conservation established by the California Desert Protection Act—while ensuring that other important local uses are maintained in appropriate areas.

I remember my first visits to the desert years ago. It was treated like a waste dump. It was full of abandoned cars. Old appliances littered the landscape.

But we have worked very hard to clean it up.

We have worked to make sure that the vast vistas and pristine desert habitat are respected by humanity, and that we give to our children a healthier, more beautiful desert than we inherited.

But if we are to remain successful in the long run, we must not only protect the desert land itself, we must also protect the broader environment from the ravages of climate change, and we must offer economic opportunity to those who live in these areas.

That is the purpose of this legislation. There are many places in the California desert where development and employment are essential and appropriate.

But there are also places that future generations will thank us for setting aside.

I have worked painstakingly with stakeholders to ensure that this legislation balances sometimes competing needs.

This bill, if enacted, will have a positive and enduring impact on the landscape of the Southern California desert by conserving pristine areas while meeting the needs of all desert stakeholders.

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:

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 “California Desert Protection Act of 2011.”

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Amendments to the California Desert Protection Act of 1994.
Sec. 3. Designation of wild and scenic rivers.
Sec. 4. Designation of special management area additions.
Sec. 5. Designation of off-highway vehicle recreation areas.
Sec. 6. Miscellaneous.
Sec. 7. State land transfers and exchanges.
Sec. 8. Military activities.
Sec. 9. Climate change and wildlife corridors.
Sec. 10. Prohibited uses of donated and acquired land.
Sec. 11. Triba luses and interests.

SEC. 2. AMENDMENTS TO THE CALIFORNIA DESERT PROTECTION ACT OF 1994.

(a) In General.—Public Law 103–433 (16 U.S.C. 410aaa et seq.) is amended by adding at the end the following:

**TITLE XIII—MOJAVE TRAILS NATIONAL MONUMENT**

**SEC. 1301. DEFINITIONS.**

In this title:

(1) MAP.—The term ‘map’ means the map entitled ‘Boundary Map, Mojave Trails National Monument’ and dated November 19, 2009.

(2) MONUMENT.—The term ‘Monument’ means the Mojave Trails National Monument established by section 1302(a).
"(3) Study area.—The term ‘study area’ means the land that—
"(A) is described in—
"(i) the notice of the Bureau of Land Management of September 15, 2009 entitled ‘Notice of Proposed Legislative Withdrawal and Opportunity for Public Comment; California’ (73 Fed. Reg. 53289); or
"(ii) a subsequent notice in the Federal Register that is related to the notice described in clause (i); and
"(B) has been segregated by the Director of the Bureau of Land Management.

SEC. 1302. ESTABLISHMENT OF THE MOJAVE TRAILS NATIONAL MONUMENT.

(a) Establishment.—There is designated in the State the Mojave Trails National Monument.

(b) Purposes.—The purposes of the Monument are—

(1) to preserve the nationally significant biological, cultural, recreational, geological, educational, historic, scenic, and scientific values—
"(A) in the Central and Eastern Mojave Desert; and
"(B) along historic Route 66; and

(2) to secure the opportunity for present and future consultation to experience and enjoy the magnificent vistas, wildlife, land forms, and natural and cultural resources of the Monument.

(c) Boundaries.—

(1) in General.—Except as provided in paragraph (2), the Monument shall consist of the Federal land and Federal interests in land within the boundaries depicted on the map.

(2) Exclusions.—

(A) Study area.—Subject to subparagraph (B), the study area shall be excluded from the Monument to permit the Secretary of the Navy to study the land within the study area for—
"(i) withdrawal in accordance with the Act of February 28, 1958 (43 U.S.C. 155 et seq.); and
"(ii) potential inclusion into the Marine Corps Air Ground Combat Center at Twentynine Palms, California, for national defense purposes.

(B) Incorporation in Monument.—After action by the Secretary of Defense and Congress regarding the withdrawal under subparagraph (A), any land within the study area that is not withdrawn shall be incorporated into the Monument.

(d) Map; Legal Descriptions.—

(1) Legal Description.—As soon as practicable after the date of enactment of this title, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate legal descriptions of the Monument, based on the map.

(2) Corrections.—The map and legal descriptions of the Monument shall have the same effect as if included in this title, except that the Secretary may correct clerical and typographical errors in the map and legal descriptions.

(3) Availability of Map.—The map shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

SEC. 1303. MANAGEMENT OF THE MONUMENT.

(a) In General.—The Secretary shall—

(1) only allow uses of the Monument that—
"(A) are further the purposes described in section 1302(b); and
"(B) are included in the management plan developed under subsection (g); and

(2) subject to valid existing rights, manage the Monument to protect the resources of the Monument, in accordance with—

(A) this Act;
"(B) the General Land Law and Management Act of 1976 (43 U.S.C. 1701 et seq.); and
"(C) any other applicable provisions of law.

(b) Cooperation Agreements.—General Authority.—The Secretary, within the management plan and existing authorities applicable to the Monument, the Secretary may enter into cooperative agreements and shared management arrangements (including special use permits with any person (including educational institutions and Indian tribes)), for the purposes of interpreting, researching, and providing education on the resources of the Monument.

(c) Administration of Subsequently Acquired Land.—Any land or interest in land within the boundaries of the Monument that is acquired by the Secretary after the date of enactment of this title shall be managed by the Secretary in accordance with this title.

(d) Limitations.—

(1) Property Rights.—The establishment of the Monument does not—

(A) affect—
"(i) any property rights of an Indian reservation, individually held trust land, or any other Indian tribe;
"(ii) any land or interests in land held by the State, any political subdivision of the State, or any special district; or
"(iii) any property rights within the boundaries of the Monument; or

(B) grant to the Secretary any authority on or over non-Federal land not already provided by law.

(2) Authority.—The authority of the Secretary under this title extends only to Federal land and Federal interests in land included in the Monument.

(e) Adjacent Management.—

(1) in General.—Nothing in this title creates any protective perimeter or buffer zone around the Monument.

(2) Activities Outside Monument.—The fact that an activity or use on land outside the Monument can be seen or heard within the Monument shall not preclude the activity or use outside the boundary of the Monument.

(f) Additions and Water Quality.—Nothing in this title affects the standards governing air or water quality outside the boundary of the Monument.

(g) Management Plan.—

(1) in General.—The Secretary shall—

(A) not later than 3 years after the date of enactment of this title, complete a management plan for the conservation and protection of the Monument; and

(B) on completion of the management plan—

(i) submit the management plan to—
"(I) the Committee on Natural Resources of the House of Representatives; and
"(II) the Committee on Energy and Natural Resources of the Senate; and

(ii) make the management plan available to the public.

(2) Inclusions.—The management plan shall include provisions that—

(A) provide for the conservation and protection of the Monument;

(B) authorize the continued recreational use of the Monument (including hiking, camping, hunting, rock climbing, sightseeing, off-highway vehicle recreation on designated routes, and horseback riding); and

(C) authorize the continued commercial use of the Monument (including mining, rock hunting, and rock collecting).

(h) Effect of Section.—Nothing in this section diminishes or alters existing authorities applicable to Federal land included in the Monument.

SEC. 1304. USES OF THE MONUMENT.

(a) Use of Off-Highway Vehicles.—

(1) in General.—The use of off-highway vehicles in the Monument (including the use of off-highway vehicles for commercial touring) shall be permitted to continue on designated routes, subject to all applicable laws and authorized by the management plan.

(2) Nondesignated Routes.—Off-highway vehicle access shall be permitted on nondesignated routes and trails in the Monument—

(A) for administrative purposes; or

(B) to respond to an emergency; or

(C) as authorized under the management plan.

(3) Inventory.—Not later than 2 years after the date of enactment of this title, the Secretary shall conduct an inventory of all existing routes in the Monument.

(b) Hunting, Trapping, and Fishing.—

"(4) Address the need for and, as necessary, establish plans for, the installation, construction, and maintenance of public utility energy transport facilities within rights-of-way that are consistent with the utility rights-of-way or corridors authorized under section 1304(f); and
(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall permit hunting, trapping, and fishing within the Monument in accordance with applicable Federal and State laws (including regulations) in effect as of the date of enactment of this title.

(2) TRAPPING.—No amphibians or reptiles may be trapped in the Monument, including the transfer of title to the trapping permit to the Secretary or to a private party.

(3) PERMIT REQUIREMENT.—The Secretary may acquire base property and associated grazing permits within the Monument for purposes of permanently retiring the permit if—

(A) the permittee is a willing seller;

(B) the permittee and Secretary reach an agreement concerning the terms and conditions of the acquisition; and

(C) termination of the allotment would further the purposes of the Monument described in section 1302(b).

(4) ACCESS TO STATE AND PRIVATE LAND.—The Secretary shall provide adequate access to each owner of non-Federal land or interests in non-Federal land within the boundary of the Monument to ensure the responsible use and enjoyment of the land or interest by the owner.

(5) LIMITATIONS.—Except as provided in paragraphs (2) and (3), or as required for the maintenance, upgrade, expansion, or development of energy transport facilities described in subparagraph (a), no commercial enterprises shall be authorized within the boundary of the Monument after the date of enactment of this title.

(6) AUTHORIZED EXCEPTIONS.—The Secretary may authorize exceptions to paragraph (1) if the Secretary determines that the enterprises would further the purposes described in section 1302(b).

(7) APPLICABILITY.—This subsection does not apply to—

(A) transmission and telecommunication facilities that are owned or operated by a utility subject to regulation by the Federal Government or a State government or a State service obligation (as those terms are defined in section 217 of the Federal Power Act (16 U.S.C. 824q)); or

(B) commercial vehicular touring enterprises within the Monument that operate on designated routes.

(8) UTILITY RIGHTS-OF-WAY.—

(1) IN GENERAL.—Nothing in this title precludes, prevents, or inhibits the maintenance, upgrade, expansion, or development of energy transport facilities within the Monument that are critical to reducing the effects of climate change in the environment.

(2) AUTHORIZATION.—The Secretary shall, to the maximum extent practicable—

(A) permit rights-of-way and alignments that benefit the values and resources of the Monument described in section 1302(b); and

(B) ensure that existing rights-of-way and utility corridors within the Monument are fully utilized before permitting new rights-of-way or designating new utility corridors within the Monument.

(3) EFFECT ON EXISTING FACILITIES AND RIGHTS-OF-WAY.—Nothing in this section terminates or limits—

(A) any right-of-way within the Monument in existence on the date of enactment of this title (including customary operation, maintenance, repair, or replacement activities in right-of-way); or

(B) a right-of-way authorization issued on the expiration of an existing right-of-way authorization described in subparagraph (A).

(4) UPGRADING AND EXPANSION OF EXISTING RIGHTS-OF-WAY.—Nothing in this subsection prohibits the upgrading (including the construction or replacement), expansion, or assignment of an existing utility transmission line for the purpose of increasing the capacity of—

(A) a transmission line in existing rights-of-way; or

(B) a right-of-way issued, granted, or permitted by the Secretary that is contiguous or adjacent to existing transmission line rights-of-way.

(5) INTERSTATE 40 TRANSPORTATION CORRIDOR.—For purposes of underground utility rights-of-way described in subparagraph (A), the Secretary shall consider the Interstate 40 transportation corridor to be equivalent to an existing utility right-of-way corridor.

(6) New Incidental Rights.—

(A) IN GENERAL.—Any new rights-of-way or new uses within existing rights-of-way shall—

(i) only be permitted in energy corridors or expansions of energy corridors that are designated as of the date of enactment of this title; and

(ii) subject to subparagraph (B), require review and approval under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) APPROVAL.—New rights-of-way or uses or expansions of existing corridors under subparagraph (A) shall only be approved if the head of the applicable lead Federal agency, in consultation with other agencies as appropriate, determines that the new rights-of-way, uses, or expansions are consistent with—

(i) the purposes of the Monument described in section 1302(b); and

(ii) the management plan for the Monument.

(7) WEST WIND ENERGY CORRIDOR.—

(1) ALTERNATIVE ALIGNMENT.—Subject to paragraph (2), to further the purposes of the Monument described in section 1302(b), the Secretary may require a realignment of the energy right-of-way corridor numbered 27–41 and designated under the energy corridor planning process established by section 368 of the Energy Policy Act of 2005 (42 U.S.C. 13526) if an alternative alignment within the Monument—

(A) provides substantially similar energy transmission capacity and reliability;

(B) does not impair other existing rights-of-way; and

(C) is compatible with military training requirements.

(2) CONSULTATION.—Before establishing an alternative alignment of the energy right-of-way corridor under paragraph (1), the Secretary shall—

(A) the Secretary of Energy;

(B) the Secretary of Defense;

(C) the State, including the transmission permitting local government; and

(D) units of local government in the State; and

(E) any entities possessing valid existing rights-of-way within—

(i) the energy corridor described in paragraph (1); or

(ii) any potential alternative energy corridor.


(A) to provide—

(i) electric transmission facilities that improve reliability, relieve congestion, and enhance the national grid; and

(ii) oil, gas, and hydrogen pipelines; and

(B) to provide locations for electric transmission facilities that—

(i) promote renewable energy generation;

(ii) otherwise further the interest of the United States if the transmission facilities are identified as critical—

(1) in a Federal law; or

(2) through a regional transmission planning process; or

(iii) consist of high-voltage transmission facilities critical to the purposes described in clause (1) or (ii).

(4) LAND USE PLANNING.—In conducting land use planning for the Monument, the Secretary—

(A) shall consider the existing locations of the corridors described in paragraph (3); and

(B) subject to paragraph (5), may amend the location of any energy corridors to comply with purposes of the Monument if the amended corridor—

(i) provides connectivity across the landscape that is equivalent to the connectivity provided by the existing location;

(ii) meets the criteria established by—

(1) section 368 of the Energy Policy Act of 2005 (42 U.S.C. 13526); and

(II) the record of decision for the applicable corridor; and

(iii) does not impair or restrict the uses of existing rights-of-way.

(5) CONSULTATION REQUIRED.—Before amending a corridor under paragraph (4)(B), the Secretary shall consult with all interested Federal agencies and other parties (including the person identified in section 368(a) of the Energy Policy Act of 2005 (42 U.S.C. 13526(a))), in accordance with applicable laws (including regulations).

(6) OVERFLIGHTS.—Nothing in this title or the management plan restricts or precludes—

(A) overflights (including low-level overflights) of military, commercial, and general aviation aircraft that can be seen or heard within the Monument;

(B) the designation or creation of new units of special use airspace; or

(C) the establishment of military flight training routes over the Monument.

(7) WITHDRAWAL.—

(A) IN GENERAL.—Subject to valid existing rights and except as provided in paragraph (2), the Federal land and interests in Federal land within the Monument are withdrawn from—

(i) all forms of entry, appropriation, or disposal under the public land laws;

(ii) entry, location, and patent under the public land mining laws; and

(C) operation of the mineral leasing, geothermal leasing, and mineral materials laws; and

(D) energy development and power generation.
(2) EXCHANGE.—Paragraph (1) does not apply to an exchange where the Secretary determines would further the protective purposes of the Monument.
(3) ACCESS TO RENEWABLE ENERGY FACILITIES.—
"(1) IN GENERAL.—On a determination that no reasonable alternative access exists and subject to paragraph (2), the Secretary may establish a right-of-way allowing access to the monument.
"(2) No reasonable alternative access exists and public utility commission.
(4) RESTRICTIONS.—To the maximum extent practicable, the right-of-way shall be designed and sited to be consistent with the purposes of the Monument described in section 1302(b).

SEC. 1303. ACQUISITION OF LAND.
"(a) IN GENERAL.—The Secretary may acquire for inclusion in the Monument any land or interests in land within the boundary of the Monument owned by the State, units of local government, Indian tribes, or private individuals only by—
"(1) donation;
"(2) exchange with a willing party; or
"(3) purchase from a willing seller for fair market value.
"(b) USE OF EASEMENTS.—To the maximum extent practicable and only with the approval of the landowner, the Secretary may use a right-of-way easement to acquire an interest in land in the Monument rather than acquiring fee simple title to the land.
"(c) INCORPORATION OF ACQUIRED LAND AND INTERESTS IN LAND.—Any land or interest in land within the boundaries of the Monument that is acquired by the United States after the date of enactment of this title shall be added to and administered as part of the Monument.
"(d) DONATED AND ACQUIRED LAND.—
"(1) All land within the boundary of the Monument donated to the United States or acquired using amounts from the land and water conservation fund established under section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–5) before, on, or after the date of enactment of this title—
"(A) is withdrawn from mineral entry; and
"(B) shall be managed in a manner consistent with the purposes of the Monument described in section 1302(b).
"(2) EFFECT ON MONUMENT.—Land within the boundary of the Monument that is contiguous to the United States or acquired using amounts from the land and water conservation fund established under section 2 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–5) shall be managed in a manner consistent with conservation purposes, subject to applicable law.

SEC. 1306. ADVISORY COMMITTEE.
"(a) IN GENERAL.—The Secretary shall establish an advisory committee for the Monument, the purpose of which is to advise the Secretary with respect to the preparation and implementation of the management plan required by section 1303(g).
"(b) MEMBERSHIP.—To the extent practicable, the advisory committee shall include the following members, to be appointed by the Secretary:
"(1) A representative with expertise in natural science and research selected from a regional research network.
"(2) A representative of the California Natural Resources Agency.
"(3) A representative of the California Public Utilities Commission.
"(4) A representative of the County of San Bernardino, California.
"(5) A representative of each of the cities of Barstow, Needles, Twentynine Palms, and Yucca Valley, California.
"(6) A representative of each of the Colorado River, the Mojave, and the Chemehuevi Indian tribes.
"(7) A representative from the Department of Defense.
"(8) A representative of the Wildlands Conservancy.
"(9) A representative of a local conservation organization.
"(10) A representative of a historical preservation organization.
"(11) A representative from each of the following recreational activities:
"(A) Off-highway vehicles.
"(B) Hunting.
"(C) Rockhounding.
"(D) TERMS.—
"(1) IN GENERAL.—In appointing members under paragraphs (1) through (11) of subsection (b), the Secretary shall appoint 1 primary member and 1 alternate member that meets the qualifications described in each of those paragraphs.
"(2) VACANCY.—
"(A) PRINCIPAL MEMBER.—A vacancy on the advisory committee with respect to a primary member shall be filled by the applicable alternate member.
"(B) ALTERNATE MEMBER.—The Secretary shall appoint a new alternate member in the event of a vacancy with respect to an alternate member of the advisory committee.
"(3) TERMINATION.—
"(A) IN GENERAL.—The term of all members of the advisory committee shall terminate on the termination of the advisory committee under subsection (g) to provide ongoing recommendations on the management of the Monument.
"(B) QUORUM.—A quorum of the advisory committee shall consist of a majority of the primary members.
"(c) CHAIRPERSON AND PROCEDURES.—
"(1) IN GENERAL.—The advisory committee shall select a chairperson and vice chairperson from among the primary members of the advisory committee.
"(2) DUTIES.—The chairperson and vice chairperson selected under paragraph (1) shall establish any rules and procedures for the advisory committee that the chairperson and vice-chairperson determine to be necessary or desirable.
"(3) SERVICE WITHOUT COMPENSATION.—Members of the advisory committee shall serve without pay.
"(4) TERMINATION.—The advisory committee shall cease to exist on—
"(1) the date that is 180 days after the date of enactment of this title;
"(2) at the discretion of the Secretary, a later date established by the Secretary.

SEC. 1307. RENEWABLE ENERGY RIGHT-OF-WAY APPLICATIONS.
"(a) IN GENERAL.—Applicants for rights-of-way for the development of solar energy facilities that have been terminated by the establishment of the Monument shall be granted the right of first refusal to apply for replacement sites that—
"(1) have not previously been encumbered by right-of-way applications; and
"(2) are within the Solar Energy Zones designated by the Solar Energy Programmatic Environmental Impact Statement of the Department of the Interior and the Department of Energy.
"(b) ELIGIBILITY.—To be eligible for a right of first refusal under subsection (a), an applicant shall have, on or before December 1, 2009—
"(1) submitted an application for a right-of-way to the Bureau of Land Management; and
"(2) completed a plan of development to develop a solar energy facility on land within the Monument;
"(3) submitted cost recovery fund payments to the Bureau of Land Management with the costs of processing the right-of-way application;
"(4) successfully submitted an application for an interconnection agreement with an electrical grid operator that is registered with the North American Electric Reliability Corporation; and
"(5) secured a power purchase agreement; or
"(B) a financially and technically viable solar energy facility project, as determined by the Director of the Bureau of Land Management.
"(c) EQUIVALENT ENERGY PRODUCTION.—Nothing in this section alters, affects, or displaces primary rights-of-way applications within the Solar Energy Study Areas unless the applications are otherwise altered, affected, or displaced as a result of the Solar Energy Programmatic Environmental Impact Statement of the Department of the Interior and the Department of Energy.
"(d) DEADLINES.—A right of first refusal granted under this section shall only be exercisable by the later of—
"(1) the date that is 180 days after the date of enactment of this title; or
"(2) the date that is 180 days after the date of the designation of the Solar Energy Zones under the Solar Energy Programmatic Environmental Impact Statement.

TITLES XIV—SAND TO SNOW NATIONAL MONUMENT

SEC. 1401. DEFINITIONS.
In this title:
"(1) MAP.—The term 'map' means the map entitled 'Boundary Map, Sand to Snow National Monument' and dated October 26, 2009.
"(2) MONUMENT.—The term 'Monument' means the Sand to Snow National Monument established by section 1402(a).

SEC. 1402. ESTABLISHMENT OF THE SAND TO SNOW NATIONAL MONUMENT.
"(a) ESTABLISHMENT.—There is established in the State the Sand to Snow National Monument.
"(b) PURPOSES.—The purposes of the Monument are—
"(1) to preserve the nationally significant biological, cultural, educational, geological, historic, scenic, and recreational values at the convergence of the Mojave and Colorado Deserts and the San Bernardino Mountains; and
"(2) to secure the opportunity for present and future generations to experience and enjoy the magnificent vistas, wildlife, land forms, and natural and cultural resources of the Monument.
"(c) BOUNDARIES.—The Monument shall consist of the Federal land and Federal interests in land within the boundaries depicted on the map.

"(d) LEGAL DESCRIPTIONS.—

"(1) LEGAL DESCRIPTION.—As soon as practicable after the date of enactment of this title, the Secretary shall submit to the Committee on Natural Resources of the Senate and the Committee on Energy and Natural Resources of the Senate the legal descriptions of the Monument, on the map.

"(2) CORRECTIONS.—The map and legal descriptions of the Monument shall have the same force and effect as if included in this title, except that the Secretary may correct clerical and typographical errors in the map and legal descriptions.

"(e) AVAILABILITY OF MAP.—The map shall be on file and available for public inspection in appropriate offices of the Bureau of Land Management.

"SEC. 1403. MANAGEMENT OF THE MONUMENT.

