S. 2040. A bill to amend the Controlled Substances Act to provide a penalty for the use of a controlled substance with the intent to rape, and for other purposes; to the Committee on the Judiciary.

By Mr. D'AMATO (for himself, Mr. MOYNIHAN, and Mr. FAIRCLOTH):

S. 2041. A bill to amend the Marine Protection, Research, and Sanctuaries Act of 1972 with respect to the dumping of dredged material in Long Island Sound, and for other purposes; to the Committee on Environment and Public Works.

By Mr. MACK (for himself, Mr. BOND, Mr. D'AMATO, and Mr. BENNETT):

S. 2042. A bill to reform the multifamily rental assisted housing programs of the Federal Government, maintain the affordability and availability of low-income housing, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KERRY:

S. 2043. A bill to require the implementation of a corrective action plan in States in which child poverty has increased; to the Committee on Finance.

By Mr. SANTORUM:

S. 2044. A bill to provide for modification of the State agreement under title II of the Social Security Act with the State of Pennsylvania with respect to certain students; to the Committee on Finance.

By Mr. HATFIELD:

S. 2045. A bill to provide regulatory relief for small business concerns, and for other purposes; to the Committee on Small Business.

By Mr. ROCKEFELLER:

S. 2046. A bill to amend section 29 of the Internal Revenue Code of 1986 to allow a credit for qualified fuels produced from wells drilled during 1997, and for other purposes; to the Committee on Finance.

By Mr. HATCH (for himself, Mr. CONRAD, Mr. PRESSLER, Mr. PRYOR, Mr. NICKLES, and Mr. BAUCUS):

S. 2047. A bill to amend the Internal Revenue Code of 1986 to modify the application of the pension nondiscrimination rules to governmental plans; to the Committee on Finance.

By Mr. MOYNIHAN (for himself, Mr. D'AMATO, and Mr. DODD):

S. 2048. A bill to amend section 552 of title 5, United States Code, (commonly referred to as the Freedom of Information Act), to provide for disclosure of information relating to individuals who committed Nazi war crimes, and for other purposes; to the Committee on the Judiciary.

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

S.J. Res. 59. A joint resolution to consent to certain amendments enacted by the Legislature of the state of Hawaii to the Hawaiian Homes Commission Act, 1920; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT (for himself and Mr. DASCHLE):

S. Res. 287. A resolution to authorize the production of records by the Permanent Subcommittee on Investigations; considered and agreed to.

By Mr. WELLSTONE (for himself, Mr. KENNEDY, and Mr. WYDEN):

S. Con. Res. 68. A concurrent resolution to correct the enrollment of H.R. 3103; considered and agreed to.

By Mr. SANTORUM (for himself and Mrs. FEINSTEIN):

S. Con. Res. 69. A concurrent resolution expressing the sense of the Congress that the German Government should investigate and prosecute Dr. Hans Joachim Sewering for his war crimes of euthanasia committed during World War II; to the Committee on Foreign Relations.

By Mr. MURKOWSKI:

S. Con. Res. 70. A concurrent resolution directing the Clerk of the House of Representatives to make technical corrections in the enrollment of H.R. 1975; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GORTON:

S. 2017. A bill to authorize the Secretary of Agriculture to exchange certain lands in the Wenatchee National Forest, Washington, for certain lands owned by Public District No. 1 of Chelan County, Washington, and for other purposes; to the Committee on Energy and Natural Resources.

LAND EXCHANGE LEGISLATION

Mr. GORTON. Mr. President, today I introduce legislation to authorize a land exchange between the Chelan County PUD, in Washington State and the U.S. Forest Service. The land exchange legislation will consolidate land for a wastewater treatment facility onto Chelan County PUD land. Chelan PUD would in turn own and operate the wastewater treatment facility, which serves both the Forest Service and some of the local community.

The legislation was carefully negotiated between the Forest Service and the Chelan County PUD. The Forest Service supports the legislation, and I hope that the legislation can be enacted this year.

By Mr. GORTON:

S. 2018. A bill to approve a settlement agreement between the Bureau of Reclamation and the Oroville-Tonasket Irrigation District; to the Committee on Energy and Natural Resources.

SETTLEMENT LEGISLATION

Mr. GORTON. Mr. President, today I introduce legislation that will authorize settlement between the Bureau of Reclamation and the Oroville-Tonasket Irrigation District in Washington state. Congressman DOC HASTINGS has introduced identical legislation on this subject in the House of Representatives.

This legislation will authorize a carefully negotiated settlement between the BOR and the Oroville-Tonasketi Irrigation District. If enacted, this legislation will save the BOR, and therefore the Nation's taxpayers, money that would otherwise be spent fighting with the irrigation district in court. Briefly, the legislation directs the irrigation district to release and discharge all past and future claims against the United States associated with the project—such claims are estimated at $4.5 million. The irrigation district will assume full responsibility to indemnify and defend the United States against any third-party claims associated with the project. The irrigation district will make a cash payment of $350,000 to the United States—a condition that has already been met. The irrigation district will release the United States from its obligation to remove existing dilapidated facilities—cost estimated at $150,000 in 1978. The district will also be solely responsible for the operations and maintenance of the project, and will agree to continue to deliver water to and provide for O&M of the wildlife Mitigation facilities at its own expense.

The legislation directs the BOR to release and discharge the irrigation district's construction charge obligation under the 1979 repayment contract—present value estimated at $4.2 million. Within 180 days of the date of enactment, the BOR will transfer the title of the irrigation works to district at no additional cost to the district. The BOR will continue to provide power and energy for water pumping for the project for a period of 50 years—starting October 1990—as provided for in the irrigation discount provision in the Northwest Power Act. At the end of that 50 year period, the irrigation district will have to purchase its power at nonirrigation discount rates.

Mr. President, this legislation will resolve a long standing dispute between the irrigation district and the Bureau of Reclamation that will save the taxpayers the expense of financing a long, drawn out court fight. I will work with my colleagues on the Energy and Natural Resources Committee to see that this legislation is enacted this year.

By Mr. CRAIG (for himself, Mr. SIMON, Mr. THOMAS, Mr. REID, Mr. GRAHAM, Mr. AKAKA, and Mr. COHEN):

S. 2019. A bill to provide for referenda to resolve the political status of Puerto Rico, and for other purposes; to the Committee on Energy and Natural Resources.

PUERTO RICO LEGISLATION

Mr. CRAIG. Mr. President, today I am introducing legislation which would establish a congressionally recognized self-determination process to resolve the political status of Puerto Rico. This proposal is made in light of the formal request of the Legislature of Puerto Rico, expressly directed to the 104th Congress, for a response to the 1993 plebiscite on Puerto Rico's future political status conducted under local law.

Puerto Rico Legislature Resolution 62, adopted by the elected representatives of the residents of Puerto Rico on November 14, 1994, specifically calls upon this Congress to state the ''specific alternatives that it is willing to consider, and the measures it recommends the people of Puerto Rico should take as part of the process to solve the problem of their political status.'' Even though time is running out on the 104th Congress, this Senator believes it would be wrong to adjourn

later this year without introducing in the Senate a proposal which addresses the manner in which Puerto Rico's status can be resolved consistent with both self-determination and the national interest.

The solution to Puerto Rico's status cannot be one which imposes a result on the residents of Puerto Rico or on the United States. The process we are proposing recognizes the right of self-determination on both sides of the relationship. Let me explain why my colleagues should support the bill I am offering.

Puerto Rico has been an unincorporated territory of the United States for almost 100 years, subject to the plenary powers of Congress under the territorial clause of the U.S. Constitution, article IV, section 3, clause 2. Congressional authorization for the adoption of a local constitution and delegation of authority for internal self-government in 1952 represented progress in the evolution of the territory's status, but the 3.8 million U.S. citizens residing in Puerto Rico do not yet have equal legal and political rights with their fellow citizens living in the States, or a guaranteed permanent status protected by the U.S. Constitution.

Puerto Ricans have a statutory citizenship status prescribed by Congress in 1917, with less than equal legal standing and political rights while residing in Puerto Rico because it is not a State. In 1980 the U.S. Supreme Court ruled in *Harris* v. *Rosario* (446 U.S. 651) that as long as Puerto Rico is an unincorporated territory subject to the territorial clause it does not violate the fundamental rights which all U.S. citizens have under the Constitution for Congress to treat the U.S. citizens residing in Puerto Rico differently than their fellow citizens in the 50 States as long as there is a rational basis for such unequal treatment.

While any self-determination process we establish should allow the people in Puerto Rico to express approval of this present status, the idea that perpetual territorial status for such a large and populous area is desirable for either Puerto Rico or the nation as a whole needs to be examined closely. To begin with we need to recognize that Americans from Puerto Rico have served with valor along side their fellow citizens in every war this century, but Congress never has afforded the people an opportunity to express their wishes as to the options for full self-government and a permanent status outside the territorial clause—either as a state or through separate nationhood.

In 1953 the U.N. recognized the Resolution 748 (VIII) that establishment of internal constitutional self-government with the consent of the residents was consistent with self-determination principles of the U.N. Charter, and on that basis the United States stopped reporting to the United Nations on the status of Puerto Rico. While Puerto Rico is no longer a non-self-governing for purposes of Article 73(e) of the U.N. Charter, Puerto Rico remains an unincorporated territory under the U.S. constitutional process. In 1956, 4 years after the commonwealth structure for local self-government was established, the U.S. Supreme Court recognized in *Reid* v. *Covert* (354 U.S. 1), that the status of all such unincorporated territories, results from the exercise of the territorial clause authority and ''. . . the power of Congress to provide rules and regulations to govern *temporarily* territories with wholly dissimilar traditions and institutions . . . '' (emphasis added).

The traditions and institutions in Puerto Rico most relevant to the political status of the people there are no longer wholly dissimilar to those of the United States. Puerto Ricans have been U.S. nationals since 1899, with U.S. citizenship for 80 years. Puerto Rico has been within the U.S. legal and political system and customs territory for nearly a century. A republican form of constitutional internal self-government was instituted through a democratic process 45 years ago.

Clearly, the time has come to establish a process through which the current territorial status can be ended in favor of a constitutionally guaranteed permanent status consistent with full self-government, full political participation and equal citizenship rights. That means full integration into the United States on the basis of equality, or full citizenship and a constitutionally protected political status through separate nationhood.

Again, if the residents of Puerto Rico prefer to remain in an unincorporated status and continue the present commonwealth structure for local government, any congressionally recognized self-determination process should enable them freely to express their wishes in this regard. But they will not be able to make a free and informed choice unless the legal and political nature of the current status is defined in a constitutionally valid and intellectually honest manner.

Therein lies the problem with the 1993 plebiscite, in which the status options were formulated by the local political parties. The commonwealth option on the 1993 ballot included elements which were simply unconstitutional, and policy proposals that were so implausible and misleading as to make the voting results highly ambiguous. For example, commonwealth received the lowest voter approval ever at 48 percent, while statehood received the highest vote ever at 46 percent. But the commonwealth ballot definition include permanent union, the same citizenship rights as persons born in the States, increased Federal programs, and parity with the States in Federal budget outlay—features which are constitutional guaranteed and/or politically possible only with statehood.

At the same time, the commonwealth option also called for Federal tax exemptions, fiscal autonomy, a local veto over Federal laws passed by Congress under a so-called bilateral pact, and other features more consistent with independence than territorial status. Independence received 4 percent voter approval. The combined vote for the have it both ways definition of commonwealth and independence was 52 percent, but the combined vote for statehood and commonwealth as options which involved guaranteed permanent union and U.S. citizenship was over 95 percent.

I doubt that the 103d Congress would have adjourned more than a year after the 1993 vote without breaking a deafening silence regarding the results of the plebiscite if the ballot definitions had not rendered those results both ambiguous and confusing.

Apparently due in large part to Resolution 62, in this Congress the House committees with primary jurisdiction with respect to Puerto Rico's status conducted hearings on the 1993 voting results on October 17, 1995. Each of Puerto Rico's political parties were given a full and fair hearing regarding their views on the 1993 vote.

Based on the record of that hearing, the leadership of the concerned House committees transmitted a comprehensive statement to the leaders of the Puerto Rico Legislature on February 29, 1996, setting forth authoritative policy statements and points of law regarding the 1993 voting results. On March 6, 1996, legislation consistent with the principles set forth in the February 29 policy statement was introduced in the House. After hearings in San Juan Puerto Rico in which all parties were heard once again regarding H.R. 3024—United States-Puerto Rico Political Status Act—the bill was amended to meet certain concerns that had been raised and unanimously approved by the Committee on Resources on June 26, 1996.

On June 28, 1996, senior minority members on the two House committees which had conducted the hearings on the 1993 vote also transmitted views to leaders in the Puerto Rico Legislature regarding the results thereof. In addition, on July 18, 1996, 11 members of the minority in the House, including some of the most knowledgeable and experienced Members of Congress where the issue of Puerto Rico's status is concerned, wrote to that body's minority leader expressing their support for the Puerto Rico status bill reported unanimously by the Resources Committee on June 26, 1996.

What the measures taken by House committees and members to date demonstrate is that there is some important new thinking in Congress about the Puerto Rico status issue. There is an emerging bipartisan consensus that the time has come for Congress to recognize that a process which makes definitive self-determination and permanent full self-government available to Puerto Rico is in the U.S. national interest, as well as that of the residents of Puerto Rico.

In particular, I want to point out that the July 18, 1996 letter from concerned members of the minority to House Minority Leader GEPHARDT defends the specific approach to legitimate self-determination for Puerto Rico set forth in H.R. 3024 against criticism generated by supporters of the fatally-flawed and discredited definition of commonwealth presented on the 1993 plebiscite ballot. Specifically, the July 18 letter notes that:

Some have tried to revive discussion over the language and citizenship provisions of the bill, even though these issues were dealt with in the reported text of H.R. 3024. Others claim that the ballot process is unfairly skewed toward one option or another, hoping to revert back to the three-way ballot in 1993 which yielded no clear majority. More than just attempts to amend the legislation, these efforts are aimed at delaying its consideration or tainting its language so that it will never see the light of day.

I have described the response in the House to Resolution 62 of the Puerto Rico Legislature in some detail so that my Senate colleagues can better appreciate the need for some demonstration that Members of this body have an interest in the issues raised by the formal request directed by the local constitutional authorities to the 104th Congress. The bill we are introducing today is not a definitive or final formal response to that request, but it sends an important message to the House and to Puerto Rico that the Senate also will address this matter consistent with the principles of self-determination and the national interest.

Accordingly, the legislation we are proposing, like the House version, recognizes that the commonwealth option can and should be presented accurately and fairly on a status referendum ballot. The voters must be able to evaluate the current status and the commonwealth structure for local government on the merits. But those who think that Congress is required to adopt the same 3-option ballot format employed in the 1993 local plebiscite format need to think again. While we need to respect, study, and consider the 1993 vote despite obvious flaws in the ballot, Congress cannot restrict itself to considering only past practices in Puerto Rico or the approach previously considered by Congress.

We need to keep an open mind, and this bill proposes a new approach consistent with that being developed in the House. It recognizes that Congress may determine that it could be misleading to present the status quo option without distinguishing it in any way from the options for ending territorial status and instituting fundamental changes that would be required to establish permanent full self-government and a constitutionally guaranteed status.

Only when the people who live in Puerto Rico are allowed to vote in a referendum process which defines the choices in a way that is valid and accurate will Congress be able to understand the meaning of the results. Then Congress can respond to those results by proposing the terms under which the preferred option would be possible, after which an additional informed stage of self-determination can take place. If the terms for change are not approved by the people, or the people vote for the option of continued commonwealth, then Congress will have to consider its response to that result as well.

Before my colleagues, or those responsible for these issues in the administration, attempt to defend the approach of the 1993 plebiscite ballot, I suggest they review all of the congressional documents responding to Puerto Rico Legislature Resolution 62 referred to above. To facilitate an openminded consideration of what we are proposing, those documents are included here in the order mentioned above.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC, February 29, 1996.

Hon. ROBERTO REXACH-BENITEZ,
President of the Senate.

Hon. ZAIDA HERNANDEZ-TORRES,
Speaker of the House, of the Commonwealth of Puerto Rico, San Juan, PR.

DEAR MR. REXACH-BENITEZ AND MS. HERNANDEZ-TORRES: The Committee on Resources and the Committee on International Relations are working cooperatively to establish an official record which we believe will enable the House to address the subject-matter of Concurrent Resolution 62, adopted by the Legislature of Puerto Rico on December 14, 1994. While the specific measures addressing Puerto Rico's status which the 104th Congress will consider are still being developed, we believe the history of the self-determination process in Puerto Rico, as well as the record of the Joint Hearing conducted on October 17, 1995 by the Subcommittee on Native American and Insular Affairs and the Subcommittee on Western Hemisphere, lead to the following conclusions with respect to the plebiscite conducted in Puerto Rico on November 14, 1993:

1. The plebiscite was conducted under local law by local authorities, and the voting process appears to have been orderly and consistent with recognized standards for lawful and democratic elections. This locally organized self-determination process was undertaken within the authority of the constitutional government of Puerto Rico, and is consistent with the right of the people of Puerto Rico freely to express their wishes regarding their political status and the form of government under which they live. The United States recognizes the right of the people of Puerto Rico to self-determination, including the right to approve any permanent political status which will be established upon termination of the current unincorporated territory status. Congress will take cognizance of the 1993 plebiscite results in determining future Federal policy toward Puerto Rico.

2. The content of each of the three status options on the ballot was determined by the three major political parties in Puerto Rico identified with those options, respectively. The U.S. Congress did not adopt a formal position as to the feasibility of any of the options prior to presentation to the voters. Consequently, the results of the vote necessarily must be viewed as an expression of the preferences of those who voted as between the proposals and advocacy of the three major political parties for the status option espoused by each such party.

3. None of the status options presented on the ballot received a majority of the votes cast. While the commonwealth option on the ballot received a plurality of votes, this result is difficult to interpret because that option contained proposals to profoundly change rather than continue the current Commonwealth of Puerto Rico government structure. Certain elements of the commonwealth option, including permanent union with the United States and guaranteed U.S. citizenship, can only be achieved through full integration into the U.S. leading to statehood. Other elements of the commonwealth option on the ballot, including a government-to-government bilateral pact which cannot be altered, either are not possible or could only be partially accomplished through treaty arrangements based on separate sovereignty. While the statehood and independence options are more clearly defined, neither of these options can be fully understood on the merits, unless viewed in the context of clear Congressional policy regarding the terms under which either option could be implemented if approved in a future plebiscite recognized by the federal government. Thus, there is a need for Congress to define the real options for change and the true legal and political nature of the status quo, so that the people can know what the actual choices will be in the future.

4. Although there is a history of confusion and ambiguity on the part of some in the U.S. and Puerto Rico regarding the legal and political nature of the current ''commonwealth'' local government structure and territorial status, it is incontrovertible that Puerto Rico's present status is that of an unincorporated territory subject in all respects to the authority of the United States Congress under the Territorial Clause of the U.S. Constitution. As such, the current status does not provide guaranteed permanent union or guaranteed citizenship to the inhabitants of the territory of Puerto Rico, nor does the current status provide the basis for recognition of a separate Puerto Rican sovereignty or a binding government-to-government status pact.

5. In light of the foregoing, the results the November 14, 1993 vote indicates that it is the preference of those who cast ballots to change the present impermanent status in favor of a permanent political status based on full self-government. The only options for a permanent and fully self-governing status are: 1) separate sovereignty and full national independence, 2) separate sovereignty in free association with the United States; 3) full integration into the United States political system ending unincorporated territory status and leading to statehood.

6. Because each ballot option in the 1993 plebiscite addressed citizenship, we want to clarify this issue. First, under separate sovereignty Puerto Ricans will have their own nationality and citizenship. The U.S. political status, nationality, and citizenship provided by Congress under statues implementing the Treaty of Paris during the unincorporated territory period will be replaced by the new Puerto Rican nationhood and citizenship status that comes with separate sovereignty. To prevent hardship or unfairness in individual cases, the U.S. Congress may determine the requirements for eligible persons to continue U.S. nationality and citizenship, or be naturalized, and this will be governed by U.S. law, not Puerto Rican law. If the voters freely choose separate sovereignty, only those born in Puerto Rico who have acquired U.S. citizenship on some other

legal basis outside the scope of the Treaty of Paris citizenship statutes enacted by Congress during the territorial period will not be affected. Thus, the automatic combined Puerto Rican and U.S. citizenship described under the definition of independence on the 1993 plebiscite ballot was a proposal which is misleading and inconsistent with the fundamental principles of separate nationality and non-interference by two sovereign countries in each other's internal affairs, which includes regulation of citizenship. Under statehood, guaranteed equal U.S. citizenship status will become a permanent right. Under the present Commonwealth of Puerto Rico government structure, the current limited U.S. citizenship status and rights will be continued under Federal law enacted under the Territorial Clause and the Treaty of Paris, protected to the extent of partial application of the U.S. Constitution during the period in which Puerto Rico remains an unincorporated territory.

7. The alternative to full integration into the United States or a status based on separate sovereignty is continuation of the current unincorporated territory status. In that event, the present status quo, including the Commonwealth of Puerto Rico structure for local self-government, presumably could continue for some period of time, until Congress in its discretion otherwise determines the permanent disposition of the territory of Puerto Rico and the status of its inhabitants through the exercise of its authority under the Territorial Clause and the provisions of the Treaty of Paris. Congress may consider proposals regarding changes in the current local government structure, including those set forth in the ''Definition of Commonwealth'' on the 1993 plebiscite ballot. However, in our view serious consideration of proposals for equal treatment for residents of Puerto Rico under Federal programs will not be provided unless there is an end to certain exemptions from federal tax laws and other non-taxation in Puerto Rico, so that individuals and corporations in Puerto Rico have the same responsibilities and obligations in this regard as the states. Since the ''commonwealth'' option on the 1993 plebiscite ballot called for ''fiscal autonomy,'' which is understood to mean, among other things, continuation of the current exemptions from federal taxation for the territory, this constitutes another major political, legal and economic obstacle to implementing the changes in Federal law and policy required to fulfill the terms of the ''Definition of Commonwealth.''

8. In addition, it is important to recognize that the existing Commonwealth of Puerto Rico structure for local self-government, and any other measures which Congress may approve while Puerto Rico remains an unincorporated territory, are not unalterable in a sense that is constitutionally binding upon a future Congress. Any provision, agreement or pact to the contrary is legally unenforceable. Thus, the current Federal laws and policies applicable to Puerto Rico are not unalterable, nor can they be made unalterable, and the current status of the inhabitants is not irrevocable, as proposed under the ''commonwealth'' option on the 1993 plebiscite ballot. Congress will continue to respect the principle of self-determination in its exercise of Territorial Clause powers, but that authority must be exercised within the framework of the U.S. Constitution and in a manner deemed by Congress to best serve the U.S. national interest. In our view, promoting the goal of full self-government for the people of Puerto Rico, rather than remaining in a separate and unequal status, is in the best interests of the United States. This is particularly true due to the large population of Puerto Rico, the approach of a new century in which a protracted status debate will interfere with Puerto Rico's economic and social development, and the domestic and international interest in determining a path to full self-government for all territories with a colonial history before the end of this century.

9. The record of the October 17, 1995 hearing referred to above makes it clear that the realities regarding constitutional, legal and political obstacles to implementing the changes required to fulfill the core elements of the ''commonwealth'' option on the ballot were not made clear and understandable in the public discussion and political debate leading up to the vote. Consequently, Congress must determine what steps the Federal government should take in order to help move the self-determination process to the next stage, so that the political status aspirations of the people can be ascertained through a truly informed vote in which the wishes of the people are freely expressed within a framework approved by Congress. Only through such a process will Congress then have a clear basis for determining and resolving the question of Puerto Rico's future political status in a manner consistent with the national interest.

Ultimately, Congress alone can determine Federal policy with respect to self-government and self-determination for the residents of Puerto Rico. It will not be possible for the local government or the people to advance further in the self-determination process until the U.S. Congress meets its moral and governmental responsibility to clarify Federal requirements regarding termination of the present unincorporated territory status of Puerto Rico in favor of one of the options for full self-government.

The results of the locally administered 1993 vote are useful in this regard, but in our view are not definitive beyond what has been stated above. The question of Puerto Rico's political status remains open and unresolved.

Sincerely,

DON YOUNG,
Chairman, Committee on Resources.
ELTON GALLEGLY,
Chairman, Subcommittee on Native American and Insular Affairs.
BEN GILMAN,
Chairman, Committee on International Relations.
DAN BURTON,
Chairman, Subcommittee on the Western Hemisphere.

CONGRESS OF THE UNITED STATES,
Washington, DC, June 28, 1996.

Senator CHARLIE RODRIGUEZ,
Majority Leader, Puerto Rico Senate, the Capitol, San Juan, PR.

DEAR SENATOR RODRIGUEZ: As the senior democrats on the House Resources and International Relations Committees we have always been concerned about the economic and political future of Puerto Rico. As the 104th Congress considers proposed legislation regarding the process of self-determination for Puerto Rico, we believe that it is time to reexamine the status issue in light of the 1993 plebiscite.

On December 14, 1994 the Legislature of Puerto Rico adopted Concurrent Resolution 62 which sought congressional guidance regarding the results of the 1993 status plebiscite. Recently, the Chairman of the relevant committees and subcommittees that deal with Puerto Rico's political status responded to this important resolution. Although we agree with many portions of the letter, we would like to outline some of our views on the issue as well.

We believe that the definition of Commonwealth on the 1993 plebiscite ballot was difficult given Constitutional, and current fiscal and political limitations. Through numerous Supreme Court and other Federal Court decisions, it is clear that Puerto Rico remains an unincorporated territory and is subject to the authority of Congress under the territorial clause. Another aspect of this definition called for the granting of additional tax breaks to Section 936 companies and an increase in federal benefits in order to achieve parity with all the states without having to pay federal taxes. It is important that any judgment on the future of Puerto Rico be based on sound options that reflect the current budgetary context in the United States. This context should also reflect the bi-partisan agreement being worked on by Congress which reduces Section 936 benefits.

Since Congress has neither approved nor resolved the 1993 plebiscite results, we are in favor of legislation that will establish a future process of self-determination for the people of Puerto Rico. This legislation should include a requirement for status plebiscites to take place within a certain number of years and define various status options in a realistic manner.

In two years, Puerto Rico will celebrate its 100th year as part of the United States. Congress has both a political and moral responsibility to ensure that the 3.5 million Americans living in Puerto Rico have a right to express their views on the important issue of political status on a regular basis.

We hope this additional response to Concurrent Resolution 62 is helpful.

Sincerely,

ROBERT TORRICELLI,
BILL RICHARDSON,
LEE HAMILTON,
DALE KILDEE,

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 18, 1996.

Hon. RICHARD GEPHARDT,
Minority Leader, the Capitol, Washington, DC.

DEAR MINORITY LEADER GEPHARDT: Given the short time before the adjournment of the 104th Congress, we are eagerly trying to secure floor time for a bill that is of great importance to us, H.R. 3024, the United States-Puerto Rico Political Status Act. Unfortunately, we understand that certain Representatives have approached you in recent days in hopes of derailing this legislative effort.

After nearly 100 years as a territory of the United States, Puerto Rico must be provided with the opportunity to determine its future. While some would have you believe that there is no need for a self-determination process, it must be clear that the existing ''Commonwealth'' structure was never meant to be a permanent solution for Puerto Rico, particularly since the 3.8 million U.S. citizens in Puerto Rico are disenfranchised under the current arrangement. Just as the United Nations has called for an end to colonialism by the year 2000, the United States must lead by example by putting an end to the disenfranchisement of its own citizens and allowing Puerto Rico to resolve, once and for all, its status dilemma.

As you know, H.R. 3024 establishes a process whereby the U.S. citizens of Puerto Rico would be allowed to vote on self-determination by the end of 1998. On the first ballot, the voters would choose to either change their status or maintain the status quo. Then, assuming the majority votes to change their status, they would then again vote to choose between a path toward separation (independence or free association) or a path

toward integration (statehood). In each instance, the results would be definitive and would produce a majority.

With over sixty cosponsors in the House, H.R. 3024 has strong bipartisan support. During the full Resources Committee markup last month, the bill was reported unanimously after adopting only minor perfecting amendments. It is now before the Rules Committee and we are hopeful that it will soon proceed to the House floor. Opponents of H.R. 3024, however, are using a number of tactics to try to delay this process and confuse the issue.

Some have tried to revive discussions over the language and citizenship provisions of the bill, even though these issues were dealt with in the reported text of H.R. 3024. Others claim that the ballot process is unfairly skewed toward one option or another, hoping to revert back to the three-way ballot in 1993 which yielded no clear majority. More than just attempts to amend the legislation, these efforts are aimed at delaying its consideration or tainting its language so that it will never see the light of day this year on the House floor.

All told, these efforts should not obscure the original intent of the legislation: to provide Puerto Rico with a fair process of self-determination for the first time in the Island's history. Your support for this effort is needed and would help Congress give the U.S. citizens of Puerto Rico the voice and participation in the democratic process which they are entitled to and deserve.

Thank you for your interest in the affairs of Puerto Rico. If you would like to discuss this matter further, please do not hesitate to contact us.

Sincerely,

Carlos A. Romero-Barceló, Robert A. Underwood, Nick Rahall, Sam Farr, Esteban E. Torres, Bill Richardson, Patrick J. Kennedy, José E. Serrano, Dale E. Kildee, Pat Williams, Neil Abercrombie.

Mr. CRAIG. Mr. President, I am proud to be an original cosponsor of the legislation introduced by my colleague from Idaho, Senator CRAIG, with whom I have worked closely on many issues over the years.

This important bill establishes a process whereby the people of Puerto Rico can vote for a retention or a change of their current Commonwealth status, a status preserved as a result of the November 14, 1993 plebiscite. If Puerto Ricans choose change, they can select a path toward separation—independence or free association—or a path toward incorporation—statehood. In short, the bill establishes an orderly path toward true self-determination in the true democratic spirit of our Nation.

One might ask why such legislation is necessary given that less than 3 years ago, a plurality of U.S. citizens in Puerto Rico chose the Commonwealth option on the November 14 ballot. This option—drafted by the Commonwealth party itself, under the agreed-upon terms of the plebiscite—presented the people of Puerto Rico with utterly inflated and unrealistic expectations regarding the island's future relationship with the United States. In effect, the Commonwealth option guaranteed United States citizens of Puerto Rico many of the benefits of statehood and many of the benefits of separation without any of the accompanying responsibilities of either. Given these pie-in-the-sky promises, it is no wonder that a plurality of Puerto Ricans—though, important, not a majority—chose the Commonwealth option. However, the future of Puerto Rico's relationship with the United States remains unclear, and congressional action providing Puerto Ricans with the power to determine their fate through a fair and orderly process is long overdue.

It is time that Congress' silence on the results of the November 14, 1993 Puerto Rican plebiscite end, and that we afford United States citizens in Puerto Rico realistic and just options for determining Puerto Rico's future relationship with the United States of America. The Puerto Rican Government has asked that we do as much. On December 14, 1994, the legislature of Puerto Rico adopted Concurrent Resolution 62 which formally requested congressional guidance regarding the results of the 1993 status plebiscite. This legislation provides this guidance.

The process established by this legislation would be unprecedented and long overdue, affording Puerto Ricans for the first time a fair process of self-determination that is consistent with everything America stands for. We owe Puerto Rico—which in 2 years will have been part of the United States for 100 years—at least this much.

For decades, we have treated the right to self-determination as a cornerstone of our foreign policy. It is time that we practice what we preach.

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

S. 2020. A bill to establish America's Agricultural Heritage Partnership in Iowa, and for other purposes; to the Committee on Energy and Natural Resources.

THE AGRICULTURAL HERITAGE PARTNERSHIP ACT OF 1996

Mr. GRASSLEY. Mr. President, today I am introducing the America's Agricultural Heritage Partnership Act of 1996. This legislation would authorize the designation of several counties in northeast Iowa as America's Agricultural Heritage Partnership. This project is more commonly known as Silos and Smokestacks.

The story of agriculture in the United States is not only one of national progress and bounty, but is also a story of world progress and bounty. American agriculture is a national and a world treasure. It is a story that needs to be told. That is the silos part of Silos and Smokestacks. The smokestacks are the industrial base that supports our country's agriculture. The mission of America's Agricultural Heritage Partnership—Silos and Smokestacks—is to tell their combined story, through traditional exhibits and by designed routes through the countryside highlighting areas of importance and interest.

Community leaders in Waterloo, IA, the surrounding communities, and the rural area began meeting several years ago to determine how best to tell the agricultural story, especially how it relates to our country's great industrial history. Because of their interest, the National Park Service was then requested to conduct a study to develop recommendations as to the location of a heritage area and how to present the history.

That study recommended that northeast Iowa be the location for an agricultural heritage partnership area. Since that time, the communities have continued their work to lay a proper foundation for the project pending congressional authorization for Silos and Smokestacks.

Waterloo is located in the center of some of the richest, most productive agricultural land in the world. It is also home to John Deere and other farm equipment manufacturers and other related agricultural industries. Waterloo is an ideal location to tell the combined story of American agriculture and the industry associated with it.

This legislation would authorize the Secretary of Agriculture to make grants or enter into cooperative agreements to further this project. He may also provide necessary technical assistance.

This is a worthwhile endeavor to tell an important American story to our citizens and the World. I strongly encourage enactment of this legislation.

Mr. HARKIN. Mr. President, I rise as cosponsor of America's Agricultural Heritage Partnership Act of 1996. This bill would establish America's Agricultural Heritage Partnership in northeast Iowa in order to promote the story of agriculture in our Nation's rich history.

A few years ago, leaders from Waterloo and other communities in northeast Iowa developed an initiative called Silos and Smokestacks. Silos and Smokestacks is a private organization that has worked to remodel and renovate old, and often abandoned, buildings in Waterloo. This effort is a wonderful example of communities and concerned citizens working together to preserve a unique part of American history.

The hard work by Silos and Smokestacks has provided the foundation for a unique heritage park that would combine the stories of our Nation's agricultural and industrial development. In the past, the focus of the National Park Service has been to create and administer the so-called natural areas, commonly known as our National Park System. A heritage park involves local, State, Federal, and private interests in recognizing and preserving sites of cultural and historical significance. Heritage areas are something like a large interactive museum in which people have the opportunity to gain firsthand knowledge of an important facet of our Nation's history.

The National Park Service has determined that northeast Iowa is an ideal

location for a heritage park. This park would tell the nationally significant, but often overlooked, story of American agriculture. Northeast Iowa combines the rich histories of our Nation's farming and industrial sectors. In the area surrounding Waterloo one will find some of the most productive and fertile land in the Nation. Boasting the production lines of John Deere and other farm equipment manufacturers and some of the largest meatpacking operations in the Midwest, the city of Waterloo represents our Nation's industrial strength. Taken together, this area represents nearly every aspect of agricultural and food production.

The National Park Service has suggested that four principal topics of the heritage area could include: the amazing science of agriculture, agriculture as a way of life, organizing for survival, and crops from the field to the table.

The legislation introduced today would authorize the Secretary of Agriculture to make grants and provide technical and management assistance to those entities developing the introductory heritage park. This assistance would be the critical impetus to see this unique project through to completion. A heritage project in northeast Iowa would provide countless Americans with a valuable insight into one of the most fascinating, and important, aspects of American society.

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

S. 2021. A bill to suspend temporarily the duty on certain chemicals used in the formulation of an HIV protease inhibitor; to the Committee on Finance.

DRUG DEVELOPMENT ACCELERATION LEGISLATION

Mrs. FEINSTEIN. Mr. President, as a nation, we must do everything we can to find a cure for HIV/AIDS. However, until we have a cure for this urgent health priority, we need to find effective treatments and put them in the hands of people with needs.

I rise today to introduce legislation, joined by my colleague Senator BOXER, to eliminate the tariff for several chemical compounds. These compounds are required for the manufacture of an AIDS drug, nelfinavir mesylate, which has produced promising test results.

PROTEASE INHIBITORS

Nelfinavir is one of a new class of AIDS drugs called protease inhibitors. The drugs are designed to block an enzyme, called protease, that appears to play a crucial role in the replication of HIV.

As the Wall Street Journal reported in its coverage of the recently concluded 11th International Conference on AIDS in Vancouver, BC, researchers have evidence that protease inhibitor drugs, when taken in combination with existing therapies, can reduce levels of the AIDS-causing virus in blood to levels so low that the virus is undetectable by even the most sensitive tests. AIDS researchers at the conference describe this new drug therapy as a major and unprecedented step in combating AIDS, one that may represent a treatment approach that may delay the onset of AIDS, extend patients' lives, and transform AIDS into a long-term, manageable disease.

Mr. President, HIV/A is a critical public health issue, requiring the Nation's full attention. In America today, AIDS is the leading cause of death for young Americans between the ages of 25 and 44.

More than 220,700 American men, women and children have died of AIDS by the end of 1993. While the number of deaths trails other urgent health priorities such as cancer or heart disease, AIDS is nearly equally debilitating to the Nation when measured by the years of potential and productive life lost due to the disease.

In my State of California, 1 of every 200 Californians is HIV positive, while 1 of every 25 is HIV positive in my home of San Francisco.

AIDS is a paramount public health concern and every effort should be made to ensure that drugs are made available as swiftly and at as low a cost as possible. We simply cannot delay or waste time in providing drugs, treatments or materials. This tariff legislation represents a modest, but important step.

ZERO TARIFF FOR PHARMACEUTICALS

Under the 1994 GATT agreement, most pharmaceutical products are entitled to enter the country without a tariff. However, the zero tariff does not apply to many new pharmaceutical products or their chemical ingredients. As a result, the chemicals needed to make nelfinavir mesylate, an AIDS protease inhibitor currently undergoing research testing, but not yet a recognized pharmaceutical product under GATT, would be ineligible for the pharmaceutical zero tariff.

During negotiations with World Trade Organization nations to implement the pharmaceutical zero tariff, the administration successfully added the chemical compounds needed to manufacture the AIDS drug. As a result, the tariff will drop to zero on April 1, 1997.

Nelfinavir is on the Food and Drug Administration's fast-track approval process for AIDS drugs. Commercial production of the drug will begin well before April 1, in order that the drug can be immediately available to AIDS patients upon FDA approval. Although currently imported duty-free for use in clinical research trials, the imported chemicals will soon be used for commercial production. During the period of commercial production prior to April 1, the chemical compounds will face a 12 percent tariff, which will only add to the cost and delay the drug's production and distribution to individuals in need.

This proposed legislation would eliminate the tariff for two of the essential and unique chemical inputs, as well as for the active ingredient nelfinavir (Acid Chloride, Chloroalcohol and AG 1346), from August 1 when the drug production increases, until April 1, 1997 when the tariff drops to zero under the WTO pharmaceutical agreement. Without this legislation, the manufacturer would face a 12 percent tariff for its chemicals, which are not available in the United States, as the drug proceeds into production. This tariff reduction will allow for the acceleration of drug production, providing more timely relief for the public.

The Federal Government needs to do everything it can to expedite the development and distribution of AIDS drugs. Without this legislation to remove the tariff, we will be tolerating needless hurdles and delay, rather than needed relief.

The Congressional Budget Office is reviewing the cost of the proposed legislation. However, because the WTO negotiations will already provide a zero tariff for the chemical compounds on April 1, the legislation may have a de minimis impact on tariff revenue. For AIDS patients, their families and those at risk, it's a step Congress should take.

I have also requested various Federal agencies and other organizations to review the legislation and ensure that other important Federal policies, like narcotics enforcement or maintaining a strong, domestic chemical industry, are not undermined. The Drug Enforcement Agency and U.S. Customs Service indicate the chemicals present no risk for law enforcement or anti-narcotics enforcement priorities. Similarly, the U.S. Trade Representative's Industry Sector Advisory Committee for chemicals and the International Trade Commission also reviewed and approved the administration's efforts to include the chemicals in the pharmaceutical appendix negotiations. PhRMA, the Pharmaceutical Research and Manufacturers of America, also has reviewed the proposal and does not oppose the legislation.

The administration deserves tremendous credit for extending a zero tariff for these chemical components. It is my hope that miscellaneous tariff legislation, which is currently pending before the Finance Committee, could accommodate this noncontroversial tariff issue, which can accelerate the development and production of an AIDS drug, with the potential to provide meaningful relief.

As a matter of public policy, we should do everything we can to develop AIDS drugs and treatments. Patients and their families cannot wait for the next round of drugs to be approved and added to the zero-tariff list, scheduled for review in 1999. By importing the chemical compounds without a tariff, we can accelerate the drug development process.

I am pleased to introduce this tariff legislation, along with my colleague Senator BOXER, and will work with the chairman and ranking members of the Finance Committee to pursue the legislation.

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

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

S. 2021

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

SECTION 1. TEMPORARY DUTY SUSPENSION.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new headings:

''9902.30.63	3-acetoxy-2-methylbenzoyl chloride (CAS No. 167678–46–8) (provided for in subheading 2918.29.65)	Free	No change	On or before 3/30/97
9902.30.64	2S, 3R-N-Cbz-3-amino-1-chloro-4-phenylsulfanyl-butan-2-ol (CAS No. 159878–02–1) (provided for in subheading 2922.19.60)	Free	No change	On or before 3/30/97
9902.30.65	N-(1,1-dimethylethyl)deca-hydro-2-[2-hydroxy-3[(3-hydroxy-2-methylbenzoyl) amino]-4-(phenylthio)butyl]-3-isoquinolinecarboxamide, [3S-[2(2S*,3S*), 3.a.,4a.b.,8a.b.]] (CAS No. 159989–64–7) (provided for in subheading 2933.40.60)	Free	No change	On or before 3/30/97''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date that is 15 days after the date of the enactment of this Act.

(2) RETROACTIVE APPLICATION.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the Customs Service, before the 90th day after the date of the enactment of this Act, any entry, or withdrawal from warehouse for consumption, of an article described in heading 9902.30.63, 9902.30.64, or 9902.30.65 of the Harmonized Tariff Schedule of the United States (as added by subsection (a)), that was made—

(A) on or after August 1, 1996, and

(B) before the date that is 15 days after the date of the enactment of this Act,

shall be liquidated or reliquidated as though such entry or withdrawal was made on the 15th day after such date of enactment.

By Mr. THURMOND (for himself, Mr. FAIRCLOTH, Mr. HOLLINGS, Mr. COATS, and Mr. HELMS):

S. 2022. A bill to amend title 23, United States Code, to modify the minimum allocation formula under the Federal-aid highway program, to provide reimbursement to each State with respect to which the highway users in the State paid into the highway trust fund an amount in excess of the amount received by the State from the highway trust fund, and for other purposes; to the Committee on Environment and Public Works.

THE SURFACE TRANSPORTATION EQUITY ACT

Mr. THURMOND. Mr. President, I rise today to introduce legislation, on behalf of myself and Senators FAIRCLOTH, HOLLINGS, COATS, and HELMS, to correct one of the most inequitable and unfair policies of our Government—the Federal aid to highways distribution formulas. Currently, our Federal Aid to Highways Program collects 18.3 cents tax on each gallon of gasoline. That money is then sent to the Federal Treasury where deductions are made for deficit reduction and other Department of Transportation programs. The remainder is then apportioned among the States by statutory formulas which is used for infrastructure projects. In 1995, South Carolina received 52 cents for each dollar its citizens contributed to the fund. Other States were allocated $2 or more for each dollar contributed. This disparity is inexcusable.

This donor State system was originally devised to build the Interstate Highway System. In order to build highways across the vast expanses of the less populated Western States, it was necessary to incorporate a system in which some States contribute more than they receive. Next year, the last segment of the Interstate System will be completed. Subsequently, all our surface transportation priorities will then be local, but the donor/donee system with its unfair formulas will still be in place.

The statutory formulas are largely based on 1950's population data. Needless to say, there have been great population shifts in this country since that time. As a result, high-growth States have become desperate to find money to cope with the growing demand for highway construction and maintenance. Other States, however, are allocated such an excess amount that some of their funds go unused. In some cases they seek legislation to use the money for more exotic transportation purposes. We should not be building roads where people have been—we shoud build them where they are or where they are going. The present situation is equivalent to laying railroad tracks behind the train. It is inefficient, wasteful, and does not address the transportation needs of our Nation.

Unlike other programs, our Federal aid highway system was intended to be a user fee system where the gas taxes motorists pay go to maintain and improve the roads on which they drive. Unfortunately, the current system does not work in that manner. For example, when a school teacher in Mt. Pleasant, SC, buys gas to commute to her job in Charleston, she should expect that the tax she has paid is going to pay part of the cost of replacing the Cooper River Bridge which is in danger of collapse. Instead, 48 cents of each dollar she pays in gas tax goes to finance projects in other States. On the other hand, when a school teacher in one of the donee States does the same thing, she receives more than double her money back in road improvements. This is simply unfair.

The donor States have made tremendous sacrifices to build the Interstate System from which we all benefit. They have for years postponed addressing critical highway needs at home. The time has come for our national policy to recognize this contribution and address this issue fairly.

Mr. President, the bill we are introducing is simple. It stipulates that the portion of the Federal highway distribution to a State in each year shall be equal to its percentage of all contributions to the fund. In other words, if South Carolina contributes 1.8 percent of the trust fund in a year, it would get back 1.8 percent of whatever amount is appropriated out of the fund that year. Further, my bill would establish a 5-year program to bring the historic donor States into parity with the rest of the country. After implementation of this bill then we will have a Federal Highway Program that is fair to all.

Mr. President, if we are to reauthorize a Federal Highway Program, it must be a fair one. My bill presents a fair and equitable formula for doing this. I urge my colleagues to join us in support of this legislation.

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

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

S. 2022

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Surface Transportation Equity Act of 1996''.

SEC. 2. MINIMUM ALLOCATION.

(a) FISCAL YEAR 1998 AND THEREAFTER.—Section 157(a) of title 23, United States Code, is amended by adding at the end the following:

''(5) FISCAL YEAR 1998 AND THEREAFTER.—In fiscal year 1998 and each fiscal year thereafter, the Secretary, after making the allocations described in section 3 of the Surface Transportation Equity Act of 1996, shall allocate among the States amounts sufficient to ensure that a State's percentage of the total apportionments in each fiscal year and allocations for the prior fiscal year from funds made available out of the Highway Trust Fund is not less than 100 percent of the percentage of estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund in the latest fiscal year for which data are available.''.

(b) CONFORMING AMENDMENT.—Section 157(a)(4) of title 23, United States Code, is amended by striking the paragraph designation and all that follows before ''on October 1'' and inserting the following:

''(4) FISCAL YEARS 1992–1997.—In each of fiscal years 1992 through 1997,''.

SEC. 3. DONOR STATE REIMBURSEMENT.

(a) ALLOCATION.—Over the period consisting of fiscal years 1998 through 2002, the Secretary of Transportation shall proportionally allocate to each eligible State described in subsection (b) the total amount of the excess described in subsection (b).

(b) ELIGIBLE STATES.—For the purpose of this section, an eligible State is a State with respect to which the highway users in the State paid into the Highway Trust Fund, during the period consisting of July 1, 1957, through the end of the latest fiscal year for which data are available, an amount in excess of the amount received by the State from the Highway Trust Fund during that period.

(c) FORMULA.—For each fiscal year, the Secretary of Transportation shall allocate the amounts made available under subsection (a) for the fiscal year in such a way

as to bring each successive eligible State, or eligible States, with the lowest dollar return on dollar paid into the Highway Trust Funding during the period described in subsection (b) up to the highest common return on dollar paid that can be funded with the amounts made available under subsection (a).

(d) APPLICABILITY OF CHAPTER 1 OF TITLE 23.—Funds allocated under this section shall be available for obligation in the same manner and for the same purposes as if the funds were apportioned for the surface transportation program under chapter 1 of title 23, United States Code, except that the funds shall remain available until expended.

(e) ADMINISTRATIVE EXPENSES.—

(1) DEDUCTION.—For each fiscal year, prior to making allocations under this section, the Secretary of Transportation shall deduct such amount, not to exceed 3¾ percent of the amount made available under subsection (f) for the fiscal year, as the Secretary determines is necessary to pay the administrative expenses of carrying out this section. Amounts so deducted shall remain available until expended.

(2) CONSIDERATION OF PRIOR DEDUCTIONS.—In determining each amount to be deducted under paragraph (1), the Secretary of Transportation shall take into consideration the unexpended balance of any amounts deducted for prior fiscal years under paragraph (1).

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated out of the Highway Trust Fund such sums as are necessary to carry out this section.

Mr. HOLLINGS. Mr. President, 5 years ago I opposed legislation extending our Nation's Highway Program. I did that, not because we do not need highways—they have been a fine investment—but because the funding distribution to States had become so egregiously unfair that it threatened support for any highway program at all. It is interesting to note that today we have proposals in the Congress essentially to follow that logic by repealing most of the program to the States on the basis that the Federal funding pattern is so incredibly wrong. As such, I make the case again today for a fair and rational distribution of highway funds and put the Senate on notice that the distribution must change when the Congress considers highway program revisions next year. The U.S. General Accounting Office has studied highway spending again since the 1991 ISTEA legislation, and reported in November 1995 what Senators have long known—a formula that provided South Carolina 52 cents this year for a dollar of taxes contributed is unfair and untenable.

This is not just a matter of my State receiving less. It is a matter of how best to distribute funds for our Nation's highway needs. Objective studies have found that our current funding pattern is wrong, outdated, and unconnected to highway needs. As the GAO put it, ''the States' funding shares for the four major programs are divorced from current conditions,'' and the underlying factors for the two largest programs are ''irrelevant to the highway system's needs.''

Particularly, the current distribution to States includes significant, indirect influences from earlier, unfair funding patterns. It includes postal road factors from the 1921 formula, population data from the 1980 census, and bridge costs reported from States nearly a decade ago which were wildly disparate. Why should South Carolina have gotten $38 per square foot to replace bridges while the District of Columbia received $223 per square foot? Why should these amounts be grandfathered into today's allocations?

Not only did the GAO declare last year that these formula factors are ''irrelevant,'' it suggested better factors more than 10 years ago. At that time, the GAO recommended making a transition to a more fair formula in a way that did not hurt states that had been receiving a greater than equitable share of highway formulas. But as the GAO reported last year, ''However, the Congress elected not to change the basic formula structure.''

Mr. President, I voted against ISTEA because of the objective, well-documented unfairness of the highway formula, and will vigorously oppose any highway bill next year that does not provide fairness. The legislation we are introducing here today is a good starting point to better address our Nation's highway needs.

By Mr. REID:

S. 2023. A bill to provide for travelers' rights in air commerce, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE TRAVELERS' RIGHTS ACT OF 1996

Mr. REID. Mr. President, as our open society has evolved, the Government has consistently, though in varying degrees, had to define the rights of consumers and citizens. In this regard, I introduce today the Travelers' Rights Act. This bill is to expedite access to information to airline customers and broaden the choices that air travelers have through greater information. Additionally, through the Victims Rights Program we call for greater coordination of governmental agencies and American Red Cross in providing facts to victims and survivors of victims.

Mr. President, air travel in America is a fundamental of American transportation. I cannot imagine spanning the distances of Nevada, much less the Western United States to come back here and represent my State without the convenience of air travel. Perhaps we take many things about travel for granted; for instance, I do not know nor can I fathom the many details involved in getting a 747, the size of 12 city busses, into the sky. But, Mr. President, I believe that there are some basic rights of the half-billion passengers of airlines that need to be protected. I have searched the current statutes and regulations and am confident that the Federal Aviation Administration has many of the tools necessary to continue to make our skies safe. I am not convinced, however, that passengers, are receiving sufficient information about the aircraft and the many involved personnel and accessibility to the aircraft. Daily, pilots, mechanics, air tower controllers, and others dedicate themselves to meeting the needs of air travelers, but still the trust relationship requires some understanding that the FAA certificate requirements are being met by the personnel who serve the airline customers.

While some may argue that requires a lot of information. I consider it to be the nature of the information not the quantity to be significant, because the traveler on the airlines are putting their lives in the airlines' hands and should be allowed the knowledge that bestows security, understanding and choice. There is information that ought to be available and if the customer seeks the information the airlines should expeditiously provide it. This bill is not to scare travelers about the safety and security of air travel, rather on the contrary, I believe this bill will inspire confidence through openness and knowledge. Additionally, if customers of air travel exercise their right to know about certain elements about the airlines, aircraft and crew then that too will enhance the trust between customers and the airlines.

The second principle element of the bill is the Victims Rights Program, which is essential in alleviating some of the criticism of the airlines and restoring the confidence of airline customers. Increased coordination of the agencies and the American Red Cross in opening up communication between the investigating parties and the victims, appears to me, to be the least that we can do and an essential right of those who place their trust in air travel.

This legislation is vital in making sure that these fundamental rights of information and knowledge are preserved. As airplane accidents occur and the airplanes are sabotaged, the sense of security that airplane passengers have paid for is undermined. This bill does not try to second guess the Federal Aviation Administration and the inspector general in safety investigations and security methods, because they have been given both the mission and the means of working with the airlines.

Mr. President, last May a ValuJet DC–9 crashed into a Florida swamp, and before that in December an American Airlines aircraft flew into a South American mountainside. Then over 200 individuals died off the coast of New York and the Federal authorities have still not identified all the victims. Indeed, I have heard repeatedly that the survivors of victims cannot get information from the airlines and the National Transportation Safety Board and FBI. I believe that in the past couple of years, air travel have suffered terrible accidents and the American public who travel by air do not seem to get any more consideration, as far as information and education are concerned.

We do hear, Mr. President, that security might be enhanced at the airports,

and that more screening of passengers might take place at airplane boarding and other draconian measures are being considered. Those issues need tremendous study and intensive deliberation of classified information among those who have the expertise. This bill focuses on the prerogatives of the traveler and through access of information the choices of the traveler expand and trust is preserved.

I urge my colleagues to act quickly on this legislation so that this fundamental way of travel is not undermined by the airline industry's own protective silence and guarded communication. When unfortunate accidents or harm occurs, trust is best established by allowing the victims open access. Through this legislation the rights of travelers will be firmly preserved.

By Ms. SNOWE (for herself and Mrs. FEINSTEIN):

S. 2024. A bill to amend the Public Health Service Act to provide a one-stop shopping information service for individuals with serious or life-threatening diseases; to the Committee on Labor and Human Resources.

THE ONE-STOP SHOPPING INFORMATION SERVICE ACT OF 1996

Ms. SNOWE. Mr. President, today, I rise to introduce a vital piece of legislation which will help people with serious or life-threatening diseases obtain the information they desperately need about clinical trials. Easy access to this information is critical, because clinical trials provide cancer patients with potentially promising treatments which are otherwise unavailable and which may be on the cutting edge of medical research.

In June of this year, I convened an important hearing with my colleagues, Senators CONNIE MACK and DIANNE FEINSTEIN, Cochairs of the Senate Cancer Coalition, to address recent developments in breast cancer treatments and research. We convened our hearing on the eve of the Seventh Annual National Race for the Cure, a race that raises millions of dollars each year for breast cancer research and education efforts.

During the hearing, we heard testimony from breast cancer advocates on the difficulty patients and physicians face in learning about ongoing clinical trials. One witness, representing Breast Cancer Action in California, testified about the need for ''One Stop Shopping'' to find out what is available in terms of clinical trials for cancer treatments. She testified that the existing Cancer Information Service at the National Cancer Institute is helpful but underfunded, and provides only partial information because it lists only publicly funded trials. It does not list, however, the 300-plus clinical trials of private pharmaceutical companies, producing a major knowledge gap.

This witness contrasted this difficulty faced by cancer patients with the ease with which AIDS patients obtain information about clinical trials. As the result of a 1988 amendment to the Public Health Service Act, AIDS patients need only dial a 1–800 number in order to obtain information about all clinical trials—both Government financed and private pharmaceutical trials. If you have cancer or some other life-threatening illness, however, you must rely upon your doctor's knowledge about clinical trials, which is likely to be limited. Moreover, information contained on commercial databases are costly to access, difficult to use or understand, and often incomplete.

Since this hearing, I have heard similar complaints not only from cancer patients, but from patients suffering from a wide range of severe or life-threatening illnesses. Today, I rise to introduce legislation to rectify this knowledge gap.

My bill is based closely on the existing language in the Public Health Service Act which created the AIDS database and which has been so successful in making information about AIDS clinical trials available to those who need it. Modeled on that language, my bill establishes a data bank of information on clinical trials and experimental treatments for all serious or life-threatening illnesses. The one stop shopping information service will include a registry of all private and public clinical trials, and will contain information describing the purpose of the trial, eligibility criteria for participating in the trial, as well as the location of the trial. The bill also requires HHS to set up information systems, including a toll-free number, for patients, doctors, and others to access this critical information. The database will also include information on the results of experimental trials, enabling patients to make fully informed decisions about medical treatment.

Imagine facing a deadly disease and not having access to information about the latest treatment options. Imagine enduring great pain and not having access to a centralized source of information about existing clinical trials which may relieve your suffering or extend your life. Imagine the arduous effort needed to gather information about these clinical trials in order to potentially benefit from cutting-edge treatments.

Then consider what this legislation will do for Americans. People with cancer, Alzheimers' disease, Parkinsons, cystic fibrosis, advanced heart disease, multiple sclerosis, or any other serious disease will be able to dial a 1–800 number from their home phone and access the information they need about clinical trials underway across the Nation. They will also be able to obtain information about the results of experimental trials, helping them to make treatment decisions.

All parties will benefit from this legislation. First and foremost, it encourages patient choice and informed decisions. But pharmaceutical companies will also benefit, because this legislation will allow for easier and quicker recruitment of individuals willing to participate in experimental trials, expediting the approval process for investigational new drugs. And the National Institutes of Health and the Food and Drug Administration will be better able to serve the public.

This one-stop shopping service will provide hope to countless Americans. But most importantly, it will help to save lives and reduce the suffering of Americans who are stricken by serious or life-threatening illnesses. We know from experience that this language works. I call for the speedy enactment of this legislation which will be of enormous benefit to countless Americans in times of extraordinary need, and I urge my colleagues to support this important bill.

Mrs. FEINSTEIN. Mr. President, today, with Senator SNOWE, I am introducing a bill to set up a toll-free service so that people with life-threatening diseases can find out about research projects that might help them.

Today there are thousands of serious and life-threatening diseases, diseases for which we have no cure. For genetic diseases alone, there are 3,000 to 4,000. Some of these are familiar, like cancer, Parkinson's disease, and multiple sclerosis. Others are not so common, like cystinosis, Tay-Sachs disease, Wilson's disease, and Sjogren's syndrome. Indeed, there are over 5,000 rare diseases, diseases most of us have never heard of, affecting between 10 and 20 million Americans.

Cancer kills half a million Americans per year. Diabetes afflicts 15 million Americans per year, half of whom do not know they have it. Arthritis affects 40 million Americans every year. 15,000 American children die every year. Among children, the rates of chronic respiratory diseases—asthma, bronchitis, and sinusitis—heart murmurs, migraine headaches, anemia, epilepsy, and diabetes are increasing. Few families escape illness today.

THE BILL

The bill we introduce requires the Secretary of Health and Human Services to establish a ''one-stop shopping'' database, including a toll-free telephone number, so that patients and physicians can find out what clinical research trials are underway on experimental treatments for various diseases. Callers would be able to learn the purpose of the study, eligibility requirements, research sites, and a contact person for the research project. Information would have to be presented in plain English, not medicalese, so that the average person could understand it.

A CONSTITUENT SUGGESTION

The suggestion for this information center came from Nancy Evans, of San Francisco's Breast Cancer Action, in a June 13 hearing of the Senate Cancer Coalition, which I cochair with Senator MACK. She described the difficulty that patients have in trying to find out

what experimental treatments might be available, research trials sponsored by the Federal Government, and by private companies. Most of them are desperate; most have tried everything. She testified that the National Cancer Institute has established 1–800–4–CANCER, but their information is incomplete. It does not include all trials and the information is often difficult for the lay person to understand.

In addition, the National Kidney Cancer Association has called for a central database.

PEOPLE IN SERIOUS NEED

To understand the importance of this bill, we have to stop and think about the plight of the individuals it is intended to help. These are people who have a terminal illness, whose physicians have tried every treatment they can find. Cancer patients, for example, have probably had several rounds of chemotherapy, which has left them debilitated, virtually lifeless. These patients cling to slim hopes. They are desperate to try anything. But step one is finding out what is available.

One survey found that a majority of patients and families are willing to use investigational drugs—drugs being researched but not approved—but find it difficult to locate information on research projects. A similar survey of physicians found that 42 percent of physicians are unable to find printed information about rare illnesses.

HELP FOR PHYSICIANS

Physicians, no matter how competent and well trained, also do not necessarily know about experimental treatments currently being researched. And most Americans do not have sophisticated computer hookups that provide them instant access to the latest information through commercial, government, or medical databases. Our witness, Nancy Evans, testified that she can find out more about a company's clinical trials by calling her stockbroker than by calling existing services.

I have had many desperate families call me, their U.S. Senator, seeking help. Others have lodged their pleas at the White House. Others call lawyers, 911, the local medical society, the local chamber of commerce, anything they can think of. Getting information on health research projects should not require a fishing expedition of futile calls, good connections, or the involvement of elected officials.

In 1988, Congress directed HHS to establish an AIDS Clinical Trials Information Service. It is now operational, 1–800–TRIALS–A, so that patients, providers, and their families can find out more about AIDS clinical trials. All calls are confidential and experienced professionals at the service can tell people about research trials underway which are evaluating experimental drugs and other therapies at all stages of HIV infection.

IMPROVING HEALTH, RESEARCH

Facilitating access to information can also strengthen our health research effort. With a national database enabling people to find research trials, more people could be available to participate in research. This can help researchers broaden their pool of research participants.

MODEST HELP FOR THE ILL

The bill we introduce does not guarantee that anyone can participate in a clinical research trial. Researchers would still control who participates and set the requirements for the research. But for people who cling to hopes for a cure, for people who want to live longer, for people who want to feel better, this database can offer a little help.

It should not take political or other connections, computer sophistication or access to top-flight university medical schools to find out about research on treatments of disease when you have a life-threatening illness.

Mr. President, I hope this bill will offer some hope to the millions who are suffering today and I hope Congress will act on the bill promptly.

By Mr. FEINGOLD:

S. 2025. A bill to amend the Communications Act of 1934 to authorize the States to regulate interference with radio frequencies; to the Committee on Commerce, Science, and Transportation.

CB RADIO FREQUENCY INTERFERENCE LEGISLATION

Mr. FEINGOLD. Mr. President, I rise today to introduce legislation which creates a commonsense solution to a growing problem in U.S. cities and towns—the Federal preemption of State and municipal regulation of citizens band [CB] radio frequency interference with residential home electronic or telephone equipment. This problem can be extremely distressing for residents who cannot have a telephone conversation or watch television without being interrupted by a neighbor's citizen band radio [CB] conversation. Under the current law, those residents have little recourse.

Interference of CB radio signals with household electronic equipment such as telephones, radios, and televisions has been regulated by the Federal Communications Commission [FCC] for nearly 30 years. Up until recently, the FCC has enforced rules outlining what equipment may or may not be used for CB radio transmissions, what content may or may not be transmitted, how long transmissions may be broadcast, what channels may be used, as well as many other technical details. FCC also investigated complaints that a personal radio enthusiast's transmissions interfered with a neighbor's use of home electronic and telephone equipment. FCC receives nearly 45,000 such complaints annually.

Mr. President, for the past 3 years I have worked with constituents who have been bothered by persistent interference of nearby CB radio transmissions. In each case, the constituents have sought my help in securing an FCC investigation of the complaint. In each case, Mr. President, the FCC indicated that due to a lack of resources, the Commission no longer investigates radio frequency interference complaints. Instead of investigation and enforcement, the FCC is able to provide only a packet of self-help information for the consumer to limit the interference on their own.

Municipal residents, after being denied investigative or enforcement assistance from the FCC, frequently contact their city or town government and ask them to police the interference. However, the Communications Act of 1934 provides exclusive authority to the Federal Government for the regulation of radio, preempting municipal ordinances or State laws regulating radio frequency interference. This has created an interesting dilemma for municipal governments. They can neither pass their own ordinances to control CB radio interference, nor can they rely on the agency with exclusive jurisdiction over interference to enforce the very Federal law which preempts them.

In Beloit, WI, as in many Wisconsin communities, this dilemma has been extremely frustrating for local residents who have been powerless to prevent the transmissions of a neighboring CB enthusiast from interfering with their home electronic equipment. One Beloit resident, after having adopted every form of filtering technology for her telephone and other electronic equipment, still experienced persistent interference. Her answering machine picks up calls for which there is no audible ring, and at times records ghost messages. Often, she cannot get a dial tone when she or her family members wish to place an outgoing call. During telephone conversations, the content of the nearby CB transmission can frequently be heard and on occasion, her phone conversations are inexplicably cur off. Her neighbors have experienced similar problems and have complained to the Beloit City Council.