"(a) IN GENERAL.—The Secretary shall—

"(1) only allow uses of the Monument that—

"(A) further the purposes described in section 1402(b); and

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

"(C) do not interfere with the utility rights-of-way authorized under section 1405(c); and

"(2) subject to valid existing rights, manage the Monument to protect the resources of the Monument, in accordance with—

"(A) this title; and

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

"(C) any other applicable provisions of law.

"(b) COOPERATION AGREEMENTS; GENERAL AUTHORITY.—Consistent with the management plan and existing authorities applicable to Federal and State lands (including any special use permits with any person (including educational institutions and Indian tribes)), for the purposes of interpreting, re-evaluating, and providing education on the resources of the Monument.

"(c) ACQUISITION OF SUBSEQUENTLY ACQUIRED LAND.—Any land or interest in land within the boundaries of the Monument that is acquired by the Secretary of the Interior or the Chief of the Forest Service after the date of enactment of this title shall be managed by the Secretary of Agriculture or the Secretary of the Interior, respectively, in accordance with this title.

"(d) LIMITATIONS.—

"(1) PROPERTY RIGHTS.—The establishment of the Monument does not—

"(A) affect law.—The Secretary shall prepare and implement the management plan in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any other applicable laws.

"(B) CONSULTATION.—In preparing and implementing the management plan, the Secretary shall periodically consult with—

"(i) the advisory committee established under section 1404(e); and

"(ii) any other applicable provisions of law.

"(2) USES IN THE MONUMENT.—

"(A) IN GENERAL.—The Secretary shall manage any Federal land and Federal interests in land within the boundaries of the Monument—

"(i) consistent with the existing permits and uses of the land in section 1402(b); and

"(ii) as required for the maintenance, upgrade, expansion, or development of energy transport facilities in the corridors described in subsection (e), no commercial enterprises shall be authorized within the boundary of the Monument after the date of enactment of this title.

"(B) AUTHORIZED EXCEPTIONS.—The Secretary may authorize exceptions to paragraph (2) if the Secretary determines that the commercial enterprises would further the purposes described in section 1402(b).

"(C) EXISTING USE.—Nothing in this paragraph diminishes or alters existing authorities applicable to Federal land included in the Monument.

"SEC. 1404. USES OF THE MONUMENT.

"(a) USE OF OFF-HIGHWAY VEHICLES.—

"(1) IN GENERAL.—The use of off-highway vehicles in the Monument (including the use of off-highway vehicles for commercial tourism) shall be permitted to continue on designated routes, subject to all applicable law and authorized by the management plan.

"(2) NONDESIGNATED ROUTES.—Off-highway vehicle access shall be permitted on non-designated routes and trails in the Monument—

"(A) for administrative purposes; (B) to respond to an emergency; or

"(C) as authorized under the management plan.

"(3) INVENTORY.—Not later than 2 years after the date of enactment of this title, the Secretary shall complete an inventory of all existing routes in the Monument.

"(4) HUNTING, TRAPPING, AND FISHING.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall permit hunting, trapping, and fishing within the Monument in accordance with applicable Federal and State laws (including regulations) as of the date of enactment of this title.

"(2) TRAPPING.—No amphibians or reptiles may be collected within the Monument.

"(3) REGULATIONS.—The Secretary, after consultation with the California Department of Fish and Game, may establish regulations for the use of designating zones where, and establishing periods during which, no hunting, trapping, or fishing shall be permitted in the Monument for the purposes of resource protection, public use and enjoyment.

"(c) ACCESS TO STATE AND PRIVATE LAND.—

"(1) IN GENERAL.—The Secretary shall provide access to each owner of non-Federal land or interests in non-Federal land within the boundaries of the Monument to ensure the reasonable use and enjoyment of the land or interest by the owner.

"(d) LIMITATIONS.—

"(1) COMMERICAL ENTERPRISES.—Except as provided in paragraphs (2) and (3), as required for the maintenance, upgrade, expansion, or development of energy transport facilities in the corridors described in subsection (e), no commercial enterprises shall be authorized within the boundary of the Monument after the date of enactment of this title.

"(2) AUTHORIZED EXCEPTIONS.—The Secretary may authorize exceptions to paragraph (1) if the Secretary determines that the commercial enterprises would further the purposes described in section 1402(b).

"(3) TRANSMISSION AND TELECOMMUNICATION FACILITIES.—This subsection does not apply to—

"(A) transmission and telecommunication facilities that are owned or operated by a utility subject to regulation by the Federal...
Government or a State government or a State utility with a service obligation (as those terms are defined in section 217 of the Federal Power Act (16 U.S.C. 824q)); or

(2) the designation or creation of new utility transmission rights-of-way located within the Monument that are identified as critical in law or through a regional transmission planning process; or

(3) the purposes of the Monument described in section 1402(b); and

(4) the execution of section 1402(b).

SEC. 1405. ACQUISITION OF LAND.

(a) IN GENERAL.—The Secretary may acquire for inclusion in the Monument any land or interests in land within the Monument that are identified as critical in law or through a regional transmission planning process; or

(b) the designation or creation of new utility transmission rights-of-way located within the Monument that are identified as critical in law or through a regional transmission planning process; or

(c) the purposes of the Monument described in section 1402(b); and

(d) energy development and power generation.

(b) EXCHANGE.—Paragraph (1) does not apply to an exchange that the Secretary determines would further the interest of the United States if the transmission facilities are identified as critical in law or through a regional transmission planning process; or

(c) the purposes of the Monument described in section 1402(b); and

(d) energy development and power generation.

(b) EXCHANGE.—Paragraph (1) does not apply to an exchange that the Secretary determines would further the interest of the United States if the transmission facilities are identified as critical in law or through a regional transmission planning process; or

(c) the purposes of the Monument described in section 1402(b); and

(d) energy development and power generation.

(b) EXCHANGE.—Paragraph (1) does not apply to an exchange that the Secretary determines would further the interest of the United States if the transmission facilities are identified as critical in law or through a regional transmission planning process; or

(c) the purposes of the Monument described in section 1402(b); and

(d) energy development and power generation.

(b) EXCHANGE.—Paragraph (1) does not apply to an exchange that the Secretary determines would further the interest of the United States if the transmission facilities are identified as critical in law or through a regional transmission planning process; or

(c) the purposes of the Monument described in section 1402(b); and

(d) energy development and power generation.

(b) EXCHANGE.—Paragraph (1) does not apply to an exchange that the Secretary determines would further the interest of the United States if the transmission facilities are identified as critical in law or through a regional transmission planning process; or

(c) the purposes of the Monument described in section 1402(b); and

(d) energy development and power generation.

(b) EXCHANGE.—Paragraph (1) does not apply to an exchange that the Secretary determines would further the interest of the United States if the transmission facilities are identified as critical in law or through a regional transmission planning process; or

(c) the purposes of the Monument described in section 1402(b); and

(d) energy development and power generation.

(b) EXCHANGE.—Paragraph (1) does not apply to an exchange that the Secretary determines would further the interest of the United States if the transmission facilities are identified as critical in law or through a regional transmission planning process; or

(c) the purposes of the Monument described in section 1402(b); and

(d) energy development and power generation.

(b) EXCHANGE.—Paragraph (1) does not apply to an exchange that the Secretary determines would further the interest of the United States if the transmission facilities are identified as critical in law or through a regional transmission planning process; or

(c) the purposes of the Monument described in section 1402(b); and

(d) energy development and power generation.

(b) EXCHANGE.—Paragraph (1) does not apply to an exchange that the Secretary determines would further the interest of the United States if the transmission facilities are identified as critical in law or through a regional transmission planning process; or

(c) the purposes of the Monument described in section 1402(b); and

(d) energy development and power generation.

(b) EXCHANGE.—Paragraph (1) does not apply to an exchange that the Secretary determines would further the interest of the United States if the transmission facilities are identified as critical in law or through a regional transmission planning process; or

(c) the purposes of the Monument described in section 1402(b); and

(d) energy development and power generation.
"(3) TERMINATION.—

(a) IN GENERAL.—The term of all members of the advisory committee shall terminate on the termination of the advisory committee established under subsection (g).

(b) NEW ADVISORY COMMITTEE.—At the discretion of the Secretary, the Secretary may establish a new advisory committee on the terms and conditions set forth under subsection (g) to provide ongoing recommendations on the management of the Monument.

(c) QUORUM.—A quorum of the advisory committee shall consist of a majority of the primary members.

(3) SERVICE WITHOUT COMPENSATION.—Members of the advisory committee shall serve without pay.

(4) TERMINATION.—The advisory committee shall cease to exist on—

(1) the date on which the management plan is officially adopted by the Secretary; or

(2) at the discretion of the Secretary, a later date established by the Secretary.

TITLE XV—WILDERNESS

SEC. 1501. DESIGNATION OF WILDERNESS AREAS.

(a) DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT.—In accordance with the Wilderness Act (16 U.S.C. 1311 et seq.) and sections 601 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1781, 1782), the following land in the State is designated as wilderness areas and as components of the National Wilderness Preservation System:

(1) AVAWATZ MOUNTAINS WILDERNESS.—Certain land in the Conservation Area administered by the Director of the Bureau of Land Management, comprising approximately 21,633 acres, as generally depicted on the map entitled ‘Avawatz Mountains Proposed Wilderness’ and dated July 15, 2009, to be known as the ‘Avawatz Mountains Wilderness’.

(2) GOLDEN VALLEY WILDERNESS.—Certain land in the Conservation Area administered by the Director of the Bureau of Land Management, comprising approximately 7,714 acres, as generally depicted on the map entitled ‘Golden Valley Proposed Wilderness’ and dated July 15, 2009, to be known as the ‘Golden Valley Wilderness’.

(3) GREAT FALLS BASIN WILDERNESS.—

(A) IN GENERAL.—Certain land in the Conservation Area administered by the Director of the Bureau of Land Management, comprising approximately 7,871 acres, as generally depicted on the map entitled ‘Great Falls Basin Proposed Wilderness’ and dated October 26, 2009, to be known as the ‘Great Falls Basin Wilderness’.

(B) LIMITATIONS.—Designation of the wilderness under subparagraph (A) shall not be established under the Clean Air Act (42 U.S.C. 7401 et seq.).

(4) KINGSTON RANGE WILDERNESS.—Certain land in the Conservation Area administered by the Director of the Bureau of Land Management, comprising approximately 53,321 acres, as generally depicted on the map entitled ‘Kingston Range Proposed Wilderness Additions’ and dated October 26, 2009, to be known as the ‘Kingston Range Wilderness Range’. Certain land in the Conservation Area, administered by the Bureau of Land Management, comprising approximately 79,376 acres, as generally depicted on the map entitled ‘Soda Mountains Proposed Wilderness’ and dated October 26, 2009, to be known as the ‘Soda Mountains Wilderness’.

(b) DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE NATIONAL PARK SERVICE.—In accordance with the Wilderness Act (16 U.S.C. 1311 et seq.) and sections 601 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1781, 1782), the following land in the State is designated as wilderness areas and as components of the National Wilderness System:

(1) DEATH VALLEY NATIONAL PARK WILDERNESS ADDITIONS.—Certain land in the Conservation Area administered by the Director of the National Park Service, comprising approximately 59,264 acres, as generally depicted on the map entitled ‘Death Valley National Park Additions’ and dated October 1, 2009, which shall be considered to be a part of the Death Valley National Park Wilderness.

(2) BOWLING ALLEY WILDERNESS.—Certain land in the Conservation Area administered by the Director of the National Park Service, comprising approximately 30,888 acres, as generally depicted on the map entitled ‘Death Valley National Park Proposed Wilderness Area’, numbered 143/100080, and dated June 2009, which shall be considered to be a part of the Death Valley National Park Wilderness.

(3) GREAT FALLS BASIN WILDERNESS.—Certain land in the Conservation Area administered by the Director of the National Park Service, comprising approximately 5,700 acres, as generally depicted on the map entitled ‘Great Falls Basin Proposed Wilderness Area’, numbered 144/100080, and dated June 2009, which shall be considered to be a part of the Death Valley National Park Wilderness.

(4) SODA MOUNTAINS WILDERNESS.—Certain land in the Conservation Area administered by the Bureau of Land Management, comprising approximately 7,871 acres, as generally depicted on the map entitled ‘Soda Mountains Proposed Wilderness’ and dated October 26, 2009, to be known as the ‘Soda Mountains Wilderness’.

(c) DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE FOREST SERVICE.—

(1) IN GENERAL.—In accordance with the Wilderness Act (16 U.S.C. 1311 et seq.) and sections 601 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1781, 1782), the following land in the State is designated as a wilderness area and as a component of the National Wilderness Preservation System:

(1) MANAGING WILDERNESS AREAS.—

(A) DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT.—As soon as practicable after the date of enactment of this title, the Secretary shall make a public notice and public comment period to receive comments on the designation of any wilderness area designated before the date of enactment of this title; and

(B) EFFECT ON NONWILDERNESS ACTIVITIES.—Nothing in this Act alters any authority of the Secretary of Defense to conduct any military operations at desert installations, facilities, and ranges of the State that are established under another provision of law.

(c) ADMINISTRATION.—Subject to valid existing rights, the land designated as wilderness or as a wilderness addition by section 1501 shall be administered by the Secretary in accordance with this Act and the Wilderness Act (16 U.S.C. 1781 et seq.) and any reference in that Act to the effective date shall be considered to be a reference to the date of enactment of this title.

(3) TERMINATION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this title, the Secretary shall file a map and legal description of each wilderness area and wilderness addition designated by section 1501 with—

(A) the Committee on Natural Resources of the House of Representatives; and

(B) the Committee on Energy and Natural Resources of the Senate.

(2) TIME LIMIT.—A map and legal description filed under paragraph (1) shall be filed and made available for public inspection in the appropriate office of the Secretary.

(4) EFFECT ON MILITARY OPERATIONS.—Nothing in this Act alters any authority of the Secretary of Defense to conduct any military operations at desert installations, facilities, and ranges of the State that are established under another provision of law.

(5) MAPS; LEGAL DESCRIPTIONS.

(1) IN GENERAL.—As soon as practicable after the date of enactment of this title, the Secretary shall make a public notice and public comment period to receive comments on the designation of any wilderness area designated before the date of enactment of this title; and

(2) TERMINATION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this title, the Secretary shall file a map and legal description of each wilderness area and wilderness addition designated by section 1501 with—

(A) the Committee on Natural Resources of the House of Representatives; and

(B) the Committee on Energy and Natural Resources of the Senate.

(2) TIME LIMIT.—A map and legal description filed under paragraph (1) shall be filed and made available for public inspection in the appropriate office of the Secretary.

(3) PUBLIC AVAILABILITY.—Each map and legal description filed under paragraph (1) shall be filed and made available for public inspection in the appropriate office of the Secretary.

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

“SEC. 1602. ESTABLISHMENT OF THE VINAIGRE WASH SPECIAL MANAGEMENT AREA.

“(a) ESTABLISHMENT.—There is established the Vinaigre Wash Special Management Area in the State, to be managed by the El Centro Field Office and the Yuma Field Office of the Bureau of Land Management.

“(b) PURPOSE.—The purpose of the Management Area is to conserve, protect, and enhance—

“(1) the plant and wildlife values of the Management Area; and

“(2) the outstanding and nationally significant ecological, geological, scenic, recreational, cultural, historic, and other resources of the Management Area.

“(c) BOUNDARIES.—The Management Area shall consist of the public land in Imperial County, California, comprising approximately 74,714 acres, as generally depicted on the map.

“(d) MAP; LEGAL DESCRIPTION.—

“(1) IN GENERAL.—As soon as practicable, but not later than 5 years after the date of enactment of this title, the Secretary shall submit a map and legal description of the Management Area to—

“(A) the Committee on Natural Resources of the House of Representatives; and

“(B) the Committee on Energy and Natural Resources of the Senate.

“(2) EFFECT.—The map and legal description submitted under paragraph (1) shall have the same force and effect as if included in this title, except that the Secretary may correct any errors in the map and legal description.

“(3) AVAILABILITY.—Copies of the map submitted under paragraph (1) shall be on file and available for public inspection in—

“(A) the Office of the Director of the Bureau of Land Management; and

“(B) the appropriate office of the Bureau of Land Management in the State.

“SEC. 1603. MANAGEMENT.

“(a) IN GENERAL.—The Secretary shall allow hicking, camping, hunting, and sightseeing and the use of motorized vehicles, motorcycles, all-terrain vehicles, snowmobiles, and horses on designated routes in the Management Area in a manner that—

“(1) is consistent with the purpose of the Management Area described in section 1602(b);

“(2) ensures public health and safety; and

“(3) is consistent with applicable law.

“(b) OFF-HIGHWAY VEHICLE USE.—

“(1) IN GENERAL.—Subject to paragraphs (2) and (3) and all other applicable laws, the use of off-highway vehicles shall be permitted on routes in the Management Area generally depicted on the map.

“(2) CLOSURE.—The Secretary may temporarily close or permanently reroute a portion of a route described in paragraph (1)—

“(A) to prevent, or allow for restoration of, resource damage;

“(B) to protect tribal cultural resources, including the resources identified in the tribal cultural resources management plan developed under section 1605(c);

“(C) to address public safety concerns; or

“(D) as otherwise required by law.

“(3) DESIGNATION OF ADDITIONAL ROUTES.—During the 3-year period beginning on the date of enactment of this title, the Secretary—

“(A) shall accept petitions from the public regarding additional routes for off-highway vehicle use; and

“(B) may designate additional routes that the Secretary determines—

“(1) would provide significant or unique recreational opportunities; and

“(ii) are consistent with the purposes of the Management Area.

“(c) WRITING NOTICE.—Subject to valid existing rights, all Federal land within the Management Area is withdrawn from—

“(1) all forms of entry, appropriation, or disposal under all laws; and

“(2) location, entry, and patent under the mining laws; and

“(3) right-of-way, leasing, or disposition under all laws;

“(A) minerals; or

“(B) solar, wind, and geothermal energy.

“(d) NO BUFFERS.—The establishment of the Management Area—

“(1) creates a protective perimeter or buffer zone around the Management Area; or

“(2) preclude uses or activities outside the Management Area that are permitted under other applicable laws, even if the uses or activities are prohibited within the Management Area.

“(e) NOTICE OF AVAILABLE ROUTES.—The Secretary shall ensure that visitors to the Management Area have adequate notice relating to the availability of designated routes in the Management Area through—

“(1) the placement of appropriate signage along the designated routes;

“(2) the display of maps, safety education materials, and other information that the Secretary determines to be appropriate; and

“(3) the restoration of areas that are not designated as open routes, including vertical mulching.

“(f) STEWARDSHIP.—The Secretary, in consultation with Indian tribes and other interested parties, shall develop a program to provide opportunities for monitoring and stewardship of the Management Area to minimize environmental impacts and prevent resource damage from recreational use, including volunteer assistance with—

“(1) route signage;

“(2) restoration of closed routes;

“(3) protection of Management Area resources; and

“(4) recreation education.

“(g) PROTECTION OF TRIBAL CULTURAL RESOURCES.—Not later than 2 years after the date of enactment of this title, the Secretary, in accordance with the National Historic Preservation Act (16 U.S.C. 1470 et seq.) and any other applicable law, shall—

“(1) prepare and complete a tribal cultural resources survey of the Management Area; and

“(2) consult with the Quechan Indian Nation and other Indian tribes demonstrating ancestral, cultural, or other ties to the resources within the Management Area on the development and implementation of the tribal cultural resources survey under paragraph (1).

“SEC. 1604. POTENTIAL WILDERNESS.

“(a) PROTECTION OF WILDERNESS CHARACTER.—

“(1) IN GENERAL.—The Secretary shall manage the Federal land in the Management Area described in paragraph (2) in a manner that preserves the character of the land for the eventual inclusion of the land in the National Wilderness Preservation System.

“(2) DESCRIPTION OF LAND.—The Federal land described in this paragraph is—

“(A) the approximately 9,160 acres of land, as generally depicted on the map entitled ‘Indian Pass Wilderness Additions-Proposed’ and dated November 10, 2009;

“(B) the approximately 17,436 acres of land, as generally depicted on the map entitled ‘Milpitas Wash Wilderness Area-Proposed’ and dated November 10, 2009.

“(C) the approximately 13,647 acres of land, as generally depicted on the map entitled ‘Buzzard Peak Wilderness Area-Proposed’ and dated November 10, 2009; and

“(D) the approximately 6,379 acres of land, as generally depicted on the map entitled ‘Palo Verde Mountain Wilderness Additions-Proposed’ and dated November 10, 2009.

“(b) USE OF LAND.—

“(A) MILITARY USES.—The Secretary shall manage the Federal land in the Management Area described in paragraph (2) in a manner that—

“(1) ensures public health and safety; and

“(2) is consistent with applicable law.

“(B) SUBSEQUENT USE OF LAND.—

“(A) IN GENERAL.—The Federal land described in paragraph (2) shall be designated as wilderness and as a component of the National Wilderness Preservation System on the date on which the Secretary, in consultation with the Secretary of Defense, publishes a notice in the Federal Register that all activities on the Federal land that are incompatible with the Wilderness Act (16 U.S.C. 1131 et seq.) have terminated.

“(B) DESIGNATION.—On designation of the Federal land under paragraph (3)—

“(i) the land described in paragraph (2)(A) shall be incorporated in, and shall be considered to be a part of, the Indian Pass Wilderness;

“(ii) the land described in paragraph (2)(B) shall be designated as the ‘Milpitas Wash Wilderness’;

“(iii) the land described in paragraph (2)(C) shall be designated as the ‘Buzzard Peak Wilderness’; and

“(iv) the land described in paragraph (2)(D) shall be incorporated in, and shall be considered to be a part of, the Palo Verde Mountains Wilderness.

“(c) ADMINISTRATION OF WILDERNESS.—Subject to valid existing rights, the land designated as wilderness or as a wilderness addition by this title shall be administered by the Secretary in accordance with this Act and the Wilderness Act (16 U.S.C. 1131 et seq.).

“TITLE XVIII—NATIONAL PARK SYSTEM ADDITIONS

“SEC. 1701. DEATH VALLEY NATIONAL PARK BOUNDARY REVISION.

“(a) IN GENERAL.—The boundary of Death Valley National Park is adjusted to include—

“(1) the approximately 33,041 acres of Bureau of Land Management land abutting the southern end of the Death Valley National Park that lies between Death Valley National Park to the north and Ft. Irwin Military Reservation to the south and which runs approximately 34 miles from west to east, as depicted on the map entitled ‘Death Valley National Park Proposed Boundary Addition’, numbered 143100.080, and dated June 2009;

“(2) the approximately 6,379 acres of Bureau of Land Management land in Inyo County, California, located in the northeast area
of Death Valley National Park that is within, and surrounded by, land under the jurisdiction of the Director of the National Park Service, as described on the map entitled ‘Proprietary Crater Mine Area Addition to Death Valley National Park’, numbered 143/100,079, and dated June 2009; and

"(3) on transfer of title to the private land described in subsection (a) shall be administered by the Bureau of Land Management, as depicted on the map entitled ‘Proposed Ryan Camp Addition to Death Valley National Park’, numbered 143/100,097, and dated June 2009; and

"(4) there shall be a public inspection in the appropriate offices of the Federal Government, for a period of at least 30 days, of the map and legal description referred to in subsection (a), to allow for public comment on the withdrawal under subparagraph (A), any land within the study area that is not withdrawn shall be incorporated into the Johnson Valley Off-Highway Vehicle Recreation Area.

"(C) JOINT USE OF CERTAIN LAND.—The Secretary of the Interior shall establish joint use areas in the Johnson Valley Off-Highway Vehicle Recreation Area for military purposes. Such joint use areas shall be in accordance with applicable laws (including regulations); and

"(D) JOINT USE OF CERTAIN LAND.—The Secretary of the Interior shall provide for the use of certain public lands within the Johnson Valley Off-Highway Vehicle Recreation Area for public use purposes. Such public lands shall be in accordance with applicable laws (including regulations).

"(2) JOINT USE OF CERTAIN LAND.—The Secretary of the Interior shall establish joint use areas in the Johnson Valley Off-Highway Vehicle Recreation Area for joint use purposes. Such joint use areas shall be in accordance with applicable laws (including regulations).

"(3) JOINT USE OF CERTAIN LAND.—The Secretary of the Interior shall provide for the use of certain public lands within the Johnson Valley Off-Highway Vehicle Recreation Area for public use purposes. Such public lands shall be in accordance with applicable laws (including regulations).
rock crawling, training, and other forms of recreation activities and use designations in accordance with applicable Federal law (including regulations).

(b) OFF-HIGHWAY VEHICLE AND OFF-HIGHWAY RECREATION.—To the extent consistent with applicable Federal law (including regulations), the Secretary shall designate, or continue to authorize, maintain, and enhance areas designated by subsection (a) that are suitable for, and appropriate to, off-highway vehicle recreation, including transmission line rights-of-way and related telecommunication facilities.

(c) PROHIBITED USES.—Residential and commercial development (including development of energy facilities) and any unauthorized recreation activities and use designations in effect on the date of enactment of this title and applicable to the off-highway vehicle recreation areas designated by subsection (a) shall continue, including casual off-highway vehicular use, racing, competitive events, rock crawling, training, and other forms of off-highway recreation.

(2) WILDLIFE GUZZLERS.—Wildlife guzzlers shall be allowed in the off-highway vehicle recreation areas designated by subsection (a) in accordance with applicable Bureau of Land Management guidelines.

(3) PROHIBITED USES.—Residential and commercial development (including development of energy facilities) and any unauthorized recreation activities and use designations in effect on the date of enactment of this title and applicable to the off-highway vehicle recreation areas designated by subsection (a) if the Secretary determines that the development is incompatible with the purpose described in subsection (b).

(e) ADMINISTRATION.—

(A) IN GENERAL.—The Secretary shall administer high-speed vehicle race tracks designated by subsection (a) in accordance with—

(i) this title;

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

(iii) any other applicable laws (including regulations).

(B) MANAGEMENT.—Any land within the expanded areas under subparagraph (A) shall be managed in accordance with this section.

TITLE XIX—MISCELLANEOUS

SEC. 1901. STATE LAND TRANSFERS AND EXCHANGES.

(a) TRANSFER OF LAND TO ANZA-BORREGO DESERT STATE PARK.

(i) IN GENERAL.—The Secretary shall transfer the land described in paragraph (1) to the State of California.

(ii) DESCRIPTION OF LAND .—The land described in paragraph (1) consists of—

(A) the inventory of land under clause (i);

(B) any proposed land exchange under this section that involves more than 5,000 acres of Federal land;

(C) in preparing the study under paragraph (1), the Secretary shall use best efforts to give priority to—

(i) land that has the potential for commercial development, such as wind and solar energy development;

(ii) the inventory under clause (i) is updated annually by the Secretary and submitted to the Senate; and

(iii) disposition under all laws relating to mineral and geothermal leasing.

(C) REVERSION.—If the State ceases to manage the land transferred under paragraph (1) in a manner consistent with the California Wilderness Act (California Public Resources Code sections 5993.30–5993.40), the land shall revert to the Secretary to be managed as a Wilderness Study Area.

(b) LAND EXCHANGES.—

(i) IN GENERAL.—The Secretary shall, in consultation with the California State Lands Commission (referred to in this section as the 'Commission'), develop a process to exchange isolated parcels of State land within the Conservation Area for Federal land located in the Conservation Area or other Federal land in the State that—

(A) is consistent with the plans described in paragraph (2); and

(B) ensures that the conservation goals and objectives identified in those plans are not adversely impacted.

(ii) DESCRIPTION OF PLANS.—The plans referred to in paragraph (1) are—

(A) the California Desert Renewable Energy Conservation Plan;

(B) the California Desert Conservation Area Plan;

(C) the Northern and Eastern Colorado Desert Plan; and

(D) any other applicable plans.

(iii) REQUIREMENTS.—The process developed under paragraph (1) shall—

(A) apply to all State land within the Conservation Area that is under the jurisdiction of the Commission;

(B) authorize the elimination of State land from units of the National Park System, national monuments, and wilderness areas;

(C) provide the Commission with decision holdings sufficient to make the land viable for commercial or recreation uses, including renewable energy development, off-highway vehicle recreation, or State infrastructure or resource needs;

(D) establish methods to ensure that—

(i) not later than 1 year after the date of enactment of this title, the Secretary and the Commission complete an inventory of Federal land and State land in the Conservation Area under the jurisdiction of the Secretary and the Commission, respectively, and all other Federal land outside the Conservation Area that is determined to be suitable for exchange consistent with paragraph (1);

(ii) the inventory under clause (i) is updated annually by the Secretary and submitted to the Senate; and

(iii) disposition under all laws relating to mineral and geothermal leasing.

(C) REVERSION.—If the State ceases to manage the land transferred under this title in a manner consistent with the California Wilderness Act (California Public Resources Code sections 5993.30–5993.40), the land shall revert to the Secretary to be managed as a Wilderness Study Area.

(b) LAND EXCHANGES.—

(i) IN GENERAL.—The Secretary shall, in consultation with the California State Lands Commission (referred to in this section as the 'Commission'), develop a process to exchange isolated parcels of State land within the Conservation Area for Federal land located in the Conservation Area or other Federal land in the State that—

(A) is consistent with the plans described in paragraph (2); and

(B) ensures that the conservation goals and objectives identified in those plans are not adversely impacted.

(ii) DESCRIPTION OF PLANS.—The plans referred to in paragraph (1) are—

(A) the California Desert Renewable Energy Conservation Plan;

(B) the California Desert Conservation Area Plan;

(C) the Northern and Eastern Colorado Desert Plan; and

(D) any other applicable plans.

(iii) REQUIREMENTS.—The process developed under paragraph (1) shall—

(A) apply to all State land within the Conservation Area that is under the jurisdiction of the Commission;

(B) authorize the elimination of State land from units of the National Park System, national monuments, and wilderness areas;

(C) provide the Commission with decision holdings sufficient to make the land viable for commercial or recreation uses, including renewable energy development, off-highway vehicle recreation, or State infrastructure or resource needs;

(D) establish methods to ensure that—

(i) not later than 1 year after the date of enactment of this title, the Secretary and the Commission complete an inventory of Federal land and State land in the Conservation Area under the jurisdiction of the Secretary and the Commission, respectively, and all other Federal land outside the Conservation Area that is determined to be suitable for exchange consistent with paragraph (1);

(ii) the inventory under clause (i) is updated annually by the Secretary and submitted to the Senate; and

(iii) disposition under all laws relating to mineral and geothermal leasing.
“(v) the land exchanges are completed by the date that is 10 years after the date of enactment of this title; and

(E) provide for the submission of annual reports to Congress that—

(i) describe any progress or impediments to accomplishing the goal described in subparagraph (D)(v); and

(ii) any recommendations for legislation to accomplish the goal.

(4) VALUATION.—Notwithstanding paragraphs (2) through (5) of subsection (d) of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)), if within 180 days after the submission of an appraisal under subsection (d)(1) of that section, the Secretary and the Commission cannot agree to accept the findings of the appraisal—

(A) the Secretary and the Commission shall mutually agree to employ a process of arbitration, or some other process to determine the values of the land involved in the exchange;

(B) the appraisal shall be submitted to an arbitral panel representing the Secretary by the American Arbitration Association for arbitration; and

(C) within the decision of the arbitrator under subparagraph (B) shall be nonbinding, the decision may be used by the Secretary and the Commission as a valid appraisal for—

(i) a period of 2 years; and

(ii) on mutual agreement of the Secretary and the Commission, an additional 2-year period;

(D) on mutual agreement of the Secretary and the Commission, the valuation process shall be suspended or modified.

(5) TREATMENT OF LAND USE RESTRICTIONS AND CONVEYANCE APPLICATIONS.—For the purposes of this title—

(A) the Secretary shall not exclude parcels of land from exchanges because the parcels are subject to designations pending land use applications, including applications for the development of renewable energy;

(B) all Federal land and State land proposed for sale shall be valued—

(i) according to fair market value; and

(ii) in accordance with section 206(d)(5) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)(5)); and

(iii) without regard to—

(I) pending land use applications;

(II) renewable energy designations; or

(III) any land use restrictions on adjacent land.

(B) COOPERATION AGREEMENTS.—The Secretary may—

(A) enter into such joint agreements with the General Services Administration and the Commission as the Secretary determines to be necessary to facilitate land exchanges, including agreements that establish accounting mechanisms for—

(i) to be used for tracking the differential in dollar value of land conveyed in a series of transactions; and

(ii) that, notwithstanding part 2000 of title 43, Code of Federal Regulations (or successor regulations), may carry outstanding cumulative credit balances until the completion of the land exchange process developed under paragraph (1); and

(B) to the extent that the agreement does not conflict with this section, continue using the agreement entitled ‘Memorandum of Agreement Between California State Lands Commission, General Services Administration, and the Department of the Interior Regarding the Implementation of the California Desert Protection Act’, which became effective on November 7, 1995.

(7) EXISTING LAW.—Except as otherwise provided in this section, nothing in this section supersedes or limits section 707.

(8) STATE LAND LEASES.—

(A) IN GENERAL.—The Secretary shall manage any State land described in subparagraph (B) in accordance with the terms and conditions of the applicable State lease for the leases, subject to applicable laws (including regulations).

(B) DESCRIPTION OF STATE LAND.—The State land referred to in subparagraph (A) is any State land within the Conservation Area that is subject to a lease or permit on the date of enactment of this Act that is transferred to the Federal Government.

(C) EXPIRATION OF LEASE.—On the expiration of a State lease referred to in subparagraph (A), the Secretary shall provide lessees with the opportunity to seek Federal permits to continue the existing use of the State land without further action otherwise required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(D) APPLICABLE LAW.—Except as otherwise provided in this section, any State land transferred to the Federal Government under this section shall be managed in accordance with all laws (including regulations) and rules applicable to the public land adjacent to the transferred State land.

(E) TWENTYNINE PALMS MARINE CORP BASE.—

(1) IN GENERAL.—The Secretary and the Secretary of Defense, in consultation and in cooperation with the California State Lands Commission, shall develop a process to purchase or exchange parcels of State land within the area of expansion and land use restrictions planned for the Twentynine Palms Marine Corp Base.

(2) REQUIREMENTS.—The process developed under paragraph (1) for exchanged parcels of State land shall provide the California State Lands Commission with consolidated land holdings sufficient to make the land viable for commercial or recreational uses, including renewable energy development, off-highway vehicle recreation, or State infrastructure or resource needs.

(F) APPLICABLE LAW.—An exchange of land under this subsection shall be subject to the requirements of subsection (b).

(G) HOLTVILLE AIRPORT, IMPERIAL COUNTY.—

(1) IN GENERAL.—On the submission of a proposed conveyance from the Secretary of Defense throughout the Conservation Area, in accordance with—

(i) plants, insects, and animals;

(ii) soils;

(iii) air quality;

(iv) water quality and quantity; and

(v) species migration and survival;

(C) any other applicable law.

(D) RIGHTS-OF-WAY.—The Secretary shall consider the information and recommendations of the study under paragraph (1) to determine the individual and cumulative impacts of rights-of-way for projects in the Conservation Area, in accordance with—

(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.); and

(C) any other applicable law.

(E) LAND MANAGEMENT PLANS.—The Secretary shall incorporate into all land management plans applicable to the Conservation Area the findings and recommendations of the study completed under subsection (b).
SEC. 1904. PROHIBITED USES OF DONATED AND ACQUIRED LAND.

(a) Definitions.—In this section:


(2) The term ‘donated land’ means any private land donated to the United States for conservation purposes in the Conservation Area.

(3) Donor.—The term ‘donor’ means an individual or entity that donates private land to the Conservation Area to the United States.

(4) Secretary.—The term ‘Secretary’ means the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(b) Prohibitions.—Except as provided in subsection (c), there shall be prohibited with respect to donated land or acquired land—

(1) disposal; or

(2) any land use authorization that would result in appreciable damage or disturbance to the public lands, including—

(A) rights-of-way;

(B) leases;

(C) livestock grazing;

(D) infrastructure development;

(E) mineral entry;

(F) off-highway vehicle use, except on—

(i) designated routes;

(ii) off-highway vehicle areas designated by law; and

(iii) administratively-designated open areas;

(G) any other activities that would create impacts contrary to the conservation purposes for which the land was donated or acquired.

(c) Exceptions.—

(1) Authorization by Secretary.—Subject to paragraph (2), the Secretary may authorize limited exceptions to prohibited uses of donated land or acquired land in the Conservation Area if—

(A) an applicant has submitted a right-of-way application to the Bureau of Land Management proposing renewable energy development on the donated land or acquired land on or before December 1, 2009; or

(B) the use is consistent with an analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including full public participation in the analysis, the Secretary determined that—

(i) the use of the donated land or acquired land is in the public interest;

(ii) the impacts of the use are fully and appropriately mitigated; and

(iii) the land was donated or acquired on or before December 1, 2009.

(2) Conditions.—

(A) General.—If the Secretary grants an exception to the prohibition under paragraph (1), the Secretary shall require the permittee to acquire and donate comparable public land to the United States to mitigate the use.

(B) Approval.—The private land to be donated under subparagraph (A) shall be approved by the Secretary after consultation, to the maximum extent practicable, with the donor of the private land proposed for nonconservation use.

(d) Conforming Amendments.—Nothing in this section affects permitted or prohibited uses of donated land or acquired land in the Conservation Area established in any case in law, deed restrictions, memoranda of understanding, or other agreements in existence on the date of enactment of this title.

(e) Withdrawal.—The Secretary may accept deeded restrictions requested by donors for land donated to the United States within the Conservation Area after the date of enactment of this title.

SEC. 1905. TRIBAL USES AND INTERESTS.

(a) Access.—The Secretary shall ensure access to areas covered under this Act by members of Indian tribes for traditional cultural and religious purposes, consistent with applicable law, including Public Law 95–341 (commonly known as the American Indian Religious Freedom Act) (42 U.S.C. 1996).

(b) Temporary Closure.—

(1) In General.—In accordance with applicable law, including Public Law 95–341 (commonly known as the American Indian Religious Freedom Act) (42 U.S.C. 1996), and on request of an Indian tribe or Indian religious community, shall temporarily close to general public use any portion of an area designated as a national monument, special management area, wild and scenic river, or National Park System unit under this Act (referred to in this subsection as a ‘designated area’) to protect the privacy of traditional cultural and religious activities in the designated area by members of the Indian tribe or Indian religious community.

(2) Limitation.—In closing a portion of a designated area under paragraph (1), the Secretary shall limit the closure to the smallest practicable area for the minimum period necessary for the traditional cultural and religious activities.

(c) Tribal Cultural Resources Management Plan.

(1) In General.—Not later than 2 years after the date of enactment of this title, the Secretary shall develop and implement a tribal cultural resources management plan to identify, protect, and conserve cultural resources of Indian tribes associated with the land享受ed by this Act or titles XIII through XIX by the Secretary.

(2) Consultation.—The Secretary shall consult on the development and implementation of the tribal cultural resources management plan under paragraph (1) with—

(A) each of—

(i) the Chemehuevi Indian Tribe;

(ii) the Hualapai Tribal Nation;

(iii) the Fort Mojave Indian Tribe;

(iv) the Colorado River Indian Tribes;

(v) the Gila River Indian Community; and

(vi) the Cocopah Indian Tribe; and

(B) the Advisory Council on Historic Preservation.

(3) Resource Protection.—The tribal cultural resources management plan developed under paragraph (1) shall be—

(A) based on a completed tribal cultural resources survey; and

(B) include procedures for identifying, protecting, and preserving petroglyphs, ancient trails, intaglios, sleeping circles, artifacts, and other resources of cultural, archaeological, or historical significance in accordance with all applicable laws and policies, including—

(i) the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.); and


(d) Withdrawal.—Subject to valid existing rights, all Federal land within the area designated as the ‘Indian Pass Withdrawal Area’ is permanently withdrawn from—

(1) all forms of entry, appropriation, or disposal under the public laws;

(2) location, entry, and patent under the mining laws; and

(3) title under the term ‘ leasing and disposition under all laws relating to mineral, solar, wind, and geothermal energy’. 

(e) CONFORMING AMENDMENTS.—Title IV of the California Desert Protection Act of 1994 (16 U.S.C. 410aa–1 et seq.) is amended by striking ‘1 and 2, and titles 1 through IX’ and inserting ‘1, 2, 3, titles 1 through IX, and titles XIII through XIX’.

(2) Definitions.—The California Desert Protection Act of 1994 (Public Law 103–333; 108 Stat. 481) is amended by inserting after section 2 the following:

SEC. 3. Definitions.

In titles XIII through XIX—

(1) Conservation Area.—The term ‘Conservation Area’ means the California Desert Conservation Area.

(2) Secretary.—The term ‘Secretary’ means—

(A) with respect to land under the jurisdiction of the Secretary of the Interior, the Secretary of the Interior; and

(B) with respect to land under the jurisdiction of the Secretary of Agriculture, the Secretary of Agriculture.

(3) State.—The term ‘State’ means the State of California.

(3) Administration of Wilderness Areas.—Section 103 of the California Desert Protection Act of 1994 (Public Law 108–333; 108 Stat. 481) is amended by striking subsection (d) and inserting the following:

(d) No Buffer Zones.—In general—

(A) the Secretary shall not designate under this Act—

(i) any wilderness area that includes an area designated as a national monument, special management areas, or national monument; or

(ii) a potential wilderness area adjacent to the wild lands, national forests, national parks, or national wildlife refuges.

(B) No Nonwilderness Activities.—Any nonwilderness activities (including renewable energy projects, mining, camping, hunting, and military activities) in areas immediately adjacent to the wild lands, national forests, national parks, or national wildlife refuges designated as wilderness or any portion of an area designated as wilderness or national monument shall be prohibited.

(C) Protection of Native Water Resources.—The Director of the Bureau of Land Management shall not access or process any application for a right-of-way for development projects that propose the use of native groundwater or aquifers adjacent to the Mojave National Preserve that individually or collectively, in combination with proposed or anticipated projects on private land, require the draining of native groundwater in excess of the estimated recharge rate as determined by the United States Geological Survey.

SEC. 520. NATIVE GROUNDWATER SUPPLIES.

The Secretary of the Interior shall not issue any permit or grant any authorization for the use or development of any native groundwater in the Mojave National Preserve that individually or collectively, in combination with proposed or anticipated projects on private land, requires the draining of native groundwater.

SEC. 550. APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of the Interior to carry out this title amounts equal to the estimated costs of implementing this title and a reasonable margin for overhead expenses.

SEC. 551. EFFECTIVE DATE.

This title shall take effect on the date of enactment of this title.

SEC. 552. CONFORMING AMENDMENTS.

This title is enacted as part of title IV of the California Desert Protection Act of 1994 (16 U.S.C. 410aa–1 et seq.) and is to be enacted in conjunction with such Act.
(5) AMENDMENTS TO THE CALIFORNIA MILITARY LANDS WITHDRAWAL AND OVERFLIGHTS ACT OF 1994.—

(A) FINDINGS.—Section 801(b)(2) of the California Military Lands Withdrawal and Overflights Act of 1994 (16 U.S.C. 410aaa-82 note) is amended by inserting "national monuments, or special management areas, potential wilderness areas," before "and wilderness areas".

(B) OVERFLIGHTS; SPECIAL AIRSPACE.—Section 802 of the California Military Lands Withdrawal and Overflights Act of 1994 (16 U.S.C. 410aaa-82) is amended—

(1) by inserting "the Secretary of Agriculture and the Secretary of the Interior, acting jointly;" in subsection (b), by inserting "national monuments, or special management areas" before "designated by this Act"; and

(ii) by adding at the end the following:

(d) DEPARTMENT OF DEFENSE FACILITIES.—

Nothing in this Act alters any authority of the Secretary of Defense to conduct military operations at installations and ranges within the California Desert Conservation Area that are authorized under any other provision of law.

SEC. 3. DESIGNATION OF WILD AND SCENIC RIVERS.

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1273(a)) is amended—

(1) in paragraph (196), by striking subparagraph (A) and inserting the following:

(A) The approximately 1.4-mile segment of the Amargosa River in the State of California, from the private property boundary in sec. 19, T. 22 N., R. 7 E., to 100 feet downstream of Highway 178, to be administered by the Secretary of the Interior as a scenic river; and

(i) The approximately 6.1-mile segment of the Whitewater River in the State of California, from 100 feet downstream of the State Highway 178 crossing to 100 feet upstream of the Tecopa Hot Springs Road crossing, to be administered by the Secretary of the Interior as a scenic river; and

(ii) The approximately 5.3 miles of Surprise Canyon Creek from the confluence of Frenchman's Canyon and Water Canyon to 100 feet upstream of Chris Wicht Camp, as a wild river.

(b) by adding at the end the following:

(208) SURPRISE CANYON CREEK, CALIFORNIA.—

(A) In General.—The following segments of Surprise Canyon Creek in the State of California, to be administered by the Secretary of the Interior:

(I) The approximately 5.3 miles of Surprise Canyon Creek from the confluence of Frenchman's Canyon and Water Canyon to 100 feet upstream of Chris Wicht Camp, as a wild river.

(II) The approximately 1.8 miles of Surprise Canyon Creek from 100 feet upstream of Chris Wicht Camp to the southern boundary of sec. 14, T. 21 N., R. 44 E., as a recreational river.

(B) EFFECT ON HISTORIC MINING STRUCTURES.—Nothing in this paragraph affects the historic mining structures associated with the former Panamint Mining District.

(209) DEEP CREEK, CALIFORNIA.—

(A) IN GENERAL.—The following segments of Deep Creek in the State of California, to be administered by the Secretary of Agriculture:

(I) The approximately 6.5-mile segment of Deep Creek from 0.125 mile downstream of the Rainbow Dam site in sec. 33, T. 2 N., R. 2 W., to 0.25 miles upstream of the Road 3N24 crossing, as a wild river.