Last month, the Beloit City Council, exasperated by FCC inaction on this matter, passed an ordinance allowing the city to enforce FCC regulations on this type of inference. While the council knew that, if challenged under current law, their ordinance would likely not be upheld by the courts, they felt they had little choice if they wished to address their constituents concerns.

Mr. President, it is not fair that municipalities and their residents should be hamstrung by an outdated Federal preemption of laws the Federal Government no longer has the resources to enforce.

The legislation I am introducing today will help the city of Beloit, and many other municipalities like it, to regulate CB radio transmissions and to enforce those regulations. My bill provides a limited exception to the Federal preemption of State or local laws on radio frequency interference. It simply allows State and local governments

to regulate CB radio interference when that interference results from a violation of FCC rules. Thus, States and municipalities can use their enforcement resources to investigate and enforce Federal law thereby protecting the rights of their residents. Even the FCC recognizes that States and localities need to be able to protect their citizens.

Mr. President, this bill simply allows common sense to prevail. If Federal regulators cannot enforce the rules over which they have exclusive jurisdiction, States and localities should be given the authority to investigate and enforce those regulations for them. I hope my colleagues will support this important legislation.

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

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

S. 2025

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

SECTION 1. AUTHORITY OF STATES TO REGULATE RADIO FREQUENCY INTERFERENCE.

Section 302 of the Communications Act of 1934 (47 U.S.C. 302) is amended by adding at the end the following:

(e) Where radio frequency interference to home electronic equipment is caused by a CB Radio Station through the use of a transmitter or amplifier that is not authorized for use by a CB Radio Station pursuant to Commission rules, the state, county, municipal, or other local government shall not be preempted from exercising its police powers to resolve the interference by prohibiting the use of such unauthorized equipment or by imposing fines or other monetary sanctions. For purposes of this subsection, home electronic equipment includes, but is not limited to, television receivers, radio receivers, stereo components or systems, video cassette recorders, audio recorders, loud speakers, telephone equipment, and other electronic devices normally used in the home. Any action taken by the state, county, municipal, or local government shall not preclude concurrent action by the Commission. Nothing in this subsection shall be construed to diminish the Commission's exclusive jurisdiction over radio frequency interference in any matter outside the scope of this subsection.

By Mr. FAIRCLOTH (for himself, Mrs. KASSEBAUM, Mr. COATS, Mr. ASHCROFT, Mr. DEWINE, Mr. FRIST, and Mr. GORTON):

S. 2026. A bill to amend the Fair Labor Standards Act of 1938 to make uniform the application of the overtime exemption for inside sales personnel, and for other purposes; to the Committee on Labor and Human Resources.

OVERTIME EXEMPTION LEGISLATION

Mr. FAIRCLOTH. Mr. President, in 1961, Congress amended the Fair Labor Standards Act to provide a narrow overtime exemption for commissioned employees in retail and service establishments. Under section 207(i) of the FLSA, outside commissioned sales employees are treated as professional employees and are thus exempt from the act. In contrast, most commissioned inside sales employees are not treated as professionals regardless of the similarly of their duties with regard to outside sales employees.

Despite dramatic changes in the workplace since 1961, the FLSA continues to subject professional commissioned sales employees to an outdated, static view of the economy. Therefore, today I am introducing legislation to extend the limited FLSA exemption to all commissioned inside sales personnel. This bill is identical to H.R. 1226 which was introduced by Representative HARRIS FAWELL.

By Mr. LAUTENBERG:

S. 2027. A bill to provide for a 5-year extension of Hazardous Substance Superfund, and for other purposes; to the Committee on Finance.

THE SUPERFUND TAXES EXTENSION ACT OF 1996

Mr. LAUTENBERG. Mr. President, I rise today to introduce legislation to extend the Superfund taxes, which have been in place since 1980.

Mr. President, the Superfund program provides for cleaning-up those toxic waste sites that pose the most serious threats to our environment and to our health. The program is largely funded by a chemical and oil feedstock tax and by taxes on corporate environmental entities, such as petrochemical companies.

Mr. President, few of us may be aware of the fact that these taxes expired in December of 1995. Since that time, not one single penny has been assessed to replenish the Superfund, and so protect our ability to cleanup toxic sites in the future.

The failure to extend the Superfund tax is causing us to lose $4 million dollars a day. That is $4 million a day which could be used to expedite the cleanup at existing Superfund sites, or fund the revitalization of additional sites.

It has been argued that we have sufficient monies in the Superfund trust fund to carry us for the next few years, although there is disagreement concerning how long the money will last. However, Superfund monies are used for long-term construction projects. By utilizing these funds for other purposes, we squander our ability to do long range planning and to continue cleanups without interruption.

Mr. President, as someone who spent most of my life as a businessman, I recognize the importance of long term planning. And I understand the real costs associated with stopping and restarting a project; it is never efficient or cost effective.

Mr. President, I and the citizens of New Jersey, lived through the funding crisis of 1984–1985. The subsequent disruption of cleanups caused unnecessary hardships for the citizens of my state. I don't want to go through that again.

We need to ensure that we have sufficient financial resources to plan for, contract and continue Superfund cleanups without interruption. After all, we owe it to our children to do whatever is possible to preserve the environment, to protect the public health and to provide for the future.

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

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

S. 2027

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

SECTION 1. 5-YEAR EXTENSION OF HAZARDOUS SUBSTANCE SUPERFUND.

(a) EXTENSION OF TAXES.—

(1) The following provisions of the Internal Revenue Code of 1986 are each amended by striking ''January 1, 1996'' each place it appears and inserting ''January 1, 2001'':

(A) Section 59A(e)(1) (relating to application of environmental tax).

(B) Paragraphs (1) and (3) of section 4611(e) (relating to application of Hazardous Substance Superfund financing rate).

(2) Paragraph (2) of section 4611(e) of such Code is amended—

(A) by striking ''1993'' and inserting ''1998'',

(B) by striking ''1994'' each place it appears and inserting ''1999'', and

(C) by striking ''1995'' each place it appears and inserting ''2000''.

(b) INCREASE IN AGGREGATE TAX WHICH MAY BE COLLECTED.—Paragraph (3) of section 4611(e) of such Code is amended by striking ''$11,970,000,000'' each place it appears and inserting ''$22,000,000,000'' and by striking ''December 31, 1995'' and inserting ''December 31, 2000''.

(c) EXTENSION OF REPAYMENT DEADLINE FOR SUPERFUND BORROWING.—Subparagraph (B) of section 9507(d)(3) of such Code is amended by striking ''December 31, 1995'' and inserting ''December 31, 2000''.

(d) EXTENSION OF TRUST FUND PURPOSES.—Subparagraph (A) of section 9507(c)(1) of such Code is amended—

(1) by striking clause (i) and inserting the following:

''(i) paragraphs (1), (2), (5), (6), (7), (8), (9), and (10) of section 111(a) of CERCLA as in effect on the date of the enactment of the Superfund Reform Act of 1995,'', and

(2) by striking clause (iii) and inserting the following:

''(iii) subsections (m), (n), (q), (r), (s), and (t) of section 111 of CERCLA (as so in effect), or''.

(e) EXTENSION OF AUTHORIZATION OF APPROPRIATIONS TO TRUST FUND.—Subsection (b) of section 517 of the Superfund Revenue Act of 1986 (26 U.S.C. 9507 note) is amended by striking ''and'' at the end of paragraph (8), by striking the period at the end of paragraph (9) and inserting a comma, and by adding at the end the following new paragraphs:

''(10) 1996, $250,000,000,

''(11) 1997, $250,000,000,

''(12) 1998, $250,000,000, and

''(13) 1999, $250,000,000,''.

(f) COORDINATION WITH OTHER PROVISIONS.—Paragraph (2) of section 9507(e) of the Internal Revenue

---

By Mr. LAUTENBERG (for himself, Mr. BAUCUS, Mr. REID, Mr. MOYNIHAN, and Mr. GRAHAM):

S. 2028. A bill to assist the States and local governments in assessing and remediating brownfields and encouraging environmental cleanup programs, and for other purposes; to the Committee on Environment and Public Works.

THE BROWNFIELDS AND ENVIRONMENTAL CLEANUP ACT OF 1996

Mr. LAUTENBERG. Mr. President, today, along with Senators BAUCUS and REID, I am introducing the Brownfields and Environmental Cleanup Act of 1996. This legislation is designed to foster the cleanup and reuse of thousands of lightly contaminated and abandoned properties across the country.

Mr. President, I have long been interested in the issue of abandoned, underutilized and contaminated industrial properties, commonly known as brownfields.

For years, decaying industrial plants have defined the skyline and contaminated the land in many of our urban, suburban, and rural areas.

Their rusting frames, like aging skyscrapers, are a silent reminder of the manufacturers that left, taking jobs—and often hope—with them.

Yet, in these fallow fields may lie the seeds of economic revitalization. I continue to feel, as I did when I introduced similar legislation in 1993, that a brownfields' cleanup program can spur significant economic development and create jobs. Such a cleanup initiative makes good environmental sense, and good business sense.

In fact, if one picture is worth a thousand words, then we need only look at a few of the brownfields' success stories in my State of New Jersey.

In Hackensack, the city's department of public works yard, and an adjacent oil tank farm, have been redeveloped as a Price Club discount store, complete with riverwalk and park area. The site is now estimated to be worth about $15 million dollars, and the project has created 350 jobs.

Near Elizabeth, NJ, a withering brownfield has been converted into a thriving IKEA furniture store.

The story is the same across the country, where unused, unattractive land is being transformed into valuable community assets.

A pilot project in Cleveland resulted in $3.2 million in private investment, a $1 million increase in the local tax base, and more than 170 new jobs. And in Buffalo, NY, a hydroponic tomato farm was built on a former Republic Steel site, bringing 300 new jobs to the area.

In fact, the potential for job creation is enormous. And every revitalized brownfield may represent a field of dreams to an unemployed worker.

Mr. President, while fostering jobs, brownfields' cleanup also means that dangerous contaminants are removed from our environment. The subsequent benefit to our—and our children's—health could be enormous. Furthermore, the scars of decades of neglected industrial waste, which disfigure our cities and suburbs, may finally be allowed to heal.

Brownfield initiatives are important, because the Superfund Program only provides for cleaning-up those abandoned waste sites that pose the most serious threats. However, there are over 100,000 brownfields that don't fall under Superfund, because of lower levels of contamination.

The risks posed by many of these sites may be relatively low. But their full economic use is being stymied, because there's no ready mechanism for fostering and financing cleanups—even when the property owner is ready, willing and eager to do so. In addition, prospective purchasers, developers and bankers are reluctant to invest in brownfields because they could be held liable for cleaning up the contamination.

This is unfortunate because, as I noted these abandoned or underutilized sites have enormous potential for economic development.

To unleash this potential, several States—including New Jersey—have developed expedited procedures to clean-up sites that do not pose a significant threat to public health or the environment.

Under these cleanup programs, owners can volunteer to pay for the costs of remediation and State oversight. In return, they get a letter from the State which assures prospective buyers and lenders that the property has been cleaned up to the Government's satisfaction, and that other parties need not worry about potential liability. This so-called clean bill of health removes a major impediment to economic development, and it can help revitalize stagnant local economies.

In New Jersey, 550 parties signed up for the State's voluntary cleanup program in just the first 18 months of its existence. The economic benefits, in terms of jobs and economic development, are undeniable.

But if we are to move forward, if we are to foster economic revitalization and economic renewal, if we are to continue this public-private partnership for progress, then we must remove all major roadblocks to brownfields' cleanup and reuse.

My legislation addresses the major barriers preventing redevelopment of brownfields sites.

This bill would provide financial assistance, in the form of grants, to local and State governments to evaluate brownfields sites. Consequently, interested parties would know what is required to clean the site, and what reuse would best suit the property.

My bill would also provide grants to State and local governments to establish and capitalize low-interest loan programs for cleanups. These funds could be lent to current owners, prospective purchasers, and municipalities.

The minimal seed money envisioned by this program would leverage substantial economic payoffs, and turn lands which may be of negative worth into assets for the future.

This legislation would also place limits on the potential liability of innocent property buyers. So long as purchasers or landowners made reasonable inquires, they would be exempt from Superfund liability.

The bill also limits the liability of banks and other lending institutions, which hold title merely as a result of their security interest in the property. As long as they did not participate in the management of the site, the institutions could not be held liable.

My bill would make similar reforms in the area of fiduciary liability, and would limit the liability for those who merely act as trustees or executors.

Cleaning up brownfields means a safer environment in the future, and more jobs for places that need them in the present.

Mr. President, the introduction of this bill is not a substitute for a Superfund bill. Throughout this session of Congress, Senators BAUCUS, SMITH, CHAFEE, and I have worked long and hard to try and craft a Superfund bill which we could all agree on and the President could sign into law.

However, I am forced to acknowledge that the calendar is against us at this point. Consequently, I think it is important to use the time remaining to focus on one of the areas where there is general consensus—the desire to facilitate the cleanup and development of blighted areas, and to provide the legislative framework to make this possible.

Interest in fostering the cleanup of brownfields has been bipartisan, and it exists in both in our own body and among our colleagues on the other side of the Capitol. It also has the strong backing of the EPA, and I want to thank Director Carol Browner for her support.

Moreover, this bill is largely based on S. 773, which was unanimously reported by the Environment and Public Works Committee in the 103d Congress, and on the lender, prospective purchaser and innocent landowner provisions in S. 1285 and S. 1834, that was reported by the Environment and Public Works Committee last Congress.

Mr. President, as ranking Democratic member of the Superfund Subcommittee of the Environment and Public Works Committee, I am committed to continuing the quest to reform the Superfund program. But I believe that we should move ahead, now, to cleanup thousands of priority sites not governed by the Superfund.

This is an area where we can—and should—put aside our differences and work for a goal which we all embrace.

Mr. President, our citizens want progress on both the environmental and economic fronts. The Brownfields legislation that I introduce today supports both goals. It creates a vehicle for cleanups which can help keep us onboard for environmental improvement and on-track for economic growth.

Mr. President, I ask unanimous consent to print a copy of the bill in the RECORD.

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

S. 2028

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 ''Brownfields and Environmental Cleanup Act of 1996''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) past uses of land in the United States for industrial and commercial purposes have created many sites throughout the United States that have environmental contamination;

(2) Congress and the governments of States and political subdivisions of States have enacted laws to—

(A) prevent environmental contamination; and

(B) carry out response actions to correct past instances of environmental contamination;

(3) many sites are minimally contaminated, do not pose serious threats to human health or the environment, and can be satisfactorily remediated expeditiously with little government oversight;

(4) promoting the assessment, cleanup and redevelopment of contaminated sites could lead to significant environmental and economic benefits, particularly in any case in which a cleanup can be completed quickly and during a period of time that meets short-term business needs;

(5) the private market demand for sites affected by environmental contamination frequently is reduced, often due to uncertainties regarding liability or potential cleanup costs of innocent landowners, lenders, fiduciaries, and prospective purchasers under Federal law:

(6) the abandonment or underutilization of affected sites impairs the ability of the Federal Government and the governments of States and political subdivisions of States to provide economic opportunities for the people of the United States, particularly the unemployed and economically disadvantaged;

(7) the abandonment or underuse of affected sites also results in the inefficient use of public facilities and services, as well as land and other natural resources, and extends conditions of blight in local communities;

(8) cooperation among Federal agencies, departments and agencies of State and political subdivisions of States, local community development organizations, and current owners and prospective purchasers of affected sites is required to accomplish timely response actions and the redevelopment or reuse of affected sites;

(9) there is a need for a program to—

(A) encourage cleanups of affected sites; and

(B) facilitate the establishment and enhancement of programs by States and local governments to foster cleanups of affected site though capitalization of loan programs; and

(10) there is a need to provide financial incentives and assistance to characterize certain affected sites and facilitate the cleanup of the sites so that the sites may be redeveloped for beneficial uses.

(b) PURPOSE.—The purpose of this Act is to create new business and employment opportunities through the economic redevelopment of affected sites that generally do not pose a serious threat to human health or the environment and to stimulate the assessment and cleanup of affected sites by—

(1) encouraging States and local governments to provide for characterization and cleanup of sites that may not be remediated under other environmental laws (including regulations) in effect on the date of enactment of this Act;

(2) encouraging local governments and private parties, including local community development organizations, to participate in programs, such as State cleanup programs, that facilitate expedited response actions that are consistent with business needs at affected sites;

(3) directing the Administrator to establish programs that provide financial assistance to—

(A) facilitate site assessments of certain affected sites;

(B) encourage cleanup of appropriate sites through capitalization of loan programs; and

(C) encouraging workforce development in areas adversely affected by contaminated properties; and

(4) reducing transaction costs and paperwork, and preventing needless duplication of effort and delay at all levels of government.

SEC. 3. DEFINITIONS.

As used in this Act (unless the context clearly requires otherwise):

(1) ADMINISTRATIVE COSTS.—The term ''administrative costs'' means eligible costs that are not nonadministrative costs.

(2) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(3) AFFECTED SITE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''affected site'' means a facility that has or is suspected of having environmental contamination that—

(i) could prevent the timely use, reuse, or redevelopment of the facility; and

(ii) is relatively limited in scope or severity and can be comprehensively characterized and readily analyzed.

(B) EXCEPTIONS.—The term does not include—

(i) any facility that is the subject of a planned or an ongoing response action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), except that the term includes a facility for which a preliminary assessment, site investigation or removal action has been completed and with respect to which the Administrator has decided not to take further response action, including cost recovery action;

(ii) any facility included, or proposed for inclusion, on the National Priorities List maintained by the Administrator under such Act;

(iii) any facility with respect to which a record of decision, other than a no-action record of decision, has been issued by the President under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604) with respect to the facility;

(iv) any facility that is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u) or 6928(h)) at the time that an application for loan assistance with respect to the facility is submitted under this title, including any facility with respect to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

(v) any land disposal unit with respect to which a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted and closure requirements have been specified in a closure plan or permit;

(vi) any facility at which there has been a release of polychlorinated biphenyls and that is subject to the requirements of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

(vii) any facility with respect to which an administrative order on consent or a judicial consent decree requiring cleanup has been entered into by the President and is still in effect under–

(I) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(II) the Solid Waste Disposal Act (42 U.S.C. 6901, et seq.);

(III) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(IV) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

(V) title XIV of the Public Health Service Act (commonly known as the ''Safe Drinking Water Act'') (42 U.S.C. 300f et seq.);

(viii) any facility at which assistance for response activities may be obtained pursuant to subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established by section 9508 of the Internal Revenue Code of 1986; and

(ix) a facility owned or operated by a department, agency or instrumentality of the United States, except for lands held in trust by the United States for Indian tribes.

(4) CONTAMINANT.—The term ''contaminant'' includes any hazardous substance (as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)).

(5) CURRENT OWNER.—The term ''current owner'' means, with respect to a voluntary cleanup, an owner of an affected site or facility at the time of the cleanup.

(6) DISPOSAL.—The term ''disposal'' has the meaning provided the term in section 1004(3) of the Solid Waste Disposal Act (42 U.S.C. 6903(3)).

(7) ENVIRONMENT.—The term ''environment'' has the meaning provided the term in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(8)).

(8) ENVIRONMENTAL CONTAMINATION.—The term ''environmental contamination'' means the existence at a facility of 1 or more contaminants that may pose a threat to human health or the environment.

(9) FACILITY.—The term ''facility'' has the meaning provided the term in section 101(9) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(9)).

(10) GRANT.—The term ''grant'' includes a cooperative agreement.

(11) GROUND WATER.—The term ''ground water'' has the meaning provided the term in section 101(12) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(12)).

(12) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning provided the term in section 101(36) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(36)).

(13) LOCAL GOVERNMENT.—The term ''local government'' has the meaning provided the term ''unit of general local government'' in the first sentence of section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)), except that the term includes Indian tribe.

(14) NATURAL RESOURCES.—The term ''natural resources'' has the meaning provided the term in section 101(16) of the Comprehensive Environmental Response, Compensation, Liability Act of 1980 (42 U.S.C. 9601(16)).

(15) NONADMINISTRATIVE COSTS.—The term ''nonadministrative costs'' includes the cost of—

(A) inventorying and classifying properties with probable contamination;

(B) oversight for a cleanup at an affected site by a contractor, current owner, or prospective purchaser;

(C) identifying the probable extent and nature of environmental contamination at the

affected site, and the preferred manner of carrying out a cleanup at the affected site;

(D) the cleanup, including onsite and offsite treatment of contaminants; and

(E) monitoring ground water or other natural resources at the affected site.

(16) OWNER.—The term ''owner'' has the meaning provided the term in section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)).

(17) PERSON.—The term ''person'' has the meaning provided the term in section 101(21) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(21)).

(18) PROSPECTIVE PURCHASER.—The term ''prospective purchaser'' means a prospective purchaser of an affected site.

(19) RELEASE—The term ''release'' has the meaning provided the term in section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(22)).

(20) RESPONSE ACTION.—The term ''response action'' has the meaning provided the term ''response'' in section 102(25) of such Act (42 U.S.C. 9601(25)).

(21) SITE CHARACTERIZATION.—

(A) IN GENERAL.—The term ''site characterization'' means an investigation that determines the nature and extent of a release or potential release of a hazardous substance at a site and meets the requirements referred to in subparagraph (B).

(B) INVESTIGATION.—For the purposes of this paragraph, an investigation that meets the requirements of this subparagraph—

(i) shall include—

(I) an onsite evaluation; and

(II) sufficient testing, sampling, and other field data gathering activities to accurately determine whether the site is contaminated and the threats to human health and the environment posed by the release of contaminants at the site; and

(ii) may also include—

(I) review of existing information regarding the site and previous uses (available at the time of the review); and

(II) an offsite evaluation, if appropriate.

(22) STATE.—The term ''State'' has the meaning provided the term under section 101(27) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(27)).

TITLE I—BROWNFIELD REMEDIATION AND ENVIRONMENTAL CLEANUP

SEC. 101. SITE CHARACTERIZATION GRANT PROGRAM.

(a) IN GENERAL.—The Administrator shall establish a program to provide grants to local governments to inventory brownfield sites and to conduct site characterizations of affected sites at which cleanups are being conducted or are proposed to be conducted under a State voluntary cleanup program, State superfund program, or other State cleanup program.

(b) SCOPE OF PROGRAM.—

(1) GRANT AWARDS.—In carrying out the program establish under subsection (a), the Administrator may award a grant to the head of each local government that submits to the Administrator an application (that is approved by the Administrator) to conduct an inventory of sites and a site characterization at an affected site or sites within the jurisdiction of the local government.

(2) GRANT APPLICATION.—An application for a grant under this section shall include, at a minimum, each of the following:

(A) An identification of the brownfield areas for which assistance is sought and a description of the effect of the brownfields on the community, including a description of the nature and extent of any known or suspected environmental contamination within the areas.

(B) The need for Federal support.

(C) A demonstration of the potential of the assistance to stimulate economic development, including the extent to which the assistance will stimulate the availability of other funds for site characterization, site identification, or environmental remediation and subsequent redevelopment of the areas in which eligible brownfields sites are situated.

(D) The existing local commitment, which shall include a community involvement plan that demonstrates meaningful community involvement.

(E) A plan that shows how the site characterization, site identification, or environmental remediation and subsequent development shall be implemented, including an environmental plan that ensures the use of sound environmental procedures, an explanation of the existing appropriate government authority and support for the project, proposed funding mechanisms for any additional work, and the proposed land ownership plan.

(F) A statement on the long-term benefits and the sustainability of the proposed project that includes the national replicability and measures of success of the project and, to the extent known, the potential of the plan for the areas in which eligible brownfields sites are situated to stimulate economic development of the area on completion of the environmental remediation.

(G) A statement that describes how the proposed site inventory and characterization program will analyze the extent to which the project or projects will reduce potential health and environmental threats caused by the presence of or potential releases of contaminants at or from the site or sites.

(H) A plan for the distribution of the grant monies among sites within the jurisdiction of the State or local government, including mechanisms to ensure a fair distribution of the grant monies.

(I) Such other factors as the Administrator considers relevant to carry out the purposes of this title.

(3) APPROVAL OF APPLICATION.—

(A) IN GENERAL.—In making a decision whether to approve an application submitted under paragraph (1) the Administrator shall consider the criteria in the application, and—

(i) the financial need of the State or local government for funds to conduct a characterization of the site or sites;

(ii) the demonstrable potential of the affected site or sites for stimulating economic development on completion of the cleanup of the affected site if the cleanup is necessary;

(iii) to the extent information is available, the estimated fair market value of the site or sites (4) after cleanup;

(iv) to the extent information is available, other economically viable, commercial activity on real property—

(I) located within the immediate vicinity of the affected site at the time of consideration of the application; or

(II) projected to be located within the immediate vicinity of the affected site by the date that is 5 years after the date of the consideration of the application;

(v) the potential of the affected site for creating new business and employment opportunities on completion of the cleanup of the site;

(vi) whether the affected site is located in an economically distressed community; and

(vii) such other factors as the Administrator considers relevant to carry out the purposes of the grant program under this section.

(B) GRANT CONDITIONS.—As a condition for awarding a grant under this section, the Administrator may, on the basis of the criteria considered under subparagraph (A), attach such conditions to the grant award as the Administrator determines appropriate.

(4) GRANT AMOUNT.—The amount of a grant awarded to any local government under subsection (a) for characterization of an affected site or sites shall not exceed $200,000.

(5) TERMINATION OF GRANTS.—If the Administrator determines that a local government that receives a grant under this subsection is in violation of a condition of a grant award referred to in paragraph (3), the Administrator may terminate the grant made to the local government and require full or partial repayment of the grant award.

SEC. 102. ECONOMIC REDEVELOPMENT ASSISTANCE GRANTS FOR LOAN PROGRAMS.

(a) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to provide grants to be used by State or local governments to capitalize loan programs for the cleanup of affected sites. These loans may be provided by the State or local government to finance cleanups of affected sites by the State or local government, or by an owner or a prospective purchaser of an affected site (including a local government) at which a cleanup is being conducted or is proposed to be conducted under Federal or State authority, including a State voluntary clean-up program.

(b) SCOPE OF PROGRAM.—

(1) IN GENERAL.—

(A) GRANTS.—The Administrator may award a grant to a local or State government that is an eligible applicant described in subsection (a)(1) that submits an application to the Administrator that is approved by the Administrator. The grant monies shall be used by the local or State government to capitalize a loan fund to be used for cleanup of an affected site or affected sites.

(B) GRANT APPLICATION.—An application for a grant under this section shall be in such form as the Administrator determines appropriate. At a minimum, the application submitted by the State or local government to establish a revolving loan program shall include the following:

(i) Insofar as the sites within their jurisdiction have been identified and information as to the contaminated sites is known, a description of the affected site or sites, including the nature and extent of any known or suspected environmental contamination at the affected site or sites.

(ii) Identification of the criteria to be used by the local or State government in providing for loans under the program. This criteria shall include the financial standing of the applicants for the loans, the use to which the loans will be put, and the provisions to be used to ensure repayment of the funds. These criteria shall also include:

(I) A complete description of the financial standing of the applicant that includes a description of the assets, cash flow, and liabilities of the applicant.

(II) A written certification that attests that the applicant has attempted, and has been unable, to secure financing from a private lending institution for the cleanup action that is the subject of the loan application.

(III) The proposed method, and anticipated period of time required, to clean up the environmental contamination at the affected site.

(IV) An estimate of the proposed total cost of the cleanup to be conducted at the site.

(V) An analysis that demonstrates the potential of the affected site for stimulating economic development on completion of the cleanup of the site.

(2) GRANT APPROVAL.—In determining whether to award a grant under this section, the administrator shall consider—

(A) the need of the local or State government for financial assistance to clean up the affected site or sites that are the subject of the application, taking into consideration the financial resources available to the local or State government;

(B) the ability of the local or State government to ensure that the applicants repay the loans in a timely manner;

(C) the extent to which the cleanup of the affected site or sites would reduce health and environmental risks caused by the release of contaminants at, or from, the affected site or sites;

(D) the demonstrable potential of the affected site or sites for stimulating economic development on completion of the cleanup;

(E) the demonstrated ability of the local or State. Government to administer such a loan program;

(F) the demonstrated experience of the local or State government regarding brownfields and the reuse of contaminated land, including whether or not the government has received grant monies under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) to characterize brownfields sites provided however that applicants who have not previously received such grant monies may also be considered for awards under this section;

(G) the efficiency of having the loan administered by the applicant entity level of government;

(H) the experience of administering any loan programs by the entity, including the loan repayment rates;

(I) the demonstrations made regarding the ability of the local or State government to ensure a fair distribution of grant monies among sites within their jurisdiction; and

(J) such other factors as the Administrator considers relevant to carry out the purposes of the loan program established under this section.

(3) GRANT AMOUNT—The amount of a grant made to a local or State applicant under this section shall not exceed $500,000.

(4) STATE APPROVAL.—Each application for a grant under this section shall, as a condition for approval by the Administrator, include a written statement by the local or State government that cleanups to be funded under their loan programs shall be conducted under the auspices of and compliant with the State voluntary cleanup program or State Superfund program or Federal authority, and that—

(A) the cleanup or proposed voluntary cleanup is cost-effective; and

(B) the estimated total cost of the cleanup is reasonable.

(c) GRANT AGREEMENTS.—Each grant under this section shall be made pursuant to a grant agreement. At a minimum, the grant agreement shall include provisions that ensure the following:

(1) The grant recipient shall include in all loan agreements a requirement that the loan recipient shall comply with all applicable Federal and State laws applicable to the cleanup and shall ensure that the cleanup is protective of human health and the environment.

(2) The local or State government shall require and ensure repayment of the loan consistent with this title.

(3) The State or local government shall use the funds solely for the purposes of establishing and capitalizing a loan program pursuant to the provisions of this title and of cleaning up the environmental contamination at the affected site or sites.

(4) The State or local government shall require in each loan agreement, and take necessary steps to ensure, that the loan recipient shall use the loan funds solely for the purposes stated in paragraph (3), and shall require the return any excess funds immediately on a determination by the appropriate State or local official that the cleanup has been completed.

(5) The funds shall not be transferable, unless the Administrator agrees to the transfer in writing.

(6) LIEN.—

(A) IN GENERAL.—A lien in favor of the State shall arise on the contaminated property subject to a loan under this section. The lien shall cover all real property included in the legal description of the property at the time the loan agreement provided for in this section is signed, and all rights to the property, and shall continue until the terms and conditions of the loan agreement have been fully satisfied. The lien shall arise at the time a security interest is appropriately recorded in the real property records of the appropriate office of the State, county, or other governmental subdivision, as designated by State law, in which the real property subject to the lien is located, and shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is or has been perfected under applicable State law before the notice has been filed in the appropriate office within the State, county, or other governmental subdivision, as designated by State law, in which the real property subject to the lien is located.

(B) DEFINITIONS.—In this paragraph, the terms ''security interest'' and ''purchaser'' have the meanings provided in section 6323(h) of the Internal Revenue Code of 1986.

(7) Such other terms and conditions that the Administrator determines to be necessary to protect the financial interests of the United States or to protect human health and the environment.

(e) AUDITS.—The Inspector General of the Environmental Protection Agency shall audit a portion of the grants awarded under this section to ensure that all funds are used for the purposes set forth in this section. The result of the audit shall be taken into account in awarding any future grant monies to the entity of State or local government.

SEC. 103. REGULATIONS.

The Administrator may promulgate such regulations as are necessary to carry out this Act. The regulations shall include the procedures and standards that the Administrator considers necessary, including procedures and standards for evaluating an application for a grant or loan submitted under this Act.

SEC. 104. ECONOMIC REDEVELOPMENT GRANTS.

(a) EXPENDITURES FROM THE SUPERFUND.—Amounts in the Superfund shall be made available, consistent with and for the purposes of carrying out the grant program established under sections 101 and 102.

(b) AUTHORITY TO AWARD GRANTS.—There are authorized to be appropriated from the Superfund, as grants to local and State governments as provided for in sections 101 and 102, an amount equal to $25,000,000 for each of fiscal years 1997, 1998, 1999, 2000, and 2001.

SEC. 105. AUTHORIZATION OF APPROPRIATIONS

(a) SITE CHARACTERIZATION PROGRAM.—There are authorized to be appropriated to the Environmental Protection Agency to carry out section 101, an amount not to exceed $10,000,000 for each of fiscal years 1997 through 2001.

(b) ECONOMIC REDEVELOPMENT ASSISTANCE PROGRAM.—There are authorized to be appropriated to the Environmental Protection Agency to carry out section 102 an amount not to exceed $15,000,000 for each of fiscal years 1997 through 2001.