(II) The 0.5-mile segment from 0.25 mile upstream of the Road 3N24 crossing to 0.25 mile downstream of the Road 3N24 crossing, as a scenic river.

(III) The 2.5-mile segment from 0.25 miles downstream of the Road 3 N. 34, crossing to 0.25 mile downstream of the Trail 2W01 crossing, as a wild river.

(IV) The 0.5-mile segment from 0.25 miles upstream of the Trail 2W01 crossing to 0.25 mile downstream of the Trail 2W01 crossing, as a scenic river.

(V) The 10-mile segment from 0.25 miles downstream of the Trail 2W01 crossing to the upper limit of the Mojave Dam flood zone in sec. 17, T. 3 N., R. 3 W., as a wild river.

(VI) The 11-mile segment of Holcomb Creek from 0.25 miles downstream of the Road 3N12 crossing to 25.25 miles downstream of Holcomb Crossing, as a recreational river.

(VII) The 3.5-mile segment of the Holcomb Creek from 0.25 miles downstream of Holcomb Crossing to the Deep Creek confluence, as a wild river.

(B) EFFECT ON SKI OPERATIONS.—Nothing in this paragraph affects—

(i) the operations of the Snow Valley Ski Resort; or

(ii) The State regulation of water rights and water quality associated with the operation of the Snow Valley Ski Resort.

(210) WHITEWATER RIVER, CALIFORNIA.—

The following segments of the Whitewater River in the State of California, to be administered by the Secretary of Agriculture and the Secretary of the Interior, acting jointly:

(A) The 5.8-mile segment of the North Fork Whitewater River from the source of the River near Mt. San Gorgonio to the confluence with the Middle Fork, as a wild river.

(B) The 6.4-mile segment of the Middle Fork Whitewater River from the source of the River to the confluence with the South Fork, as a wild river.

(C) The 1-mile segment of the South Fork Whitewater River from the source of the South Fork Whitewater River to the confluence of the River with the East Fork to the section line between sections 32 and 33, T. 1 S., R. 2 E., as a wild river.

(D) The 1-mile segment of the South Fork Whitewater River from the section line between sections 32 and 33, T. 1 S., R. 2 E., to the section line between sections 34 and 33, T. 1 S., R. 2 E., as a recreational river.

(E) The 4.9-mile segment of the South Fork Whitewater River from the section line between sections 34 and 33, T. 1 S., R. 2 E., to the confluence with the Middle Fork, as a wild river.

(F) The 5.4-mile segment of the main stem of the Whitewater River from the confluence of the East Forks to the San Gorgonio Wilderness boundary, as a wild river.

(G) The 2.7-mile segment of the main stem of the Whitewater River from the San Gorgonio Wilderness boundary to the southern boundary of section 26, T. 2 S., R. 3 E., as a recreational river.

By Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. LEVIN, Mr. BINGAMAN, Mr. WYDEN, Mr. BONENSTEIN, Mr. ENZI, and Mr. KERRY):

S. 139. A bill to provide that certain tax planning strategies are not patentable, and for other purposes; to the Committee on the Judiciary.

Mr. BAUCUS. Mr. Chairman, American judge and judicial philosopher Learned Hand once wrote: "Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury."

Judge Hand would probably have been surprised to learn that, through the use of patents, certain individuals have acquired monopolies on methods of arranging one’s affairs to lower taxes.

That is precisely what patenting a tax strategy does: it gives the holder the exclusive right to others from a particular transaction or financial arrangement without permission or payment of a royalty.

And patents have been granted on ideas as simple as funding a certain type of tax-favored trust with a specific type of financial product or calculating the ways to minimize the tax burden of converting to an alternative retirement plan.

These commonsense tax planning approaches should be available to everyone. No one should be able to patent those techniques.

Let’s first assure that the tax planning technique is legitimate under the Tax Code and does, indeed, reduce taxes.

In that case, every taxpayer should be able to plan in a way that they can lower their taxes without paying royalties or worrying that they are violating patent law while filing their tax returns. This is a matter of fairness and uniform application of the tax law.

Conversely, there are tax planning techniques that are not legitimate under the Tax Code, say, for example, a tax shelter designed to illegally evade taxes.

No taxpayer should be using those strategies. A patent on those ideas may mislead unknowing taxpayers into believing that the strategy is valid under the tax law.

Today, we have gathered a coalition of Senators to introduce legislation to prevent patents from being issued on claims of tax strategies.

Our bill, the "Equal Access to Tax Planning Act," makes clear that any strategy for reducing, avoiding, or deferring tax liability relies on the provisions of the Tax Code to work, will not be considered a new or nonobvious idea and therefore not be eligible for a patent.

In the lingo of the patent law, the Tax Code is "prior art"—which is just another way of saying it isn't novel and nonobvious—and methods of complying with the Code cannot be patented. This would be the result under patent law whenever an invention was not found to be novel or nonobvious.

This legislation does not hinder patent protection for otherwise novel, nonobvious inventions but only stops the patenting of the tax strategy claims.

Where a patent is indeed granted—for example, where an application advances multiple claims—the taxpayer has no compelling reason to believe that the strategy is not patentable; it is a strategy for applying the Tax Code. It is encouraging that our bill has been incorporated into the larger patent bill that is being introduced by Senators Grassley and Leahy today.

I strongly believe in the importance of patents. America is a land that fosters innovation and competitiveness by
Mr. KIRK. Mr. President, today I am pleased to join with Senator BAUCUS and I first introduced a bill to ban patents for tax inventions in the 110th Congress. Since then, we have worked with the leaders of the Judiciary Committee, the Patent and Trademark Office, the American Institute of Certified Public Accountants, industry, and members of the patent bar to perfect the language. I am pleased to introduce this new and improved bill today with Senators BAUCUS, LEVIN, WYDEN, BINGAMAN, CONRAD, ENZI, and KERRY.

There are strong policy reasons to ban tax strategy patents. Tax strategy patents may lead to the marketing of aggressive tax shelters or otherwise mislead taxpayers about expected results. Tax strategy patents encumber the ability of taxpayers and their advisors to use the tax law freely, interfering with the voluntary tax compliance system. If firms or individuals were able to hold patents for these strategies, some taxpayers could face fees simply for complying with the Tax Code. And, tax patents provide windfalls to patent holders by granting them exclusive rights to use loopholes, which could provide some businesses with an unfair advantage.

Tax strategy patents are unlikely to be novel given the public nature of the Tax Code. Moreover, tax strategy patents may undermine the fairness of the Federal tax system by removing from the public domain particular ways of satisfying a taxpayer’s legal obligations. The Tax Payer Protection Act expressly provides that a strategy for reducing, avoiding, or deferring tax liability cannot be considered a new or nonobvious idea, and therefore, a patent on a tax strategy cannot be obtained. This ensures that all taxpayers will have equal access to strategies to comply with the Tax Code. I encourage support for this bill.

By Mr. KIRK (for himself and Mr. DURBIN):

S. 147. A bill to amend the Federal Water Pollution Control Act to establish a deadline for restricting sewage dumping into the Great Lakes and to fund programs and activities for improving wastewater discharges into the Great Lakes; to the Committee on Environment and Public Works.

Mr. KIRK. Mr. President, today I am pleased to join with Senator DURBIN to introduce the Great Lakes Water Protection Act. This bipartisan legislation would set a date certain to end sewage dumping in America’s largest supply of fresh water, the Great Lakes. More than thirty million Americans depend on the Great Lakes for their drinking water, food, jobs, and recreation. We need to put a stop to the poisoning of our water supply. Cities along the Great Lakes must become environmental stewards of our country’s most precious freshwater ecosystem.

The Great Lakes Water Protection Act gives cities until 2031 to build the full infrastructure needed to prevent sewage dumping into the Great Lakes. Those who violate EPA sewage dumping regulations after that deadline will be fined up to $100,000 for each day a violation occurs. These fines will be directed to a newly established Great Lakes Clean-Up Fund within the Clean Water State Revolving Fund. Penalties collected would go into this fund and be reallocated to the states surrounding the Great Lakes. From there, the funds will be spent on wastewater treatment options, with a special focus on greener solutions such as habitat protection and wetland restoration. This legislation is sorely needed.

Many major cities along the Great Lakes do not have the infrastructure needed to divert sewage overflows during times of heavy rainfall. More than twenty-four billion gallons of sewage are dumped into the Lakes each year; Detroit alone dumps an estimated 13 billion gallons of sewage into the Great Lakes annually. EPA estimates show there is a total of 347 combined sewer outflows that discharge into the Lake Michigan basin alone. This development is echoed throughout the Great Lakes region and is one we need to reverse.

These disastrous practices result in thousands of annual beach closures for the region’s 815 freshwater beaches. Illinois alone lost $2.4 million in lost revenue every year. Protecting our Great Lakes is one of my top priorities in the Congress. As an original sponsor of the Great Lakes Restoration Act, I favor a broad approach to addressing needs in the region. However, we must also move forward with tailored approaches to fix specific problems as we continue to push for more comprehensive reform. I am proud to introduce this important legislation that addresses a key problem facing our Great Lakes, and hope my colleagues will support me in ensuring that these important resources become free from the threat of sewage pollution.

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:

SEC. 2. PROHIBITION ON SEWAGE DUMPING INTO THE GREAT LAKES.

Section 802 of the Federal Water Pollution Control Act (33 U.S.C. 1342) is amended by adding at the end the following:

(1) Definitions.—In this subsection:

(A) BYPASS.—The term ‘bypass’ means an intentional diversion of waste streams to bypass any portion of any facility which results in a discharge into the Great Lakes.

(B) GREAT LAKES.—The term ‘Great Lakes’ has the meaning given the term in section 118(a)(3).

(C) TREATMENT FACILITY.—The term ‘treatment facility’ includes all wastewater treatment units used by a publicly owned treatment works to meet secondary treatment standards or higher, as required to attain water quality standards, under any operating conditions.

(D) TREATMENT WORKS.—The term ‘treatment works’ has the meaning given the term in section 212.

(2) PROHIBITION.—A publicly owned treatment works is prohibited from intentionally diverting waste streams to bypass any portion of a treatment facility at the treatment works if the diversion results in a discharge into the Great Lakes unless—

(A)(i) the bypass is unavoidable to prevent loss of life, personal injury, or severe property damage;

(ii) there is not a feasible alternative to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime; and

(iii) the treatment works provides notice of the bypass in accordance with this subsection;

or

(B) the bypass does not cause effluent limitations to be exceeded, and the bypass is used for essential maintenance to ensure efficient operation of the treatment facility.

(3) LIMITATION.—The requirement of paragraph (2)(A)(i) is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent the bypass; and

(B) the bypass occurred during normal periods of equipment downtime or preventative maintenance.

(4) NOTICE REQUIREMENTS.—A publicly owned treatment works shall provide to the Administrator (or to the State, in the case of a State that has a permit program approved under this section)—

(A) prior notice of an anticipated bypass; and

(B) notice of an unanticipated bypass by not later than 24 hours after the time at which the treatment works first becomes aware of the bypass.

(5) FOLLOW-UP NOTICE REQUIREMENTS.—In the case of an unanticipated bypass for which a publicly owned treatment works provides notice under paragraph (4)(B), the treatment works shall provide to the Administrator (or to the State in the case of a State that has a permit program approved under this section), not later than 5 days following the date on which the treatment works first becomes aware of the bypass, a follow-up notice containing a description of—

(A) the cause of the bypass;
Mr. DURBIN. Mr. President, today I am introducing the Great Lakes Water Protection Act with my colleague, Senator Mark Kirk.

We face many unique challenges in protecting the Great Lakes—from contaminated sediment to industrial pollutants to invasive species. This legislation tackles another significant threat to the water system municipal sewage.

A recent report found that from January 2009 through January 2010, five U.S. cities dumped a combined 41 billion gallons of waste water into the Great Lakes. Sewage and storm water discharges have been associated with elevated levels of bacterial pollutants. For the 40 million people who depend on the Great Lakes for their drinking water, that is no small matter.

When bacterial counts go too high, beaches have to be closed. In Illinois, we have 52 public beaches along the Lake Michigan shoreline. People use these beaches for swimming, boating, fishing—and many communities generate revenue from these public beaches.

Our legislation will quadruple fines for municipalities that dump raw sewage into the Great Lakes and direct the revenue from these penalties to projects that improve water quality. The bill also includes new reporting requirements that will provide a more complete understanding of the frequency and impact of sewage dumping on this critical water system.

The Great Lakes are a national treasure. Illinoisans know that. They want to protect Lake Michigan, and they are willing to fight for the lake. Three and a half years ago, when we learned that BP was planning to increase the pollutants it puts into Lake Michigan—the people of Illinois stood up and said: No, polluting our lake further is not an option.

The Great Lakes are not a partisan issue, and this is not a partisan bill. We intend to work together to ensure that this national treasure is for generations, providing drinking water, recreation, and other benefits to Illinois and other Great Lakes States.

By Mr. REID (for Mrs. FEINSTEIN):

S. 149. A bill to extend the expiring provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005, the Intelligence Reform and Terrorism Prevention Act of 2004, and the FISA Amendments Act of 2008 until December 31, 2013, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, today I am introducing the S. 149. A bill to extend the expiring provisions of the USA PATRIOT Improvement and Reauthorization Act of 2005, the Intelligence Reform and Terrorism Prevention Act of 2004, and the FISA Amendments Act of 2008 until December 31, 2013, and for other purposes; to the Committee on the Judiciary.

Metro Reclamation Fund. For purposes of this title, amounts made available from the Great Lakes Cleanup Fund under section 519 shall be treated as funds made available under this title, except that the funds shall be made available to the Great Lakes States in accordance with the procedures to ensure that permits issued under this title (or under a State permit program approved under this section) receiving such a notice, shall each post the notice, by not later than 48 hours after providing or receiving the notice (as the case may be), in a searchable database accessible on the Internet.

(7) SEWAGE BLENDING.—Byrpes prohibited by this section include bypasses resulting in discharges from a publicly owned treatment works that consist of effluent routed around treatment units and thereafter mixed with effluent from treatment units prior to discharge.

(8) IMPLEMENTATION.—Not later than 180 days after the date of enactment of this subsection, and the Administrator shall establish procedures to ensure that permits issued under this subsection or under a State permit program approved under this subsection to a publicly owned treatment works include requirements to implement this subsection.

(9) INCREASE IN MAXIMUM CIVIL PENALTY FOR VIOLATIONS OCCURRING AFTER JANUARY 1, 2013.—The Administrator shall increase the maximum civil penalty that shall be assessed for a violation shall be $100,000 per day for each day the violation occurs.

(10) APPLICABILITY.—This subsection shall apply to a bypass occurring after the last day of the 1-year period beginning on the date of enactment of this subsection.

SEC. 3. ESTABLISHMENT OF GREAT LAKES CLEANUP FUND.

(a) In General.—The Great Lakes Cleanup Fund is amended by adding the following:

(1) by redesignating section 519 (33 U.S.C. 1387) as section 519(a); and

(2) by adding at the end of the following:

SEC. 519. ESTABLISHMENT OF GREAT LAKES CLEANUP FUND.

(a) Definitions.—In this section:

(1) FUND.—The term ‘Fund’ means the Great Lakes Cleanup Fund established by subsection (b).

(2) GREAT LAKES; GREAT LAKES STATES.—The terms ‘Great Lakes’ and ‘Great Lakes States’ have the meanings given the terms in section 118(a)(3).

(b) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a trust fund to be known as the ‘Great Lakes Cleanup Fund’ (in this section referred to as the ‘Fund’).

(c) TRANSFERS TO FUND.—Effective January 1, 2013, the Administrator shall transfer to the Fund amounts equivalent to the penalties collected for violations of section 402(a).

(d) ADMINISTRATION OF FUND.—The Administrator shall administer the Fund.

(e) USE OF FUNDS.—The Administrator shall—

(1) make the amounts in the Fund available to the Great Lakes States for use in carrying out programs and activities for improving wastewater discharges into the Great Lakes, including habitat protection and wetland restoration; and

(2) allocate those amounts among the Great Lakes States based on the proportion that—

(A) the amount attributable to a Great Lakes State for penalties collected for violations of section 402(a); and

(B) the total amount of those penalties attributable to all Great Lakes States.

(f) IMPLEMENTATION.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall establish procedures to ensure that permits issued under this subsection or under a State permit program approved under this subsection to a publicly owned treatment works include requirements to implement this subsection.

(g) PRIORITY.—In selecting programs and activities to be funded using amounts made available from the Great Lakes Cleanup Fund under section 519 shall be treated as funds made available under this title, except that the funds shall be made available to the Great Lakes States in accordance with the procedures to ensure that permits issued under this title (or under a State permit program approved under this section) receiving such a notice, shall each post the notice, by not later than 48 hours after providing or receiving the notice (as the case may be), in a searchable database accessible on the Internet.

(h) SEWAGE BLENDING.—Byrpes prohibited by this section include bypasses resulting in discharges from a publicly owned treatment works that consist of effluent routed around treatment units and thereafter mixed with effluent from treatment units prior to discharge.

(i) IMPLEMENTATION.—Not later than 180 days after the date of enactment of this subsection, and the Administrator shall establish procedures to ensure that permits issued under this subsection or under a State permit program approved under this subsection to a publicly owned treatment works include requirements to implement this subsection.

(j) INCREASE IN MAXIMUM CIVIL PENALTY FOR VIOLATIONS OCCURRING AFTER JANUARY 1, 2013.—The Administrator shall increase the maximum civil penalty that shall be assessed for a violation shall be $100,000 per day for each day the violation occurs.

(10) APPLICABILITY.—This subsection shall apply to a bypass occurring after the last day of the 1-year period beginning on the date of enactment of this subsection.
terrorist groups are only clear after an individual is apprehended.

Third, the collection of business records pursuant to court orders. This provision allows the Government to require the production of ‘‘tangible things’’ in order to obtain foreign intelligence information as part of an investigation. In the September 2009 letter, the Department of Justice urged reauthorization of that authority because ‘‘[t]he absence of such authority could force the FBI to sacrifice key intelligence opportunities.’’

I cannot elaborate into the use of these authorities in this unclassified context. I can say, however, that as the Chairman of the Senate Select Committee on Intelligence and as one who reviews the intelligence on the threats we face, we remain a nation under attack. Providing the authorities to collect intelligence to identify and prevent terrorist attacks on the homeland remains necessary.

It is also important to allow Congress, in the future, to conduct a complete review of FISA provisions. By synchronizing the dates when different pieces of the law expire, Congress can consider changes to FISA at once, prior to the end of 2013.

In closing, I would like to assure all Members of the Senate and the American public that extending these sunsets does not shield them from oversight. There is a system of review and oversight in place that consists of the FISA Court, Inspectors General in the Department of Justice and in the intelligence community, regular oversight reviews by the National Security Division at the Department of Justice, a new Director of Compliance at the National Security Agency, and reporting to the Senate and House Intelligence and Judiciary Committees. As Chairman of the Senate Select Committee and as a member of the Judiciary Committee, I can assure colleagues that the Senate will continue to provide oversight, oversight of the Government’s surveillance authorities as a major priority.

I urge my colleagues to support this legislation.

By Mr. ROCKEFELLER (for himself, Mr. HARKIN, Mrs. MURRAY, and Mr. MANCHIN):

S. 153. A bill to improve compliance with the Occupational Safety and Health laws, empower workers to raise safety concerns, prevent future mine and other workplace tragedies, establish rights of families of victims of workplace accidents, and for other purposes—

Mr. ROCKEFELLER. Mr. President, today I am proud to introduce the Robert C. Byrd Mine and Workplace Safety and Health Act of 2011. This legislation is identical to the bill I introduced last Congress with Senator Carte Goodwin and will afford miners in West Virginia and employees across the country the safest possible workplace, which is what they deserve. As I have mentioned before, this legislation is a tribute to all miners who have lost their lives and also to my dear friend and colleague, the late Senator Robert Byrd, who devoted his career to improving the working conditions of West Virginia’s miners and worked diligently with me to develop this bill.

I am also very pleased that Senators TOM HARKIN, PATTY MURRAY, and JOE MANCHIN are joining me in cosponsoring this legislation. Chairman HARKIN and Senator MURRAY are strong advocates for America’s workforce and worked closely with me to draft this bill. Their contributions and expertise on this issue are immeasurable. Senator MANCHIN and I also have a history of working together, when he was Governor, to improve the safety of West Virginia’s mining community. We were there with the families after the Sago, Aracoma, and Upper Big Branch tragedies, and I know that he shares my commitment to miners safe.

I firmly believe that every American deserves a safe and healthy work environment. No family should have to experience the sadness and grief that is felt by families who have lost their miners. Upper Big Branch victims. Sadly, the Upper Big Branch families are still waiting. They are waiting for answers regarding this terrible tragedy. And, they are waiting for Congress to do even more to strengthen the mine safety laws of the land.

The Upper Big Branch tragedy and several other high-profile workplace accidents around the country last year serve as stark reminders of the need to make sure that all workers can return home to their loved ones at the end of the day. Yet, these types of tragedies are far too common. Each year, thousands of employees die on the job and millions more are injured or become ill. These fatalities, injuries, and illnesses have a profound effect on the health and quality of life, but also substantial costs for employers. It is in everyone’s interest to improve the safety and health of America’s workforce.

I also know that improving the safety of our workplace will require hard work and dedication by everyone involved including state and federal officials, businesses, unions, employees, and safety experts. Here in the Senate, I am committed to working with my colleagues on both sides of the aisle—there is no question that we must work together to find real solutions that will save lives in mining and other industries in our country. I have no doubt that we will continue to learn more about the Upper Big Branch disaster as the investigations move forward. But I also know that there are several areas of the law that we can work to fix right now. These improvements will make us more proactive in identifying hazards before they become fatal, foster cooperation between employers and employees to keep everyone safe, improve the efficiency and effectiveness of our regulators, and increase the accountability for those responsible for keeping our workforce safe.

The Robert C. Byrd Mine and Workplace Safety and Health Act of 2011 takes important steps to empower miners to report safety concerns and keep themselves and their coworkers safe. Specifically, it gives whistleblowers up to 180 days to file a complaint if they have been retaliated against, permits the assessment of punitive damages and criminal penalties against operators that retaliate against miners who report safety problems, makes sure that miners do not lose a paycheck when their mining jobs shrink in for safety reasons, and allows miners to give private interviews to MSHA without the operator or union representative present, so that they can speak openly about investigations.

Our legislation allows MSHA to be more effective and efficient in its enforcement of our mine safety laws, while also increasing accountability and making sure that the agency is doing everything in its power to keep miners safe. Importantly, it expands MSHA’s authority to subpoena documents and testimonies from companies, to stop dangerous acts, and implement additional safety training at unsafe mines. It also creates an independent panel to determine MSHA’s role in serious accidents, and requires that MSHA conduct its investigations in a way that protects every miner regardless of when the miner’s shift occurs.