(c) AVAILABILITY OF FUNDS.—The amounts appropriated pursuant to this section shall remain available until expended.

SEC. 106. REPORTS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and not later than January 31 of each of the 3 calendar years thereafter, the Administrator shall prepare and submit a report describing the achievements of each program established under this title to—

(1) the Committee on Environment and Public Works of the Senate; and

(2) the Committee on Energy and Commerce of the House of Representatives.

(b) CONTENTS OF REPORT.—Each report shall, with respect to each of the programs established under this title, include a description of—

(1) the number of applications received by the Administrator during the preceding calendar year;

(2) the number of applications approved by the Administrator during the preceding calendar year; and

(3) the allocation of assistance under sections 101 and 102 among the States and local governments for assistance under this title.

SEC. 107. FUNDING.

(a) ADMINISTRATIVE COST LIMITATION.—Not more than 15 percent of the amount of a grant made pursuant to this title may be used for administrative costs. No grant made pursuant to this title may be used to pay for fines or penalties owed to a State or the Federal Government, or for Federal cost-sharing requirements.

(b) OTHER LIMITATIONS.—Funds made available to a State or local government pursuant to the grant programs established under sections 101 and 102 shall be used only for inventorying, assessing, and characterizing sites as authorized by this Act, and for capitalizing a loan program as authorized by this Act. Funds made available under this title may not be used to relieve a local government or State of the commitment or responsibilities of the local government or State under State law to assist or carry out cleanup actions at affected sites.

SEC. 108. STATUTORY CONSTRUCTION.

Nothing in this title is intended to affect the liability or response authorities for environmental contamination of any other law (including any regulation), including—

(1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(2) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(4) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

(5) title XIV of the Public Health Service Act (commonly known as the ''Safe Drinking Water Act'') (42 U.S.C. 300f et seq.).

TITLE II—PROSPECTIVE PURCHASERS

SEC. 201. LIMITATIONS ON LIABILITY FOR RESPONSE COSTS FOR PROSPECTIVE PURCHASERS.

(a) LIMITATIONS ON LIABILITY.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following new subsection:

''(n) LIMITATIONS ON LIABILITY FOR PROSPECTIVE PURCHASERS.—Notwithstanding paragraphs (1) through (4) of subsection (a), a person who does not impede the performance of response actions or natural resource restoration at a facility shall not be liable under this Act, to the extent liability is based solely on subsection (a)(1) for a release or threat of release from a facility, and the person is a bona fide prospective purchaser of the facility.

(b) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as amended by subsection (a)) is further amended by inserting after subsection (n) the following new subsection:

''(o) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—

''(1) LIEN.—In any case in which there are unrecovered response costs at a facility for which an owner of the facility is not liable by reason of subsection (n), and the conditions described in paragraph (2) are met, the United States shall have a lien upon such facility, or may obtain from the appropriate responsible party or parties, a lien on other property or other assurances of payment satisfactory to the Administrator, for such unrecovered costs. Such lien—

''(A) shall not exceed the increase in fair market value of the property attributable to the response action at the time of a subsequent sale or other disposition of the property;

''(B) shall arise at the time costs are first incurred by the United States with respect to a response action at the facility;

''(C) shall be subject to the requirements for notice and validity established in paragraph (3) of subsection (l); and

''(D) shall continue until the earlier of satisfaction of the lien or recovery of all response costs incurred at the facility.

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

''(A) RESPONSE ACTION.—A response action for which there are unrecovered costs is carried out at the facility.

''(B) FAIR MARKET VALUE.—Such response action increases the fair market value of the facility above the fair market value of the facility that existed 180 days before the response action was taken.''.

(c) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following new paragraph:

''(39) BONA FIDE PROSPECTIVE PURCHASER.—The term 'bona fide prospective purchaser' means a person who acquires ownership of a facility after the date of enactment of the Brownfields and Environmental Cleanup Act of 1996, or a tenant of such a person, who can establish each of the following by a preponderance of the evidence:

''(A) DISPOSAL PRIOR TO ACQUISITION.—All active disposal of hazardous substances at the facility occurred before that person acquired the facility.

''(B) INQUIRY.—The person made all appropriate inquiry into the previous ownership and uses of the facility and its real property in accordance with generally accepted good commercial and customary standards and practices. The standards and practices issued by the Administrator pursuant to paragraph (35)(B)(ii) shall satisfy the requirements of this subparagraph. In the case of property for residential or other similar use purchased by a nongovernmental or noncommercial entity, a site inspection and title search that reveal no basis for further investigation satisfy the requirements of this subparagraph.

''(C) NOTICES.—The person provided all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

''(D) CARE.—The person exercised appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop on-going releases, prevent threatened future releases of hazardous substances, and prevent or limit human or natural resource exposure to hazardous substances previously released into the environment.

''(E) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and facility access to those persons that are responsible for response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility.

''(F) RELATIONSHIP.—The person is not liable, or is not affiliated with any other person that is potentially liable, for response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.''.

TITLE III—FIDUCIARY AND LENDER LIABILITY

SEC. 301. FIDUCIARY LIABILITY.

(a) DEFINITIONS.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by section 201(c)) is amended by adding at the end the following:

''(40) FIDUCIARY.—The term 'fiduciary'—

''(A) means a person acting for the benefit of another party as a bona fide—

''(i) trustee;

''(ii) executor;

''(iii) administrator of an estate;

''(iv) custodian;

''(v) guardian of estates or guardian ad litem;

''(vi) court-appointed receiver;

''(vii) conservator;

''(viii) committee of estates of incapacitated persons or other incapacitated persons;

''(ix) personal representative; or

''(x) representative in any other capacity that the Administrator, pursuant to public notice, determines to be similar to those listed in clauses (i) through (ix); and

''(B) does not include any person who—

''(i) had a role in establishing a trust, estate, or fiduciary relationship if such trust, estate, or fiduciary relationship has no objectively reasonable or substantial purpose apart from the avoidance or limitation of liability under this Act; or

''(ii) is acting as a fiduciary with respect to a trust or other fiduciary estate that—

''(I) was not created as part of, or to facilitate, 1 or more estate plans or pursuant to the incapacity of a natural person; and

''(II) was organized for the primary purpose of, or is engaged in, activity carrying on a trade or business for profit.

''(41) FIDUCIARY CAPACITY.—The term ''fiduciary capacity'', in reference to an act of a person with respect to a vessel or facility, means a capacity in which the person holds title to a vessel or facility, or otherwise has control of or an interest in a vessel or facility, pursuant to the exercise of the responsibilities of the person as a fiduciary.''.

(b) LIABILITY OF FIDUCIARIES.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following new section:

''SEC. 127. LIABILITY OF FIDUCIARIES.

''(a) IN GENERAL—The liability of a fiduciary that is liable under any other provision of this Act for the release or threatened release of a hazardous substance at, from, or in connection with a vessel or facility held in a fiduciary capacity, may not exceed the assets held in such fiduciary capacity that are available to indemnify the fiduciary.

''(b) EXCLUSION.—Subsection (a) does not apply to the extent that a person is liable under this Act independent of such person's ownership or actions taken in a fiduciary capacity.

''(c) LIMITATION—Subsections (a) and (d) shall not limit the liability of a fiduciary whose failure to exercise due care caused or contributed to the release of a hazardous substance.

''(d) SAFE HARBOR.—A fiduciary shall not be liable in its personal capacity under this Act for—

''(1) undertaking or directing another to undertake a response action under section 107(d)(1) or under the direction of an on-scene coordinator;

''(2) undertaking or directing another to undertake any other lawful means of addressing hazardous substances in connection with the vessel or facility;

''(3) terminating the fiduciary relationship;

''(4) including in the terms of a fiduciary agreement covenant, warranty, or other terms of conditions that relate to compliance with environmental laws, or monitoring or enforcing such terms;

''(5) monitoring or undertaking 1 or more inspections of the vessel or facility;

''(6) providing financial or other advice or counseling to any other party to the fiduciary relationship, including the settler or beneficiary;

''(7) restructuring, renegotiating, or otherwise altering a term or condition of the fiduciary relationship;

''(8) acting in a fiduciary capacity with respect to a vessel or facility that was contaminated before the fiduciary's period of service; or

''(9) declining to take any of the actions described in paragraphs (2) through (8).

''(e) SAVINGS CLAUSE.—Nothing in this section shall affect the rights or immunities or other defenses that are available under this Act or other applicable law to any person subject to the provisions of this section. Nothing in this section shall create any liability for any party. Nothing in this section shall create a private right of action against a fiduciary or any other party.

''(f) NO EFFECT ON CERTAIN PERSONS.—Nothing in this section shall be construed to affect the liability, if any, of a person who—

''(1)(A) acts in a capacity other than a fiduciary capacity; and

''(B) directly or indirectly benefits from a trust or fiduciary relationship; or

''(2) who—

''(A) is a beneficiary and a fiduciary with respect to the same fiduciary estate; and

''(B) as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

''(g) REGULATORY AUTHORITY.—

''(1) IN GENERAL.—The Administrator may—

''(A) issue such regulations as the Administrator deems necessary to carry out this section; and

''(B) delegate and assign any duties or powers imposed upon or assigned to the Administrator by this section, including the authority to issue regulations.

''(2) AUTHORITY TO CLARIFY.—The authority under paragraph (1) includes authority to clarify or interpret all terms, including those used in this section, and to implement any provision of this section.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any claim that has not been fully adjudicated as of the date of enactment of this Act.

SEC. 302. LIABILITY OF LENDERS.

(a) DEFINITION OF PARTICIPATION IN MANAGEMENT.—Section 101(20) of the Comprehensive Environmental Response, Liability, and Compensation Act of 1980 (42 U.S.C. 9601(20)) is amended—

(1) in subparagraph (A), by striking the second sentence;

(2) by amending paragraph (A)(iii) to read as follows:

''(iii) any person who owned, operated or otherwise controlled activities at a vessel or facility immediately before the United States (including any department, agency or instrumentality), a unit of State or local government, or their agents or appointees, acquired title or control of such vessel or facility in any of the following ways:

''(I) through bankruptcy, tax delinquency, abandonment, or escheat;

''(II) through foreclosure that is connected with the provision of loans, discounts, advances, guarantees, insurance, or other financial assistance, if the United States or unit of State or local government meets the requirements of paragraph (F)(ii) (I) and (II) of this section;

''(III) through the exercise of statutory receivership or conservatorship authority, including any liquidating or winding up the affairs of any person or any subsidiary thereof, if the governmental entity did not participate in management of the vessel or facility prior to acquiring title or control and meets the requirements of paragraph (F)(ii)(II) of this section;

''(IV) through the exercise of any seizure or forfeiture authority;

''(V) in any civil, criminal, or administrative enforcement proceeding, whether by order or settlement, in which an interest in a vessel or facility is conveyed to satisfy a claim of the governmental entity, and the governmental entity meets the requirements of this section; and

''(VI) temporarily in connection with a law enforcement operation.'';

(3) by amending paragraph (D) to read as follows:

''(D)(i) The term 'owner or operator' does not include the United States (including any department, agency, or instrumentality) or a unit of State or local government that acquires title or control of a vessel or facility in a manner described in paragraph (A)(iii), or in any other circumstances in which the government involuntary acquires title by virtue of its function as sovereign.

''(ii) Notwithstanding subparagraph (i), if the United States or a unit of State or a unit of State or local government caused or contributed to the release or threatened release of a hazardous substance from the facility, this Act (including section 107) shall apply in the same manner and to the same extent, procedurally and substantively, as the Act does to any non-governmental entity.''; and

(4) by adding at the end the following:

''(E) EXCLUSION OF PERSONS NOT PARTICIPANTS IN MANAGEMENT.—

''(i) INDICIA OF OWNERSHIP TO PROTECT SECURITY INTEREST.—The term 'owner or operator' does not include—

''(I) a person, including a successor or assign of such person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect such person's security interest in the vessel or facility; or

''(II) a successor or assign of a person described in subclause (I).

''(ii) NONPARTICIPATION IN MANAGEMENT PRIOR TO FORECLOSURE.—The term 'owner or operator' does not include a person that forecloses on a vessel or a facility even if such person forecloses on such vessel or facility, sells, re-leases (in the case of a lease finance transaction), or liquidates the vessel or facility, maintains business activities, winds up operations, or undertakes any response action under section 107(d)(1) or under the direction of an on-scene coordinator, with respect to the vessel or facility, or takes other measures to preserve, protect, or prepare the vessel or facility prior to sale or disposition, if—

''(I) the person did not participate in management prior to foreclosure; and

''(II) such person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest such vessel or facility at the earliest practical, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

''(F) PARTICIPATION IN MANAGEMENT.—For purposes of subparagraph (E)—

''(i) the term 'participate in management' means actually participating in the management or operational affairs of the vessel or facility, and does not include merely having the capacity to influence, or the unexercised right to control, vessel or facility operations;

(ii) a person shall be considered to 'participate in management' only if, while the borrower is still in possession of the vessel or facility encumbered by the security interest, such person—

''(I) exercises decisionmaking control over the environmental compliance of a borrower, such that the person has undertaken responsibility for the hazardous substance handling or disposal practices of the borrower; or

''(II) exercises control at a level comparable to that of a manager of the enterprise of the borrower, such that the person has assumed or manifested responsibility for the overall management of the enterprise encompassing day-to-day decisionmaking with respect to environmental compliance, or with respect to all or substantially all of the operational aspects (as distinguished from financial or administrative aspects) of the enterprise, other than environmental compliance;

''(iii) the term 'participate in management' does not include conducting an act or failing to act prior to the time that a security interest is created in a vessel or facility; and

''(iv) the term 'participate in management' does not include–

''(I) holding such a security interest or, prior to foreclosure, abandoning or releasing such a security interest;

''(II) including in the terms of an extension of credit, or in a contract or security agreement relating to such an extension, covenant, warranty, or any other term or condition that relates to environmental compliance;

''(III) monitoring or enforcing the term or condition of the extension of credit or security interest;

''(IV) monitoring or undertaking 1 or more inspections of the vessel or facility;

''(V) requiring the borrower to undertake response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the vessel or facility prior to, during, or upon the expiration of the term of the extension of credit;

''(VI) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the vessel or facility;

''(VII) restructuring, renegotiating, or otherwise agreeing to alter a term or condition of the extension of credit or security interest;

''(VIII) exercising other remedies that may be available under applicable law for the breach of any term or condition of the extension of credit or security agreement; or

''(IX) conducting a response action under section 107(d)(1) or under the direction of an on-scene coordinator,

if such actions do not rise to the level of participation in management, as defined in clauses (i) and (ii).

''(G) OTHER TERMS.—As used in subparagraph (E), subparagraph (F), and this subparagraph, the following definitions shall apply:

''(i) BORROWER.—The term ''borrower'' means a person whose vessel or facility is encumbered by a security interest.

''(ii) EXTENSION OF CREDIT.—The term 'extension of credit' includes a lease finance transaction—

''(I) in which the lessor does not initially select the leased vessel or facility and does not during the lease term control the daily operation or maintenance of the vessel or facility; or

''(II) that conforms with regulations issued by the appropriate Federal banking agency or the appropriate State bank supervisor (as those terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) or with regulations issued by the National Credit Union Administration Board, as appropriate.

''(iii) FINANCIAL OR ADMINISTRATIVE ASPECT.—The term 'financial or administrative aspect' includes a function such as a function of a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or any similar function.

''(iv) FORECLOSURE; FORECLOSE.—The term 'foreclosure' and 'foreclose' mean, respectively, acquiring, and to acquire from a nonaffiliated party for subsequent disposition, a vessel or facility through—

''(I) purchase at sale under a judgment or decree, a power of sale, a nonjudicial foreclosure sale, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if such vessel or facility was security for an extension of credit previously contracted;

''(II) conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

''(III) any other formal or informal manner by which the person acquires, for subsequent disposition, possession of collateral in order to protect the security interest of the person.

''(v) OPERATIONAL ASPECT.—The term 'operational aspect' includes a function such as a function of a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

''(vi) SECURITY INTEREST.—The term 'security interest' includes a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease, or any other right accruing to a person to secure the repayment of money, the performance of a duty, or some other obligation.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to any claim that has not been finally adjudicated as of the date of enactment of this Act.

(c) LENDER LIABILITY RULE.—(1) Effective on the date of enactment of this section, the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992 (57 Stat. Fed. Reg. 18344), shall be deemed to have been validly issued pursuant to the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to have been effective according to the final rule's terms. No additional administrative or judicial proceedings shall be necessary with respect to such final rule.

(2) Notwithstanding section 113(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, no court shall have jurisdiction to review the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992 (57 Fed. Reg. 18344).

(3) Nothing in this subsection shall be construed to limit the authority of the President or his delegate to amend the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992

(57 Fed. Reg. 18344), in accordance with applicable provisions of law.

(d) REGULATORY AUTHORITY.—

(1) IN GENERAL.—The Administrator may—

(A) issue such regulations as the Administrator deems necessary to carry out the amendments made by this section; and

(B) delegate and assign any duties or powers imposed upon or assigned to the Administrator by the amendments made by this section, including the authority to issue regulations.

(2) AUTHORITY TO CLARIFY.—The authority under paragraph (1) includes authority to clarify or interpret all terms, including those used in this section, and to implement any provision of the amendments made by this section.

TITLE IV—INNOCENT LANDOWNERS

SEC. 401. INNOCENT LANDOWNERS.

(a) ENVIRONMENTAL SITE ASSESSMENT.—Section 107 (as amended by section 201(b)) is amended by adding at the end the following new subsection:

''(p) INNOCENT LANDOWNERS.—

''(1) CONDUCT OF ENVIRONMENTAL ASSESSMENT.—A person who has acquired real property shall have made all appropriate inquiry within the meaning of subparagraph (B) of section 101(35) if the person establishes that, within 180 days prior to the time of acquisition, an environmental site assessment of the real property was conducted which meets the requirements of paragraph (2).

''(2) DEFINITION OF ENVIRONMENTAL SITE ASSESSMENT.—For purposes of this subsection, the term 'environmental site assessment' means an assessment conducted in accordance with the standards set forth in the American Society for Testing and Materials (ASTM) Standard E1527–94, titled 'Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process' or with alternative standards issued by rule by the President or promulgated or developed by others and designated by rule by the President. Before issuing or designating alternative standards, the President shall first conduct a study of commercial and industrial practices concerning environmental site assessments in the transfer of real property in the United States. Any such standards issued or designated by the President shall also be deemed to constitute commercially reasonable and generally accepted standards and practices for purposes of this paragraph. In issuing or designating any such standards, the President shall consider requirements governing each of the following:

''(A) Interviews or owners, operators, and occupants of the property to determine information regarding the potential for contamination.

''(B) Review of historical sources as necessary to determine previous uses and occupancies of the property since the property was first developed. For purposes of this subclause, the term 'historical sources' means any of the following, if they are reasonably ascertainable: recorded chain of title documents regarding the real property, including all deeds, easements, leases, restrictions, and covenants, aerial photographs, fire insurance maps, property tax files, USGS 7.5 minutes topographic maps, local street directories, building department records, zoning/land use records, and any other sources that identify past uses and occupancies of the property.

''(C) Determination of the existence of recorded environmental cleanup liens against the real property which have arisen pursuant to Federal, State, or local statutes.

''(D) Review of reasonably ascertainable Federal, State, and local government records of sites or facilities that are likely to cause or contribute to contamination at the real property, including, as appropriate, investigation reports for such sites or facilities; records of activities likely to cause or contribute to contamination at the real property, including landfill and other disposal location records, underground storage tank records, hazardous waste handler and generator records and spill reporting records; and such other reasonably ascertainable Federal, State, and local government environmental records which could reflect incidents or activities which are likely to cause or contribute to contamination at the real property.

''(E) A visual site inspection of the real property and all facilities and improvements on the real property and a visual inspection of immediately adjacent properties, including an investigation of any hazardous substance use, storage, treatment, and disposal practices on the property.

''(F) Any specialized knowledge or experience on the part of the defendant.

''(G) The relationship of the purchase price to the value of the property if uncontaminated.

''(H) Commonly known or reasonably ascertainable information about the property.

''(I) The obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate investigation.

A record shall be considered to be 'reasonably ascertainable' for purposes of this paragraph if a copy or reasonable facsimile of the record is publicly available by request (within reasonable time and cost constraints) and the record is practically reviewable.

''(3) APPROPRIATE INQUIRY.—A person shall not be treated as having made all appropriate inquiry under paragraph (1) unless—

''(A) the person has maintained a compilation of the information reviewed and gathered in the course of the environmental site assessment;

''(B) the person exercised appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop on-going releases, prevent threatened future releases of hazardous substances, and prevent or limit human or natural resource exposure to hazardous substances previously released into the environment; and

''(C) the person provides full cooperation, assistance, and facility access to persons authorized to conduct response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility.

''(4) DEFINITION OF CONTAMINATION.—For the purposes of this subsection and section 101(35), the term 'contamination' means an existing release, a past release, or the threat of a release of a hazardous substance.''.

(b) Section 101(35) of the Comprehensive Environmental Response, Compensation, and Liability act of 1980 (42 U.S.C. 9601(35)) is by striking subparagraph (B) and inserting the following new subparagraph:

''(B) KNOWLEDGE OF INQUIRY REQUIREMENT.—

''(i) IN GENERAL.—To establish that the defendant had no reason to know, as provided in subparagraph (A)(i), the defendant must have undertaken, at the time of the acquisition, all appropriate inquiry (in accordance with section 107(p)) into the previous ownership and uses of the facility and its real property in accordance with generally accepted good commercial and customary standards and practices. For the purposes of the preceding sentence and until the Administrator issues or designates standards and practices as provided in clause (ii), the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate investigation.

''(ii) RULE.—Within 1 year after the date of enactment of this Act, the Administrator shall, by rule, issue standards and practices or designate standards and practices promulgated or developed by others, that satisfy the requirements of this subparagraph. In issuing or designating such standards and practices, the Administrator shall consider each of the following:

''(I) Conduct of an inquiry by an environmental professional.

''(II) Inclusion of interviews with past and present owners, operators, and occupants of the facility and its real property for the purpose of gathering information regarding the potential for contamination at the facility and its real property.

''(III) Inclusion of a review of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since it was first developed.

''(IV) Inclusion of a search for recorded environmental cleanup liens, filed under Federal, State, or local law, against the facility or its real property.

''(V) Inclusion of a review of Federal, State, and local government records (such as waste disposal records), underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility or its real property.

''(VI) Inclusion of a visual inspection of the facility and its real property and of adjoining properties.

''(VII) Any specialized knowledge or experience on the part of the defendant.

''(VIII) The relationship of the purchase price to the value of the property if uncontaminated.

''(IX) Commonly known or reasonably ascertainable information about the property.

''(X) The obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate investigation.

''(iii) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a site inspection and title search that reveal no basis for further investigation satisfy the requirements of this subparagraph.''; and

(c) REGULATORY AUTHORITY.—

(1) IN GENERAL.—The Administrator may—

(A) issue such regulations as the Administrator deems necessary to carry out the amendments made by this section; and

(B) delegate and assign any duties or powers imposed upon or assigned to the Administrator by the amendments made by this section, including the authority to issue regulations.

(2) AUTHORITY TO CLARIFY.—The authority under paragraph (1) includes authority to clarify or interpret all terms, including those used in this section, and to implement any provision of the amendments made by this section.

By Mr. WYDEN (for himself and Mr. D'AMATO):

S. 2029. A bill to make permanent certain authority relating to self-employment assistance programs; to the Committee on Finance.

THE SELF-EMPLOYMENT REAUTHORIZATION ACT

Mr. WYDEN. Mr. President, I rise today to introduce legislation with

Senator D'AMATO to reauthorize the Self-Employment Act. As waves of economic change turn our economy into a high-wire act, the Self-Employment Act has helped turn the unemployment safety net into a trampoline of opportunity for the unemployed. The Self-Employment Assistance Program takes an innovative and cost-effective approach to helping eligible dislocated workers become self-sufficient; it enables them to use their weekly unemployment checks to start their own businesses.

Harvard Business School reported earlier this year that from 1978 to the present, 22 percent of the work force, or 3 million workers, at the country's top 100 companies had been laid off, and that 77 percent of all the layoffs involved white-collar workers. Many of these highly skilled workers will never be able to return to their former positions, but some are highly motivated to start their own firms. In 40 out of 50 States, however, those who start their own businesses are forced to give up their weekly unemployment compensation checks as soon as the company starts generating revenue—but before it provides enough income to support the worker. It is exactly this problem the Self-Employment Assistance Program is designed to correct.

In a few short years, the Self-Employment Act (Public Law 103–182; title V) has already enabled thousands of unemployed Americans to use their unemployment compensation to establish new businesses. Two experimental programs, in Massachusetts and Washington, have already shown that self-employment programs can create jobs at no cost to the taxpayer. Using existing funds, the Massachusetts program created dozens of new businesses but actually paid $1,400 less unemployment per worker than the State average. The Washington program created more than 600 new jobs and the firms were paying an average of $10.50 an hour to workers they had hired.

The legislation we introduce today reauthorize a program that allows—but does not require—State to establish self-employment assistance [SEA] programs as part of their unemployment insurance [UI] programs. It permits States to provide income support payments to the unemployed in the same weekly amount as the worker's regular unemployment insurance [UI] benefits would otherwise be, so that they may work full time on starting their own business instead of searching for traditional wage and salary jobs. In effect, this legislation removes a high hurdle facing those who have the ingenuity, motivation, and energy to start their own businesses. It eliminates a barrier in the law that has forced workers interested in self-employment to choose between receiving UI benefits and starting a new business.

Self-employment assistance has not only proved to be a viable reemployment option for unemployed workers; its benefits have exceeded its costs as well. While the law is not a panacea for all of our Nation's unemployed, it's an opportunity for many skilled workers to get back to work faster and helps create new jobs as well.

In a recent tour around Oregon, my State SEA officials found tremendous enthusiasm for this program. They reported to me: "* * * the SEA Program in Oregon is meeting the goal of providing Oregon dislocated workers—as identified through worker profiling—with access to entrepreneurial training and financial assistance while pursuing self-employment and the establishment of a business." Among the examples of businesses developed under the Oregon SEA Program this year are a marine maintenance and repair company, drop-in day care centers at shopping malls and a handmade hats, quilts, and bags business working to develop a mail-order firm.

The 1993 SEA law is based upon self-employment programs that have worked well in 17 other industrialized nations. As the author of two laws, in 1987 and 1993, that have promoted self-employment, I can attest to the dramatic success of the self-employment concept. According to a June 1995 Department of Labor [DOL] evaluation of the Washington State and Massachusetts pilot programs, the two projects "clearly demonstrate that self-employment is a viable reemployment option for some unemployed workers . . . about one-half of those interested actually do start a business and an average of two-thirds were still in business 3 years later." In addition, the DOL report found that self-employment assistance programs increased business starts among project participants, reduced the length of their unemployment periods and increased their total time in employment. Both the Washington and Massachusetts models proved to be cost effective for the participants as well as for taxpayers.

Over the past 2½ years, 10 States used the 1993 legislation to create self-employment programs: California, Connecticut, Delaware, Maine, Maryland, Minnesota, New Jersey, New York, Oregon, and Rhode Island. To date, DOL has approved six State plans—California, Delaware, Maine, New Jersey, New York, and Oregon—and four of these—Delaware, Maine, New York and Oregon—have actually implemented their SEA programs.

Let me briefly describe how the program works. The law directs the DOL to review and approve State SEA Program plans. In States that operate SEA programs, new UI claimants identified through worker profiling—automated systems that use a set of criteria to identify those claimants who are likely to exhaust their UI benefits and need reemployment assistance—will be eligible for self-employment assistance. State SEA programs provide participants with periodic—weekly or biweekly—self-employment allowances while they are getting their businesses off the ground. These support payments are the same weekly amount as the worker's regular UI benefits. The SEA participants are required to participate in technical assistance programs—entrepreneurial training—accounting, cash flow, finances, taxes, etc.—business counseling—business plans, marketing, legal requirements, insurance, etc.—and finance—to ensure they have the skills necessary to operate a business. Finally, SEA programs are required to operate at no additional cost to the unemployment trust fund: The law stipulates that the payment of SEA allowances may not result in any additional benefits charges to the unemployment trust fund. Individuals may choose at any time to opt out of the SEA Program; they may resume collection of regular unemployment compensation until the total amount of regular unemployment compensation paid and the SEA paid equals the maximum benefit amount. States are responsible for the costs of providing basic SEA Program services, like business counseling and technical assistance, but may allow participants to pay for more intensive counseling and technical assistance.

Mr. President, as we move into the global economy of the 21st century, it is imperative that the Government adopt fresh strategies so that our many skilled buy unemployed workers can start anew in the private sector. Congress should extend the Self-Employment Assistance Program so that States will have the continued flexibility to help unemployed workers create their own businesses. Our bipartisan bill promotes the spirit of entrepreneurship. It carries forward a reasonable, and sensible reform of the unemployment insurance system that bears no cost to the taxpayer.

I would like to thank Senator D'AMATO for joining me as an original cosponsor of this bill. New York has a very active and successful Self Employment Assistance Program, and I look forward to working closely with him to see this important program reauthorized.

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

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

S. 2029

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

SECTION 1. SELF-EMPLOYMENT ASSISTANCE PROGRAMS.

(a) IN GENERAL.—Paragraph (2) of section 507(e) of the North American Free Trade Agreement Implementation Act (26 U.S.C. 3306 note) is hereby repealed.

(b) CONFORMING AMENDMENTS.—Subsection (e) of section 507 of such Act is further amended—

(1) by amending the heading after the subsection designation to read "EFFECTIVE DATE.—"; and

(2) by striking "(1) EFFECTIVE DATE.—" and by running in the remaining text of subsection (e) immediately after the heading therefor, as amended by paragraph (1).

By Mr. LOTT (for himself and Mr. EXON):

S. 2030. A bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE NATIONAL MOTOR VEHICLE SAFETY, ANTITHEFT, TITLE REFORM, AND CONSUMER PROTECTION ACT OF 1996

Mr. LOTT. Mr. President, I rise today to introduce legislation to establish national requirements regarding the titling and registration of salvage, nonrepairable and rebuilt vehicles. I am proud to have Senator EXON as my principle cosponsor on this bipartisan bill. Senator EXON has done yeoman's work in previous Congresses to address this issue.

Several years ago, Congress formed a group to study this issue. My bill responds to the recommendations made by that Federal task force regarding the disclosure of vehicle conditions. This consumer safety bill will protect used car consumers from unknowingly purchasing rebuilt automobiles that have not been restored to safe operating conditions. The legislation requires the vehicle title to be branded to show that it has been totaled.

This legislation would create a uniform national policy concerning the disclosure of vehicle conditions. Forty-eight States require some sort of disclosure on the vehicle title. Insistency among these States, however, permits those unscrupulous few to take advantage of unsuspecting consumers.

I hope my colleagues in the Senate will join me as cosponsors of this legislation, which addresses this consumer safety issue in a direct and straightforward manner.

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

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

S. 2030

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 ''National Motor Vehicle Safety, Antitheft, Title Reform, and Consumer Protection Act of 1996''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) many States do not have specific requirements regarding the disclosure of the salvage history of a motor vehicle and some States never require that the title to a motor vehicle be stamped or branded to indicate that the motor vehicle is, or has been, a salvage vehicle;

(2) as of the date of enactment of this Act, State disclosure requirements regarding the salvage history of a motor vehicle—

(A) are inconsistent in scope and content;

(B) require the use of different forms and administrative procedures;

(C) will undercut the effectiveness of the National Automobile Title Information System created by the Anti Car Theft Act of 1992;

(D) are burdensome on interstate commerce; and

(E) do not provide a significant deterrent to unscrupulous sellers of rebuilt vehicles who mislead potential wholesale and retail buyers concerning the condition and value of such vehicles;

(3) the fact that a motor vehicle is salvage, nonrepairable, water damaged, or rebuilt after incurring substantial damage is material in any subsequent purchase or sale of that motor vehicle;

(4) some salvage and nonrepairable vehicles become involved in illegal commerce in stolen vehicles and parts;

(5) in some jurisdictions, the lack of theft inspections prior to allowing a rebuilt motor vehicle back on the road provides an opportunity for an unscrupulous person to use stolen parts in the rebuilding of motor vehicles;

(6) according to the National Highway Traffic Safety Administration, rebuilt motor vehicles—

(A) may not have passed any safety inspection; and

(B) may pose a public safety risk and consumers who unknowingly buy rebuilt motor vehicles face an increased risk of death or serious injury;

(7) statistics prepared by the American Association of Motor Vehicle Administrators indicate that 71 percent of the States require some form of safety inspection before a rebuilt salvage vehicle may be registered for use on the road;

(8) the promulgation of a safety inspection program by the Secretary of Transportation may assist the States in expanding and standardizing their inspection programs for rebuilt vehicles;

(9) duplicate or replacement titles play an important role in many vehicle thefts and various types of vehicle fraud;

(10) State controls on the issuance of such titles must therefore be strengthened and made uniform across the United States;

(11) large quantities of motor vehicles are exported from United States ports to foreign countries without proper documentation of ownership in violation of applicable law; and

(12) in view of the threats to public safety and consumer interests described in paragraphs (1) through (10), the Motor Vehicle Titling, Registration and Salvage Advisory Committee, which was convened by the Secretary of Transportation under section 140(a) of the Anti Car Theft Act of 1992 (15 U.S.C. 2041 note), recommended that—

(A) Federal laws be enacted to require certain definitions to be used nationwide to describe seriously damaged vehicles; and

(B) all States be required to—

(i) use the definitions referred to in subparagraph (A) in determining appropriate title designations;

(ii) use certain motor vehicle titling and control methods; and

(iii) take certain other measures to protect the integrity of the titling process.