Another key piece of this bill is the section that reforms the broken “pattern of violations” process and requires MSHA to focus on rehabilitating unsafe mines. The original pattern of violations process was meant to allow MSHA to take additional action against mines that repeatedly violate our laws, but unfortunately it has never been effectively implemented. This bill requires unsafe mines to meet specific safety plans, additional safety inspections, and meet specific safety improvement benchmarks. To make sure that MSHA’s pattern of violations criteria accurately identifies unsafe mines, the Government Accountability Office will evaluate the implementation of MSHA’s new criteria.

I know that Secretary Hilda Solis and Assistant Secretary Joe Main have made mine safety a priority, and I deeply appreciate their work. They are currently examining proposals to administratively change how the pattern of violations process is used, and I support them in those efforts. But ultimately, there is only so much that MSHA can do under existing statute, which is why I believe that Congress must address this matter legislatively.

We also know that workplace disasters are not confined to the mining industry, and our mines provide important, protections for workers across all industries under the jurisdiction of the Occupational Safety and Health Administration and the Environmental Protection Agency. Our legislation ensures that MSHA’s pattern of violations process can be used to ensure workers in all industries have the protection they deserve.
By Mr. KOHL (for himself and Mr. Brown of Ohio):

S. 154. A bill to authorize the Secretary of Education to make grants to support early college high schools and other dual enrollment programs; to the Committee on Health, Education, Labor, and Pensions.

Mr. KOHL. Mr. President, today I am reintroducing the Fast Track to College Act, a bill to support the expansion of dual enrollment programs and Early College High Schools. Such programs allow young people to earn up to two years of college credit while also earning their high school diploma.

I believe the key to our country’s economic recovery is a strong investment in our young people. By investing in education, we ensure that today’s students are well prepared to compete in a global economy.

Far too many of our students are falling behind in school, and as students struggle with their studies or drop out of school altogether, their futures and the health of our workforce are at risk. Young people who drop out of high school are at increased risk for negative outcomes such as unemployment and incarceration, as well as reliance on public assistance for healthcare, housing, and other basic needs—outcomes that have high costs for their communities and our economy. Conversely, adults who earn bachelor’s degrees earn on average two-thirds more than high school graduates and $1 million more than high school dropouts who are not working.

Studies show many youth drop out because they don’t see a practical reason to complete high school or go on to get a postsecondary degree. Maybe they don’t think they can get into college, don’t think they can afford to go, or just don’t see the point in going. Dual enrollment programs and Early College High Schools address these issues by showing students that they can succeed in college courses while saving time and money. They don’t drop out because they can see that they are on track to get a job. By earning college credit, and possibly even an Associate’s Degree, students are better prepared after high school to continue their education or pursue career training.

That is why many colleagues support this bill, which provides competitive grant funding for Early College High Schools and other dual enrollment programs that allow low-income students to earn college credit and a high school diploma at the same time. These programs put students on the fast track to college and increase the odds that they will not only graduate, but also go on to continue their education and secure higher-paying jobs.

This bill authorizes $140,000,000 for competitive 6-year grants to schools, with priority given to schools that serve low-income students. The funding will help schools implement new programs, strengthening existing programs, and providing students and teachers with the resources they need to succeed in early college high schools and other dual enrollment programs. The bill also includes $10 million for states to provide support for these programs, as well as an evaluation component so we can measure the program’s effectiveness.

I am proud to sponsor this legislation, with the support of Senator Brown of Ohio, because I believe this investment in our schools will help solve the dropout crisis and secure America’s future by ensuring that all young people can compete in today’s global economy. Further, I believe that all children, regardless of income or other factors, deserve equal opportunities to fulfill their potential, and it is both morally and fiscally responsible for this Congress to invest in high-quality education programs that help our youth reach their potential.

I urge my colleagues to support this important legislation.

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. 154

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 “Fast Track to College Act of 2011”.

SEC. 2. PURPOSE.

The purpose of this Act is to increase secondary school graduation rates and the percentage of students who complete a recognized postsecondary credential by the age of 26, including among low-income students and students from other populations underrepresented in higher education.

SEC. 3. DEFINITIONS.

In this Act:

(1) DUAL ENROLLMENT PROGRAM.—The term “dual enrollment program” means an academic program through which a secondary school student is able simultaneously to earn both a high school diploma and a postsecondary degree or credential.

(2) EARLY COLLEGE HIGH SCHOOL.—The term “early college high school” means a public secondary school, as defined in section 9011 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7201), that provides a course of study that enables a student to earn a secondary school diploma and either an associate’s degree or 1 to 2 years of postsecondary credit toward a postsecondary degree or credential.

(3) ELIGIBLE ENTITY.—The term “eligible entity” means a local educational agency in a collaborative partnership with an institution of higher education. Such partnership also may include other entities, such as a nonprofit organization with experience in youth development.

(4) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(5) LOCAL EDUCATIONAL AGENCY.—The term “local educational agency” has the meaning given such term in section 9011 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7201).

(6) SECRETARY.—The term “Secretary” means the Secretary of Education.

(7) LOW-INCOME STUDENT.—The term “low-income student” means a student who meets a measure of poverty described in section 1111(a)(5) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(a)(5)).

SEC. 4. AUTHORIZATION OF APPROPRIATIONS; RESERVATIONS.

(a) IN GENERAL.—To carry out this Act, there are authorized to be appropriated $150,000,000 for fiscal year 2012 and such sums as may be necessary for each of fiscal years 2013–2017.

(b) EARLY COLLEGE HIGH SCHOOLS.—The Secretary shall reserve not less than 45 percent of the funds appropriated under subsection (a) to support early college high schools under section 5.

(c) OTHER DUAL ENROLLMENT PROGRAMS.—The Secretary shall reserve not less than 45 percent of such funds to support other dual enrollment programs (including early college high schools) under section 5.

(d) STATE GRANTS.—The Secretary shall reserve 10 percent of such funds, or $10,000,000, whichever is less, for grants to States under section 9.

SEC. 5. AUTHORIZED PROGRAM.

(a) IN GENERAL.—The Secretary is authorized to award, on a competitive basis, 6-year grants to eligible entities seeking to establish a new, or support an existing, early college high school or other dual enrollment program.

(b) GRANT AMOUNT.—The Secretary shall ensure that each grant under this section is of sufficient size to enable grantees to carry out all required activities and otherwise meet the purposes of this Act, except that a grant under this section may not exceed $2,000,000.

(c) MATCHING REQUIREMENT.—

(1) IN GENERAL.—An eligible entity shall contribute matching funds toward the costs of the early college high school or other dual enrollment program to which this Act applies. The amount of matching funds contributed by the lead entity for this section, of which not less than half shall be from non-Federal sources, which funds shall represent not less than the following:

(2) STIPENDS.—Notwithstanding the provisions of this section, the stipends of eligible institutions received in each of the first and second years of the grant.
and transportation.

Secondary school students and their families are aware of the school or program; (e) A system of student supports, including small group activities, tutoring, literacy and numeracy skill development in all academic disciplines, parental and community outreach, extended learning time, and activities to improve readiness for postsecondary education, such as academic seminars and counseling.

(6) how parents or guardians of students participating in the early college high school or other dual enrollment program will be informed of the students’ academic performance and progress and, if required under paragraph (5), involved in the development of the students’ career and graduation plans; (7) coordination between the institution of higher education and the local educational agency, including regarding academic calendars, provision of student services, curriculum development, and professional development; (8) how the eligible entity will ensure that teachers in the early college high school or other dual enrollment program are aware of early college high school or other dual enrollment programs from the secondary and postsecondary perspective.

for the application—(1) that propose to establish or support an early college high school or other dual enrollment program that will serve a student population of which 40 percent or more are students counted under section 1113a(a)(5) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6313a(a)(5)); and (2) from States that provide assistance to early college high schools or other dual enrollment programs, during the first year of enrollment program, during the first year of (2) IMPLEMENTATION PERIOD.—During the implementation period, the level of dual enrollment programs will be determined by the local educational agency, including regarding academic calendars, provision of student services, curriculum development, and professional development, as appropriate, to collect and use data for student and instructional improvement and program evaluation.

(14) how the eligible entity will help students meet eligibility criteria for postsecondary courses and ensure that students understand how their credits will transfer; and (15) how the eligible entity will access and leverage additional resources necessary to sustain the early college high school or other dual enrollment program that support the curriculum of the early college high school or other dual enrollment program; (2) that support the curriculum of the early college high school or other dual enrollment program; (4) how the eligible entity will help students meet eligibility criteria for postsecondary courses and ensure that students understand how their credits will transfer; and (1) which may include the development of (3) DETERMINATION OF AMOUNT CONTRIBUTED.—The Secretary shall allow an eligible entity to satisfy the requirements of this subsection through in-kind contributions.

(i) such funds. (d) SUPPLEMENT, NOT SUPPLANT.—An eligible entity shall use a grant received under this section only to supplement funds that would, in the absence of such grant, be made available from non-Federal funds for support of the activities described in the eligible entity’s application under section 7, and not to supplant such funds.

(c) A system of student supports, including small group activities, tutoring, literacy and numeracy skill development in all academic disciplines, parental and community outreach, extended learning time, and activities to improve readiness for postsecondary education, such as academic seminars and counseling.

(5) in the case of an early college high school, the majority of courses offered, including internships, career-based capstone projects, and opportunities to participate in, the academic credit earned in the academic year will be transferable to, at a minimum, public institutions of higher education within the State, consistent with existing statewide articulation agreements (as of the time of the application); (11) student assessments and other measurements of student achievement, including benchmarks for student achievement; (12) outreach programs to provide elementary and secondary school students, especially those in middle grades, and their parents, teachers, and other partners, including businesses and community-based organizations, with information about, and academic preparation for, the early college high school or other dual enrollment program; (3) how the eligible entity will help students meet eligibility criteria for postsecondary courses and ensure that students understand how their credits will transfer; and (2) how the eligible entity will help students meet eligibility criteria for postsecondary courses and ensure that students understand how their credits will transfer; and (1) which may include the development of

(4) a system of student supports, including small group activities, tutoring, literacy and numeracy skill development in all academic disciplines, parental and community outreach, extended learning time, and activities to improve readiness for postsecondary education, such as academic seminars and counseling.

(C) 40 percent in the fifth year.

(1) how the eligible entity will help students meet eligibility criteria for postsecondary courses and ensure that students understand how their credits will transfer; and (2) how the eligible entity will help students meet eligibility criteria for postsecondary courses and ensure that students understand how their credits will transfer; and (1) which may include the development of
The effectiveness and ensure the quality of partnership between elementary and secondary programs, such as brokering relationships among colleges and high schools and other dual enrollment programs, including identifying any obstacles to such a partnership, such as faculty at institutions of higher education under Federal, State, or local laws (including applicable state or local orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employers and their employees.

(2) faculty at institutions of higher education and secondary school teachers with expertise in dual enrollment; and

(3) experts in the education of students who may be at risk of not completing their secondary school education.

SEC. 9. GRANTS TO STATES.

(a) IN GENERAL.—The Secretary is authorized to award, on a competitive basis, 5-year grants to eligible entities for early college high schools and other dual enrollment programs, including instructional coaches who offer on-site guidance;

(b) GRANT AMOUNT.—The Secretary shall ensure that each grant awarded under this section is of sufficient size to enable the grantee to address required activities under this section, which funds shall represent not less than 50 percent of the grant amount received in each year of the grant.

(d) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to States that, as of the time of the application, provide assistance to high school students who are underrepresented in early college high schools or other dual enrollment programs, such as assistance to defray the costs of higher education, such as tuition, fees, and textbooks.

(e) APPLICATION.—(1) In GENERAL.—To receive a grant under this section, a State agency shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

(2) CONTENTS OF APPLICATION.—At a minimum, the application described in paragraph (1) shall include a description of—

(A) how the State will carry out all of the required activities described in subsection (f);

(B) how the State will identify and eliminate barriers to implementing effective early college high schools and other dual enrollment programs after the grant expires, including by engaging businesses and non-profit organizations; and

(C) how the State will access and leverage additional resources necessary to sustain early college high schools or other dual enrollment programs.

(f) REQUIRED ACTIVITIES.—A State receiving a grant under this section shall use such funds for—

(1) creating outreach programs to ensure that prospective students, their families, and community members are aware of early college high schools and other dual enrollment programs in the State;

(2) implementing a statewide strategy for expanding access to early college high schools and other dual enrollment programs for students who are underrepresented in high schools and other at-risk students, including identifying any obstacles to such a strategy under State law or policy;

(3) providing technical assistance to early college high schools and other dual enrollment programs for students who are underrepresented in high schools and other dual enrollment programs, such as brokering relationships and agreements that forge a strong partnership between elementary and secondary school districts and secondary school teachers; and

(4) identifying policies that will improve the effectiveness and ensure the quality of early college high schools and other dual enrollment programs, such as access to educational resources and quality assurance, governance, accountability, and alignment policies; and

(5) planning and delivering statewide training and peer learning opportunities for school leaders and teachers from early college high schools and other dual enrollment programs, including instructional coaches who offer on-site guidance;

(6) disseminating best practices in early college high schools and dual enrollment programs from across the State and from other States; and

(f) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to eligible entities concerning the information described in subsection (e) that each grantee shall report annually to the Secretary in order to demonstrate progress toward achieving the purpose of this Act.

(2) CONTENTS OF REPORT.—At a minimum, a report submitted under this subsection by an eligible entity receiving funds under section 1111(b)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)(i)) shall include the following:

(A) The number of students;

(B) the percentage of students scoring advanced, proficient, basic, and below basic on the assessments described in section 1111(b)(3) of such Act of 1965 (20 U.S.C. 6311(b)(3));

(C) the performance of students on other assessments or measurements of achievement;

(D) the number of secondary school credits earned;

(E) the number of postsecondary credits earned;

(F) Attendance rate, as appropriate.

(G) Graduation rate.

(H) Placement in postsecondary education or advanced training, in military service, and in employment.

(I) A description of the school or program’s student, parent, and community outreach and engagement.

(b) REPORTING BY SECRETARY.—The Secretary annually shall—

(1) prepare a report that compiles and analyzes the information described in subsection (a) and identifies the best practices for achieving the purpose of this Act; and

(2) submit the report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives.

(c) MONITORING VISITS.—The Secretary’s designee shall visit each grantee under this Act at least once for the purpose of helping the grantee achieve the goals of this Act and to monitor the grantee’s progress toward achieving such goals.

(d) NATIONAL EVALUATION.—(1) IN GENERAL.—Not later than 6 months after the date on which funds are appropriated under this Act, the Secretary shall enter into a contract with an independent organization to perform an evaluation of the grants awarded under this Act.

(a) EMPLOYEES.—Nothing in this Act shall be construed to alter or otherwise affect the right to remedies, and procedures afforded to the employees of local educational agencies (including schools) or institutions of higher education under Federal, State, or local laws (including applicable state or local orders) or under the terms of collective bargaining agreements, memorandums of understanding, or other agreements between such employees and their employers.

(b) GRADUATION RATE.—Notwithstanding any other provision of law, a student who graduates from an early college high school supported under this Act in the standard number of years for graduation described in the eligible entity’s application shall be considered to have graduated on time for purposes of section 1111(h)(1)(C)(i) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(h)(1)(C)(i)).

By Mr. KOHL: S. 155. This bill would amend the Internal Revenue Code of 1986 to provide an enhanced credit for research and development by companies that manufacture products in the United States; to the Committee on Finance.

Mr. KOHL. Mr. President, I rise today to introduce three bills that I believe will be important for our small businesses, especially our smaller manufacturers. In each of these bills, there is an emphasis on keeping our research and development and manufacturing here in the United States, rewarding innovator companies in the businesses with predictable credits and equitable treatment, and creating good paying jobs.

The first bill, S. 155, is designed to incentivize keeping jobs in the United States by increasing the existing Research & Development tax credit for companies that produce most of their goods domestically. The Domestic Jobs Innovation Bonus Act would create a bonus R&D Credit that increases incrementally to reward a higher percentage of domestic production. To earn the bonus credit, a company would need to make at least half of their products domestically—and for doing so would receive an additional 2 percentage points on top of the existing R&D credit. The credit would max out at 10 percent—aggregate point increase for companies with 90 percent to 100 percent of their receipts from domestic production. For example, a company with 100 percent domestic production that would normally receive a 20 percent R&D tax credit would receive a 30 percent credit under this proposal.

To be clear, this isn’t a tax credit that will benefit every company that has a presence in the United States. It
may not benefit many large, multi-national corporations, but those companies will still have access to the existing R&D Credit, which I support as well.

It is my hope that a credit like this could encourage a company that is deciding whether to manufacture and research here or abroad, to choose America.

I am introducing a second bill, S. 156, with Senators CORKER and ALEXANDER that would establish a uniform energy efficiency descriptor for all water heaters and improve the testing methods by which that descriptor is determined. Currently, water heaters are lumped into two categories under two federal statutes, based on arbitrary gallon capacity and energy input ratings. "Smaller" water heaters are covered by the National Appliance Energy Conservation Act, NAECA, and must be rated using an energy factor or EF rating. "Larger" water heaters are within the scope of the Energy Policy Act of 1992, EPACT, and must be rated using a thermal efficiency or TE rating. Not only do the testing methods differ, but a manufacturer is forbidden to place an EF rating on a TE-sized unit, and vice versa.

This legislation would direct the Department of Energy to work with industry stakeholders to develop a uniform energy efficiency descriptor that applies to all sizes of water heaters. It also would develop a test method to accurately determine that descriptor for all types of water heaters. It is my hope that the water heating manufacturing community can develop and implement the new test method and descriptor that will eliminate confusion and enable consumers and business owners to make informed purchasing decisions on water heaters. In today's tough economy, energy bills continue to stretch family budgets. Families can save money and conserve energy if they have accurate information about how much energy home appliances consume.

The difference between EF and TE ratings was based on the assumption that smaller units were exclusively for residential uses while larger units were exclusively for commercial purposes. Due to advances in manufacturing technology, the assumptions underlining the earlier dividing line are no longer valid. In fact, both larger and smaller units made by leading U.S. manufacturers are used in residences without regard to which Federal law applies. Yet, Federal legislation continues to be written by taking this distinction into account.

In particular, these American companies are affected by the current disparate energy standards because it can disadvantage some of their products. Establishing one standard will help break down a patchwork of confusing and inefficient designations at both the state and federal level. For example, water heaters rated with a TE rating are not eligible for the ENERGY STAR label, and accordingly, not eligible for many state appliance rebate programs that link their incentives to an ENERGY STAR designation. This bill will make it so all products are competing on a level playing field for all incentives.

In addition to the energy savings that this bill will provide, it is also about the jobs potential for companies making these cutting-edge products. A globally-recognized cluster of water technology companies is emerging in the City of Milwaukee and surrounding counties. An important part of this effort is innovative water heater technologies. Incentivizing these products through predictable and equitable standards is vital to these companies.

The third bill, S. 157, would extend the Section 48 investment tax credit to solar water heating technology. This is a promising new technology that could save our businesses money on their electricity bills, and reduce our overall carbon footprint. It is a technology which we can all agree. Light pipes collect natural light, and then through the use of sensor technology, automatically dim the other lights in a building—thereby using less electricity for the same amount of light.

Despite the clear benefits of the technology, high cost has kept many businesses from using light pipes. Adding this technology to Section 48 will provide that boost that these businesses need to justify the expense.

I became aware of this technology because one of the companies that makes it is based in Manitowoc, Wisconsin. This company, Orion Energy Systems, employs about 250 people, and has been growing even during this tough economic time. In addition to light pipes, Orion makes energy efficient lighting systems, and partners with wind and solar power companies to significantly reduce the energy costs for many of our largest and most distinguished companies. Orion has been deployed at more than 6,000 facilities, and has worked with 126 of the Fortune 500 companies. Since 2001, Orion customers have saved more than $1 billion in electricity costs by displacing nearly 600 megawatts.

This credit will help Orion and companies like it create thousands of jobs through the production of the technology as well as installing it.

I urge my colleagues to support all of these bills, as I hope that they are enacted as part of an agenda that focuses on innovation, job creation, and shoring up our vital manufacturing sector.

By Mrs. BOXER:

S. 170. A bill to provide for the affordable refinancing of mortgages held by Fannie Mae and Freddie Mac; to the Committee on Banking, Housing, and Urban Affairs.

Mrs. BOXER. Mr. President, I rise today to introduce the Helping Responsible Homeowners Act of 2011. This legislation will eliminate barriers that have prevented millions of borrowers who continue to make their payments on time from taking advantage of historically low interest rates and refinancing their mortgages.

Despite a recent uptick, interest rates for 30-year home mortgages remain under five percent. Yet of the 31.5 million mortgages guaranteed by Fannie Mae and Freddie Mac, nearly 13 million still carry an interest rate at or above 6 percent. This bill would allow non-delinquent mortgages to be refinanced at current rates, putting hundreds of dollars a month back in the pockets of struggling families.

The Administration's Home Affordable Refinance Program has resulted in Fannie Mae and Freddie Mac refinancing 520,000 loans through October 2010, far short of its goal of assisting four to five million homeowners.

One reason for the program's failure is that Fannie and Freddie continue to charge risk-based fees to refinance a mortgage. These addional fees can be as high as two percent of the loan amount, or an extra $4,000 on a $200,000 loan. In my home state of California, where prices are higher, that might be $8,000 on a $400,000 loan. For borrowers struggling to keep up with their payments, this is an additional cost they simply cannot afford.

Fannie and Freddie already bear the risks on these loans; yet this policy actually makes it more likely that borrowers will be able to take advantage of the low rates and increases the chance they will eventually default.

Many borrowers also have been blocked from refinancing by the owner of their second mortgage, even though reducing payments on the first mortgage would make it more likely the borrower would be able to continue making payments on the second.

To remove these barriers and allow borrowers current on their payments to refinance their mortgage loans, the Helping Responsible Homeowners Act would eliminate risk-based fees on loans for which Fannie and Freddie already bear the risk; remove refinancing limits on properties that lost value during the real estate crisis; make it easier for borrowers with second mortgages to participate in refinancing programs; and require that borrowers are able to receive a fair interest rate, comparable to that received by any other current borrower who has not suffered a drop in home value.

At a time when millions of Americans have been forced out of their homes, this legislation will ensure that homeowners who make their payments on time will be able to refinance their mortgages at current low rates so that they can stay in their homes. I urge my colleagues to join me and to support this legislation.

By Mr. HARKIN:

S. 174. A bill to improve the health of Americans and reduce health care costs by reorienting the Nation's health care
Mr. HARKIN. Mr. President, the Healthy Lifestyles and Prevention America Act, also known as the HeLP America Act, will improve the health of Americans and reduce health care costs by emphasizing prevention, wellness, and health promotion in our communities, workplaces and schools.

We made a significant investment in preventive wellness as part of the passing of the historic Affordable Care Act into law. The robust array of provisions contained in the HeLP America Act continue to build off the investments made by the Affordable Care Act and together, they will significantly transform our current sick care system into a true health care system.

Make no mistake about it; these combined efforts will continue our transformation into a genuine wellness society by keeping people from developing health problems and from costly hospitalizations in the first place.