SEC. 3. MOTOR VEHICLE TITLING AND DISCLOSURE REQUIREMENTS.

(a) IN GENERAL.—Subtitle VI of title 49, United States Code, is amended by adding at the end the following new chapter:

''CHAPTER 333—AUTOMOBILE SAFETY, ANTITHEFT, AND TITLE DISCLOSURE REQUIREMENTS

''Sec.
''33301. Definitions.
''33302. Passenger motor vehicle titling.
''33303. Petitions for extensions of time.
''33304. Effect on State law.
''33305. Civil and criminal penalties.

''§ 33301. Definitions

''For the purposes of this chapter the following definitions and requirements shall apply:

''(1) PASSENGER MOTOR VEHICLE.—

''(A) IN GENERAL.—The term 'passenger motor vehicle' means any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways.

''(B) PASSENGER MOTOR VEHICLES AND LIGHT TRUCKS INCLUDED.—Such term includes a multipurpose passenger vehicle or light duty truck if the vehicle or truck is rated at not more than 7,500 pounds gross vehicle weight.

''(C) MOTORCYCLES NOT INCLUDED.—Such term does not include a motorcycle.

''(2) SALVAGE VEHICLE.—

''(A) IN GENERAL.—Subject to subparagraph (E), the term 'salvage vehicle' means any passenger motor vehicle that has been wrecked, destroyed, or damaged to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the passenger motor vehicle to its preaccident condition for legal operation on the roads or highways exceeds 75 percent of the retail value of the passenger motor vehicle, as set forth in the most recent edition of any nationally recognized compilation (including automated databases) of current retail values that is approved by the Secretary.

''(B) VEHICLES EXCLUDED.—Such term does not include any passenger motor vehicle that has a model year designation of a calendar year that precedes that calendar year in which the vehicle was wrecked, destroyed, or damaged by 5 or more years.

''(C) DETERMINATION OF VALUE OF REPAIR PARTS.—For purposes of subparagraph (B), the value of repair parts shall be determined by using—

''(i) the published retail cost of the original equipment manufacturer parts; or

''(ii) the actual retail cost of the repair parts to be used in the repair.

''(D) DETERMINATION OF LABOR COSTS.—For purposes of subparagraph (B), the labor cost of repairs shall be computed by using the hourly labor rate and time allocations that are reasonable and customary in the automobile repair industry in the community in which the repairs are performed.

''(E) CERTAIN VEHICLES INCLUDED.—The term 'passenger vehicle' includes, without regard to whether the passenger motor vehicle meets the 75 percent threshold specified in subparagraph (B)—

''(i) any passenger motor vehicle with respect to which an insurance company acquires ownership under a damage settlement (except for a settlement in connection with a recovered theft vehicle that did not sustain a sufficient degree of damage to meet the 75 percent threshold specified in subparagraph (B)); or

''(ii) any passenger motor vehicle that an owner may wish to designate as a salvage vehicle by obtaining a salvage title, without regard to the extent of the damage and repairs.

''(F) SPECIAL RULE.—A designation of a passenger motor vehicle by an owner under subparagraph (E)(ii) shall not impose any obligation on—

''(i) the insurer of the passenger motor vehicle; or

''(ii) an insurer processing a claim made by or on behalf of the owner of the passenger motor vehicle.

''(3) SALVAGE TITLE.—

''(A) IN GENERAL.—The term 'salvage title' means a passenger motor vehicle ownership document issued by a State to the owner of a salvage vehicle.

''(B) TRANSFER OF OWNERSHIP.—Ownership of a salvage vehicle may be transferred on a salvage title.

''(C) PROHIBITION.—The salvage vehicle may not be registered for use on the roads or

highways unless the salvage vehicle has been issued a rebuilt salvage title.

''(D) REQUIREMENT FOR A REBUILT SALVAGE TITLE.—A salvage title shall be conspicuously labeled with the word 'salvage' across the front of the document.

''(4) REBUILT SALVAGE VEHICLE.—The term 'rebuilt salvage vehicle' means—

''(A) for passenger motor vehicles subject to a safety inspection in a State that requires such an inspection under section 33302(b)(2)(H), any passenger motor vehicle that has—

''(i) been issued previously a salvage title;

''(ii) passed applicable State antitheft inspection;

''(iii) been issued a certificate indicating that the passenger motor vehicle has—

''(I) passed the antitheft inspection referred to in clause (ii); and

''(II) been issued a certificate indicating that the passenger motor vehicle has passed a required safety inspection under section 33302(b)(2)(H); and

''(iv) affixed to the door jamb adjacent to the driver's seat a decal stating 'Rebuilt Salvage Vehicle—Antitheft and Safety Inspections Passed'; or

''(B) for passenger motor vehicles in a State other than a State referred to in subparagraph (A), any passenger motor vehicle that has—

''(i) been issued previously a salvage title;

''(ii) passed an applicable State antitheft inspection;

''(iii) been issued a certificate indicating that the passenger motor vehicle has passed the required antitheft inspection referred to in clause (ii); and

''(iv) affixed to the door jamb adjacent to the driver's seat, a decal stating 'Rebuilt Salvage Vehicle—Antitheft Inspection Passed/No Safety Inspection Pursuant to National Criteria'.

''(5) REBUILT SALVAGE TITLE.—

''(A) IN GENERAL.—The term 'rebuilt salvage title' means the passenger motor vehicle ownership document issued by a State to the owner of a rebuilt salvage vehicle.

''(B) TRANSFER OF OWNERSHIP.—Ownership of a rebuilt salvage vehicle may be transferred on a rebuilt salvage title.

''(C) REGISTRATION FOR USE.—A passenger motor vehicle for which a rebuilt salvage title has been issued may be registered for use on the roads and highways.

''(D) REQUIREMENT FOR SALVAGE TITLE.—A rebuilt salvage title shall be conspicuously labeled, either with 'Rebuilt Salvage Vehicle—Antitheft and Safety Inspections Passed' or 'Rebuilt Salvage Vehicle—Antitheft Inspection Passed/No Safety Inspection Pursuant to National Criteria', as appropriate, across the front of the document.

''(6) NONREPAIRABLE VEHICLE.—

''(A) IN GENERAL.—The term 'nonrepairable vehicle' means any passenger motor vehicle that—

''(i)(I) is incapable of safe operation for use on roads or highways; and

''(II) has no resale value, except as a source of parts or scrap only; or

''(ii) the owner irreversibly designates as a source of parts or scrap.

''(B) CERTIFICATE.—Each nonrepairable vehicle shall be issued a nonrepairable vehicle certificate.

''(7) NONREPAIRABLE VEHICLE CERTIFICATE.—

''(A) IN GENERAL.—The term 'nonrepairable vehicle certificate' means a passenger motor vehicle ownership document issued by the State to the owner of a nonrepairable vehicle.

''(B) TRANSFER OF OWNERSHIP.—Ownership of the passenger motor vehicle may be transferred not more than 2 times on a nonrepairable vehicle certificate.

''(C) PROHIBITION.—A nonrepairable vehicle that is issued a nonrepairable vehicle certificate may not be titled or registered for use on roads or highways at any time after the issuance of the certificate.

''(D) REQUIREMENT FOR NONREPAIRABLE VEHICLE CERTIFICATE.—A nonrepairable vehicle certificate shall be conspicuously labeled with the term 'Nonrepairable' across the front of the document.

''(8) FLOOD VEHICLE.—

''(A) IN GENERAL.—The term 'flood vehicle' means any passenger motor vehicle that has been submerged in water to the point that rising water has reached over the door sill of the motor vehicle and has entered the passenger or trunk compartment.

''(B) REQUIREMENT FOR DISCLOSURE.—Disclosure that a passenger motor vehicle has become a flood vehicle shall be made by the person transferring ownership at the time of transfer of ownership. After such transfer is completed, the certificate of title shall be conspicuously labeled with the term 'flood' across the front of the document.

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

''§ 33302. Passenger motor vehicle titling

''(a) CARRYFORWARD OF CERTAIN TITLE INFORMATION IF A PREVIOUS TITLE WAS NOT ISSUED IN ACCORDANCE WITH CERTAIN NATIONALLY UNIFORM STANDARDS.—

''(1) IN GENERAL.—If—

''(A) records that are readily accessible to a State indicate that a passenger motor vehicle with respect to which the ownership is transferred on or after the date that is 1 year after the date of enactment of the National Motor Vehicle Safety, Antitheft, Title Reform, and Consumer Protection Act of 1996, has been issued previously a title that bore a term or symbol described in paragraph (2); and

''(B) the State licenses that vehicle for use, the State shall disclose that fact on a certificate of title issued by the State.

''(2) TERMS AND SYMBOLS.—

''(A) IN GENERAL.—A State shall be subject to the requirements of paragraph (1) with respect to the following terms on a title that has been issued previously to a passenger motor vehicle (or symbols indicating the meanings of those terms):

''(i) 'Salvage'.

''(ii) 'Unrebuildable'.

''(iii) 'Parts only'.

''(iv) 'Scrap'.

''(v) 'Junk'.

''(vi) 'Nonrepairable'.

''(vii) 'Reconstructed'.

''(viii) 'Rebuilt'.

''(ix) Any other similar term, as determined by the Secretary.

''(B) FLOOD DAMAGE.—A State shall be subject to the requirements of paragraph (1) if a term or symbol on a title issued previously for a passenger vehicle indicates that the vehicle has been damaged by flood.

''(b) NATIONALLY UNIFORM TITLE STANDARDS AND CONTROL METHODS.—

''(1) IN GENERAL.—Not later than 18 months after the date of the enactment of the National Motor Vehicle Safety, Antitheft, Title Reform, and Consumer Protection Act of 1996, the Secretary shall issue regulations that require each State that licenses passenger motor vehicles with respect to which the ownership is transferred on or after the date that is 2 years after the issuance of final regulations, to apply with respect to the issuance of the title for any such motor vehicle uniform standards, procedures, and methods for—

''(A) the issuance and control of that title; and

''(B) information to be contained on such title.

''(2) CONTENTS OF REGULATIONS.—The titling standards, control procedures, methods, and information covered under the regulations issued under this subsection shall include the following:

''(A) INDICATION OF STATUS.—Each State shall indicate on the face of a title or certificate for a passenger motor vehicle, as applicable, if the passenger motor vehicle is a salvage vehicle, a nonrepairable vehicle, a rebuilt salvage vehicle, or a flood vehicle.

''(B) SUBSEQUENT TITLES.—The information referred to in subparagraph (A) concerning the status of the passenger vehicle shall be conveyed on any subsequent title, including a duplicate or replacement title, for the passenger motor vehicle issued by the original titling State or any other State.

''(C) SECURITY STANDARDS.—The title documents, the certificates and decals required by section 33301(4), and the system for issuing those documents, certificates, and decals shall meet security standards that minimize opportunities for fraud.

''(D) IDENTIFYING INFORMATION.—Each certificate of title referred to in subparagraph (A) shall include the passenger motor vehicle make, model, body type, year, odometer disclosure, and vehicle identification number.

''(E) UNIFORM LAYOUT.—The title documents covered under the regulations shall maintain a uniform layout, that shall be established by the Secretary, in consultation with each State or an organization that represents States.

''(F) NONREPAIRABLE VEHICLES.—A passenger motor vehicle designated as nonrepairable—

''(i) shall be issued a nonrepairable vehicle certificate; and

''(ii) may not be retitled.

''(G) REBUILT SALVAGE TITLE.—No rebuilt salvage title may be issued to a salvage vehicle unless, after the salvage vehicle is repaired or rebuilt, the salvage vehicle complies with the requirements for a rebuilt salvage vehicle under section 33301(4).

''(H) INSPECTION PROGRAMS.—Each State inspection program shall be designed to comply with the requirements of this subparagraph and shall be subject to approval and periodic review by the Secretary. Each such inspection program shall include the following:

''(i) Each owner of a passenger motor vehicle that submits a vehicle for an antitheft inspection shall be required to provide—

''(I) a completed document identifying the damage that occurred to the vehicle before being repaired;

''(II) a list of replacement parts used to repair the vehicle;

''(III) proof of ownership of the replacement parts referred to in subclause (II) (as evidenced by bills of sale, invoices or, if such documents are not available, other proof of ownership for the replacement parts); and

''(IV) an affirmation by the owner that—

''(aa) the information required to be submitted under this subparagraph is complete and accurate; and

''(bb) to the knowledge of the declarant, no stolen parts were used during the rebuilding of the repaired vehicle.

''(ii) Any passenger motor vehicle or any major part or major replacement part required to be marked under this section or the regulations issued under this section that—

''(I) has a mark or vehicle identification number that has been illegally altered, defaced, or falsified; or

''(II) cannot be identified as having been legally obtained (through evidence described in clause (i)(III)),

shall be contraband and subject to seizure.

''(iii) To avoid confiscation of parts that have been legally rebuilt or manufactured, the regulations issued under this subsection shall include procedures that the Secretary, in consultation with the Attorney General of the United States, shall establish—

''(I) for dealing with parts with a mark or vehicle identification number that is normally removed during remanufacturing or rebuilding practices that are considered acceptable by the automotive industry; and

''(II) deeming any part referred to in clause (i) to meet the identification requirements under the regulations if the part bears a conspicuous mark of such type, and is applied in such manner, as may be determined by the Secretary to indicate that the part has been rebuilt or remanufactured.

''(iv) With respect to any vehicle part, the regulations issued under this subsection shall—

''(I) acknowledge that a mark or vehicle identification number on such part may be legally removed or altered, as provided under section 511 of title 18, United States Code; and

''(II) direct inspectors to adopt such procedures as may be necessary to prevent the seizure of a part from which the mark or vehicle identification number has been legally removed or altered.

''(v) The Secretary shall establish nationally uniform safety inspection criteria to be used in States that require such a safety inspection. A State may determine whether to conduct such safety inspection, contract with a third party, or permit self-inspection. Any inspection conducted under this clause shall be subject to criteria established by the Secretary. A State that requires a safety inspection under this clause may require the payment of a fee for such inspection or the processing of such inspection.

''(I) DUPLICATE TITLES.—No duplicate or replacement title may be issued by a State unless—

''(i) the term 'duplicate' is clearly marked on the face of the duplicate or replacement title; and

''(ii) the procedures issued are substantially consistent with the recommendation designated as recommendation 3 in the report issued on February 10, 1994, under section 140 of the Anti Car Theft Act of 1992 (15 U.S.C. 2041 note) by the task force established under such section.

''(J) TITLING AND CONTROL METHODS.—Each State shall employ the following titling and control methods:

''(i) If an insurance company is not involved in a damage settlement involving a salvage vehicle or a nonrepairable vehicle, the passenger motor vehicle owner shall be required to apply for a salvage title or nonrepairable vehicle certificate, whichever is applicable, before the earlier of the date—

''(I) on which the passenger motor vehicle is repaired or the ownership of the passenger motor vehicle is transferred; or

''(II) that is 30 days after the passenger motor vehicle is damaged.

''(ii) If an insurance company, under a damage settlement, acquires ownership of a passenger motor vehicle that has incurred damage requiring the vehicle to be titled as a salvage vehicle or nonrepairable vehicle, the insurance company shall be required to apply for a salvage title or nonrepairable vehicle certificate not later than 15 days after the title to the motor vehicle is—

''(I) properly assigned by the owner to the insurance company; and

''(II) delivered to the insurance company with all liens released.

''(iii) If an insurance company does not assume ownership of a passenger motor vehicle of an insured person or claimant that has incurred damage requiring the vehicle to be titled as a salvage vehicle or nonrepairable vehicle, the insurance company shall, as required by the applicable State—

''(I) notify—

''(aa) the owner of the owner's obligation to apply for a salvage title or nonrepairable vehicle certificate for the passenger motor vehicle; and

''(bb) the State passenger motor vehicle titling office that a salvage title or nonrepairable vehicle certificate should be issued for the vehicle; or

''(II) withhold payment of the claim until the owner applies for a salvage title or nonrepairable vehicle certificate.

''(iv) If a leased passenger motor vehicle incurs damage requiring the vehicle to be titled as a salvage vehicle or nonrepairable vehicle, the lessor shall be required to apply for a salvage title or nonrepairable vehicle certificate not later than 21 days after being notified by the lessee that the vehicle has been so damaged, except in any case in which an insurance company, under a damage settlement, acquires ownership of the vehicle. The lessee of such vehicle shall be required to inform the lessor that the leased vehicle has been so damaged not later than 30 days after the occurrence of the damage.

''(v)(I) Any person who acquires ownership of a damaged passenger motor vehicle that meets the definition of a salvage or nonrepairable vehicle for which a salvage title or nonrepairable vehicle certificate has not been issued, shall be required to apply for a salvage title or nonrepairable vehicle certificate, whichever is applicable.

''(II) An application under subclause (I) shall be made the earlier of—

''(aa) the date on which the vehicle is further transferred; or

''(bb) 30 days after ownership is acquired.

''(III) The requirements of this clause shall not apply to any scrap metal processor that—

''(aa) acquires a passenger motor vehicle for the sole purpose of processing the motor vehicle into prepared grades of scrap; and

''(bb) carries out that processing.

''(vi) State records shall note when a nonrepairable vehicle certificate is issued. No State shall issue a nonrepairable vehicle certificate after 2 transfers of ownership in violation of section 33301(b)(7)(B).

''(vii)(I) In any case in which a passenger motor vehicle has been flattened, baled, or shredded, whichever occurs first, the title or nonrepairable vehicle certificate for the vehicle shall be surrendered to the State not later than 30 days after that occurrence.

''(II) If the second transferee on a nonrepairable vehicle certificate is unequipped to flatten, bale, or shred the vehicle, such transferee shall be required, at the time of final disposal of the vehicle, to use the services of a professional automotive recycler or professional scrap processor. That recycler or reprocessor shall have the authority to—

''(aa) flatten, bale, or shred the vehicle; and

''(bb) effect the surrender of the nonrepairable vehicle certificate to the State on behalf of the second transferee.

''(III) State records shall be updated to indicate the destruction of a vehicle under this clause and no further ownership transactions for the vehicle shall be permitted after the vehicle is so destroyed.

''(IV) If different from the State of origin of the title or nonrepairable vehicle certificate, the State of surrender shall notify the State of origin of the surrender of the title or nonrepairable vehicle certificate and of the destruction of such vehicle.

''(viii)(I) In any case in which a salvage title is issued, the State records shall note that issuance. No State may permit the retitling for registration purposes or issuance of a rebuilt salvage title for a passenger motor vehicle with a salvage title without a certificate of inspection that—

''(aa) complies with the security and guideline standards established by the Secretary under subparagraphs (C) and (G), as applicable; and

''(bb) indicates that the vehicle has passed the inspections required by the State under subparagraph (H).

''(II) Nothing in this clause shall preclude the issuance of a new salvage title for a salvage vehicle after a transfer of ownership.

''(ix) After a passenger motor vehicle titled with a salvage title has passed the inspections required by the State, the inspection official shall—

''(I) affix a secure decal required under section 33301(4) (that meets permanency requirements that the Secretary shall establish by regulation) to the door jamb on the driver's side of the vehicle; and

''(II) issue to the owner of the vehicle a certificate indicating that the passenger motor vehicle has passed the inspections required by the State.

''(x)(I) The owner of a passenger motor vehicle titled with a salvage title may obtain a rebuilt salvage title and vehicle registration by presenting to the State the salvage title, properly assigned, if applicable, along with the certificate that the vehicle has passed the inspections required by the State.

''(II) If the owner of a rebuilt salvage vehicle submits the documentation referred to in subclause (I), the State shall issue upon the request of the owner a rebuilt salvage title and registration to the owner. When a rebuilt salvage title is issued, the State records shall so note.

''(K) FLOOD VEHICLES.—

''(i) IN GENERAL.—A seller of a passenger motor vehicle that becomes a flood vehicle shall, at or before the time of transfer of ownership, provide a written notice to the purchaser that the vehicle is a flood vehicle. At the time of the next title application for the vehicle—

''(I) the applicant shall disclose the flood status to the applicable State with the properly assigned title; and

''(II) the term 'Flood' shall be conspicuously labeled across the front of the new title document.

''(ii) LEASED VEHICLES.—In the case of a leased passenger motor vehicle, the lessee, within 15 days after the occurrence of the event that caused the vehicle to become a flood vehicle, shall give the lessor written disclosure that the vehicle is a flood vehicle.

''(c) ELECTRONIC PROCEDURES.—A State may employ electronic procedures in lieu of paper documents in any case in which such electronic procedures provide levels of information, function, and security required by this section that are at least equivalent to the levels otherwise provided by paper documents.

''§ 33303. Petitions for extensions of time

''(a) IN GENERAL.—Subject to subsection (b), if a State demonstrates to the satisfaction of the Secretary, a valid reason for needing an extension of a deadline for compliance with requirements under section 33302(a), the Secretary may extend, for a period determined by the Secretary, an otherwise applicable deadline with respect to that State.

''(b) LIMITATION.—No extension made under subsection (a) shall remain in effect on or after the applicable compliance date established under section 33302(b).

''§ 33304. Effect on State law

''(a) IN GENERAL.—Beginning on the effective date of the regulations issued under section 33302, this chapter shall preempt any

State law, to the extent that State law is inconsistent with this chapter or the regulations issued under this chapter (including the regulations issued under section 33302), that—

''(1) establish the form of the passenger motor vehicle title;

''(2)(A) define, in connection with a passenger motor vehicle (but not in connection with a passenger motor vehicle part or part assembly separate from a passenger motor vehicle)—

''(i) any term defined in section 33301;

''(ii) the term 'salvage', 'junk', 'reconstructed', 'nonrepairable', 'unrebuildable', 'scrap', 'parts only', 'rebuilt', 'flood', or any other similar symbol or term; or

''(B) apply any of the terms referred to in subparagraph (A) to any passenger motor vehicle (but not in connection with a passenger motor vehicle part or part assembly separate from a passenger motor vehicle); and

''(3) establish titling, recordkeeping, antitheft inspection, or control procedures in connection with any salvage vehicle, rebuilt salvage vehicle, nonrepairable vehicle, or flood vehicle.

''(b) RULE OF CONSTRUCTION.—

''(1) ADDITIONAL DISCLOSURES.—Additional disclosures of the title status or history of a motor vehicle, in addition to disclosures made concerning the applicability of terms defined in section 33301, may not be considered to be inconsistent with this chapter.

''(2) INCONSISTENT TERMS.—When used in connection with a passenger motor vehicle (but not in connection with a passenger motor vehicle part or part assembly separate from a passenger motor vehicle), any definition under Federal or State law of a term defined in section 33301 that is different from the definition provided for in that section or any use of any other term listed in subsection (a), shall be considered to be inconsistent with this chapter.

''(3) RULE OF CONSTRUCTION.—Nothing in this chapter shall preclude a State from disclosing on a rebuilt salvage title that a rebuilt salvage vehicle has passed a State safety inspection that differed from the nationally uniform criteria promulgated under section 33302(b)(2)(H)(v).

''§ 33305. Civil and criminal penalties

''(a) PROHIBITED ACTS.—It shall be unlawful for any person knowingly and willfully to—

''(1) make or cause to be made any false statement on an application for a title (or duplicate title) for a passenger motor vehicle;

''(2) fail to apply for a salvage title in any case in which such an application is required;

''(3) alter, forge, or counterfeit—

''(A) a certificate of title (or an assignment thereof);

''(B) a nonrepairable vehicle certificate;

''(C) a certificate verifying an antitheft inspection or an antitheft and safety inspection; or

''(D) a decal affixed to a passenger motor vehicle under section 33302(b)(2)(J)(ix);

''(4) falsify the results of, or provide false information in the course of, an inspection conducted under section 33302(b)(2)(H);

''(5) offer to sell any salvage vehicle or nonrepairable vehicle as a rebuilt salvage vehicle; or

''(6) conspire to commit any act under paragraph (1), (2), (3), (4), or (5).

''(b) CIVIL PENALTY.—Any person who commits an unlawful act under subsection (a) shall be subject to a civil penalty in an amount not to exceed $2,000.

''(c) CRIMINAL PENALTY.—Any person who knowingly commits an unlawful act under subsection (a) shall, upon conviction, be—

''(1) subject to a fine in an amount not to exceed $50,000;

''(2) imprisoned for a term not to exceed 3 years; or

''(3) subject to both fine under paragraph (1) and imprisonment under paragraph (2).''.

(b) CONFORMING AMENDMENT.—The analysis for subtitle VI of title 49, United States Code, is amended by adding at the end the following new item:

''333. Automobile Safety, Antitheft, and Title Disclosure Requirements ..... 33301''.

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 2032. A bill to designate a portion of the Sudbury, Assabet, and Concord Rivers as a component of the National Wild And Scenic Rivers System; to the Committee on Energy and Natural Resources.

THE SUDBURY, ASSABET, AND CONCORD WILD AND SCENIC RIVERS ACT

Mr. KERRY.

Mr. President, I am pleased to join my distinguished colleague from Massachusetts, Senator KENNEDY, in introducing the Sudbury, Assabet, and Concord [SuAsCo] Wild and Scenic Rivers Act. This is the companion bill to H.R. 3405, sponsored by Representatives MEEHAN, MARKEY, and TORKILDSEN.

The Sudbury, Assabet, and Concord river area is rich in history and literary significance. It has been the location of many historical events, most notably the Battle of Concord in the Revolutionary War, that gave our great Nation its independence. The Concord River flows under the North Bridge in Concord, MA, where, on April 18, 1775, colonial farmers fired the legendary ''shot heard around the world'' which signaled the start of the Revolutionary War.

In later years, this scenic area was also home to many of our literary heroes including, Ralph Waldo Emerson, Henry David Thoreau, and Louisa May Alcott. Their writing often focused on the bucolic rivers. Thoreau spent most of his life in Concord, MA, where he passed his days immersed in his writing and enjoying the natural surroundings. He spoke of the Concord River when he wrote ''the wild river valley and the woods were bathed in so pure and bright a light as would have waked the dead, if they had been slumbering in their graves, as some suppose. There needs no strong proof of immortality.'' This area was held close to many an author's heart. It was a place of relaxation and inspiration for many.

The Sudbury, Assabet, and Concord Wild Rivers Act would amend the Wild and Scenic Rivers Act to include a 29 mile segment of the Assabet, Concord, and Sudbury Rivers. Based on a report authorized by Congress in 1990 and issued by the National Park Service in 1995, these river segments were determined worthy of inclusion in the Wild and Scenic Rivers Program. In its report, the SuAsCo Wild and Scenic Study Committee showed that this area has not only the necessary scenic, recreational, and ecological value, but also the historical and literary value to merit the Wild and Scenic River designation. All eight communities in the area traversed by these river segments are supporting his important legislation.

Our legislation is of minimal cost to the Federal Government but by using limited Federal resources we can leverage significant local and State effort. Provisions in the bill limit the Federal Government's contribution to just $100,000 annually, with no more than a 50 percent share of any given activity. This is a concept that merits the support of Congress. Should our bill become law, the SuAsCo River stewardship council, in cooperation with Federal, State, and local governments would manage the land.

We now have the opportunity to protect the precious 29-mile section of the Assabet, Sudbury, and Concord Rivers. This area is not only rich in ecological value but also in historical and literary value. I urge my colleagues to support this bill and through it to preserve this wild river valley for the enjoyment and instruction of all who live and work there, for visitors from throughout the nation and, perhaps most importantly, for generations yet to come.

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

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

S. 2032

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 ''Sudbury, Assabet and Concord Wild and Scenic Rivers Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Title VII of Public Law 101–628—

(A) designated segments of the Sudbury, Assabet, and Concord Rivers in the Commonwealth of Massachusetts, totaling 29 river miles, for study of potential addition to the National Wild and Scenic Rivers System, and

(B) directed the Secretary of the Interior to establish the Sudbury, Assabet, and Concord River Study Committee (in this Act referred to as the ''Study Committee'') to advise the Secretary of the Interior in conducting the study and concerning management alternatives should the river be included in the National Wild and Scenic Rivers System.

(2) The study determined that:

—the 16.6 mile segment of the Sudbury River beginning at the Danforth Street Bridge in the Town of Framingham, to its confluence with the Assabet River

—the 4.4 mile segment of the Assabet River from 1000 feet downstream from the Damon Mill Dam in the Town of Concord to the confluence with the Sudbury River at Egg Rock in Concord, and

—the 8 mile segment of the Concord River from Egg Rock at the confluence of the Sudbury and Assabet Rivers to the Route 3 Bridge in the Town of Billerica

are eligible for inclusion in the National Wild and Scenic Rivers System based upon their free-flowing condition and outstanding scenic, recreation, wildlife, literary, and historic values.

(3) The towns that directly abut the segments, including Framingham, Sudbury, Wayland, Lincoln, Concord, Bedford, Carlisle, and Billerica, Massachusetts, have each

demonstrated their desire for National Wild and Scenic River Designation through town meeting votes endorsing designation.

(4) During the study, the Study Committee and the National Park Service prepared a comprehensive management plan for the segments, entitled ''Sudbury, Assabet and Concord wild and Scenic River Study, River Management Plan'', dated March 16, 1995, which establishes objectives, standards, and action programs that will ensure long-term protection of the rivers' outstanding values and compatible management of their land and water resources.

(5) The river management plan does not call for federal land acquisition for Wild and Scenic River purposes and relies upon state, local and private entities to have the primary responsibility for ownership and management of the Sudbury, Assabet and Concord Wild and Scenic River resources.

(6) The Study Committee voted unanimously on February 23, 1995, to recommend that the Congress include these segments in the National Wild and Scenic Rivers System for management in accordance with the River Conservation Plan.

SEC. 3. WILD, SCENIC, AND RECREATIONAL RIVER DESIGNATION.

Section 3(a) of the *Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end the following new paragraph:

''( ) SUDBURY, ASSABET AND CONCORD RIVERS, MASSACHUSETTS.—

''(A) IN GENERAL.—The 29 miles of river segments in Massachusetts consisting of the Sudbury River from the Danforth Street Bridge in Framingham downstream to its confluence with the Assabet River at Egg Rock; the Assabet River from a point 1,000 feet downstream of the Damondale Dam in Concord to its confluence with the Sudbury River at Egg Rock; and the Concord River from its origin at Egg Rock in Concord downstream to the route 3 bridge in Billerica (in this paragraph referred to as 'segments'), as scenic and recreational river segments. The segments shall be administered by the Secretary of the Interior through cooperative agreements between the Secretary of the Interior and the Commonwealth of Massachusetts and its relevant political subdivisions (including the Towns of Framingham, Wayland, Sudbury, Lincoln, Concord Carlisle, Bedford, and Billerica) pursuant to Section 10(e) of this Act. The segments shall be managed in accordance with the plan entitled ''Sudbury, Assabet and Concord Wild and Scenic River Study, River Conservation Plan'' dated March 16, 1995 (in this paragraph referred to as the 'Plan'). The Plan is deemed to satisfy the requirement for a comprehensive management plan under section 3(d) of this Act.''

SEC. 4. MANAGEMENT.

(a) COMMITTEE.—The Director of the National Park Service (in this paragraph referred to as the 'Director'), or his or her designee, shall represent the Secretary of the Interior on the SUASCO River Stewardship Council provided for in the ''Sudbury, Assabet and Concord Wild and Scenic River Study, River Management Plan'' (the 'Plan').

(b) FEDERAL ROLE.—(i) The Director represent the Secretary of the Interior in the implementation of the Plan and the provisions of the Wild and Scenic Rivers Act with respect to the segments, including the review of proposed federally assisted water resources projects which could have a direct and adverse effect on the values for which the segments are established, as authorized under section 7(a) of the Wild and Scenic Rivers Act.