Currently, the United States spends more than $2 trillion on health care each year but historically we invest just four cents out of every dollar in prevention, reducing health care spending. This is why I fought for the Prevention and Public Health Fund that is included in the health reform law.

But transforming our Nation into a true wellness society requires a comprehensive approach to make being healthier easier for all Americans.

It just doesn’t make any sense why we don’t put a greater emphasis on making health promotion easier—why we would focus so little on prevention and public health when we know that these initiatives can make us healthier and reduce our annual health care spending?

Well, I am proud that the bill before the Senate continues to make significant investments in prevention and wellness. The HeLP America Act will put additional systems in place that will improve access to nutritious foods, opportunities for physical activity, and affordability of recommended preventive services.

The bill focuses on initiatives to make kids and schools healthier. In particular, it will support State efforts to provide resources to child care providers to help them meet high-quality physical activity and healthy eating standards. It also directs the Department of Education to provide guidance and technical assistance to schools to provide equal opportunities for students with disabilities for physical education and extracurricular athletics.

In addition, the bill focuses on initiatives to make healthier communities and workplaces. For example, it requires the Secretary of Health and Human Services to establish guidelines in physical activity for children under the age of 5 and the Secretary of Agriculture to establish a grant program promoting and expanding efforts to create community gardens. Specific to small workplaces and workplace wellness programs, there is a provision that allows employers to deduct the cost of athletic facility memberships for their employees and exempts this benefit as taxable income for employees.

The HeLP America Act also creates systems that give Americans the information they need to make informed decisions. In particular, there is a provision that requires uniform guidelines be developed for the use of nutrient labeling symbols or systems on the front of food packages. There are provisions meant to strengthen federal initiatives to improve the health literacy of consumers by making health information easier to understand and health care systems easier to navigate.

Let me be clear, this bill doesn’t just ticker around the edges; it changes the very paradigm of a variety of systems to make it easier for Americans to be healthy. After many years of advocating for wellness and prevention, I am thrilled to see that these things were at the very heart of the historic Affordable Care Act passed into law. But there is still much more to be done, and the HeLP America Act is an important step in continuing our transformation into a genuine wellness society and getting health care costs under control.

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

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

S. 174

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 "Healthy Lifestyles and Prevention America Act" or the "HeLP America Act." (b) Table of Contents.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—HEALTHIER KIDS AND SCHOOLS


Sec. 102. Access to local foods and school gardens at preschools and child care.

Sec. 103. Fresh fruit and vegetable program.

TITLE II—HEALTHIER COMMUNITIES AND WORKPLACES

Subtitle A—Creating Healthier Communities

Sec. 201. Technical assistance for the development of joint use agreements.


Sec. 203. Community gardens.

Sec. 204. Physical activity guidelines for Americans.

Sec. 205. Tobacco taxes parity.

Sec. 206. Leveraging and coordinating federal resources for improved health.

Subtitle B—Incentives for a Healthier Workforce

Sec. 211. Tax credit for employers for costs of implementing wellness programs.

Sec. 212. Employer-provided off-premises athletic facilities.

Sec. 213. Task force for the promotion of breastfeeding in the workplace.

Sec. 214. Improving healthy eating and active living options in Federal workplaces.

TITLE III—RESPONSIBLE MARKETING AND CONSUMER AWARENESS

Sec. 301. Guidelines for reduction in sodium and sugar.

Sec. 302. Nutrition labeling for food products sold principally for use in restaurants or other retail food establishments.

Sec. 303. Front-label food guidance systems.

Sec. 304. Rulemaking authority for advertising to children.

Sec. 305. Health literacy research, coordination, and dissemination.

Sec. 306. Disallowance of deductions for advertising and marketing expenses relating to tobacco product use.

Sec. 307. Incentives to reduce tobacco use.

TITLE IV—EXPANDED COVERAGE OF PREVENTIVE SERVICE

Sec. 401. Required coverage of preventive services under the Medicaid program.

Sec. 402. Coverage for comprehensive workplace activities and preventive services.

Sec. 403. Health professional education and training in healthy eating.

Sec. 501. Grants for Body Mass Index data analysis.


TITLE V—RESEARCH

Sec. 505. Authorization for grants.

Sec. 506. Expansion of access to research investigators.

Sec. 507. Coordination of Federal research programs.

Sec. 508. Authorization of appropriations.

Section 18(g) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1764m) is amended—

(1) by striking “choice,” and inserting “choices:”; and

(2) by inserting after “referral services)” the following: “, and the provision of resources to enable eligible child care providers to meet, exceed, or sustain success in meeting or exceeding Federal or State high-quality program standards relating to health, mental health, nutrition, physical activity, and physical development."

SEC. 101. NUTRITION AND PHYSICAL ACTIVITY IN CHILD CARE QUALITY IMPROVEMENT.

Sec. 102. Access to local foods and school gardens at preschools and child care.

Sec. 103. Fresh fruit and vegetable program.

Sec. 104. Rulemaking authority for advertising to children.

Sec. 105. Incentives to reduce tobacco use.
"(B) SPONSORING ORGANIZATION.—The term ‘sponsoring organization’ means an institution described in subparagraphs (C), (D), or (E) of section 171(a)(2).";
(6) In paragraph (3) (as so redesignated)—
(A) in the paragraph heading, by striking ‘IN GENERAL’ and inserting ‘ASSISTANCE’;
(B) in the matter preceding subparagraph (A), by inserting ‘, child care centers, sponsoring organizations for home-based care, after ‘schools’; and
(C) in subparagraph (A), by inserting ‘, child care centers, sponsoring organizations for home-based care, after ‘schools’;
(7) In paragraph (3) (as so redesignated), by striking ‘paragraph (1)’ and inserting ‘paragraph (2)’; and
(8) In paragraph (4) (as so redesignated)—
(A) in subsection (A)(i), by striking ‘or’; and
(B) in subsection (F), by striking the period at the end and inserting ‘; or’; and
(C) by adding at the end the following:
‘(III) a consortium of at least 2 child care centers or sponsoring organizations for home-based care with hands-on vegetable garden and nutrition education that is incorporated into the curriculum for 1 or more age groups at 2 or more eligible centers or family child care homes supported by sponsoring organizations for home-based care; and
(D) in paragraph (F), by striking ‘paragraph (1)(H)’ and inserting ‘paragraph (2)(H)’.
SEC. 103. FRESH FRUIT AND VEGETABLE PROGRAM.
Section 19 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760a) is amended—
(1) by striking subsections (c) and (d) and inserting the following:
‘(c) SCHOOL PARTICIPATION.—
‘(1) IN GENERAL.—Each State shall carry out the program in each elementary school (as defined in section 1101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) in the State—
‘(A) in which not less than 50 percent of the students are eligible for free or reduced price meals under this Act; and
‘(B) that submits an application in accordance with paragraph (2).
‘(2) APPLICATION.—
‘(A) IN GENERAL.—An interested elementary school shall submit to the State an application containing—
‘(i) a certification pertaining to the percent of students enrolled in the school who are eligible for free or reduced price school lunches under this Act;
‘(ii) a certification of support for participation in the program signed by the school food manager, the school principal, and the district superintendent (or equivalent position, as determined by the school);
‘(iii) a plan for implementation of the program, including efforts to integrate activities contained in this section with other efforts to promote sound health and nutrition, reduce overweight and obesity, or promote physical activity; and
‘(iv) such other information as may be requested by the Secretary.
‘(B) PARTNERSHIPS.—Each State shall encourage interested elementary schools to submit a plan for implementation of the program that includes a partnership with 1 or more entities that will provide non-Federal resources (including entities representing the fruit and vegetable industry).
‘(2) by striking subsection (i) and inserting the following:
‘(i) FUNDING.—Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to
the Secretary to carry out this section such sums as are necessary, to remain available until expended.
‘(2) RECEIPT AND ACCEPTANCE.—The Secretary shall be entitled to receive, shall accept, and shall use to carry out this section the funds transferred under paragraph (1), without further appropriation; and
(3) by redesignating paragraphs (e) through (i) as subsections (d) through (h), respectively.
SEC. 104. EQUAL PHYSICAL ACTIVITY OPPORTUNITIES FOR STUDENTS WITH DISABILITIES.
(a) IN GENERAL.—The Secretary shall promote equal opportunities for students with disabilities to be included and to participate in physical education and extracurricular athletics implemented in, or in conjunction with, elementary schools, secondary schools, and institutions of higher education, by ensuring the provision of appropriate technical assistance and guidance for schools and institutions described in this subsection and their personnel.
(b) TECHNICAL ASSISTANCE AND GUIDANCE.—The provision of technical assistance and guidance described in subsection (a) shall include—
‘(1) providing technical assistance to elementary schools, secondary schools, local educational agencies, educational service agencies, and institutions of higher education, regarding—
‘(A) inclusion and participation of students with disabilities, in a manner equal to that of the other students, in physical education opportunities (including classes), and extracurricular activities (including competitive sports programs), as determined by the school; and
‘(B) provision of adaptive sports programs, in the physical education and extracurricular athletics opportunities, including programs with competitive sports leagues or competitions, for students with disabilities; and
‘(2) monitoring the extent to which physical education and extracurricular athletics opportunities for students with disabilities are implemented in, or in conjunction with, elementary schools, secondary schools, and institutions of higher education.
(c) DEFINITIONS.—In this section—
‘(1) AGENCIES.—The terms ‘local educational agency’ and ‘State educational agency’ have the meanings given the terms ‘local educational agency’ and ‘State educational agency’ in the Rehabilitation Act of 1973 (29 U.S.C. 791 et seq.), and any other applicable Federal law.
‘(2) COMMUNITY SPORTS GRANTS PROGRAM.—For purposes of this section, the term ‘individual with a physical disability’ means an individual who—
‘(A) in general.—The term ‘individual with a disability’ means an individual who—
‘(i) attends an elementary school, secondary school, or institution of higher education; and
‘(ii) who—
‘(I) is eligible for, and receiving, special education or related services, or is a student with a disability under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or
‘(II) is an individual with a disability, for purposes of section 109 of the Americans with Disabilities Act of 1990.
‘(B) STUDENTS WITH DISABILITIES.—The term ‘students with disabilities’ means more than 1 student with a disability.
‘(B) TABLE OF CONTENTS.—The title of this section in title II(b) of the Rehabilitation Act of 1973 is amended by inserting after the aforementioned joint use agreement; and
‘(B) in subsection (a)(3), by redesignating paragraphs (d) through (h), respectively, as paragraphs (e) through (i), as subsections (d) through (h), and
‘(C) in paragraph (4)—
‘(1) by redesignating subsections (e) through (i) as subsections (d) through (h), respectively;
(TITLE II—HEALTHIER COMMUNITIES AND WORKPLACES)
Subtitle A—Creating Healthier Communities
SEC. 201. TECHNICAL ASSISTANCE FOR THE DEVELOPMENT OF JOINT USE AGREEMENTS.
(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention and in coordination with the Secretary of Education and in consultation with leading national experts and organizations advancing healthy living in the school environment, shall develop and disseminate best practices, including model documents, and provide technical assistance to elementary and secondary schools to assist such schools with the development of joint use agreements, to address liability, operational and management, and cost issues that may otherwise impede the ability of community members to use school facilities for recreational and nutritional purposes during nonschool hours.
(b) DEFINITION.—In this section, the term ‘joint use agreement’ means a formal agreement between an elementary or secondary school and another entity relating to the use of the school’s facilities, equipment, or property, including recreational and food service facilities, equipment, or property, by individuals other than the school’s students or staff.
SEC. 202. COMMUNITY SPORTS PROGRAMS FOR INDIVIDUALS WITH DISABILITIES.
Part P of title III of the Public Health Service Act (42 U.S.C. 2080d et seq.) is amended by adding at the end the following:
‘(R) TITLE III—COMMUNITY SPORTS PROGRAMS FOR INDIVIDUALS WITH DISABILITIES.
‘(a) IN GENERAL.—
‘(1) INDIVIDUAL WITH A DISABILITY DEFINED.—For purposes of this section, the term ‘individual with a disability’ means any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).
‘(2) INDIVIDUAL WITH A PHYSICAL DISABILITY.—The term ‘individual with a physical disability’ means an individual with a disability that has a physical or visual disability.
‘(B) COMMUNITY SPORTS GRANTS PROGRAM.—The Secretary, in collaboration with the National Advisory Committee on Community Sports Programs for Individuals with Disabilities, may award grants with a competitive basis to public and nonprofit private entities to implement community-based, sports and
athletic programs for individuals with disabilities, including youth with disabilities.

"(b) APPLICATION.—To be eligible to receive a grant under this section, a public or nonprofit private entity shall submit to the Secretary an application at such time, in such manner, and containing such agreement, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(c) AUTHORIZED ACTIVITIES.—Amounts awarded under a grant under subsection (a) shall be used for—

(1) community-based sports programs, leagues, or competitions in individual or team sports for individuals with physical disabilities;

(2) regional sports programs or competitions in individual or team sports for individuals with physical disabilities;

(3) the development of competitive team and individual sports programs for individuals with disabilities at the high school and collegiate level; or

(4) the development of mentoring programs to encourage participation in sports programs for individuals with disabilities, including individuals with recently acquired disabilities.

"(d) ELIGIBILITY.—

(1) ADVISORY COMMITTEE.—The Secretary shall establish a National Advisory Committee on Community Sports Programs for Individuals with Disabilities to relieve the Secretary of such duties as the Secretary shall determine.

(A) establish priorities for the implementation of this section;

(B) review grant proposals;

(C) make recommendations for distribution of the available appropriated funds to specific applicants; and

(D) annually evaluate the progress of programs carried out under this section in implementing such priorities.

(2) REPRESENTATION.—The Advisory Committee established under paragraph (1) shall include representatives of—

(A) the Department of Health and Human Services Office on Disability;

(B) the United States Surgeon General;

(C) the Centers for Disease Control and Prevention;

(D) disabled sports organizations;

(E) organizations that represent the interests of specific populations with disabilities; and

(F) individuals with disabilities (including athletes with physical disabilities) or their family members.

(3) INFORMATION.—The Secretary shall disseminate information about the availability of grants under this section in a manner that is designed to reach public and nonprofit private organizations that are dedicated to providing outreach, advocacy, or independent living services to individuals with disabilities.

(4) TECHNICAL ASSISTANCE.—The Secretary, in conjunction with the United States Olympic Committee and disabled sports organizations, shall establish a technical assistance center to provide training, support, and information to grantees under this section as well as to promoting and operating community sports programs for individuals with disabilities.

(5) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this section, and annually thereafter, the Secretary shall submit to Congress a report summarizing activities, findings, outcomes, and data resulting from the grant projects funded under this section during the year for which the report is being prepared.

"(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—At least every 5 years, the Secretary of Health and Human Services (in this Act referred to as the ‘‘Secretary’’) shall publish a report entitled ‘‘Physical Activity Guidelines for Americans’’ each such report shall contain physical activity information and guidelines for the general public, and guidelines for specific population subgroups which shall include information on identifying population subgroups, including children, if the preponderance of scientific and medical knowledge which is current at the time the report is prepared, and shall include guidelines for identified population subgroups in carrying out any Federal health program.

(2) BASIS OF GUIDELINES.—The information and guidelines contained in each report required under this subsection shall be based on the preponderance of the scientific and medical knowledge which is current at the time the report is prepared, and shall include guidelines for identified population subgroups, including children, if the preponderance of scientific and medical knowledge indicates that such subgroups require different levels of physical activity.

(3) APPROVAL BY SECRETARY.—

(1) REVIEW.—Any Federal agency that proposes to issue any physical activity guidance for the general public or identified population subgroups shall submit the text of such guidance to the Secretary for a 60-day review period.

(2) BASIS FOR REVIEW.—(A) IN GENERAL.—During the 60-day review period established in paragraph (1), the Secretary shall review and approve or disapprove such guidance to assure that the guidance either is consistent with the ‘‘Physical Activity Guidelines for Americans’’ or is based on medical or new scientific knowledge which is determined to be valid by the Secretary. If after such 60-day review period the Secretary has not notified the proposing agency that such guidance has been disapproved, then such guidance may be issued by the Secretary. If the Secretary disapproves such guidance, the proposing agency shall return the text of the guidance to the Secretary. If the Secretary finds that such guidance is inconsistent with the ‘‘Physical Activity Guidelines for Americans’’ and so notifies the proposing agency, such agency shall follow the procedures set forth in this subsection before disseminating such proposal to the public in final form. If after such 60-day period, the Secretary disapproves such guidance as inconsistent with the ‘‘Physical Activity Guidelines for Americans’’ the proposing agency shall—

(i) publish a notice in the Federal Register of the availability of the full text of the proposal and the preamble of such proposal which shall explain the basis and purpose for the proposed physical activity guidance to be disseminated as well as the basis and purpose for the final guidance which addresses significant and substantive comments as determined by the proposing agency;

(ii) provide in such notice for a public comment period of 30 days; and

(iii) make available for public inspection and copying during normal business hours any comment received by the agency during such comment period.

(2) REVIEW OF COMMENTS.—After review of comments received during the comment period, the Secretary may approve for dissemination by the proposing agency a final version of such physical activity guidance in an explanation of the basis and purpose for the final guidance which addresses significant and substantive comments as determined by the proposing agency.

(3) ANNOUNCEMENT.—Any such final physical activity guidance to be disseminated under subparagraph (B) shall be announced in a notice published in the Federal Register, before public dissemination along with an address where copies may be obtained.

(4) NOTIFICATION OF DISAPPROVAL.—If after the 60-day period for comment as provided in subparagraph (B), the Secretary disapproves a proposed physical activity guidance, the Secretary shall notify the Federal agency submitting the proposal of such disapproval, and such guidance may not be issued, except as provided in subparagraph (B).

(2) REVIEW OF DISAPPROVAL.—If a proposed physical activity guidance is disapproved by the Secretary under subparagraph (D), the Federal agency proposing such guidance may, within 15 days after receiving notification of such disapproval under subparagraph (D), request the Secretary to review such disapproval. Within 15 days after receiving a request for such a review, the Secretary shall conduct such review. If, pursuant to such review, the Secretary approves such proposed physical activity guidance, such guidance may be issued by the Federal agency.

(3) DEFINITIONS.—In this subsection:

(A) The term ‘‘physical activity guidance for the general population’’ does not include any authorization or regulation issued by a Federal agency.

(B) The term ‘‘identified population subgroups’’ shall include, but not be limited to, groups based on factors such as age, sex, race, or physical disability.

(C) EXISTING AUTHORITY NOT AFFECTED.—This section does not place any limitations on—

(1) the conduct or support of any scientific or medical research by any Federal agency; or
(2) the presentation of any scientific or medical findings or the exchange or review of scientific or medical information by any Federal agency.

SEC. 206. LEVERAGING AND COORDINATING FEDERAL AGENCY ACTIVITIES.

(a) Health Impacts of Non-Health Legislation—

(1) In General.—Not later than 6 months after the date of enactment of this Act, the National Prevention, Health Promotion and Public Health Council, shall enter into a contract with the Institute of Medicine of the National Academy of Sciences for the conduct of a study to assess the potential health impacts of major non-health related legislation that is likely to be identified by Congress within a year of completion of the study. Such study shall identify the ways in which such legislation involved is likely to impact the health of Americans and shall contain recommendations to Congress on ways to maximize the positive health impacts and minimize the negative health impacts.

(2) Timing.—The timing of the study under paragraph (1) shall be provided for in a manner that ensures that the study will be available at least 3 months prior to the consideration of the legislation involved by Congress.

(3) Guidelines.—To the extent practicable, the Council under paragraph (1) shall ensure that the study conducted under this subsection complies with the consensus guidelines prepared in consultation with the Institute of Medicine of the National Academy of Sciences for the World Health Organization and other consensus bodies.

(4) Report.—Upon completion of the study under this subsection, the Institute of Medicine shall submit a report to the Council under paragraph (1), and make available to the public, a report that—

(A) summarizes the direct, indirect, and cumulative health impacts identified in the assessment; and

(B) contains recommendations for how to maximize positive health impacts and minimize negative health impacts of the legislation involved.

(5) Type of Legislation.—For purposes of this subsection, the term “non-health related legislation” shall have the meaning given such term by the Council under paragraph (1), and shall include legislation that is likely to have impacts on the health of Americans where such impacts are not likely to be considered by Congress to the extent required by their scope without the conduct of assessment under this subsection. Examples of major non-health related legislation that could be the subject of the study include reauthorizations of the Safe, Accountable, Flexible, and Equitable Transportation Equity Act: A Legacy for Users (SAFETEA-LU; Public Law 109-59), the Food, Conservation, and Energy Act of 2008 (Public Law 110-246), and the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

(b) Improving Health Impacts of Federal Agency Activities—

(1) In General.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in coordination with the National Prevention, Health Promotion and Public Health Council, shall—

(A) seek to ensure the health goals into the activities of the departments and agencies to consider the impacts of their programs and activities;

(B) seek to ensure that the programs and activities of the departments and agencies to consider the impacts of their programs and activities;

(C) seek to ensure that the programs and activities of the departments and agencies to consider the impacts of their programs and activities;

(D) seek to ensure that the programs and activities of the departments and agencies to consider the impacts of their programs and activities;
activities of the department or agency involved on the health and well-being of the populations served, the development of metrics and performance standards that can be interpreted, appropriate, integrated activities, performance measurements, and grant and contract standards of the department or agency, and the development of the report and the paragraph (3).

(3) REPORTS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, each department and agency with a budget under this section shall submit to the National Prevention, Health Promotion and Public Health Council, the Committee on Health, Education, Labor, and Pensions, and the Committee on Energy and Commerce of the House of Representatives a report detailing the health impacts of the department or agency’s activities and any plans to improve those impacts.

Subtitle B—Incentives for a Healthier Workforce

SEC. 211. TAX CREDIT TO EMPLOYERS FOR COSTS OF IMPLEMENTING WELLNESS PROGRAMS.

(a) IN GENERAL.—Subpart D of part IV of subchapter III of chapter 41 of subtitle A of title 26 of the Internal Revenue Code of 1986 is amended by adding at the end of the following:

"SEC. 458. WELLNESS PROGRAM CREDIT.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—For purposes of section 38, the wellness program credit determined under this section for any taxable year during the credit period with respect to an employer is an amount equal to 50 percent of the costs paid or incurred by the employer in connection with a qualified wellness program for its employees on the date of the enactment of this Act.

"(2) LIMITATION.—The amount of credit allowed under paragraph (1) for any taxable year shall not exceed the sum of—

"(A) the product of $200 and the number of employees of the employer not in excess of 200 employees, plus

"(B) the product of $100 and the number of employees of the employer in excess of 200 employees.

"(b) QUALIFIED WELLNESS PROGRAM.—For purposes of this section—

"(1) IN GENERAL.—The term "qualified wellness program" means a program which—

"(i) consists of any 3 of the wellness program components described in subsection (c), and

"(ii) which is certified by the Secretary of Health and Human Services, in consultation with the Secretary of Labor, determines necessary to meet the health literacy needs of employees to make the programs culturally competent and to meet the health literacy needs of the employees covered by the programs.