(ii) Pursuant to section 10(e) and section 11(b)(1), the Director shall offer to enter into cooperative agreements with the Commonwealth of Massachusetts, its relevant political subdivisions, the Sudbury Valley Trustees, and the Organizations for the Assabet River. Such cooperative agreements shall be consistent with the Plan and may include provisions for financial or other assistance from the United States to facilitate the long-term protection, conservation and enhancement of the segments.

(iii) The Director may provide technical assistance, staff support, and funding to assist in the implementation of the Plan, except that the total cost to the Federal Government of activities to implement the Plan may not exceed $100,000 each fiscal year.

(iv) Notwithstanding the provisions of 19(c) of the Wild and Scenic Rivers Act, any portion of the segments not already within the National Park System shall not under this Act)

(I) become a part of the National Park System;

(II) be managed by the National Park Service; or

(III) be subject to regulations which govern the National Park System.

(c) WATER RESOURCES PROJECTS.—(i) In determining whether a proposed water resources project would have a direct and adverse effect on the values for which the segments were included in the National Wild and Scenic Rivers System, the Secretary shall specifically consider the extent to which the project is consistent with the Plan.

(ii) The Plan, including the detailed Water Resources Study incorporated by reference therein and such additional analysis as may be incorporated in the future, shall serve as the primary source of information regarding the flows needed to maintain instream resources and potential compatibility between resource protection and possible additional water withdrawals.

(d) LAND MANAGEMENT.—(i) The zoning bylaws of the towns of Framingham, Sudbury, Wayland, Lincoln, Concord, Carlisle, Bedford, and Billerica, Massachusetts, as in effect on the date of enactment of this paragraph, are deemed to satisfy the standards and requirements under section 6(c) of the Wild and Scenic Rivers Act. For the purpose of section 6(c) of the Wild and Scenic Rivers Act, the towns are deemed to be 'villages' and the provisions of that section which prohibit Federal acquisition of lands shall apply.

(ii) the United States Government shall not acquire by any means title to land, easements, or other interests in land along the segments for the purposes of designation of the segments under this Act or the Wild and Scenic Rivers Act. Nothing in this Act or the Wild and Scenic Rivers Act shall prohibit federal acquisition of interests in land along the segments under other laws for other purposes.

SEC. 5. FUNDING AUTHORIZATION.

There are authorized to be appropriated to the Secretary of the Interior to carry out the purposes of this Act no more than $100,000 for each fiscal year.

Mr. KENNEDY. Mr. President, it is a privilege to join Senator KERRY today in sponsoring legislation to designate a 29-mile segment of the Sudbury, Assabet, and Concord Rivers in Massachusetts as a component of the National Wild and Scenic Rivers system. Our proposal has the bipartisan support of Congressmen MARTIN T. MEEHAN, PETER G. TORKILDSEN, and EDWARD J. MARKEY, who introduced an identical bill in the House of Representatives on May 7, 1996.

The Sudbury, Assabet, and Concord Rivers have witnessed many important events in the Nation's history. Stone's Bridge and Four Arched Bridge over the Sudbury River date from the pre-Revolutionary War days. On Old North Bridge over the Concord River, the ''shot heard 'round the world'' was fired on April 19, 1775, to begin the Revolutionary War. At Lexington and Concord, the Colonists began their armed resistance against British rule, and the first American Revolutionary War soldiers fell in battle.

In the 19 century, the Sudbury, Assabet, and Concord Rivers earned their lasting fame in the works of Ralph Waldo Emerson, Nathaniel Hawthorne, and Henry David Thoreau, all of whom lived in this area and spent a great deal of time on the rivers. Emerson cherished the Concord River as a place to leave ''the world of villages and personalities behind, and pass into a delicate realm of sunset and moonlight.''

Hawthorne wrote ''The Scarlet Letter'' and ''Mosses from an Old Manse'' in an upstairs study overlooking the Concord River. He also enjoyed boating on the Assabet River, of which he said that ''a more lovely stream than this, for a mile above its junction with the Concord, has never flowed on earth.''

Thoreau delighted in long, solitary walks along the banks of the rivers amidst the ''straggling pines, shrub oaks, grape vines, ivy, bats, fireflies, and alders,'' contemplating humanity's relationship to nature. His journals describing his detailed observations of the flora and fauna in the area have inspired poets and naturalists to the present day, and helped to give birth to the modern environmental movement. By protecting the rivers, a future Thoreau, Emerson, or Hawthorne may one day walk along their shores and gain new inspiration from these priceless natural resources.

In 1990, Congress authorized the National Park Service to issue a report to determine whether the three rivers are eligible for designation as Wild and Scenic Rivers. Under the National Park Service's guidelines, a river is considered eligible for the designation if it possesses at least one ''outstandingly remarkable resource value.'' In fact, the three rivers were found to possess five outstanding resource values—scenic, recreational, ecological, historical, and literary. The report also concluded that the rivers are suitable for designation based upon the existing local protection of their resources and the strong local support for their preservation.

Our bill will protect a 29-mile segment of the Sudbury, Assabet, and Concord Rivers that runs through or along the borders of eight Massachusetts towns—Framingham, Sudbury, Wayland, Concord, Lincoln, Bedford, Carlisle, and Billerica. A River Stewardship Council will be established to coordinate the efforts of all levels of government to strengthen protections for the river and address future threats to the environment. The legislation

also requires at least a one-to-one non-Federal match for any Federal expenditures, and contains provisions which preclude federal takings of private lands.

Thoreau wrote in 1847 that rivers ''are the constant lure, when they flow by our doors, to distant enterprise and adventure. . . . They are the natural highways of all nations, not only leveling the ground and removing obstacles, from the path of the traveler, but conducting him through the most interesting scenery.'' Standing on the banks of the Sudbury, Assabet, and Concord Rivers, as Thoreau often did, citizens today gain a greater sense of the ebb and flow of the nation's history and enjoy the benefit of some of the most beautiful scenery in all of America. I urge my colleagues to support this legislation, so that these three proud rivers will be protected for the enjoyment and contemplation of future generations.

By Mr. DOMENICI (for himself, Mr. WELLSTONE, Mr. SIMPSON, Mr. CONRAD, Mr. WARNER, Mr. SPECTER, Mr. REID, Mr. DODD, Mr. GRASSLEY, Mrs. KASSEBAUM, Mr. KENNEDY, Mr. BURNS, Mr. HARKIN, Mr. CHAFEE, and Mr. MOYNIHAN):

S. 2031. A bill to provide health plan protections for individuals with a mental illness; to the Committee on Labor and Human Resources.

THE MENTAL HEALTH PARITY ACT OF 1996

Mr. DOMENICI. Mr. President, I regret that it was not possible to retain this eminently fair and simple compromise in the conference agreement on health insurance reform.

Though this attempt to create fundamental fairness for the mentally ill was not completed, this issue will not go away.

The Americans who would have been helped by our compromise will not go away.

Nor will I.

As long as I am in this body, I will continue to fight to end discrimination against Americans with a mental illness.

I am therefore introducing the compromise I offered the conference committee as a free-standing bill.

The measure I am introducing today with the support and cosponsorship of Senators WELLSTONE, WARNER, SPECTER, REID, SIMPSON, and CONRAD, is a vast departure from what the Senate originally passed during consideration of health insurance reform legislation.

The Senate passed full parity for mental illness—full parity means that mental illnesses are treated as equals to physical illnesses in all respects of health coverage—copays, deductibles, inpatient hospital days, outpatient visits, out-of-pocket protections, and overall lifetime and annual expenditure limits.

The measure I present today, however, covers parity only for lifetime and annual caps.

I would very much like to introduce the Senate-passed measure providing full parity, or perhaps even something more than I am now.

But in the interests of time, simplicity, and underlying, basic fairness, I believe this measure is a necessary step toward making health coverage equitable for all Americans, regardless of the nature of their illness.

I believe this measure provides the fundamentals upon which better understanding and treatment can be built, and I believe the Senate should not miss this opportunity to do the right thing and end discrimination against Americans suffering from a mental illness.

WHAT IT IS

Let me again tell you what this bill will and will not do.

This bill simply states that health plans wishing to offer a mental health benefit—this is their option, there is nothing in this provisions saying that they must offer any mental health benefits at all—if they choose to offer a mental health benefit, they must provide the same overall financial protection to people with a mental illness that they provide to people with a physical illness.

If they have a $1 million lifetime limit for someone with cancer, or diabetes, or heart disease, they cannot have a lifetime limit of $50,000 for someone with schizophrenia or manic depression—they must provide $1 million for the person with a mental illness.

They do not have to create another, separate $1 million for mental illness—they can include these treatments in their overall cap if they like.

But they cannot impost a separate, lower overall limit for mental illness.

This same arrangement applies to annual financial caps, as well.

Since this compromise provides equal catastrophic protections, it protects Americans with the most severe and debilitating forms of mental illness.

It does not apply to the constellation of disorders and problems that concern some of my colleagues such as marital problems, or behavioral problems, or maladjustments.

WHAT IT IS NOT

It should be made clear what this bill does not do.

This bill does not mandate mental health benefits;

It does not include substance abuse or chemical dependency;

It does not dictate what a plan can or must charge for services—whether they be copays, deductibles, out-of-pocket limits, and so forth;

It does not set or dictate how many inpatient hospital days or outpatient visits must be provided or covered.

It does not, in any way, restrict a health plan's ability to manage care, such as preadmission screening, preauthorization of services, limiting coverage based on medical necessity, and so forth.

It does not apply to employers of 25 or less.

WHAT IT WILL COST

According to the CBO, this bill will not cost much. Frankly, I believe that even their cost estimates, even though practically inconsequential, are too high.

CBO says this bill will cause a 0.4-percent increase in overall premiums, ultimately resulting in a 0.16-percent increase in employer contributions to employee health plans.

Even though these costs are small—in a typical plan, a $0.60 to $0.67 increase per member per month—these projections are based on an assumption of increased utilization.

This estimate does not even factor in the effects of managed care.

We all know how managed care arrangements affect utilization and overall health care spending.

Of the 99 percent of ERISA plans offering mental health benefits, 75 percent already provide this care through a managed care arrangement—this number is growing each day.

If managed care were included in these assumptions, this provision would not likely cost anything at all.

And the percentage of Americans ever reaching these new limits will be incredibly small—less than 5 percent of beneficiaries.

So you can see why I do not believe this bill will cost even the small amount predicted by CBO.

EXPERIENCES OF STATES THAT HAVE ALREADY IMPLEMENTED PARITY

Some of my colleagues might be skeptical of these claims

Let me just outline the experiences of a few States that have already implemented parity.

Texas—Full parity and chemical dependency benefits for State and local government employees, including all school districts and university employees (over 230,000 lives)—a 47.9-percent reduction in overall yearly mental health expenditures.

Maryland—Full parity for all State-regulated plans—(over 400,000 covered lives)—an increase in cost of 0.6 percent per member per month [PMPM].

Rhode Island—Full parity for severe illnesses and chemical dependency—an increase in cost of 0.33 percent PMPM.

Massachusetts—Full parity for severe illnesses—a 5-percent increase in utilization, but a 22-percent reduction in mental health expenditures.

These numbers are for parity in the general sense, not the very limited balance included in the measure I am introducing today.

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

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

S. 2031

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 ''Mental Health Parity Act of 1996''.

SEC. 2. PLAN PROTECTIONS FOR INDIVIDUALS WITH A MENTAL ILLNESS.

(a) PERMISSIBLE COVERAGE LIMITS UNDER A GROUP HEALTH PLAN.—

(1) AGGREGATE LIFETIME LIMITS.—

(A) IN GENERAL.—With respect to a group health plan offered by a health insurance issuer, that applies an aggregate lifetime limit to plan payments for medical or surgical services covered under the plan, if such plan also provides a mental health benefit such plan shall—

(i) include plan payments made for mental health services under the plan in such aggregate lifetime limit; or

(ii) establish a separate aggregate lifetime limit applicable to plan payments for mental health services under which the dollar amount of such limit (with respect to mental health services) is equal to or greater than the dollar amount of the aggregate lifetime limit on plan payments for medical or surgical services.

(B) NO LIFETIME LIMIT.—With respect to a group health plan offered by a health insurance issuer, that does not apply an aggregate lifetime limit to plan payments for medical or surgical services covered under the plan, such plan may not apply an aggregate lifetime limit to plan payments for mental health services covered under the plan.

(2) ANNUAL LIMITS.—

(A) IN GENERAL.—With respect to a group health plan offered by a health insurance issuer, that applies an annual limit to plan payments for medical or surgical services covered under the plan, if such plan also provides a mental health benefit such plan shall—

(i) include plan payments made for mental health services under the plan in such annual limit; or

(ii) establish a separate annual limit applicable to plan payments for mental health services under which the dollar amount of such limit (with respect to mental health services) is equal to or greater than the dollar amount of the annual limit on plan payments for medical or surgical services.

(B) NO ANNUAL LIMIT.—With respect to a group health plan offered by a health insurance issuer, that does not apply an annual limit to plan payments for medical or surgical services covered under the plan, such plan may not apply an annual limit to plan payments for mental health services covered under the plan.

(b) RULE OF CONSTRUCTION.—

(1) IN GENERAL.—Nothing in this section shall be construed as prohibiting a group health plan offered by a health insurance issuer, from—

(A) utilizing other forms of cost containment not prohibited under subsection (a); or

(B) applying requirements that make distinctions between acute care and chronic care.

(2) NONAPPLICABILITY.—This section shall not apply to—

(A) substance abuse or chemical dependency benefits; or

(B) health benefits or health plans paid for under title XVIII or XIX of the Social Security Act.

(c) SMALL EMPLOYER EXEMPTION.—

(1) IN GENERAL.—This section shall not apply to plans maintained by employers that employ less than 26 employees.

(2) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this subsection—

(A) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

(B) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(C) PREDECESSORS.—Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) GROUP HEALTH PLAN.—

(A) IN GENERAL.—The term ''group health plan'' means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974) to the extent that the plan provides medical care (as defined in paragraph (2)) and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

(B) MEDICAL CARE.—The term ''medical care'' means amounts paid for—

(i) the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body,

(ii) amounts paid for transportation primarily for and essential to medical care referred to in clause (i), and

(iii) amounts paid for insurance covering medical care referred to in clauses (i) and (ii).

(2) HEALTH INSURANCE COVERAGE.—The term ''health insurance coverage'' means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

(3) HEALTH INSURANCE ISSUER.—The term ''health insurance issuer'' means an insurance company, insurance service, or insurance organization (including a health maintenance organization, as defined in paragraph (4)) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2) of the Employee Retirement Income Security Act of 1974). Such term does not include a group health plan.

(4) HEALTH MAINTENANCE ORGANIZATION.—The term ''health maintenance organization'' means—

(A) a Federally qualified health maintenance organization (as defined in section 1301(a) of the Public Health Service Act),

(B) an organization recognized under State law as a health maintenance organization, or

(C) a similar organization regulated under State law for solvency in the same manner and to the same extent as such a health maintenance organization.

(5) STATE.—The term ''State'' means each of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

By Mr. JOHNSTON:

S. 2033. A bill to repeal requirements for unnecessary or obsolete reports from the Department of Energy, and for other purposes; to the Committee on Energy and Natural Resources.

THE DOE REPORTS ELIMINATION AND STREAMLINING ACT OF 1996

Mr. JOHNSTON. Mr. President, today I am introducing the DOE Reports Elimination and Streamlining Act of 1996, to implement a number of recommendations that have been received from the administration for the repeal of requirements for unnecessary or obsolete reports to Congress from the Department of Energy. A number of my colleagues, particularly Senators LEVIN, MCCAIN, and COHEN, have devoted considerable effort over the past few years to relieving executive branch agencies from the unnecessary burden of reporting requirements that have outlived their usefulness. It has been a difficult task, and these colleagues and their staff deserve our thanks for what they have been able to accomplish in terms of crafting a long-term solution to the problem. I believe that it remains incumbent, though, on authorizing committees to review statutory reports required of agencies within their jurisdiction and to act to modify or repeal such requirements, where needed. That is what the present bill does. This bill also repeals legislative authorization for two now-defunct offices in the Department of Energy.

Mr. President, I would now like to briefly describe the rationale behind the specific provisions of the bill. Section 1 is the short title. Section 2 is composed of 12 subsections relating to reports and one subsection relating to two obsolete offices in the Department.

Subsection (a) eliminates the need for ongoing reports on the topics of process-oriented industrial energy efficiency and industrial insulation and audit guidelines. The DOE Office of Industrial Technology has worked with seven process-oriented industries to develop industry visions, which include identification of technology needs for industrial energy efficiency and technology barriers. The resulting individual technology road maps, with their associated implementation plans, make these ongoing reports redundant.

Subsection (b) repeals a requirement for a study and report on vibration reduction technologies. Vibration reduction is only tenuously related to energy conservation. It is not a prime DOE mission, and work in this area has not been funded by any appropriations bill. Given the many constraints on the DOE energy conservation budget, initiating work in this area is a low priority.

Subsection (c) repeals a requirement for a study to determine the means by which electric utilities may invest in, own, lease, service, or recharge batteries used to power electric vehicles. The electric utility companies have been working cooperatively with the automobile manufacturers, component industry, and standards setting organizations for several years to determine the infrastructure requirements necessary for recharging and servicing electric vehicle batteries. Another

study would not add meaningful information to the body of knowledge that already exists.

Subsection (d) eliminates biennial reports on the status of actions identified under the initial one-time reporting requirements of section 1301 of the Energy Policy Act of 1992. Development of these technologies is not fast paced. Significant reportable change is not likely to occur in 2-year increments. In addition, the program has sustained a significant decrease in funding, and will likely receive less in the future. Under these circumstances it is appropriate to change this requirement to a one-time report, to be submitted upon completion of the entire project.

Subsection (e) changes the frequency with which a comprehensive 5-year program plan for electric motor vehicles must be updated. Currently, this comprehensive plan must be updated annually for a period of not less than 10 years after the date of enactment of the Energy Policy Act of 1992. The first plan was prepared and submitted to the Congress in March 1994. Because programs do not change significantly on an annual basis, and because the cost of preparing and approving new plans for congressional submittal is extensive, annual updates are not justified. Changing the frequency of updates to every 2 years is a cost-savings measure.

Subsection (f) strikes the requirement for biennial updates to a 5-year program plan for a National Advanced Materials Initiative. This program plan was prepared and submitted to Congress as required, but the program was never funded. With no funding, there are no Department-supported programs or projects, and, thus, no need to update the initial program plan.

Subsection (g) eliminates a biennial report on the implementation of the Alaska SWAP Act. The purpose of the act was to take advantage of oil conservation opportunities by expanding the use of coal-fired plants and realizing economies of scale in several remote communities. These opportunities were not numerous and all have been taken advantage of for some time. No need exists for further reports.

Subsection (h) repeals a report that triggered a legislative veto provision governing DOE shipments of special nuclear materials to foreign countries. This legislative veto was exercised by a concurrent resolution and thus would be unconstitutional under the Supreme Court's ruling in INS *v.* Chadha, 1983, 103 S. Ct. 2764, 462 U.S. 919. The report requirement and the related legislative veto should be repealed.

Subsection (i) converts an annual report requirement in the Continental Scientific Drilling and Exploration Act to a periodic report. DOE's role in this multiagency program has become less prominent, and there is no longer a need for a separate DOE report.

Subsection (j) converts a free-standing report requirement on steel and aluminum research and development activities into a requirement that such activities be described in the annual budget submission of the Department.

Subsection (k) converts a free-standing report requirement on metal casting research and development activities into a requirement that such activities be described in the annual budget submission of the Department.

Subsection (l) converts the National Energy Policy Plan from a biennial report to a quadrennial report. The timing called for this report in the DOE Act requires that a new Presidential Administration submit a National Energy Policy Plan less than 3 months after taking office. This is unrealistic. In recent years, an Assistant Secretary of Energy for Policy has often not even been confirmed by that point in time. The biennial requirement also does not make sense from the point of view of requiring any given administration to generate such a report twice during each term of office. It would be more sensible to make this requirement a quadrennial one, in which case each new administration would have two full years to conduct its analysis and policy development process. The resulting energy policy plan would be released in April of the third year of its term.

Subsection (m) repeals the authorization for two offices that no longer exist in the Department of Energy.

The Office of Subseabed Disposal Research was established in 1982 to conduct research on subseabed disposal of nuclear waste. Such disposal is not ever likely to occur, and no such research has ever been proposed by the Department or funded through appropriations acts.

The Office of Alcohol Fuels was established by subtitle A of title II of the Energy Security Act (P.L. 96–294), and during the early 1980's it played a vital role in support of the emerging alcohol fuels industry. In 1985, the last of three loans made to subsidize the construction of grain-based ethanol plants was guaranteed by the Department of Energy, and on June 30, 1987, the Department's loan guarantee authority expired. Only one of the loan guarantee recipients, the New Energy Co. of Indiana, continues to produce alcohol fuels. Other than this plant, all other commercial ethanol plants in operation were built without government financial assistance. A statutory office within the DOE, headed by an Executive Level IV Presidential appointee, is no longer needed simply to manage one loan guarantee. Indeed, the functions of the Office of Alcohol Fuels have already been transferred within the Department to the Assistant Secretary for Energy Efficiency and Renewable Energy, and the Office itself has been closed. Under this proposed amendment to the Energy Security Act, which is essentially technical in nature, the DOE would continue to manage the New Energy Company loan guarantee until the loan is repaid.

Mr. President, there is nothing controversial about this bill. It is simply good government. I look forward to receiving comments on the bill from the Department of Energy and to its speedy passage.

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

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

S. 2033

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 ''DOE Reports Elimination and Streamlining Act of 1996''.

SEC. 2. REPEALS AND MODIFICATIONS.

(a) REPORTS ON INDUSTRIAL ENERGY EFFICIENCY PROGRAMS.—

(1) Section 132(d) of the Energy Policy Act of 1992 (42 U.S.C. 6349(d)) is amended by striking ''and annually thereafter,''.

(2) Section 133(c) of the Energy Policy Act of 1992 (42 U.S.C. 6350(c)) is amended by striking ''and biennially thereafter,''.

(b) STUDY AND REPORT ON VIBRATION REDUCTION TECHNOLOGIES.—Section 173 of the Energy Policy Act of 1992 (42 U.S.C. 13451 note) is repealed.

(c) REPORT ON POTENTIAL FINANCIAL INVESTMENTS BY ELECTRIC UTILITIES IN ELECTRIC BATTERIES FOR MOTOR VEHICLES.—Section 825 of the Energy Policy Act of 1992 (42 U.S.C. 13295) is repealed.

(d) BIENNIAL REPORTS ON COAL RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—Section 1301(d) of the Energy Policy Act of 1992 (42 U.S.C. 13331(d)) is amended by striking ''every two years thereafter for a period of 6 years'' and inserting ''not later than 6 years thereafter''.

(e) CHANGE OF UPDATES TO FIVE-YEAR PROGRAM PLAN FOR ELECTRIC MOTOR VEHICLES TO A BIENNIAL BASIS.—Section 2025(b)(4) of the Energy Policy Act of 1992 (42 U.S.C. 13435(b)(4)) is amended by striking ''Annual'' and inserting ''Biennial''.

(f) BIENNIAL UPDATE TO NATIONAL ADVANCED MATERIALS INITIATIVE FIVE-YEAR PROGRAM PLAN.—Section 2201(b) of the Energy Policy Act of 1992 (42 U.S.C. 13501(b)) is amended by striking the last sentence.

(g) BIENNIAL REPORT ON IMPLANTATION OF THE ALASKA SWAP ACT.—Section 6(a) of the Alaska Federal-Civilian Energy Efficiency Swap Act of 1980 (40 U.S.C. 795d) is repealed.

(h) REPEAL OF UNCONSTITUTIONAL LEGISLATIVE VETO AND RELATED REPORT.—Section 54(a) of the Atomic Energy Act of 1954 (42 U.S.C. 2074(a)) is amended—

(1) by striking the colon at the end of the first proviso and inserting a period; and

(2) by striking the second, third, and fourth provisos.

(i) CONVERSION OF ANNUAL REPORT ON SCIENTIFIC DRILLING PROGRAM TO PERIODIC JOINT REPORT.—Section 4(6) of the Continental Scientific Drilling and Exploration Act (P.L. 100–441; 102 Stat. 1762) is amended to read as follows:

''(6) submitting to the Congress periodic joint reports on significant accomplishments of, and plans for, the drilling program.''

(j) INCORPORATION OF ANNUAL REPORT ON STEEL AND ALUMINUM RESEARCH AND DEVELOPMENT ACTIVITIES INTO THE PRESIDENT'S BUDGET.—Section 8 of the Steel and Aluminum Conservation and Technology Competitiveness Act of 1988 (15 U.S.C. 5107) is amended to read as follows:

''SEC. 8. REPORTS.

''As part of the annual budget submission of the President under section 1105 of title 31, United States Code, the Secretary shall provide to Congress a description of research

and development activities to be carried out under this Act during the fiscal year involved, together with such legislative recommendations as the Secretary may consider appropriate.''

(k) INCORPORATION OF ANNUAL REPORT ON METAL CASTING RESEARCH AND DEVELOPMENT ACTIVITIES, INTO THE PRESIDENT'S BUDGET.—Section 10 of the DOE Metal Casting Competitiveness Research Act of 1990 (15 U.S.C. 5309) is amended to read as follows:

''SEC. 10. REPORTS.

''As part of the annual budget submission of the President under section 1105 of title 31, United States Code, the Secretary shall provide to Congress a description of research and development activities to be carried out under this Act during the fiscal year involved, together with such legislative recommendations as the Secretary may consider appropriate.''

(*l*) CONVERSION OF NATIONAL ENERGY POLICY PLAN FROM BIENNIAL REPORT TO QUADRENNIAL REPORT.—Section 801(b) of the Department of Energy Organization Act (42 U.S.C. 7321(b)) is amended by striking ''biennially'' and inserting ''every 4 years''.

(m) REPEAL OF AUTHORIZATIONS FOR DOE OFFICES NO LONGER IN EXISTENCE.—

(1) OFFICE OF SUBSEABED DISPOSAL RESEARCH.—Section 224 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10204 is repealed.

(2) OFFICE OF ALCOHOL FUELS.—(A) Subtitle A of title II of the Energy Security Act (42 U.S.C. 8811 through 8821) is repealed.

(B) Any existing loan guarantee under section 214 of the Energy Security Act shall remain in effect until the loan is repaid; and the Department of Energy shall continue to administer an existing loan guarantee under section 214 as if subtitle A had not been repealed.

(C) The table of contents for the Energy Security Act is amended by striking the item relating to subtitle A of title II and the matters relating to sections 211 through 221.

By Mr. BREAUX (for himself, Mr. MACK, Mr. GRAHAM, and Mr. COHEN):

S. 2034. A bill to amend title XVIII of the Social Security Act to make certain changes to hospice care under the Medicare program; to the Committee on Finance.

THE MEDICARE HOSPICE BENEFIT AMENDMENTS OF 1996

Mr. BREAUX. Mr. President, I rise today to introduce legislation to make technical changes to the Medicare hospice benefit which will ensure that high quality hospice services will be available to all terminally ill Medicare beneficiaries. Senators MACK, GRAHAM, and COHEN join me in sponsoring this legislation, which is identical to H.R. 3714 introduced last month. This legislation is endorsed by both the National Hospice Organization and the National Association for Home Care, and I urge my colleagues to support it.

Hospices help care for and comfort terminally ill patients at home or in home-like settings. There are more than 2,450 operational or planned hospice programs in all 50 States. In 1994, approximately 1 out of every 10 people in America who died were tended to by a hospice program, and 1 out of every 3 people who died from cancer or AIDS were cared for by hospice. Services provided under the Medicare hospice benefit include physician services, nursing care, drugs for symptom management and pain relief, short term inpatient and respite care, and counseling both for the terminally ill and their families. Terminally ill patients who elect hospice opt-out of most other Medicare services related to their terminal illness.

Hospice services permit terminally ill people to die with dignity, usually in the comforting surroundings of their own homes with their loved ones nearby. Hospice is also a cost-effective form of care. At a time when Medicare is pushing to enroll more beneficiaries in managed care plans, hospice is already managed care. Hospices provide patients with whatever palliative services are needed to manage their terminal illness, and they are reimbursed a standard per diem rate, based on the intensity of care needed and whether the patient is an inpatient or at home.

With 28 percent of all Medicare costs now going toward the care of people in their last year of life, and almost 50 percent of those costs spent during the last 2 months of life, cost-effective alternatives are needed. Studies show hospices do reduce Medicare spending. A study released last year by Lewin-VHI showed that for every dollar Medicare spent on hospice, it saved $1.52 in Medicare part A and part B expenditures. Similarly, a 1989 study commissioned by the Health Care Financing Administration showed savings of $1.26 for every Medicare dollar spent on hospice. I would ask unanimous consent that a summary of these studies be inserted in the RECORD at the conclusion of my remarks.

Since 1982, when the hospice benefit was added to the Medicare statute, more and more Americans have chosen to spend their final months of life in this humane and cost-effective setting. Yet in recent years it has become clear that certain technical changes are needed in the Medicare hospice benefit both to protect beneficiaries and to ensure that a full range of cost-effective hospice services continues to be available. The bill I am introducing today makes six necessary technical changes.

First, the Medicare Hospice Benefits Amendments of 1996 restructures the hospice benefit periods. The basic eligibility criteria do not change. Under this bill, as in current law, a person is eligible for the Medicare hospice benefit only if two physicians have certified that he is terminally ill with a life expectancy of 6 months or less. Patients who elect to receive hospice benefits give up most other Medicare benefits unless and until they withdraw from the hospice program.

While this bill does not change hospice eligibility criteria, it does change how the benefit periods are structured. Currently, the Medicare benefit consists of four benefit periods. At the end of each of the first three periods, the patient must be recertified as being terminally ill. The fourth benefit period is of unlimited duration. However, a patient who withdraws from hospice during the fourth hospice period forfeits his ability to elect hospice services in the future. Thus, a patient who goes into remission, and is thus no longer eligible for hospice because his life expectancy exceeds 6 months, is not be able to return to hospice when his condition worsens.

This bill restructures the hospice benefit periods to eliminate the existing open-ended fourth benefit period and to provide that after the first two 90 day periods, patients are reevaluated every 60 days to ensure that they still qualify for hospice services. This restructuring ensures that those receiving Medicare benefits are able to receive hospice services at the time they need them and can be discharged from hospice care with no penalty if their prognosis changes.

Second, the bill clarifies that ambulance services, diagnostic tests, radiation, and chemotherapy are covered under the hospice benefit when they are included in the patient s plan of care. No separate payment will be made for these services, but hospices will have to provide them when they are found to be necessary as a palliative measure. This change conforms the statute to current Medicare regulatory policy.

Third, the bill also permits hospices to have independent contractor relationships with physicians. Under current law, hospices must directly employ their medical directors and other staff physicians. This creates a legal problem in some States which prohibit the corporate practice of medicine, and the requirement has made it increasingly difficult to recruit part-time hospice physicians.

Fourth, the bill creates a mechanism to allow waiver of certain staffing requirements for rural hospices, which often have difficulty becoming Medicare-certified because of shortages of certain health professionals. Currently, about 80 percent of hospices are Medicare-certified or pending certification.

Fifth, the bill reinstates an expired provision regarding liability for certain denials. As made clear by an article published on July 18 of last month in the prestigious New England Journal of Medicine, most patients are referred to hospice very late in the course of their terminal illnesses, but some live longer than 6 months. Predicting when an individual will die will never be an exact science, and we should not expect it to be. Therefore, the bill reinstates the expired statutory presumption that hospices with very low error rates on their Medicare claims did not know that denied benefits were not covered, and it expands the bases for waiver of liability to include cases where a prognosis of 6 months life expectancy is found to have been in error.

Finally, this bill provides some administrative flexibility regarding certification of terminal illness. Currently, the statute requires that paperwork documenting physician certification of a patient s terminal illness be

completed within a certain number of days of the patient s admission to hospice. This bill will eliminate the strict statutory requirements and give the Health Care Financing Administration the discretion, as it currently has with home health certifications, to require hospice certifications to be on file before a Medicare claim is submitted.

The Medicare Hospice Benefit Amendments of 1996 are noncontroversial and should not affect Medicare spending, but they will make important and necessary changes to the Medicare hospice benefit, to enable hospices to provide high quality, cost effective care to the terminally ill, and to protect beneficiaries who depend on these services. I urge my colleagues to support this bill.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

S. 2034

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Hospice Benefit Amendments of 1996''.

SEC. 2. HOSPICE CARE BENEFIT PERIODS.

(a) RESTRUCTURING OF BENEFIT PERIOD.—Section 1812 of the Social Security Act (42 U.S.C. 1395d) is amended in subsections (a)(4) and (d)(1), by striking '', a subsequent period of 30 days, and a subsequent extension period'' and inserting ''and an unlimited number of subsequent periods of 60 days each''.

(b) CONFORMING AMENDMENTS.—(1) Section 1812(d)(2)(B) of such Act (42 U.S.C. 1395d(d)(2)(B)) is amended by striking ''90- or 30-day period or a subsequent extension period'' and inserting ''90-day period or a subsequent 60-day period''.

(2) Section 1814(a)(7)(A) of such Act (42 U.S.C. 1395f(a)(7)(A)) is amended—

(A) in clause (i), by inserting ''and'' at the end;

(B) in clause (ii)—

(i) by striking ''30-day'' and inserting ''60-day''; and

(ii) by striking ''and'' at the end and inserting a period; and

(C) by striking clause (iii).

SEC. 3. AMBULANCE SERVICES, DIAGNOSTIC TESTS, CHEMOTHERAPY SERVICES, AND RADIATION THERAPY SERVICES INCLUDED IN HOSPICE CARE.

Section 1861(dd)(1) of the Social Security Act (42 U.S.C. 1395x(dd)(1)) is amended—

(1) in subparagraph (E), by inserting ''anticancer chemotherapeutic agents and other'' before ''drugs'';

(2) in subparagraph (G), by striking ''and'' at the end;

(3) in subparagraph (H), by striking the period at the end and inserting a comma; and

(4) by inserting after subparagraph (H) the following:

''(I) ambulance services,

''(J) diagnostic tests, and

''(K) radiation therapy services.''.

SEC. 4. CONTRACTING WITH INDEPENDENT PHYSICIANS OR PHYSICIAN GROUPS FOR HOSPICE CARE SERVICES PERMITTED.

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

(1) in subparagraph (A)(ii)(I), by striking ''(F),''; and

(2) in subparagraph (B)(i), by inserting ''or under contract with'' after ''employed by''.

SEC. 5. WAIVER OF CERTAIN STAFFING REQUIREMENTS FOR HOSPICE CARE PROGRAMS IN NON-URBANIZED AREAS.

Section 1861(dd)(5) of the Social Security Act (42 U.S.C. 1395x(dd)(5)) is amended—

(1) in subparagraph (B), by inserting ''or (C)'' after ''subparagraph (A)'' each place it appears; and

(2) by adding at the end the following:

''(C) The Secretary may waive the requirements of paragraphs (2)(A)(i) and (2)(A)(ii) for an agency or organization with respect to the services described in paragraph (1)(B) and, with respect to dietary counseling, paragraph (1)(H), if such agency or organization—

''(i) is located in an area which is not an urbanized area (as defined by the Bureau of Census), and

''(ii) demonstrates to the satisfaction of the Secretary that the agency or organization has been unable, despite diligent efforts, to recruit appropriate personnel.''.

SEC. 6. LIMITATION ON LIABILITY OF BENEFICIARIES AND PROVIDERS FOR CERTAIN HOSPICE COVERAGE DENIALS.

(a) IN GENERAL.—Section 1879(g) of the Social Security Act (42 U.S.C. 1395pp(g)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and moving such subparagraphs 2 ems to the right;

(2) by striking ''is,'' and inserting ''is—'';

(3) by making the remaining text of subsection (g), as amended, that follows ''is—'' a new paragraph (1) and indenting such paragraph 2 ems to the right;

(4) by striking the period at the end and inserting ''; and''; and

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

''(2) with respect to the provision of hospice care to an individual, a determination that the individual is not terminally ill.''.

(b) WAIVER PERIOD EXTENDED.—Section 9305(f)(2) of the Omnibus Budget Reconciliation Act of 1986 is amended by striking ''and before December 31, 1995.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on December 31, 1995.

SEC. 7. EXTENDING THE PERIOD FOR PHYSICIAN CERTIFICATION OF AN INDIVIDUAL'S TERMINAL ILLNESS.

Section 1814(a)(7)(A)(i)(II) of the Social Security Act (42 U.S.C. 1395f(a)(7)(A)(i)(II)) is amended by striking '', not later than 2 days after hospice care is initiated (or, if each certify verbally not later than 2 days after hospice care is initiated, not later than 8 days after such care is initiated),'' and inserting ''at the beginning of the period''.

SEC. 8. EFFECTIVE DATE.

Except as provided in section 6(c), the amendments made by this Act shall apply to benefits provided on or after the date of the enactment of this Act, regardless of whether or not an individual has made an election under section 1812(d) of the Social Security Act before such date.

SUMMARY OF STUDIES REGARDING COST-EFFECTIVENESS OF HOSPICE

Lewin-VHI's 1995 report, An Analysis of the Cost Savings of the Medicare Hospice Benefit, prepared for The National Hospice Organization, updates a previous study prepared in 1989 by Abt Associates for the Health Care Financing Administration entitled Medicare Hospice Benefit Program Evaluation.

The 1989 Abt study found that:

(1) Medicare saved $1.26 for every $1.00 spent on hospice care.

(2) Much of these savings were realized during the last month of life of the patient and were largely a result of the substitution of home hospice care for in-hospital care.

The 1995 Lewin-VHI study was based on data generated from a group of Medicare recipients who died of cancer during the period between July 1 and December 31, 1992. This group was further divided into those who had one or more hospices claim during the aforementioned period and those who had none. (Additional analysis was done to ensure no selection bias.)

The Lewin-VHI report concluded:

(1) Medicare saved $1.52 for every $1.00 spent on hospice.

(2) While savings were highest for the last month of life, there were also net savings over the last year of life for those who enrolled in hospice.

(3) While the greatest savings were found in Part A Medicare expenditures, savings were also found in Part B expenditures.

Mr. GRAHAM. Mr. President, I rise today to join in support of the ''Medicare Hospice Benefit Amendments of 1996'' to be introduced by Senator BREAUX.

The number of terminally ill patients choosing hospice care over conventional Medicare has increased from 11,000 Medicare admission in 1985 to more than 220,000 Medicare beneficiaries last year.

During the current session of Congress, much has been made about the problems with the Medicare Trust Fund. Congress should act as soon as possible to reduce Medicare costs and protect the Medicare Trust Fund. However, radical cuts to the program are not the solution.

Instead, we should emphasize prevention, fraud reduction, and successful programs such as hospice care—all proven efforts at reducing spending while maintaining current Medicare quality and beneficiary protections.

The goal of hospice is to provide comprehensive health care at home to terminally ill patients in a manner that improves the quality of life for the patients and their families. This approach places a high value of personal choice, family support, and community involvement.

Patients covered by Medicare and Medicaid waiver their eligibility for all other public program benefits when choosing hospice care. By doing so, hospice patients are cared for at home with their families and avoid costly hospitalizations. Hospice makes sense from a health care, quality of life, and economic perspective.

The number of terminally ill patients choosing hospice care over conventional Medicare has increased from 11,000 Medicare admission in 1985 to more than 220,000 Medicare beneficiaries last year.

Clearly, hospice is an idea that is rapidly gaining acceptance and acclaim in modern times. Florida has been a pioneer in the modern hospice movement. In 1979, while I was the Governor in Florida, my State became the first to set standards for hospices and recognize hospice as an option for the terminally ill. The Florida law served as a model for national legislation. As a result, inpatient and at-home hospice care has been covered by Medicare since 1982.

The goal of hospice is to make the last months of a person's life as comfortable and meaningful as possible. Hospice does not use artificial life-support systems or surgery when there is no reasonable hope of remission. Hospice offers dignity for the dying and avoids costly—often traumatic—acute-care hospitalization.

For example, according to Lewin-VHI in their 1994 study entitled Hospice Care: An Introduction and Review of the Evidence, Medicare beneficiaries in their last year of life constituted 5 percent of beneficiaries in 1988 but more than 27 percent of Medicare payments. Lewin-VHI adds that ''during the last month of life, hospice users cost, on average, $3,069, while those using conventional care cost $4,071.'' Overall, that study indicates the use of the hospice benefit saved Medicare $1.26 for every $1.00 spent.

However, an updated 1995 Lewin-VHI study shows even better results through the use of hospice. The study, entitled An Analysis of the Cost Savings of the Medicare Hospice Benefit, found that Medicare saves $1.52 for every $1.00 spent on hospice.

According to Lewin-VHI, ''First, hospices effectively substitute relatively inexpensive care at home for costly inpatient hospital days during the period in which expenditures are typically the greatest and in which most hospice users enroll in the benefit, in the last month of life. Second, the financial incentives of the current Medicare Hospice Benefit reinforce the organizational incentives of most hospice programs to provide quality care at a lower cost.''

In another study entitled ''Survival of Medicare Patients After Enrollment in Hospice Programs'' in the New England Journal of Medicine on July 18, 1996, authors Nicholas Christakis and Jose Escarce establish that the benefits of hospice should be expanded. They write, ''Enrolling patients [in hospice] earlier . . . might enhance the quality of end-of-life care and also prove cost effective.''

Again, hospice has been a Medicare benefit since passage of the 1982 law and its implementation in 1983. Hospice care has grown dramatically since the benefit's inception, but few changes have been made to the 1982 law. As the bill's House sponsors—Congressmen BEN CARDIN and ROB PORTMAN—have said, ''As more and more patients choose the hospice benefit, it has become clear that certain provisions of the law need to be clarified in order to protect Medicare beneficiaries and to ensure that Medicare hospice patients can continue to receive excellent, cost-effective hospice care.''

We should do what we can to encourage hospice care in the Medicare program and through the health care system generally. This bill makes technical amendments to Medicare's hospice program. Specifically, the bill would:

Restructure the benefit periods to require more frequent certifications after 180 days to facilitate appropriate discharge with no penalty to the patient; clarify that ambulances, diagnostic tests, radiation and chemotherapy are covered hospice services when included in the plan of care; amend the ''core services'' requirement to allow hospices to contract for physician services with independent contractor physicians or physician groups; allow waiver of certain staffing requirements of rural hospices; extend the expired favorable presumption of waiver of liability provisions and include waiver protection where prognosis of terminal illness is found to have been in error; and, allow the Health Care Financing Administration to set documentation requirements of physician certifications.

Finally, I would like to commend Congressman CARDIN from Maryland for his hard work on this legislation on the House side. The Congressman is a great thinker on the topic of how to improve Medicare and his legislation—H.R. 3714—once again serves that purpose.

By Mr. BIDEN:

S. 2035. A bill to invest in the future American work force and to ensure that all Americans have access to higher education by providing tax relief for investment in a college education and by encouraging savings for college costs, and for other purposes; to the Committee on Finance.

THE GET AHEAD ACT

Mr. BIDEN. Mr. President, I have spoken in the Senate before about how the rising cost of a college education is putting a higher education—the American dream—out of reach for many middle-class American families.

When I went to college, middle-class families could pay for the public college tuition and fees of their children for less than 5 percent of their income. It stayed that way until 1980. Since then, however, college costs have skyrocketed and middle-class incomes have stagnated. The result is that today it takes almost 9 percent of the average family's income to send one—just one—child to a public college. And, if you go to a private college or university, tuition and fees will eat up 35 percent of your income.

Who can afford that? Not many middle-class families that I know. Many young people today must choose between going heavily into debt or not going to college at all. And, as the debt burden gets heavier and heavier, more and more middle-class kids will not even have that choice. They simply will not be able to go to college.

And, this is happening at a time when we as a Nation can least afford it.

Educating our work force is one of the best investments we as a society can make, and it is one of the best measurements of future economic well-being. According to one study, a more educated population has been responsible for nearly one-third of America's economic growth since the Great Depression. As we prepare to enter the 21st century and as the world economy is increasingly internationally competitive, we must ensure that no American is denied a higher education solely because of the cost.

In fact, this has been a goal of the Federal Government for over a century. From the establishment of the land-grant university system in the late 1800's to the GI bill at the end of World War II to the creation of the Pell Grant and Guaranteed Student Loan Programs in the 1960's, the Federal Government has been committed to seeing a college education within reach of every American. It is time to renew that commitment.

So, today, Mr. President, I am introducing comprehensive legislation to make college more affordable for American families, so that middle-class parents can afford to send their kids to college and middle-class kids can afford to go.

My bill, titled ''Growing the Economy for Tomorrow: Assuring Higher Education is Affordable and Dependable''—Get Ahead, for short—combines numerous proposals to give tax cuts for the cost of college, to encourage families to save for a college education, and to award college scholarships to high school students in the top of their class academically.

For the sake of time, Mr. President, I will not go through all of specific proposals now. Instead, I refer my colleagues to a summary of the legislation.

Mr. President, a college education is the dream of every American family. When I travel around my State of Delaware, I meet with wealthy businessmen, poor welfare mothers, and hundreds of middle-class families. And, they all want the same thing for their kids: a chance to go to college.

They do not need us in Washington to tell them it is becoming harder and harder to get there. They know that. They need us to make it easier for them. I urge my colleagues to cosponsor this important legislation to make sure that the American dream of a college education remains within reach of every American.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

THE GET AHEAD ACT—SUMMARY

TITLE I—TAX INCENTIVES FOR HIGHER EDUCATION

Subtitle A—Tax Relief for Higher Education Costs

Section 101—Deduction for Higher Education Expenses

An above-the-line tax deduction (available even to those who do not itemize deductions) would be allowed for the costs of college tuition and fees as well as interest on college loans.

In the case of tuition costs, beginning in tax year 1999, the maximum annual deduction would be $10,000 per year; a maximum deduction of $5,000 would be available in tax years 1996, 1997, and 1998. The full deduction

would be available to single taxpayers with incomes under $70,000 and married couples with incomes under $100,000; a reduced (phased-out) deduction would be available to those with incomes up to $90,000 (singles) and $120,000 (couples). The income thresholds would be indexed annually for inflation.

Interest on student loans would be deductible beginning with interest payments made in tax year 1996. Interest payments could be deducted on top of the $10,000 deduction for payment of college tuition and fees. There would be no annual maximum and no income limits with regard to the deductibility of interest on student loans.

Language is included to coordinate this tax deduction with other education provisions of the tax code—to ensure that individuals do not receive a double benefit for the same payments. Specifically, qualified higher education expenses that could be tax deductible would be reduced by any payments made from Series EE savings bonds (and excluded from taxable income), any veterans educational assistance provided by the federal government, and any other payments from tax-exempt sources (e.g. employer-provided educational assistance). Also, tax-free scholarships and tax-excluded funds from Education Savings Accounts (see section 112) would first be attributed to room and board costs; the remainder, if any, would count against tuition and fees and would reduce the amount that would be tax deductible. However, if tuition and fees still exceeded $10,000 even after the reductions, the full tax deduction would be available.

Section 102—Exclusion for Scholarships and Fellowships

College scholarships and fellowship grants would not be considered income for the purposes of federal income taxes. This returns the tax treatment of scholarships and fellowships to their treatment prior to the 1986 Tax Reform Act (which limited the exclusion of scholarships and fellowships to that used for tuition and fees).

Scholarships and fellowship grants would be fully excludable for degree candidates. In the case of non-degree candidates, individuals would be eligible for a lifetime exclusion of $10,800—$300 per month for a maximum 36 months.

Language is included to clarify that federal grants for higher education that are conditioned on future service (such as National Health Service Corps grants for medical students) would still be eligible for tax exclusion.

This section would be effective beginning with scholarships and fellowship grants used in tax year 1996.

Section 103—Permanent Exclusion for Educational Assistance

The tax exclusion for employer-provided educational assistance would be reinstated retroactively to January 1, 1995. And, the tax exclusion would be made a permanent part of the tax code.

Subtitle B—Encouraging Savings for Higher Education Costs

Section 111—IRA Distributions Used Without Penalty for Higher Education Expenses

Funds could be withdrawn from Individual Retirement Accounts (IRAs) before age 59½ without being subject to the 10 percent penalty tax if the funds were used for higher education tuition and fees. (However, withdrawn funds, if deductible when contributed to the IRA, would be considered gross income for the purposes of federal income taxes.)

This section would be effective upon enactment.

Section 112—Education Savings Accounts

This section would create IRA-like accounts—known as Education Savings Accounts (ESA's)—for the purpose of encouraging savings for a college education.

Each year, a family could invest up to $2000 per child under the age of 19 in an ESA. For single taxpayers with incomes under $70,000 (phased out up to $90,000) and married couples with incomes under $100,000 (phased out up to $120,000), the contributions would be tax deductible. (These income thresholds would be indexed annually for inflation.) For all taxpayers, the interest in an ESA would accumulate tax free; the contributions would not be subject to the federal gift tax; and, the balance in an ESA would not be treated as an asset or income for the purposes of determining eligibility for federal means-tested programs.

ESA funds could be withdrawn to meet the higher education expenses—tuition, fees, books, supplies, equipment, and room and board—of the beneficiary. Funds withdrawn for other purposes would be subject to a 10 percent penalty tax and would be considered income for the purposes of federal income taxes (to the extent that the funds were tax deductible when contributed). The penalty tax would not apply in cases of death or disability of the beneficiary of the ESA and in cases of unemployment of the contributors.

In addition, when the beneficiary of the account turns age 30 and is not enrolled in college at least half time, any funds remaining in the ESA would be (1) transferred to another ESA; (2) donated to an educational institution; or (3) refunded to the contributors. In the first two cases, there would be no penalty tax and the money would not be considered taxable income. In the third case, the penalty tax would not apply, but the funds would be counted as income to the extent that the funds were tax deductible when contributed.

Finally, parents could roll over funds from one child's ESA to another child's ESA without regard to any taxes, without regard to the $2000 annual maximum contribution to an ESA, and without regard to the age 30 requirement noted above. Funds rolled over would also not be subject to the federal gift tax.

Language is also included to allow individuals to designate contributions to an ESA as nondeductible even if such contributions could be tax deductible. This gives families the option to build up the principal in an ESA while at a lower tax rate, rather than having to pay taxes on unspent ESA funds when the contributors are older and likely in a higher tax bracket.

Tax deductible contributions to ESAs would be allowed beginning in tax year 1996.

Section 113—Increase in Income Limits for Savings Bond Exclusion

For taxpayers with incomes below certain thresholds, the interest earned on Series EE U.S. Savings Bonds are not considered taxable income if the withdrawn funds are used to pay for higher education tuition and fees. This section increases the income thresholds to allow more Americans to use the Series EE Savings Bonds for education expenses.

Effective with tax year 1996, the income thresholds would be the same as the income thresholds for the higher education tax deduction (see section 101): $70,000 for single taxpayers (phased out up to $90,000), and $100,000 for couples (phased out up to $120,000). As with the higher education tax deduction, these income thresholds would be indexed annually for inflation.

Section 114—Tax Treatment of State Prepaid Tuition Plans

Several states have established prepaid tuition plans, where individuals can make advance payments for college tuition. However, because of the uncertainty of federal tax law, some states have put their plans on hold and other states have not gone forward at all. This section clarifies federal tax law in two respects.

First, state-established trusts or corporations created exclusively for managing tuition prepayment plans would be exempt from federal taxes on investment earnings. Second, the letter-ruling issued by the IRS to Michigan would be codified: purchasers and beneficiaries of prepaid tuition plans would be liable for federal income taxes on the increased value of the investment only at the time the funds were redeemed, not each year as the ''interest'' accrued.

To be eligible for the tax clarification, a state prepaid tuition plan must guarantee at the time of purchase that a certain percentage of costs would be covered at a participating educational institution, regardless of the performance of the investment fund. And, it must guarantee that funds would be refunded in the event of the death or disability of the beneficiary or in the event the beneficiary failed to enroll in a participating institution.

TITLE II—SCHOLARSHIPS FOR ACADEMIC ACHIEVEMENT

Beginning with the high school graduating class of 1997, the top 5 percent of graduating seniors at each high school in the United States would be eligible for a $1000 merit scholarship. If an individual receiving such a scholarship achieved a 3.0 (''B'') average during his or her first year of college, a second $1000 scholarship would be awarded.

However, the merit scholarships would be available only to those students in families with income under $70,000 (single) and $100,000 (couples). These income thresholds would be increased annually for inflation.

Funds are authorized (and subject to annual appropriations) for five years. The first year authorization (fiscal year 1997) is $130 million. In each of the next four years (FY 1998–FY 2001), because the scholarships could be renewed for a second year, the authorization is $260 million per year. Total five-year authorization: $1.17 billion.

TITLE III—DEFICIT NEUTRALITY

To ensure that the ''GET AHEAD'' Act does not increase the deficit, this title declares it the sense of the Senate that the costs of the bill should be paid by closing corporate tax loopholes.

By Mr. DORGAN (for himself, Mr. BAUCUS, Mrs. MURRAY, Mr. WELLSTONE, Mr. CONRAD, Mr. WYDEN, and Mr. DASCHLE):

S. 2036. A bill to amend the Agricultural Market Transition Act to provide equitable treatment for barley producers so that 1996 contract payments to the producers are not reduced to a greater extent than the average percentage reduction in contract payments for other commodities, while maintaining the level of contract payments for other commodities, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

BARLEY GROWERS LEGISLATION

Mr. DORGAN. Mr. President, last week, I was among a group of Senators who tried to correct an inequitable payment reduction in farm program contract payments faced by barley growers. After considerable time and effort we reluctantly came to an agreement on an amendment to address this problem.

At the time, I said it was not the answer to the problem, but rather a small

step in the journey. Unfortunately that journey ended up being a very short one that quickly got sidetracked.

Despite the fact that the Senate agreed to the amendment to provide some relief to barley growers, the conference report came back this week with no additional funds to deal with this problem. The Senate amendment was deleted.

Instead the conferees referred the issue back to the authorizing committee and then provided an unfunded directive to the Secretary of Agriculture to deal with the problem. At the time we agreed to the Senate amendment, I was concerned that this would be the outcome. Another referral and no real action.

Barley growers deserve more than that. The freedom to farm fixed contract payment system has been violated, and the Government is once again being viewed as not keeping its word. While the freedom to farm bill was not my choice for farm legislation, I believe the promises it made to producers constitutes a public commitment that should be kept.

It appears that the only way that commitment can be met is if legislation is introduced to require that such action be taken. That is why I am introducing legislation today.

My bill will give the authorizing committee, the Senate Agriculture Committee, a clear opportunity to move forward to resolve this issue. It will establish the goal that we had in mind when we sought to solve this problem by amending the appropriations bill.

It would seem to me that the majority leadership of the authorizing committees would be the first ones in line to correct this problem. They were the ones who developed the freedom to farm proposal, and they were the ones who used their projected schedule of fixed payments to sell their farm policy approach to American farmers.

A news release issued November 21, 1995, by House Agriculture Committee Chairman PAT ROBERTS clearly states that the expected market transition payments under the Freedom to Farm Program would be 46 cents per bushel for barley, 27 cents per bushel for corn, and 92 cents per bushel for wheat.

This news release lists the source of these estimates as the Republican staff of the Senate Committee on Agriculture, Nutrition, and Forestry. These payment projections went unchanged throughout the farm bill debate right through the final farm bill conference committee.

How or why these miscalculations occurred is a moot point. My purpose is not to blame anybody. My purpose is to point out that the freedom to farm bill sponsors developed these projections and used them to advance their farm program proposal. These estimates were the basis of the decisions of many farmers and farm organizations in deciding what they would support as the farm bill moved through Congress.

Throughout the farm bill debate, it was clear that these estimated amounts might be a few cents off, but nobody expected any substantial difference between these estimates and the contract payments.

MISCALCULATION RESULTS IN 30-PERCENT CUT

Unfortunately, there was a $39 million miscalculation in the payments projected for barley producers. Rather than the original payment rate of 46 cents per bushel in 1996, barley producers found out later that their payments will be only 32 cents per bushel. That is a full 30 percent less than the original congressional estimates.

Our barley producers based their farm plans and cash flow for this crop year on the projections that were made last fall. They went to their bankers and creditors who made loans based on these projections.

Frankly, I shouldn't be the one that is trying to correct this problem. This problem should have been corrected by those that developed the freedom to farm bill and its payment projections. However, since North Dakota is the largest barley producing State in the Nation, this is of considerable concern to our barley producers.

My amendment would restore $35 of the $39 million to barley producers. This would be about a 10-percent cut from what was originally projected. A 10-percent cut is in line with the reductions that are expected in other payments for the other commodities.

The purpose of this amendment is to provide equitable treatment to barley producers so that contract payments are not reduced to any greater degree than they are for other commodities. No other commodity has been asked to take as deep a reduction as barley.

Wheat producers will be getting 87 cents, rather than 92 cents. That is a 5-percent reduction. Corn producers will be getting 24 cents, rather than 27 cents. That is an 11-percent reduction. Barley producers should not be expected to take a 30-percent cut in their payments.

This is a matter of keeping faith with those family farmers that made their plans on the basis of a farm bill that was very late in getting passed. It is a matter of fairness to our Nation's barley producers.

I am pleased that Senators BAUCUS, MURRAY, WELLSTONE, CONRAD, WYDEN, and DASCHLE have joined me in this effort and will be original cosponsors of this legislation.

Mr. CONRAD. Mr. President, I rise as an original cosponsor of legislation to correct the provisions of the Federal Agriculture Improvement and Reform Act of 1996 which unfairly penalizes barley producers. In one of the most egregious examples of misinformation I've ever seen, actual payments to barley producers under the act are dramatically lower than the original promises made by proponents of the bill. The bill we are introducing today corrects that error and gives barley producers the equal treatment they deserve.

On November 21, 1995, House Agriculture Committee Chairman PAT ROBERTS released a press statement announcing the estimated market transition payments under freedom to farm. The announcement clearly stated that barley payments for 1996 would be 46 cents per bushel. While the press release does state the figures were estimates, it is undeniable that the figures became the basis on which farm group after farm group made farm policy decisions. Producers were told they would receive this level of payment, or something very close to it, and that the payment would be guaranteed. I know this is true in North Dakota because in meeting after meeting I heard producers tell me it was their belief they would receive 46 cents in 1996 if freedom to farm became law.

Later we find out this is not the case, that the payments to barley producers would not be 46 cents, they would be only 32 cents. I understand other commodities received some reductions—approximately 5–10 percent—but none received the 30 percent reduction barley producers have little choice but to accept. Opponents of this bill will argue all producers were treated the same and that barley producers should have been aware the initial figures were subject to change. Well, barley producers did know there might be some change, maybe 1 or 2 cents, but did not know there might be a 30 percent change.

It's time we set the record straight and admit that barley producers were not treated fairly by the 1996 farm bill. I hope my colleagues will join me in correcting this extremely unfair situation.

By Mr. LAUTENBERG:

S. 2037. A bill to provide for aviation security, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE AVIATION SECURITY ACT OF 1996

Mr. LAUTENBERG. Mr. President, I rise today to introduce the Aviation Security Act [ASA]. This legislation is designed to significantly enhance security measures at U.S. airports, to better protect those who fly.

Mr. President, I join with all Americans in expressing my sorrow at the loss of 230 innocent lives in the crash of TWA flight 800. My sympathy and prayers are with the victims' families and friends as they struggle to cope with this tragedy.

At this time, the sea has not yielded its secrets, and we do not have conclusive evidence of why the jet crashed. However, terrorism appears to be the likely cause of the disaster.

Whether or not the cause of the crash was a bomb, this disaster has focused national attention on the fact that America's shores are not immune from terrorism. And this is a threat which I fear will only increase in scope and sophistication over the next few years.

Terrorism is an act of war, not against any specific individual, but against our entire nation. Consequently, protecting ourselves from

this scourge is a matter of national security, and we must act accordingly. We must treat this threat as seriously as any declared war. And we need to adopt measures—and attitudes—to aggressively combat this twentieth century plague.

Mr. President, living in a free society, there is only so much we can do to protect every public building, park and gathering place. However, terrorists usually target a nation where it's most vulnerable. And perhaps nowhere are we more vulnerable than in our air security system.

Mr. President, after the past few agonizing days, it's all too apparent that we must significantly upgrade security measures at U.S. airports. Although it may be impossible to stop every terrorist who is determined to bomb an airline, security can be significantly enhanced to better protect those who fly. And it must be continually improved as threats and technology change.

The 1.5 million people who daily board flights at American airports undergo security measures which were designed decades ago to stop highjackers with metal guns and knives. These measures are inadequate when dealing with terrorists with Semtex and other plastic explosives. Such explosives are so dangerous that less than 2 pounds can shred a jumbo jet into a pile of scrap metal.

The problem of inadequate protection stems from many causes. In most other countries, government is responsible for air security. In the United States, the Government, the airlines and the airports share responsibility. The highly competitive airlines, many of which are experiencing financial difficulties, face an inevitable and difficult conflict of interest. Although the Federal Aviation Administration issues minimum security standards, individual airlines and airports are responsible for implementing them.

There are also multiple loopholes in the present security system. On U.S. domestic flights, bags and passengers are not even required to travel together. And there are many other points of vulnerability, including cargo and mail.

It is true that our safety procedures were upgraded after the Lockerbie disaster. As a member of the President's Commission on Aviation Security and Terrorism, I helped draft the Aviation Security Improvement Act of 1990. Among its 38 provisions were requirements that the FAA accelerate explosives detection research and heighten security checks on airport personnel.

Additionally, on July 25, the President announced new air travel security measures. These improvements, which include increased searches of carry-on luggage and required pre-flight cargo and cabin inspections, will certainly enhance security. However, they do not go far enough.

Over the past few weeks, I have been briefed by some of our nation's best experts in the field of aviation safety. They are concerned that terrorists are outstripping our current procedures, and are breaking through America's cordon of safety. We can do better; we must do better. It will require leadership and decisiveness.

This Senator believes that we must institute a truly comprehensive security system. In order to achieve this, we must do at least three things. We must adequately invest in security technology in proportion to the increasing threat of terrorism. We must ensure that the airlines enforce necessary security measures at the gate. And we must make sure that our security personnel are adequately trained and perform well.

To begin the debate on these matters, I am introducing the Aviation Security Act (ASA). This legislation effectively addresses the problems which have become apparent recently, by charging the Department of Transportation with implementing a comprehensive aviation security system.

To enhance security before travelers reach the airport, and once they are at the gate, my bill mandates increased screening of passengers, luggage, and cargo. It also requires that the Department of Transportation review and upgrade the current procedures for examining cargo on passenger flight.

To identify passengers and cargo that pose a heightened risk—in other words, to stop the bad guys before they board or get a package on board—this legislation requries the Department of Transportation to develop a methodology to profile passengers and cargo. It also requires that air carriers implement this methodology and institute contingency plans for dealing with individuals identified as potential threats. For those individuals and cargo that pose the greatest threat, airports and airlines would be required to develop and utilize additional measures, including bag-match, personal interview, and enhanced bag search.

To complement the additional profiling and security measures, my legislation also mandates expedited installation of explosive detection devices at those airports which the Department of Transportation identifies as facing the greatest risk. These devices will include density evaluators, scanners, trace and vapor detectors.

Mr. President, the importance of installing these detection systems, as soon as possible, cannot be overemphasized. The latest luggage scanners, which can detect the most elusive plastic explosives, are now not generally used in U.S. airports. The most advanced scanning machine, the CTX–5000, works like a CAT Scan, providing a three dimensional image. There are 14 in use in Europe and Israel, and two are being installed in Manila. In our country, they are currently being tested in only Atlanta, which has two, and San Francisco. Another device, the EGIS machine, uses air samples from passengers' luggage to check for vapors emitted by explosives. Various overseas airports utilize the machine, but it's being used on only a limited basis in the United States. This, and other technologies, which can detect liquid explosives and trace chemicals, need to be further developed and deployed.

Just as important as any new machine or measure is hiring well trained security people. Most airlines, to save money, contract with security companies for low-wage workers with minimal education and little experience. Training is cursory and turnover is high. Yet, this person may be the last line of defense between a plane full of innocent people and a suicide bomber. By contrast, European security personnel are usually highly trained, educated, speak several languages and have taken courses in psychology.

This legislation requires that airport personnel who have security duties or who have access to any secure area must meet stringent requirements for training, job performance and security checks.

In conjunction with training, performance measures will be developed to assess how well security personnel are doing their jobs. Also, comprehensive investigations, including criminal history checks, will be required of all personnel in this category.

The importance of the human factor in improving security is probably best evidenced by the case of Ramzi Ahmed Yousef. Yousef is currently on trial in New York for his alleged role in the 1994 bombing of the World Trade Center. Less well known are the details of a plot to join two other men in blowing up a dozen U.S. jumbo jets in 1995.