"(2) QUALIFIED EMPLOYEE.—For purposes of this section—

"(i) QUALIFIED INCENTIVE BENEFIT.—The term "qualified incentive benefit" means an employee who works an average of not less than 25 hours per week during the taxable year.

"(ii) CERTAIN COSTS NOT INCLUDED.—Costs paid or incurred by an employer for food or health insurance shall not be taken into account under subsection (a).

"(3) NO CREDIT WHERE CERTAIN AWARDED.—No credit shall be allowable under subsection (a) with respect to any qualified wellness program of any taxpayer (other than an eligible small employer as described in subsection (b)(2)(A)) who receives a grant provided by the United States, a State, or a political subdivision of a State for use in connection with such program.

"(4) CREDIT PERIOD.—

"(A) IN GENERAL.—The term "credit period" means the period of 10 consecutive taxable years beginning with the year in which the qualified wellness program is first certified under this section.

"(B) SPECIAL RULE FOR EXISTING PROGRAMS.—In the case of an existing program (as defined in the case of a predecessor) which operates a wellness program for its employees on the date of the enactment of this section, subparagraph (A) shall be applied by substituting for the term "taxable years" the term "taxable years for which the program was certified under this section."
"(B) the amount by which the aggregate amount of credits allowed by this subpart (determined without regard to this sub-section) would increase if the limitation imposed by section 45S(d)(4) were increased by the amount of employer payroll taxes imposed on the taxpayer during the calendar year in which the taxable year begins.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of the credit otherwise allowable under subsection (a) without regard to section 39(c).

"(2) ELIGIBLE EMPLOYER.—For purposes of this subsection, the term ‘eligible employer’ means—

(A) a State or political subdivision thereof, the District of Columbia, a possession of the United States, or an agency or instrumentality of any of the foregoing, or

(B) any organization described in section 501(c) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code.

"(3) EMPLOYER PAYROLL TAXES.—For purposes of this subsection—

(A) IN GENERAL.—The term ‘employer payroll tax’ means the taxes imposed by—

(i) section 3111(b), and

(ii) sections 3211(a) and 3221(a) (determined at a rate equal to the rate under section 3111(b)).

(B) SPECIAL RULE.—A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

(g) TERMINATION.—This section shall not apply to any amount paid or incurred after December 31, 2017.

(b) TREATMENT AS GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of the Internal Revenue Code of 1986 is amended by striking ‘‘plus’’ at the end of paragraph (35), by striking the period at the end of paragraph (36) and inserting ‘‘, plus’’, and by adding at the end the following:

‘‘(37) the wellness program credit determined under section 45S.’’

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

‘‘(j) WELLNESS PROGRAM CREDIT.—

‘‘(1) IN GENERAL.—No deduction shall be allowed for that portion of the costs paid or incurred which are attributable to wellness programs (within the meaning of section 45S) allowable as a deduction for the taxable year which is equal to the amount of the credit allowable for the taxable year under section 45S.

‘‘(2) SIMILAR RULE WHERE TAXPAYER CAPITALIZES RATHER THAN DEDUCTS EXPENSES.—If—

(A) the amount of the credit determined for the taxable year under section 45S exceed—

(B) the amount allowable as a deduction for such taxable year for a qualified wellness program, the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

‘‘(3) CONTROLLED GROUPS.—In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 41(h)(5)) or a trade or business which is treated as being under common control with other trades or business (within the meaning of section 41(h)(18)(B)), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under subparagraph (a) of section 41(h)(1).

(d) CERIAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

‘‘Sec. 45S. Wellness program credit.’’

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of enactment of this Act.

(f) OUTREACH.—

(1) IN GENERAL.—The Secretary of the Treasury, in conjunction with the Director of the Centers for Disease Control and members of the human resources community, shall institute an outreach program to inform businesses about the availability of the wellness program credit under section 45S of the Internal Revenue Code of 1986 as well as to educate businesses on how to develop programs according to recognized and promising practices and on how to measure the success of implemented programs.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out the outreach program described in paragraph (1).

SEC. 212. EMPLOYER-PROVIDED OFF-PREMISES ATHLETIC FACILITIES.

(a) TREATMENT OF ELIGIBLE BENEFIT.—Subparagraph (A) of section 132(j)(4) of the Internal Revenue Code of 1986 is amended to read as follows:

‘‘(A) IN GENERAL.—Gross income shall not include—

(i) the value of any on-premises athletic facility provided by an employer to its employees, and

(ii) so much of the fees, dues, or membership expenses paid by an employer to an athletic or fitness facility described in subparagraph (C) on behalf of its employees as does not exceed $900 per employee per year.’’

(b) ATHLETIC FACILITIES DESCRIBED.—Paragraph (4) of section 132(j)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

‘‘(C) CERTAIN ATHLETIC OR FITNESS FACILITIES DESCRIBED.—For purposes of subparagraph (A)(ii), an athletic or fitness facility described in this subparagraph is a facility—

(i) which provides instruction in a program of physical exercise, offers facilities for the preservation, maintenance, encouragement, or development of physical fitness, or is the site of such a program of a State or local government,

(ii) which is not a private club owned and operated by its members,

(iii) which does not offer golf, hunting, sailing, or riding facilities,

(iv) whose health or fitness facility is not incidental to its overall function and purpose, and

(iv) which is fully compliant with the State of jurisdiction and Federal anti-discrimination laws.”

(c) EXCLUSION APPLIES TO HIGHLY COMPENSATED EMPLOYEES ONLY IF NO DISCRIMINATION.—Section 132(j)(4)(C) as does not exceed $900 per employee per year.

(d) EMPLOYER DEDUCTION FOR DUES TO CERTAIN ATHLETIC FACILITIES.—

(1) IN GENERAL.—Paragraph (3) of section 274(a) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: ‘‘The preceding sentence shall not apply to so much of the fees, dues, or membership expenses paid to athletic or fitness facilities (within the meaning of section 132(j)(4)(C)) as does not exceed $900 per employee per year.’’

(2) CONFORMING AMENDMENTS.—The last sentence of section 274(e)(4) of such Code is amended by inserting ‘‘the first sentence of’’ before ‘‘(subsection (a)(3)).’’

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 213. TASK FORCE FOR THE PROMOTION OF BREASTFEEDING IN THE WORKPLACE.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services and the Secretary of Labor, or their designees, shall convene a task force for the purpose of promoting breastfeeding among working mothers (referred to in this section as the ‘‘Task Force’’).

(b) MEMBERSHIP.—The Task Force shall be composed of members who are—

(1) expert staff from the Department of Labor with expertise in workforce issues;

(2) expert staff from the Department of Health and Human Services with expertise in the area of breastfeeding and breastfeeding promotion;

(3) members of the United States Breastfeeding Committee;

(4) expert staff from the Department of Agriculture; and

(5) appointed by the Secretary of Health and Human Services and the Secretary of Labor, including—

(A) working mothers who have experience in working and breastfeeding; and

(B) representatives of the human resource departments of both large and small employers that have successfully promoted breastfeeding and breastmilk pumping support at work.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Task Force. Any vacancy in the Task Force shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) CHAIR.—The Task Force shall be chaired jointly by the Secretary of Health and Human Services and the Secretary of Labor, or their designees.

(e) DUTIES OF THE TASK FORCE.—

(1) EXAMINATION.—Consistent with the Department of Health and Human Services Blueprint for Action on Breastfeeding (2000), the Task Force shall examine the following issues:

(A) The challenges that mothers face with continuing breastfeeding when the mothers return to work after giving birth.

(B) The challenges employers face in accommodating mothers who seek to continue breastfeeding or to express milk when the mothers re-enter the workforce, including different challenges that mothers of varying socio-economic status and in different professions may face.

(C) The benefits that accrue to mothers, babies, and to employers when mothers are able to continue to breastfeed or to express breastmilk at work after the mothers have re-entered the workforce.

(D) Federal and State statutes that may have the effect of reducing breastfeeding and breastfeeding retention rates among working mothers.

(2) REPORTS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Task Force shall issue a public report with recommendations on the following:

(i) Steps that can be taken to promote breastfeeding among working mothers and to remove barriers to breastfeeding among working mothers.

(ii) Potential ways in which the Federal Government can work with employers to promote breastfeeding among working mothers.

(iii) Areas in which changes to existing Federal, State, or local laws would likely
have the effect of making it easier for working mothers to breastfeed or would remove impediments to breastfeeding that currently exist in such laws.

(iv) Whether or not increased rates of breastfeeding among working mothers would likely have the result of reducing health care costs among such mothers and their children, in particular, whether increased rates of breastfeeding would be likely to result in lower Federal expenditures on health care for such mothers and their children.

(v) Whether the Federal Government, through increased efforts by Federal agencies, or changes to existing Federal law, can and should increase the Federal Government's efforts to promote breastfeeding among working mothers.

(B) COPY TO CONGRESS.—Upon completion of the report described in subparagraph (A), the Task Force shall submit a copy of the report to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Appropriations of the Senate, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Appropriations of the House of Representatives.

Powers of the Task Force.

(1) HEARINGS.—The Task Force may hold such hearings, sit and act at such times and places, and receive such evidence as the Task Force considers advisable to carry out this section.

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

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

(4) DONATIONS.—The Task Force may accept, use, and dispose of donations of services or property.

(g) OPERATING EXPENSES.—The operating expenses of the Task Force, including travel expenses for members of the Task Force, shall be paid for from the general operating expenses funds of the Secretary of Health and Human Services and the Secretary of Labor.

SEC. 214. IMPROVING HEALTHY EATING AND ACTIVITY OPPORTUNITIES IN FEDERAL WORKPLACES.

(a) Menu Labeling in Federal Food Establishments.

(1) IN GENERAL.—

(A) EXECUTIVE AND JUDICIAL BUILDINGS.—Section 403(q) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)) is amended by adding at the end the following:

"(6)(A) The requirements of subparagraph (5)(H) shall apply—

"(i) to a restaurant or similar retail food establishment located in a Federal building in the same manner as such subparagraph applies to a restaurant or similar retail food establishment that is part of a chain with 20 or more locations, as described in subparagraph (5)(H)(i); and

"(ii) to a person that operates a vending machine or retail food establishment in a Federal building in the same manner as such subparagraph applies to a person who is engaged in the business of owning or operating 20 or more vending machines, as described in subparagraph (5)(H)(viii).

"(B) In this subparagraph, the term 'Federal building' means a building that is—

"(i) owned by the Federal Government (as defined in section 102 of title 40, United States Code);"
Secretary of Health and Human Services shall promulgate regulations establishing guidelines for the reduction, over a 2 year period, in the sodium content of processed food and beverages, as appropriate, the recommendations made by the Institute of Medicine report entitled ‘Strategies to Reduce Sodium Intake in the United States.”

(b) Definitions.—For purposes of this section—

(1) the term “processed food” has the meaning given such term in section 203(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1); and

(2) the term “retail food” means food sold for consumption by the consumer at the place of purchase by the food business operator, as defined in section 403(q)(5)(H) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(5)(H)).

SEC. 302. NUTRITION LABELING FOR FOOD PRODUCTS SOLD PRINCIPALLY FOR USE IN RESTAURANTS OR OTHER RETAIL FOOD ESTABLISHMENTS.

Section 403(g)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(5)) is amended by striking clause (G).

SEC. 303. FRONT-LABEL FOOD GUIDANCE SYSTEMS.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services (referred to in this section as the “Secretary”) shall begin soliciting public comments regarding—

(1) the use of retail front-label food guidance systems to convey nutrition information to the public using logos, symbols, signs, emblems, insignia, or other graphic representations on the labeling of food intended for human consumption that are intended to provide simple, standardized, and understandable nutrition information to the public in graphic form;

(2) appropriate nutrition standards by which a retail front-label food guidance system may convey the relative nutritional value of different foods in simple graphic form; and

(3) whether American consumers would be better served by establishing a single, standardized retail front-label food guidance system regulated by the Food and Drug Administration, or by allowing individual food companies, trade associations, nonprofit organizations, and others to continue to develop their own retail front-label food guidance systems.

(b) EFFECT ON NUTRITION FACTS PANEL.—In soliciting and receiving comments under subsection (a), the Secretary shall inform the public that any retail front-label food guidance system intended to supplement, not replace, the information provided in subsection (a) shall supplement the information provided on the Nutrition Facts Panel that appears on food labels pursuant to section 403(q) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)).

(c) PROPOSED REGULATION.—Not later than 12 months following the closure of the public comment solicitation period under subsection (a), the Secretary shall—

(1) publish a notice in the Federal Register that summarizes the public comments and describes the suggested retail front-label food guidance systems received through such solicitation; and

(2) publish proposed regulations that—

(A) establish a single, standardized retail front-label food guidance system; or

(B) establish the conditions under which individual food companies, trade associations, nonprofit organizations, and other entities may continue to develop their own retail front-label food guidance systems.

SEC. 304. RULEMAKING AUTHORITY FOR ADVERTISING TO CHILDREN.

(a) Purposes.—The purposes of this section are to restore the authority of the Federal Trade Commission to issue regulations that restrict the marketing or advertising of foods and beverages to children under the age of 18 years if the Federal Trade Commission determines that there is evidence that consuming certain foods and beverages is detrimental to the health of children.

(b) AUTHORITY.—Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) is amended—

(1) in subsection (a), by striking “Except as provided in subsection (h), the” and inserting “The”;

(2) by amending subsection (b) to read as follows:

“(b) PROCEDURE APPLICABLE.—When prescribing a rule under subsection (a)(1) of this section, the Commission shall proceed in accordance with section 553 of title 5 (without regard to any reference in such section to sections 556 and 557 of such title);”

(3) by striking subsections (c), (f), (h), (i), and (j); and

(4) by striking subsection (d) and inserting the following:

“(c) When any rule under subsection (a)(1) takes effect a subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of section 5(a)(1) of the Federal Trade Commission Act otherwise expressly provided in such rule.”;

(5) by redesigning subsections (e) and (g) as subsections (d) and (e), respectively; and

(6) in subsection (g) designated—

(A) in paragraph (1)(B), by striking “the transcript required by subsection (c)(5)”; and

(B) in paragraph (3), by striking “error)” and all that follows through the period at the end and inserting “error);” and

(C) in paragraph (5), by striking subparagraph (C).

SEC. 305. HEALTH LITERACY: RESEARCH, CO-ORDINATION AND DISSEMINATION.

(a) IN GENERAL.—Part A of title IX of the Public Health Service Act (42 U.S.C. 299 et seq.) is amended by adding at the end the following:

“SEC. 904. HEALTH LITERACY: RESEARCH, CO-ORDINATION AND DISSEMINATION.

“(a) DEFINITION.—In this section, the term ‘health literacy’ means a person’s ability to obtain, process, and understand basic health information and services needed to make appropriate health care decisions and the translation of that information to the public using logos, symbols, signs, emblems, insignia, or other graphic representations on the labeling of food.

“(b) HEALTH LITERACY PROGRAM.—

“(1) ESTABLISHMENT.—The Director shall establish within the Agency a program (referred to in this section as the ‘program’) to strengthen health literacy by improving measurement, research, development, and information dissemination.

“(2) DUTIES.—In carrying out the program, the Director shall—

(A) gather health literacy resources from public and private sources and make such resources available to researchers, health care providers, and others;

(B) identify and fill research gaps relating to health literacy that have direct applicability to—

(i) prevention;

(ii) self-management of chronic disease;

(iii) quality improvement;

(iv) the barriers to health literacy;

(v) relationships between health literacy and health disparities, particularly with respect to language and cultural competency; and

(vi) the utilization of information on comparative effectiveness of health treatments;

(C) sponsor demonstration and evaluation projects using tools and methods to evaluate the effectiveness of health literacy programs and the dissemination of health literacy programs;

(D) support research in methods to improve health literacy, including projects focused on—

(i) the provision of simplified, patient-centered written materials;

(ii) technology-based communication techniques;

(iii) consumer navigation services; and

(iv) the training of health professional providers;

(E) give preference to health literacy initiatives that—

(i) focus on the particular needs of vulnerable populations such as the elderly, racial and ethnic minorities, children, individuals with limited English proficiency, and individuals with disabilities; and

(ii) partner with institutions in the community such as schools, libraries, senior centers, community health centers, recreation centers, area health education centers, and public assistance programs;

(F) assist appropriate Federal agencies in establishing specific objectives and strategies for carrying out the program, in monitoring the programs of such agencies, and incorporating health literacy into research designs, human subjects protections, and informed consent in clinical research;

(G) coordinate with other agencies within the Department of Health and Human Services to collect data that monitors national trends in health literacy by including relevant items in surveys such as the Medical Expenditure Panel Survey, the National Health Interview Survey, and the National Hospital Discharge Survey.

“(3) REPORT.—The Agency for Healthcare Research and Quality shall annually submit to the President a report that includes—

(A) a comprehensive and detailed description of the operations, activities, financial condition, and accomplishments of the Agency in the field of health literacy; and

(B) a description of a plan for the operation of the program for the succeeding fiscal year that will facilitate achievement of the goals of the program.

“(4) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated to carry out this subsection such sums as may be necessary for each of fiscal years 2012 through 2016.

“(c) STATE HEALTH LITERACY GRANTS.—

(1) GRANTS.—The Director of the Agency shall award grants to eligible entities to facilitate State and community efforts to strengthen health literacy.

(2) USE OF FUNDS.—An entity receiving a grant under this subsection shall use amounts received under such grant to—

(A) support efforts to monitor and strengthen health literacy within a State or community;

(B) assist public and private entities in the State or community in coordinating and delivering health literacy services; and

(C) encourage partnerships among State and local governments, community organizations, non-profit entities, academic institutions, and businesses to coordinate efforts to strengthen health literacy;
“(D) provide technical and policy assistance to State and local governments and service providers; and

(E) monitor and evaluate programs conducted under this section.

(3) REPORT.—Not later than September 30 of each fiscal year for which a grant is received by an entity under this section, the entity shall submit to the Director a report that describes the programs supported by the grant and the results of monitoring and evaluation of those programs.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection for each of fiscal years 2012 through 2017.

(b) INSTITUTE OF MEDICINE STUDY AND REPORT.

(1) STUDY.—The Secretary of Health and Human Services shall seek to enter into a contract with the Institute of Medicine to conduct a study identifying opportunities within the Department of Health and Human Services to strengthen the health literacy of health care providers and health care consumers in accordance with the Patient Protection and Affordable Care Act (Public law 111–14).

(2) REPORT.—A contract entered into under paragraph (1) shall include a provision requiring the Institute of Medicine, not later than 1 year after the date of enactment of this Act, to submit a report concerning the results of the study conducted under paragraph (1) to the Senate Committee on Appropriations, the Senate Committee on Health, Education, Labor, and Pensions, the Senate Committee on Finance, and the Senate Committee on Finance, and the Treasury Department.

SEC. 306. DISALLOWANCE OF DEDUCTIONS FOR ADVERTISING AND MARKETING EXPENSES RELATING TO TOBACCO PRODUCT USE.

(a) In general.—Section 280H of subchapter B of chapter 1 of subtitle A of the Internal Revenue Code of 1986 (relating to items not deductible) is amended by adding at the end the following new section:

“SEC. 280H. DISALLOWANCE OF DEDUCTION FOR ADVERTISING AND MARKETING EXPENSES RELATING TO TOBACCO PRODUCT USE.

“No deduction shall be allowed under this chapter for expenses relating to advertising or marketing tobacco products, smokeless tobacco, pipe tobacco, or any other tobacco product. For purposes of this section, any term used in this section which is also used in section 5702 shall have the same meaning given such term by section 5702.”.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 1 is amended by inserting after the item relating to section 280H the following new item:

“Sec. 280H. Disallowance of deduction for tobacco advertising and marketing expenses.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of enactment of this Act.

SEC. 307. INCENTIVES TO REDUCE TOBACCO USE.

(a) CHILD TOBACCO USE SURVEYS.—

(1) ANNUAL PERFORMANCE SURVEY. 

(A) IN GENERAL.—Not later than August 31, 2012, and annually thereafter, the Secretary of Health and Human Services (referred to in this section as the “Secretary”) shall publish the results of an annual tobacco use survey, to be carried out not later than 18 months after the date of enactment of this Act and completed on an annual basis thereafter, to consist of:

(i) the percentage of all young individuals who used tobacco products within the 30-day period prior to the conduct of the survey involved;

(ii) the percentage of young individuals who identify each brand of each type of tobacco product as the usual brand used within such 30-day period.

(B) YOUNG INDIVIDUALS.—For the purposes of this section, the term “young individuals” means individuals who are under 18 years of age.

(2) SIZING AND METHODOLOGY.

(A) IN GENERAL.—The survey referred to in paragraph (1) by the National Survey on Drug Use and Health or shall at least be comparable in size and methodology to the NSDUH that was completed in 2009 to measure the percentage of young individuals who used tobacco products within the 30-day period prior to the conduct of the study.

(B) CONCLUSIVE ACCURATENESS.—A survey using the methodology described in subparagraph (A) shall be deemed conclusively proper, correct, and accurate for purposes of this section.

(C) DEFINITION.—In this section, the term “National Survey on Drug Use and Health” or “NSDUH” means the annual nationwide survey of randomly selected individuals, aged 12 and older, conducted by the Substance Abuse and Mental Health Services Administration.

(3) REDUCTION.—The Secretary, based on a comparison of the first annual tobacco product survey referred to in paragraph (1) and the most recent NSDUH referred to in paragraph (2)(A) completed prior to the date of this section shall determine the percentage reduction (if any) in youth tobacco use for each manufacturer of tobacco products.

(4) PARTICIPATION IN SURVEY.—Notwithstanding any other provision of law, the Secretary may conduct a survey under this subsection involving minors if the results of such survey that minors are kept confidential and not disclosed.

(b) TOBACCO USE REDUCTION GOAL AND NONCOMPLIANCE.

(1) GOAL.—It shall be the tobacco use reduction goal that youth tobacco use be reduced by at least 5 percent or a level determined significantly sufficient by the Secretary that the tobacco use reduction goal referred to in subsection (a)(2) was not completed prior to the annual survey (and such subsequent surveys as compared to the previous year’s survey) referred to in subsection (a)(1).

(2) NONCOMPLIANCE.—

(A) INDUSTRY-WIDE PENALTY.—If the Secretary determines that the tobacco use reduction goal under paragraph (1) has not been achieved, the Secretary shall, not later than September 10, 2012, and September 10 of each year thereafter, impose an industry-wide penalty on the manufacturers of cigarettes in an amount that is in the aggregate equal to $3,000,000,000.

(B) PAYMENT.—The industry-wide penalty imposed under subsection (a) shall be paid by each manufacturer based on the brand share among youth ages 12-17 (as determined by the survey described in subsection (a)(1)) as such percentage relates to the total amount to be paid by all manufacturers.

(C) FINAL DETERMINATION.—The determination of the Secretary as to the amount and allocation of a surcharge under this section shall be final and the manufacturer shall pay such surcharge within 10 days of the date on which the Secretary assessed such payment. Such payment shall be retained by the Secretary pending final judicial review of what, if any, change in the surcharge is appropriate.

(D) LIMITATION.—No manufacturer shall be subject to a surcharge for tobacco products, a manufacturer with a market share of 1 percent or less of youth tobacco use shall not be liable for the payment of a surcharge under this paragraph.

(c) USE OF AMOUNTS.—Amounts collected under subparagraph (A) shall be deposited into the Prevention and Public Health Fund established under section 4902 of the Patient Protection and Affordable Care Act (42 U.S.C. 300u-11). Such funds shall remain available for transfer through September 30 of the fifth fiscal year following their collection, subject to the terms and conditions of such section 4902.

(4) JUDICIAL REVIEW.—

(A) AFTER PAYMENT.—A manufacturer of cigarettes may seek judicial review of any action under this section only after the assessment involved has been paid by the manufacturer to the Department of the Treasury and only in the United States District Court for the District of Columbia.

(B) REVIEW BY ATTORNEY GENERAL.—Prior to the filing of an action by a manufacturer seeking judicial review of any action under this section, the manufacturer shall notify the Attorney General of such intent to file and the Attorney General shall have 30 days in which to respond to the action.

(c) ENFORCEMENT.—

(1) INITIAL PENALTY.—There is hereby imposed an initial penalty on the failure of any manufacturer to make any payment required under this section not less than a penalty determined sufficient by the Secretary after the date on which such payment is due.

(2) AMOUNT OF PENALTY.—The amount of the penalty imposed by paragraph (1) on any failure with respect to a manufacturer shall be an amount equal to 2 percent of the penalty owed under subsection (b) for each day during the noncompliance period.

(3) NONCOMPLIANCE PERIOD.—For purposes of paragraphs (1) and (2), the term “noncompliance period” means, with respect to any failure to make the surcharge payment required under this section, the period—

(A) beginning on the due date for such payment; and

(B) ending on the date on which such payment is paid in full.

(4) LIMITATIONS.—No penalty shall be imposed by paragraph (1) on

(A) any failure to make a surcharge payment under this section during any period for which it is established to the satisfaction of the Secretary that none of the persons responsible for such failure knew or, exercising reasonable diligence, would have known, that such failure existed; or

(B) any manufacturer that produces less than 1 percent of cigarettes used by youth in that year (as determined by the annual survey).
TITLE IV—EXPANDED COVERAGE OF PREVENTIVE SERVICES

SEC. 401. REQUIRED COVERAGE OF PREVENTIVE SERVICES UNDER THE MEDICAID PROGRAM.

(a) MANDATORY COVERAGE.—Section 1905 of the Social Security Act (42 U.S.C. 1396n), as amended by section 4107(a)(1) of the Patient Protection and Affordable Care Act (Public Law 111-148), is amended—

(1) in subsection (a)(4)—

(A) by striking “a 2-year coverage gap” and inserting “a 2-year coverage gap, as defined in section 10408 of the Patient Protection and Affordable Care Act (Public Law 111-148),” and

(B) by inserting before the semicolon at the end of the following new subparagraph: “; and

(C) by inserting before the semicolon at the end of such subparagraph “; and

(2) by adding at the end the following new subsection:

‘‘(ee) PREVENTIVE SERVICES.—For purposes of subparagraph (A), preventive services described in this subsection are diagnostic, screening, preventive, and rehabilitative services other than vaccines not otherwise described in subparagraph (B) that the Secretary determines are appropriate for individuals entitled to medical assistance under this title, including—

‘‘(I) evidence-based services that are assigned a grade of A or B by the United States Preventive Services Task Force; and

‘‘(II) services that the Secretary determines are appropriate for children not otherwise described in subparagraph (B) that the Secretary determines to be a separate regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

SEC. 402. COVERAGE FOR COMPREHENSIVE WORKPLACE WELLNESS PROGRAM AND PREVENTIVE SERVICES.

Section 1905(a) of title 5, United States Code, is amended—

(1) in paragraph (1), by adding at the end the following:

‘‘(G) Comprehensive workplace wellness program benefits meet the requirements of section 10408 of the Patient Protection and Affordable Care Act (Public Law 111-148).’’

SEC. 403. HEALTH PROFESSIONAL EDUCATION AND TRAINING IN HEALTHY EATING.

Part Q of title III of the Public Health Service Act (42 U.S.C. 260h et seq.) is amended by striking section 399Z and inserting the following:

‘‘SEC. 399Z. HEALTH PROFESSIONAL EDUCATION AND TRAINING IN HEALTHY EATING.

‘‘(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, in collaboration with the Administrator of the Health Resources and Services Administration and the heads of other agencies, and in consultation with appropriate health professional associations, shall carry out a program to educate and train health professionals in effective strategies to—

‘‘(1) better identify patients at-risk of becoming overweight or obese or developing an eating disorder;

‘‘(2) detect overweight or obesity or eating disorders among a diverse patient population;

‘‘(3) counsel, refer, or treat patients with overweight or obesity or an eating disorder;

‘‘(4) educate patients and the families of patients on effective strategies to establish healthy eating habits and appropriate levels of physical activity; and

‘‘(5) assist in the creation and administration of programs to help prevent and early obesity and eating disorder prevention efforts.

‘‘(b) EATING DISORDER.—In this section, the term ‘eating disorder’ includes anorexia nervosa, bulimia nervosa, binge eating disorder, and eating disorders not otherwise specified, as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders or any subsequent edition.

‘‘(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2012 through 2016.

‘‘(d) USE OF FUNDS.—A State that receives a grant under this section shall use the grant for the following purposes:

(1) Analyzing the effectiveness of obesity prevention programs and wellness policies carried out in the State.

(2) Purchasing new computers, computer equipment, and software to upgrade computers to be used for a statewide immunization information system.

(3) The hiring and employment of personnel to maintain and analyze BMI data.

(4) The development and implementation of training programs for medical professionals to aid such professionals in taking BMI measurements and discussing such measurements with patients.

(5) Providing information to parents and legal guardians in accordance with subsection (e)(2).

‘‘(e) SELECTION CRITERIA.—In selecting recipients of grants under this section, the Secretary shall give priority to States in which a high percentage of public and private health care providers submit data to a statewide immunization information system that—

‘‘(1) contains immunization data for not less than 20 percent of children in each county of such State that is under the age of 18; and

‘‘(2) includes data collected from men and women who are of a wide variety of ages and who reside in a wide variety of geographic areas in a State (as determined by the Secretary).

‘‘(f) CONDITIONS.—As a condition of receiving a grant under this section, a State shall—

(1) ensure that BMI measurements will be recorded for children ages 2 through 18—

(A) on an annual basis by a licensed physician, nurse, nurse practitioner, or physician assistant during an annual physical examination, wellness visit, or similar visit with a health care provider; and

(B) in accordance with data collection protocols published by the American Academy
of Pediatrics in the 2007 Expert Committee Recommendations; and
(2) for each child in the State for whom such measurements indicate a BMI greater than the 95th percentile for such child's age and gender, provide to the parents or legal guardians of such child information on how to lower BMI and information on State and local obesity prevention programs.

(f) REPORTS.—
(1) REPORTS TO THE SECRETARY.—Not later than 5 years after the receipt of a grant under subsection (a), the State receiving such grant shall submit to the Secretary the following reports:
(A) A report containing an analysis of BMI data collected under the grant, including:
(i) the differences in obesity trends by gender, disability, geographic area (as determined by the State), and socioeconomic status within such State; and
(ii) the demographic groups and geographic areas most affected by obesity within such State;
(B) A report containing an analysis of the effectiveness of obesity prevention programs and State wellness policies, including—
(i) an analysis of the success of such programs and policies prior to the receipt of the grant; and
(ii) a discussion of the means to determine the most effective strategies to combat obesity in the geographic areas identified under subparagraph (A); and
(2) REPORT TO CONGRESS AND CERTAIN EXECUTIVE AGENCIES.—Not later than 1 year after the Secretary receives all the reports required pursuant to paragraph (1), the Secretary shall submit to the Secretary of Education, the Secretary of Agriculture, and to Congress a report that contains the following:
(A) An analysis of trends in childhood obesity, including how such trends vary across regions of the United States, and how such trends vary by gender and socioeconomic status.
(B) A description of any programs that—
(i) the Secretary has determined significantly lower childhood obesity rates for certain geographic areas in the United States, including urban, rural, and suburban areas; and
(ii) the Secretary recommends to be implemented by the States (including States that did not under this section receive a grant); and
(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated the following amounts for the fiscal years 2012 through 2015.

SEC. 502. NATIONAL ASSESSMENT OF MENTAL HEALTH NEEDS.
Title V of the Public Health Service Act (42 U.S.C. 290aa–6 et seq.) is amended by inserting after section 506B (42 U.S.C. 290aa–5b) the following:

"SEC. 506C. NATIONAL ASSESSMENT OF MENTAL HEALTH NEEDS.
"(a) IN GENERAL.—The Secretary, acting through the Administrator, and in consultation with the Centers for Disease Control and Prevention and the Director of the National Institutes of Health, shall establish and implement public health monitoring measures to address the mental and behavioral health status of the population of the United States and other populations served by the Administration, that include—
"(1) monitoring the mental health status of the population, including the incidence and prevalence of mental and behavioral health conditions across the lifespan;
"(2) monitoring access to appropriate diagnostic services and treatment for mental and behavioral health conditions, including trends in unmet need for services;

"(3) monitoring mental and behavioral health conditions as risk factors for obesity and chronic diseases to the extent practicable;
"(4) enhancing existing public health monitoring systems by including measures assessing mental and behavioral health status and associated risk factors; and
"(5) to the extent practicable, monitoring the immediate and long-term impact of disasters or catastrophic events, whether natural or man-made on the mental and behavioral health of affected populations.
"(b) Distinguishing Among Age Groups.—In designing and implementing the monitoring measures described in subsection (a) the Secretary shall ensure that data collection and reporting standards stratify data by age groups, in particular, to the extent practicable, children under the age of 5 years.
"(c) REPORT.—Not later than 1 year after the date of enactment of this section, the Secretary shall submit a report to Congress that describes the progress made in the implementation of the monitoring measures described in subsection (a).

"(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated necessary to carry out the program described in paragraph (c) the sums as may be necessary to carry out this section for each of fiscal years 2012 through 2016.

By Mr. HARKIN (for himself, Mr. JOHNSON of South Dakota, Ms. KLOBUCHAR, and Mr. FRANKEN):

S. 187, to carry out the expansion of the biofuels market to the Committee on Energy and Natural Resources.

Mr. HARKIN. Mr. President, I rise today to emphasize the great importance of expanding the production and availability of biofuels, and the significant impact that biofuels continue to have on reducing our overall consumption of petroleum in the United States. Our national energy situation continues to deteriorate.

We import 60 percent of the petroleum we consume, our economy faces a constant threat from volatile petroleum prices as well as significant amounts of American wealth being transferred to foreign producers. More than two-thirds of our petroleum supply is consumed by our transportation sector, we can improve this situation by expanding the production and use of alternatives to petroleum-derived fuels. Domestic biofuels have been by far our most successful alternative. Biofuels already displace close to 10 percent of our gasoline supplies, and they have the potential to make significantly larger contributions in the years ahead. Expansion of biofuels production and use also will support economic recovery by creating jobs in the areas of feedstock production and delivery, fuels processing in bio refineries, and biofuels marketing.

The American people understand the need to reduce our dependence on foreign petroleum supplies. Congress has expressed broad agreement on two fundamental approaches—increasing efficiency of vehicles and increasing use of alternative fuels. We mandated more efficient vehicles through the Energy Independence and Security Act of 2007, EISA. That bill mandates a brisk expansion of biofuels production under the Renewable Fuels Standard. However, biofuels currently are facing critical market barriers. The most common form of biofuel, ethanol, can only be used as a 10 percent blend with gasoline in most highway vehicles. To enable such larger production and use levels, we need to expand the number of flex-fuel vehicles that can use higher blends, and we need to expand the number of filling stations selling those higher blends. We also need to enable much more economic transport of higher volumes by supporting development of biofuel pipelines.

To these ends, I am proud today to introduce the Biofuels Market Expansion Act of 2011. This measure would require that at least 90 percent of new auto sales in the United States be flex fuel vehicles by 2016. It would also require major fuel distributors, those owning or branding more than 50 gasoline filling stations, to install increasing numbers of blender pumps at their retail filling stations, and it would authorize funding to support blender pump installations by smaller filling station operators. Finally, this measure would authorize guarantees for loans covering 80 percent of renewable fuel pipeline project costs.

The requirements and assistance authorized in this bill will ensure that the number of flex-fuel automobiles and the availability of alternative fuels are expanding in tandem with the production and use of biofuels in our national fuel supply over the next 8 years and beyond. This is a job-creating bill that reduces American dependence on foreign petroleum by giving Americans the option of choosing clean, domestically-produced fuels for their personal transportation needs in the future.

These steps represent critical components in the transition of our energy systems away from fossil and imported fuels toward the benefits of greater reliance on sustainable domestic fuel sources.

Today, I urge my Senate colleagues to join us in taking action to boost the transition to a cleaner, more resilient, and more secure energy economy. I urge Senators’ support for this bill and its rapid enactment.

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

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

S. 187
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 “Biofuels Market Expansion Act of 2011”.

SEC. 2. ENSURING THE AVAILABILITY OF DUAL FUELED AUTOMOBILES AND LIGHT DUTY TRUCKS.
(a) IN GENERAL.—Chapter 329 of title 49, United States Code, is amended by inserting after section 32902 the following:

"SEC. 32902A. Requirement to manufacture dual fueled automobiles and light duty trucks
"(a) IN GENERAL.—Chapter 329 of title 49, United States Code, is amended by inserting after section 32902 the following:
"(1) Subject to subparagraph (B) of paragraph (1) of section 32902 of this title and section 32903 of this chapter, each manufacturer of automobiles and light duty trucks manufactured and sold after October 1, 2011, shall make available for sale in the United States a vehicle that uses as a fuel a combination of liquid gasoline and liquid ethanol, provided that the liquid gasoline and liquid ethanol used to power such a vehicle is at least 10 percent (by volume) of the total fuel consumed by such a vehicle during such a period.
automobiles and light duty trucks manufactured by the manufacturer for sale in the United States that are dual fueled automobiles and light duty trucks is not less than 50 percent. The amount of funding for that model year in the following table:


<table>
<thead>
<tr>
<th>Model Year</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Model years 2014 and 2015</td>
<td>50</td>
</tr>
<tr>
<td>Model year 2016 and each subsequent year</td>
<td>90</td>
</tr>
</tbody>
</table>

(b) Exception. — Subsection (a) shall not apply to automobiles or light duty trucks that operate only on electricity.

(ii) Limitation. — The table of sections for chapter 329 of title 49, United States Code, is amended by inserting after the item relating to section 32902 the following:

"32902A. Requirement to manufacture dual fueled automobiles and light duty trucks."

(c) Rulemaking. — Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall prescribe regulations to carry out the amendments required by this subsection.

SEC. 3. BLENDER PUMP PROMOTION.

(a) BLENDER PUMP GRANT PROGRAM. —

(1) DEFINITIONS. — In this subsection:

(A) BLENDER PUMP. — The term "blender pump" means an automotive fuel dispensing pump capable of dispensing at least 3 different blends of gasoline and ethanol, as selected by the pump operator, including blends ranging from 0 percent ethanol to 85 percent denatured ethanol, as determined by the Secretary.

(B) E-85 FUEL. — The term "E-85 fuel" means a blend of gasoline approximately 85 percent of the content of which is ethanol.

(C) ETHANOL FUEL BLEND. — The term "ethanol fuel blend" means a blend of gasoline and ethanol, with a minimum of 0 percent and maximum of 85 percent of the content of which is denatured ethanol.

(D) MAJOR FUEL DISTRIBUTOR. —

(i) IN GENERAL. — The term "major fuel distributor" means any person that owns a refinery or directly markets the output of a refinery.

(ii) EXCLUSION. — The term "major fuel distributor" does not include any person that directly markets through less than 50 retail fueling stations.

(iii) MAJOR FUEL DISTRIBUTOR. —

(A) DEFINITIONS. — In this paragraph:

(1) E-85 FUEL. — The term "E-85 fuel" means a blend of gasoline approximately 85 percent of the content of which is ethanol.

(2) RENEWABLE FUEL PIPELINE. — A renewable fuel pipeline is a pipeline for transporting renewable fuel.

(iii) EXCEPTION. — A major fuel distributor may not use credits purchased under clause (ii) to fulfill the geographic distribution requirement in subparagraph (D).

(b) AMOUNT. — Section 1703(b)(11) of the Energy Policy Act of 2005 (42 U.S.C. 16513(b)) is amended by adding at the end the following:

"(E) $350,000,000 for fiscal year 2016; (F) PRODUCTION CREDITS FOR EXCEEDING BLENDER PUMP INSTALLATION REQUIREMENT. —

(i) E-85 FUEL. — The term "E-85 fuel" means a blend of gasoline approximately 85 percent of the content of which is ethanol.

(ii) BLENDER PUMP. — The term "blender pump" means an automotive fuel dispensing pump capable of dispensing at least 3 different blends of gasoline and ethanol, as selected by the pump operator, including blends ranging from 0 percent ethanol to 85 percent denatured ethanol, as determined by the Secretary.

(iii) MAJOR FUEL DISTRIBUTOR. —

(A) DEFINITIONS. — In this paragraph:

(1) E-85 FUEL. — The term "E-85 fuel" means a blend of gasoline approximately 85 percent of the content of which is ethanol.

(2) RENEWABLE FUEL PIPELINE. — A renewable fuel pipeline is a pipeline for transporting renewable fuel.

(iv) TRADING CREDITS. — Subject to clause (ii), a major fuel distributor that has earned credits under clause (i) may sell the credits to another major fuel distributor to enable the purchaser to meet the requirement under subparagraph (C).

(v) APPLICATION OF CREDITS. — A major fuel distributor may not use credits purchased under clause (ii) to fulfill the geographic distribution requirement in subparagraph (D).

SEC. 4. LOAN GUARANTEES AND PROJECTS TO CONSTRUCT RENEWABLE FUEL PIPELINES.

(a) DEFINITIONS. — Section 1701 of the Energy Policy Act of 2005 (42 U.S.C. 16511) is amended by adding at the end the following:

"(6) RENEWABLE FUEL. — The term 'renewable fuel' has the meaning given the term in section 211(o)(1) of the Clean Air Act (42 U.S.C. 7545(o)(1)), except that 'renewable fuel' includes all types of ethanol and biodiesel.

(7) RENEWABLE FUEL PIPELINE. — The term 'renewable fuel pipeline' means a pipeline for transporting renewable fuel."

(b) AMOUNT. — Section 1702(c) of the Energy Policy Act of 2005 (42 U.S.C. 16512(c)) is amended—

(1) by striking "(c) AMOUNT—Unless" and inserting the following:

"(c) AMOUNT.—

\[(1) IN GENERAL—Unless; \]

(2) by adding at the end the following:

"(2) RENEWABLE FUEL PIPELINES. — A guarantor for a project described in section 1703(b)(11) shall be in an amount equal to 80 percent of the project cost of the facility that is the subject of the guarantee, as estimated at the time at which the guarantee is issued.

(c) RENEWABLE FUEL PIPELINE ELIGIBILITY. — Section 1703(b)(11) of the Energy Policy Act of 2005 (42 U.S.C. 16513(b)) is amended by adding at the end the following:

"(11) Renewable fuel pipelines."

(d) RAPID DEPLOYMENT OF RENEWABLE FUEL PIPELINES. — Section 1705 of the Energy Policy Act of 2005 (42 U.S.C. 16516) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking "70 percent of the" and any projects desc
WHEREAS several individuals, including Patricia Maisch, Army Col. Bill Badger (Ret.), who was also wounded in the shooting, and who was a social worker before serving with the Mountain Avenue Church of Christ, is a church volunteer and New York Giants fan; 

WHEREAS Christina-Taylor Green, the 9-year-old daughter of John and Roxanna Green, was born on September 11, 2001, and was a third grader with an avid interest in science and government; the government decided to elect her as a student council at Mesa Verde Elementary School; 

WHEREAS Dorothy Morris, who was 76 years old, attended the January 8 event with her husband, George, her husband of over 50 years with whom she had 2 daughters, and who was also critically injured as he tried to shield her from the shooter; 

WHEREAS John Roll, a Pennsylvania native who was 63 years old, began his professional career as a bank employee and then was hired to the Federal bench in 1991, and became chief judge for the District of Arizona in 2006, was a devoted husband to his wife Maureen, father to his 3 sons, and grandfather to his 5 grandchildren, and heroically attempted to shield Ron Barber from additional gunfire; 

WHEREAS Phyllis Schneck, a proud mother of 3, grandmother of 7, and great-grandmother from New Jersey, was spending the winter in Arizona, and was a 79-year-old church volunteer and New York Giants fan; 

WHEREAS Dorwan Stoddard, a 76-year-old retired construction worker and volunteer at the Mountain Avenue Church of Christ, is credited with shielding his wife Mavy, a longtime friend whom he married while they were in their 60s, who was also injured in the shooting; 

WHEREAS Gabriel Matthew Zimmerman, who was 30 years old and engaged to be married, served as Director of Community Outreach to Representative Gabrielle Giffords, and was a social worker before serving with Representative Giffords; 

WHEREAS Representative Gabrielle Giffords was a target of this attack, and was critically injured; 

WHEREAS 13 others were also wounded in the shooting, including Ron Barber and Pamela Simon, both staffers to Representative Giffords; 

WHEREAS several individuals, including Patricia Maisch, Army Col. Bill Badger (Ret.), who was also wounded in the shooting, Roger Salzgeber, Joseph Zamudio, Daniel Hernandez, Jr., Anna Ballis, and Dr. Steven Rayle helped apprehend the gunman and assisted the injured, thereby risking their lives for the safety of others, and should be commended for their bravery: Now, therefore, be it 

Resolved, That the Senate—

(1) condemns in the strongest possible terms the horrific attack which occurred at the “Congress on your Corner” event hosted by Representative Gabrielle Giffords in Tucson, Arizona, on January 8, 2011; 

(2) offers its heartfelt condolences to the families, friends, and loved ones of those who were killed in the shooting; 

(3) expresses its hope for the rapid and complete recovery of those wounded in the shooting; 

(4) honours the memory of Christina-Taylor Green, Dorothy Morris, John Roll, Phyllis Schneck, Dorwan Stoddard, and Gabriel Matthew Zimmerman; 

(5) applauds the bravery and quick thinking exhibited by those individuals who prevented the gunman from potentially taking more lives and helped to save those who had been wounded; 

(6) recognizes the service of the first responders who raced to the scene and the health care professionals who tended to the victims once they reached the hospital, whose service and skill saved lives; 

(7) reaffirms the bedrock principle of American democracy and representative government enshrined in the First Amendment of the Constitution and which Representative Gabrielle Giffords herself read in the Hall of the House of Representatives on January 6, 2011, of “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”