In a 2-day reign of terror, Yousef and his compatriots planned to bomb 12 planes, with over 4,000 people on board. The motive was to provoke an end to United States support of Israel.

The heart of each bomb was a timer built by rewiring a common Casio digital watch. The timer would then be connected to a liquid nitroglycerin, disguised as contact lens solution. Even the newest screening devices would have extreme difficulty detecting the substance. Only human vigilance may have been able to stop these murderers if they had reached the airport gate. Luckily, the plot was discovered by police in the Philippines before the night's sky was set ablaze.

In addition to security, what became painfully obvious this week is that procedures to notify and counsel the families of airline disaster victims are totally inadequate. Compassion dictates that we need to adopt more efficient and humane procedures.

This legislation establishes, perhaps within the National Transportation Safety Board, the Office of Family Advocate. In consultation with the Department of State, the Department of Transportation, experts in psychology and representatives of victims' families, this Office will develop standards for informing, counseling and supporting grieving families. Providing this assistance is not just common sense, it's common decency.

Additionally, this legislation requires that information, such as full name, phone numbers and contact person, be collected when a passenger purchases a ticket. This information would be provided to the Office of Family Advocate within a specified time period after an air disaster.

Mr. President, a comprehensive security system will be expensive. The FAA has estimated that it could cost up to $6 billion over the next 10 years, to pay for security improvements. We need to decide how to pay the bill—and we need to remember that this legislation is not about spending dollars, it is about saving lives.

ASA proposes that an aviation security fee, or small surcharge of no more than $2 per one way ticket or $4 per round trip ticket, be instituted to pay for needed improvements. I would note that recent polls suggest that Americans are willing to pay as much as an extra $50 per ticket to upgrade security.

An alternative financing mechanism would be to authorize the Department of Defense to transfer such funds as may be necessary to implement the provisions of the Act. In drawing on defense funds, we would recognize that terrorism is a threat to our national security.

Mr. President, a truly comprehensive system should be put in place as soon as possible. Although not a panacea for every airport security problem, it can provide significant protection for travelers.

Of course, to truly enhance security, there is another price we all must pay. We must be willing to submit to some delay, inconvenience and intrusion when traveling by air. In London, travelers are patted down. And in many Arab airports, passengers must negotiate fourteen checkpoints before boarding. Anyone who flies coach on El Al, the Israeli national airline, is required to report to the airport 3 hours ahead of a scheduled flight. The FAA is working on how to minimize disruption while enhancing security. But we must be willing to make some trade-offs, giving up easy and quick experiences on the ground, for added security in the air.

Finally, it would be inappropriate for me to close without discussing the issue of terrorism. As a Nation, we need to better address the overall problem. We need to clamp down on domestic fundraising for Middle East Terrorist organizations. Press reports indicate that approximately $10 million is being sent annually by Americans to the terrorist group Hamas. We also need to encourage our allies in the Middle East to fight terrorist organizations in the region. And we must work with the international community to target the economies of countries that sponsor terrorism. We also cannot rule out the use of force, where necessary.

If the crash of TWA flight 800 was the work of terrorists, then they may think that they have won the battle—but they certainly haven't won the war. We can fight back.

But even if this tragedy was not the result of an evil act, but an unfortunate accident, we should not delay upgrading our security systems. We need to change the way this country approaches security. We need to be more proactive, anticipating and preempting changes in terrorist methods, rather than being reactive—always waiting for something to happen before we act.

To those who would try to deny the seriousness of the threat, and the intensity of anti-American feelings in many parts of the world, I want to again recall Ramzi Yousef's legacy of hatred. When questioned by a Pakistani interrogator as to his real motive, Yousef remarked, ''This is * * * the best thing, I enjoy it.'' He went on to explain that the United States is the first country in the world making trouble for the Muslim people. Consequently, he was willing to send 4,000 innocent people to their deaths.

Many of the scenes which have flickered across our T.V. screens over the past 2 weeks can never be forgotten. But there is one moment, in particular, which will always remain with me. A husband and father, who had lost his wife and two daughters in the disaster, hired a helicopter to fly over the crash site, which I had visited last weekend. Once there, he tossed two red roses on the water for his wife, and three white rosebuds for his little girls. And as I watched the news footage which showed the flowers slowly drifting in all directions, I thought of everything which the sea now held—the future lives of those taken too soon, and the past memories of those left behind.

I can think of no better memorial to those who died, and to those who were left behind to carry on, than to work to ensure that such a tragedy does not happen again. For the living, and in memory of the deceased, we must act now.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

S. 2037

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 ''Aviation Security Act of 1996''.

SEC. 2. ENHANCED SECURITY PROGRAMS.

(a) IN GENERAL.—Chapter 449 of title 49, United States Code, is amended by adding at the end of subchapter I the following new sections:

''§ 44916. Enhancement of aviation security

''(a) IN GENERAL.—The Secretary of Transportation (hereafter in this section referred to as the 'Secretary'), in consultation with the Administrator of the Federal Aviation Administration (hereafter in this section referred to as the 'Administrator') and other appropriate officials of the Federal Aviation Administration, shall provide for the enhancement of aviation security programs under the jurisdiction of the Federal Aviation Administration in accordance with this section.

''(b) IMPROVEMENTS IN THE EXAMINATION OF CARGO AND CHECKED BAGGAGE.—The Secretary, in consultation with the Administrator, shall—

''(1) review applicable procedures and requirements relating to the security issues concerning screening and examination of cargo and checked baggage to be placed on flights involving intrastate, interstate, or foreign air transportation that are in effect at the time of the review; and

''(2) on the basis of that review, develop and implement procedures and requirements that are more stringent than those referred to in paragraph (1) for the screening and examination of cargo and checked baggage to be placed on flights referred to in that subparagraph, including procedures that ensure that only personnel with unescorted access privileges have unescorted access at the airport to—

''(A) an aircraft;

''(B) cargo or checked baggage that is loaded onto an aircraft;

''(C) a cargo hold on an aircraft before passengers are loaded and after passengers debark;

''(D) an aircraft servicing area; or

''(E) a secured area of an airport.

''(c) PROFILES FOR RISK ASSESSMENT AND RISK REDUCTION MEASURES.—

''(1) IN GENERAL.—The Secretary, in consultation with the Administrator and appropriate officials of other Federal agencies, shall develop and implement, a methodology to profile the types of passengers, cargo, and air transportation that present, or are most susceptible to, a significant degree of risk with respect to aviation security.

''(2) RISK REDUCTION MEASURES.—In addition to developing the methodology for profiles under paragraph (1), the Secretary, in consultation with the Administrator, shall develop and implement measures to address sources that contribute to a significant degree of risk with respect to aviation security, including improved methods for matching and searching luggage or other cargo.

''(d) EXPLOSIVE DETECTION.—

''(1) IN GENERAL.—The Secretary and the Administrator, in accordance with this section, and section 44913, shall ensure the deployment, by not later than the date specified in subsection (j), of explosive detection equipment that incorporates the best available technology for explosive detection in airports—

''(A) selected by the Secretary on the basis of risk assessments; and

''(B) covered under the plan under paragraph (2).

''(2) PLAN.—The deployment of explosive detection equipment under paragraph (1) shall be carried out in accordance with a plan prepared by the Secretary, in consultation with the Administrator and other appropriate officials of the Federal Government, to expedite the installation and deployment of that equipment.

''(3) REPORT.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this section, and annually thereafter, the Secretary shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report on the deployment of explosive detection devices pursuant to the plan developed under paragraph (2).

''(B) TREATMENT OF CLASSIFIED INFORMATION.—No officer or employee of the Federal Government (including any Member of Congress) may disclose to any person other than another official of the Federal Government in accordance with applicable Federal law,

any information in the report under subparagraph (A) that is classified.

''(e) ENHANCED SCREENING OF PERSONNEL.—

''(1) IN GENERAL.—The Secretary, in consultation with the Administrator, shall establish a program for enhancing the screening of personnel of air carriers or contractors of air carriers (or subcontractors thereof) who—

''(A) in the course of their employment have—

''(i) unescorted access privileges to—

''(I) an aircraft;

''(II) cargo or checked baggage that is loaded onto an aircraft;

''(III) a cargo hold on an aircraft; or

''(IV) an aircraft servicing area; or

''(ii) security responsibilities that affect the access and passage of passengers or cargo in aircraft referred to in subparagraph (A); and

''(B) any immediate supervisor of an individual referred to in subparagraph (A).

''(2) TRAINING.—

''(A) IN GENERAL.—The Secretary, in consultation with the Administrator, shall—

''(i) review regulations and standards relating to the training of personnel referred to in paragraph (1) that are in effect at the time of the review; and

''(ii) on the basis of that review, prescribe such regulations and standards relating to minimum standards for training and certification as the Secretary determines to be appropriate.

''(B) PROHIBITION.—The fact that an individual received training in accordance with this paragraph may not be used as a defense in any action involving the negligence or intentional wrongdoing of that individual in carrying out airline security or in the conduct of intrastate, interstate, or foreign air transportation.

''(f) PERFORMANCE-BASED MEASURES.—The Secretary, in consultation with the Administrator, shall—

''(1) develop and implement, by the date specified in subsection (j), performance-based measures for all security functions covered under this section that are carried out by personnel referred to in subsection (e)(1); and

''(2) require that air carriers and owners or operators of airports that provide intrastate, interstate, or foreign air transportation ensure that those measures are carried out.

''(g) SECURITY CHECKS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Administrator and other appropriate officers and employees of the Federal Government, shall, require comprehensive employment investigations to be conducted for any individual that is employed, or commences employment, in a position described in subsection (e)(1).

''(2) CRIMINAL HISTORY CHECK.—The employment investigations referred to in paragraph (1) shall include criminal history checks. Notwithstanding any other provision of law, a criminal history check may cover a period longer than the 10-year period immediately preceding—

''(A) the initial date of employment of an individual by an employer; or

''(B) the date on which a criminal history check is conducted for an applicant for employment.

''(h) ADMINISTRATIVE ACTIONS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Administrator, shall, as appropriate, specify appropriate administrative actions or violations of this section or the regulations prescribed under this section.

''(2) ORDERS.—The administrative actions referred to in paragraph (1) may include an order by the Secretary requiring, in accordance with applicable requirements of this subtitle and any other applicable law—

''(A) the closure of an airport gate or area that the Secretary determines, on the basis of a risk assessment or inspection conducted under this section, should be secured in accordance with applicable requirements of this subtitle; or

''(B) the cancellation of a flight in intrastate, interstate, or foreign air transportation.

''(3) NOTIFICATION.—If the Secretary carries out an administrative action under this subsection, the Secretary shall provide public notice of that action, except in any case in which the President determines that the disclosure of that information would not be in the national security or foreign policy interest of the United States.

''(i) AUDITS AND EVALUATIONS.—

''(1) IN GENERAL.—The Secretary shall require each air carrier and airport that provides for intrastate, interstate, or foreign air transportation to conduct periodic audits and evaluations of the security systems of that air carrier or airport.

''(2) REPORTS.—Not later than 1 year after the date of enactment of this section, and annually thereafter, each air carrier and airport referred to in paragraph (1) shall submit to the Secretary a report on the audits and evaluations conducted by the air carrier or airport under this subsection.

''(3) INVESTIGATIONS.—The Secretary, in consultation with the Administrator, shall conduct periodic and unannounced inspections of security systems of airports and air carriers to determine whether the air carriers and airports are in compliance with the performance-based measures developed under subsection (f). To the extent allowable by law, the Secretary may provide for anonymous tests of the security systems referred to in the preceding sentence.

''(j) REGULATIONS.—Not later than 180 days after the date of enactment of this section, the Secretary, in consultation with the Administrator and appropriate officers and employees of other Federal agencies, shall prescribe and implement such regulations as are necessary to carry out this section.

''(k) MODIFICATION OF EXISTING PROGRAMS.—If the Secretary or the Administrator determines that a modification of a program in existence on the date specified in subsection (j) could be accomplished without prescribing regulations to meet the requirements of this section, the Secretary or the Administrator may make that modification in lieu of prescribing a regulation.

''§ 44917. Support for families of victims of transportation disasters

''(a) IN GENERAL.—

''(1) ESTABLISHMENT.—The President shall establish, within an appropriate Federal agency, an office to be known as the Office of Family Advocate.

''(2) STANDARDS OF CONDUCT.—

''(A) IN GENERAL.—The head of the Federal agency specified in paragraph (1) (hereafter in this section referred to as the ''agency head''), acting through the Office of Family Advocate, shall develop standards of conduct for informing and supporting families of victims of accidents in air commerce and other transportation accidents involving any other form of transportation that is subject to the jurisdiction of the Department of Transportation.

''(B) CONSULTATION.—In developing the standards under this paragraph, the agency head shall consult with—

''(i) appropriate officers and employees of other Federal agencies;

''(ii) representatives of families of victims of accidents in air commerce and other transportation accidents referred to in subparagraph (A);

''(iii) individuals who are experts in psychology and trauma counseling; and

''(iv) representatives of air carriers.

''(3) THIRD PARTY INVOLVEMENT.—

''(A) IN GENERAL.—The agency head, acting through the Office of Family Advocate, shall provide for counseling, support, and protection for the families of victims of transportation accidents referred to in paragraph (2)(A) by—

''(i) consulting with a nongovernmental organization that the agency head determines to have appropriate experience and expertise; and

''(ii) if appropriate, entering into an agreement with a nongovernmental organization or the head of another appropriate Federal agency (including the Director of the Federal Emergency Management Agency) to provide those services.

''(b) PASSENGER INFORMATION.—

''(1) IN GENERAL.—The Secretary of Transportation (hereafter in this section referred to as the 'Secretary') shall require each air carrier that provides intrastate, interstate, or foreign air transportation to obtain, at the time of purchase of passage, from each passenger that purchases passage on a flight—

''(A) the full name, address, and daytime and evening telephone numbers of the passenger; and

''(B) the full name and daytime and evening telephone numbers of a contact person designated by the passenger.

''(2) REQUIREMENT FOR AIR CARRIERS.—

''(A) IN GENERAL.—The Secretary shall require each air carrier that provides intrastate, interstate, or foreign air transportation to provide the information obtained for a flight under paragraph (1) only—

''(i) in the event of an accident in air commerce in which a serious injury or crime (as determined by the Secretary) or death occurs; and

''(ii) in accordance with section 552a of title 5, United States Code.

''(B) PROVISION OF INFORMATION.—In the event of an accident in air commerce described in subparagraph (A), if the flight involves—

''(i) intrastate or interstate air transportation, the air carrier shall provide the information required to be submitted under subparagraph (A) not later than 3 hours after the accident occurs; or

''(ii) foreign air transportation, the air carrier shall provide such information not later than 4 hours after the accident occurs.

''§ 44918 Exemption; fees

''(a) EXEMPTION.—The regulations issued under sections 44916 and 44917 shall be exempt from any requirement for a cost-benefit analysis under chapter 8 of title 5, United States Code, or any other provision of Federal law.

''(b) FEES.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall determine, and adjust on an annual basis, a fee that shall be assessed against each individual who purchases passage on a flight in intrastate, interstate, or foreign air transportation that is based on the estimated cost of carrying out sections 44916 and 44917.

''(2) LIMITATION ON AMOUNT.—The amount of a fee assessed under this subsection shall not exceed $2 per flight, per passenger.

''(3) AVIATION SECURITY ACCOUNT.—

''(A) IN GENERAL.—There shall be established within the Treasury of the United States, an Aviation Security Account. The fees collected under this subsection shall be deposited into that account.

''(B) USE OF FUNDS IN ACCOUNT.—The Secretary of the Treasury shall make the funds in the account available only to—

''(i) the Secretary of Transportation for use by the Secretary in accordance with section 44916; and

''(ii) the agency head specified by the President under section 44917, for use by that agency head in accordance with that section.''.

(b) EMPLOYMENT INVESTIGATIONS AND RESTRICTIONS.—Section 44936(b)(1)(B) of title 49, United States Code, is amended by striking '', in the 10-year period ending on the date of the investigation,''.

(c) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following new items:

''44916. Enhancement of aviation security.
''44917. Support for families of victims of transportation disasters.
''44918. Exemption; fees.''.

AVIATION SECURITY PROPOSAL

(1) DOT TO IMPLEMENT AN ENHANCED AVIATION SECURITY SYSTEM

Cargo and checked baggage—The Secretary shall review current procedures for examining cargo and checked baggage on passenger flights and implement a program to reduce all significant security risks. That program shall include, but not be limited to, procedures that restrict access to passenger, cargo, cargo hold and aircraft servicing areas.

Profiling risk assessment—the Secretary shall develop, in consultation with appropriate federal authorities, a methodology to profile passengers, cargo and flights for both pre-airport and airport arrival to identify those passengers and cargo that present a possible risk to aviation security. The Secretary will require that air carriers implement this methodology and develop contingency actions described below with respect to those persons and cargo identified by the methodology. Those measures may include, but not be limited to, bag-match and enhanced bag search.

Explosive Detection Systems—the Secretary shall identify, based on profiles and other information and measures developed in consultation with appropriate federal agencies, all flights that pose the greatest risk to security, and ensure that enhanced, state-of-the-art, explosive detection devices are installed in the appropriate airports to protect against those risks. The Secretary shall, within six months from the enactment of this Act, develop and implement a plan to phase in expedited installation of the devices at priority airports. The Secretary shall submit an annual report to the Speaker of the House of Representatives and the President of the Senate on the progress of the plan. The report may be classified or unclassified at the Secretary's discretion.

(2) INCREASED SCREENING FOR CERTAIN AIRPORT PERSONNEL

Classification of Airport Personnel—the provisions of this section shall apply to those personnel employed by air carriers or their contractors or subcontractors who, through duties and work location, either (a) have unescorted access to all or portions of aircraft that are engaged in the transportation of passengers for hire, or (b) have security responsibilities that affect the access and passage of passengers and/or cargo into the proximity of passenger carrying aircraft.

Training—the Secretary shall review existing standards and, where necessary, impose additional minimum standards for training and certification of security personnel. The fact that the employee passed the minimum standards shall not relieve the air carrier of responsibility if he later is responsible for, or contributes to, an incident or an accident.

Performance Based Measures—the Secretary shall develop performance based measures for all personnel security functions and implement actions to require the air carriers or airports, as appropriate, to accomplish those measures.

Security Checks—the Secretary shall require comprehensive employment investigations on new hires and existing employees, including but not limited to criminal history checks. This provision also lifts the current restriction of ten years on the employee's history.

Penalties—the Secretary shall, within six months from enactment, promulgate regulations that impose penalties for violations that are commensurate with the seriousness of the offense. Such penalties may include temporary suspension of the operating certificate, immediate closure of a gate or secure area, cancellation of flights, public notification of violations or actual revocation of the operating certificate.

(3) MANDATED OPERATIONAL CHECKS OF THE SYSTEM

Self-audits and evaluations—the Secretary shall require air carriers and airports to conduct audits and evaluations on the efficacy of the security systems, and issue annual reports of their results to the Secretary.

The Secretary shall conduct regular, unannounced and/or anonymous tests of the airport and air carrier's security systems to determine whether the systems are in compliance with the performance based measures as determined by the Secretary.

(4) SUPPORT FOR FAMILIES OF VICTIMS OF TRANSPORTATION DISASTERS

Family Advocate—there shall be established an Office of Family Advocate in the appropriate federal agency to be determined by the President. The Office shall develop standards of conduct for informing and supporting families of victims. The standards shall be developed in consultation with any federal agency, representatives of families of victims of airline or other transportation disasters, psychological experts and air carriers.

Third party involvement—the Office shall consult with a third party organization that has the appropriate experience, in offering counseling, support and protection for the families of victims. the Office is authorized to task an organization or other government agency, to carry out the necessary tasks, if appropriate, including the Federal Emergency Management Agency.

Passenger information—the Secretary shall require air carriers, both domestic and foreign flag carriers, to collect the following information at the time of passenger's ticket purchase: full name, address, telephone number (daytime and nighttime) and contact person. The Secretary shall require air carriers to provide, within three hours for domestic flights and four hours for international flights, such information to the Office of Family Advocate only in the event of a transportation disaster where serious injury or death occurred.

(5) FUNDING

Fee per ticket—the Secretary shall determine a fee to be assessed on each airline ticket, the amount of which is based on the cost to implement the provisions of this Act, but not to exceed $4 per ticket. The Secretary shall begin assessing the fee within 30 days from the enactment of this Act.

Aviation Security Account—there shall be established within the Department, an Aviation Security Account. The fees shall be collected and credited to relevant appropriations within the FAA.

By Mr. DASCHLE (for himself and Mr. PRESSLER);

S. 2038. A bill to authorize the construction of the Fall River Water Users District Rural Water System and authorize the appropriation of Federal dollars to assist the Fall River Water Users District, a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes; to the Committee on Energy and Natural Resources.

THE FALL RIVER WATER USERS DISTRICT RURAL WATER SYSTEM ACT OF 1996

S. 2039. A bill to authorize the construction of the Perkins County Rural Water System and authorize the appropriation of Federal dollars to assist the Perkins County Rural Water System, Inc., a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes; to the Committee on Energy and Natural Resources.

THE PERKINS COUNTY RURAL WATER SYSTEM ACT OF 1996

Mr. DASCHLE. Mr. President, the need for water development throughout South Dakota is great. As we prepare to enter the 21st century, all South Dakotans should be able to consider a high quality water supply to be a basic human right, and we should do whatever we can to meet this goal.

While considerable progress has been made in providing clean and safe drinking water to residents of my State, much work remains to be done. Fall River County and Perkins County are examples of areas that urgently need to develop new sources of potable water. That is why I am introducing bills today to authorize the construction of the Fall River Water Users District Rural Water System and the Perkins County Rural Water System.

The communities that would be served by both systems are comprised of farmers and ranchers who for too long have had to endure substandard, and at times remote, sources of drinking water. The drinking water available in Fall River County, SD, like the water in much of the rest of the State, is contaminated with high levels of nitrates, sulfates, and dissolved solids. Wells have been known to run dry, due to the high frequency of droughts in the region. Many people currently must haul water, sometimes as much as 60 miles round-trip. Similar problems exist in Perkins County, where much of the drinking water fails to meet minimum public health standards, thereby posing a long-term health risk to the citizens of that region.

Simply put, this situation is unacceptable and must be remedied.

In Fall River County, the Fall River Water Users District was formed to plan and develop a rural water system capable of supplying the water to sustain this community. I and my congressional colleagues have worked hard over the past year with the district to identify a solution that was affordable and could provide adequate amounts of clean water to satisfy the needs of the community. It became apparent that the only feasible option was the authorization of a rural water system

that involved the financial and technical participation of the Federal, State, and local governments.

My first bill would authorize the construction of a system to bring clean water to the residents of Fall River County. I am absolutely committed to continuing to work with the Fall River County Water Users District, the State and the Federal Government to bring a high quality water supply to Fall River County.

Under the second bill I am introducing today, the Perkins County Rural Water System will obtain Missouri River water through the Southwest Pipeline, which is part of the Garrison Diversion Unit in North Dakota. This is an efficient and cost-effective approach that takes advantage of existing water management infrastructure. Clean, safe drinking water will be provided to about 2,500 people who reside in the towns of Lemmon and Bison, and the surrounding areas.

It is my hope that my colleagues will join with me in supporting these two pieces of legislation, which will provide safe, clean drinking water to deserving South Dakota families.

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

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

S. 2038

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 ''Fall River Water Users District Rural Water System Act of 1996''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) there are insufficient water supplies of reasonable quality available to the members of the Fall River Water Users District Rural Water System located in Fall River County, South Dakota, and the water supplies that are available are of poor quality and do not meet the minimum health and safety standards, thereby posing a threat to public health and safety;

(2) past cycles of severe drought in the southeastern area of Fall River county have left local residents without a satisfactory water supply and during 1990, many home owners and ranchers were forced to haul water to sustain their water needs;

(3) most members of the Fall River Water Users District are forced to either haul bottled water for human consumption or use distillers due to the poor quality of water supplies available;

(4) the Fall River Water Users District Rural Water System has been recognized by the State of South Dakota; and

(5) the best available, reliable, and safe rural and municipal water supply to serve the needs of the Fall River Water Users District Rural Water System members consists of a Madison Aquifer well, 3 separate water storage reservoirs, 3 pumping stations, and approximately 200 miles of pipeline.

(b) PURPOSES.—The Congress declares that the purposes of sections 1 through 13 are to—

(1) ensure a safe and adequate municipal, rural, and industrial water supply for the members of the Fall River Water Users District Rural Water System in Fall River County, South Dakota;

(2) assist the citizens of the Fall River Water Users District to develop safe and adequate municipal, rural, and industrial water supplies; and

(3) promote the implementation of water conservation programs by the Fall River Water Users District Rural Water System.

SEC. 3. DEFINITIONS.

As used in this Act (unless the context clearly requires otherwise):

(1) ENGINEERING REPORT.—The term ''engineering report'' means the study entitled ''Supplemental Preliminary Engineering Report for Fall River Water Users District'' in August 1995.

(2) PROJECT CONSTRUCTION BUDGET.—The term ''project construction budget'' means the description of the total amount of funds that are needed for the construction of the water supply system, as contained in the feasibility study.

(3) PUMPING AND INCIDENTAL OPERATIONAL REQUIREMENTS.—The term ''pumping and incidental operational requirements'' means all power requirements that are incidental to the operation of intake facilities, pumping stations, water treatment facilities, cooling facilities, reservoirs, and pipelines up to the point of delivery of water by the Fall River Water Users District Rural Water System to each entity that distributes water at retail to individual users.

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

(5) WATER SUPPLY SYSTEM.—The term ''water supply system'' means the Fall River Water Users District Rural Water System that is established and operated substantially in accordance with the feasibility study.

SEC. 4. FEDERAL ASSISTANCE FOR THE WATER SUPPLY SYSTEM.

(a) IN GENERAL.—The Secretary is authorized to make grants to the Fall River Water Users District Rural Water System, a nonprofit corporation, for the planning and construction of the water supply system.

(b) SERVICE AREA.—The water supply system shall provide for safe and adequate municipal, rural, and industrial water supplies, mitigation of wetlands areas; and water conservation within the boundaries of the Fall River Water Users District, described as follows: bounded on the north by the Angostura Reservoir, the Cheyenne River, and the Fall River/Custer County line, bounded on the east by the Fall River/Shannon County line, bounded on the south by the South Dakota/Nebraska State line, and bounded on the west by the previously established Igloo-Provo Water Project District.

(c) AMOUNT OF GRANTS.—Grants made available under subsection (a) to the Fall River Water Users District Rural Water System shall not exceed the amount authorized under section 10.

(d) LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.—The Secretary shall not obligate funds for the construction of the water supply system until—

(1) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) have been met;

(2) a final engineering report has been prepared and submitted to the Congress for a period of not less than 90 days before the commencement of construction of the system; and

(3) a water conservation program has been developed and implemented.

SEC. 5. WATER CONSERVATION.

(a) PURPOSE.—The water conservation program required under this section shall be designed to ensure that users of water from the water supply system will use the best practicable technology and management techniques to conserve water use.

(b) DESCRIPTION.—The water conservation programs shall include—

(1) low consumption performance standards for all newly installed plumbing fixtures;

(2) leak detection and repair programs;

(3) rate structures that do not include declining block rate schedules for municipal households and special water users (as defined in the feasibility study);

(4) public education programs; and

(5) coordinated operation between the Fall River Water Users District Rural Water System and any preexisting water supply facilities within its service area.

(c) REVIEW AND REVISION.—The programs described in subsection (b) shall contain provisions for periodic review and revision, in cooperation with the Secretary.

SEC. 6. MITIGATION OF FISH AND WILDLIFE LOSSES.

Mitigation of fish and wildlife losses incurred as a result of the construction and operation of the Fall River Water Users District Rural Water System shall be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction, as provided in the feasibility study.

SEC. 7. USE OF PICK-SLOAN POWER.

(a) IN GENERAL.—From power designated for future irrigation and drainage pumping for the Pick-Sloan Missouri River Basin Program, the Western Area Power Administration shall make available the capacity and energy required to meet the pumping and incidental operational requirements of the water supply system during the period beginning May 1, and ending October 31, of each year.

(b) CONDITIONS.—The capacity and energy described in subsection (a) shall be made available on the following conditions:

(1) The water supply system shall be operated on a not-for-profit basis.

(2) The water supply system shall contract to purchase its entire electric service requirements, including the capacity and energy made available under subsection (a), from a qualified preference power supplier that itself purchases power from the Western Area Power Administration.

(3) The rate schedule applicable to the capacity and energy made available under subsection (a) shall be the firm power rate schedule of the Pick-Sloan Eastern Division of the Western Area Power Administration in effect when the power is delivered by the Administration.

(4) It shall be agreed by contract among—

(A) the Western Area Power Administration;

(B) the power supplier with which the water supply system contracts under paragraph (2);

(C) the power supplier of the entity described in subparagraph (B); and

(D) the Fall River Water Users District,

that in the case of the capacity and energy made available under subsection (a), the benefit of the rate schedule described in paragraph (3) shall be passed through to the water supply system, except that the power supplier of the water supply system shall not be precluded from including, in the charges of the supplier to the water system for the electric service, the other usual and customary charges of the supplier.

SEC. 8. NO LIMITATION ON WATER PROJECTS IN STATE.

This Act shall not limit the authorization for water projects in South Dakota and under law in effect on or after the date of enactment of this Act.

SEC. 9. WATER RIGHTS.

Nothing in this Act—

(1) invalidates or preempts State water law or an interstate compact governing water;

(2) alters the rights of any State to any appropriated share of the waters of any body of surface or ground water, whether determined by past or future interstate compacts or by past or future legislative or final judicial allocations;

(3) preempts or modifies any Federal or State law, or interstate compact, dealing with water quality or disposal; or

(4) confers on any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource.

SEC. 10. FEDERAL COST SHARE.

The Secretary is authorized to provide funds equal to 80 percent of—

(1) the amount allocated in the total project construction budget for the planning and construction of the water supply system under section 4; and

(2) such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after August 1, 1995.

SEC. 11. NON-FEDERAL COST SHARE.

The non-Federal share of the costs allocated to the water supply system shall be 20 percent of—

(1) the amount allocated in the total project construction budget for the planning and construction of the water supply system under section 4; and

(2) such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after August 1, 1995.

SEC. 12. BUREAU OF RECLAMATION AUTHORIZATION.

(a) AUTHORIZATION.—The Secretary is authorized to allow the Bureau of Reclamation to provide construction oversight to the water supply system for those areas of the water supply system that are described in section 4(b).

(b) PROJECT OVERSIGHT ADMINISTRATION.—The amount of funds used by the Bureau of Reclamation for planning and construction of the water supply system may not exceed an amount equal to 3 percent of the amount provided in the total project construction budget for the portion of the projects to be constructed in Fall River County, South Dakota.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $3,600,000 for the planning and construction of the water system under section 4, plus such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after August 1, 1995.

S. 2039

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 ''Perkins County Rural Water System Act of 1996''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) there are insufficient water supplies of reasonable quality available to the members of the Perkins County Rural Water System located in Perkins County, South Dakota, and the water supplies that are available do not meet the minimum health and safety standards, thereby posing a threat to public health and safety;

(2) in 1977 the North Dakota State Legislature authorized and directed the State Water Commission to conduct the Southwest Area Water Supply Study, which included water service to a portion of Perkins County, South Dakota;

(3) the Garrison Diversion Unit Reformulation Act of 1986 authorized the Southwest Pipeline project as an eligible project for Federal cost share participation;

(4) the Perkins County Rural Water System has continued to be recognized by the State of North Dakota, the Southwest Water Authority, the North Dakota Water Commission, the Department of the Interior, and the Congress of the United States as a component of the Southwest Pipeline Project; and

(5) the best available, reliable, and safe rural and municipal water supply to serve the needs of the Perkins County Rural Water System, Inc., members is the Missouri River as delivered by the Southwest Pipeline Project in North Dakota.

(b) PURPOSES.—The Congress declares that the purposes of sections 1 through 13 are to—

(1) ensure a safe and adequate municipal, rural, and industrial water supply for the members of the Perkins County Rural Water Supply System, Inc., in Perkins County, South Dakota;

(2) assist the citizens of the Perkins County Rural Water Supply System, Inc., to develop safe and adequate municipal, rural, and industrial water supplies; and

(3) promote the implementation of water conservation programs by the Perkins County Rural Water System, Inc.

SEC. 3. DEFINITIONS.

As used in this Act (unless the context clearly requires otherwise):

(1) FEASIBILITY STUDY.—The term ''feasibility study'' means the study entitled ''Feasibility Study for Rural Water System for Perkins County Rural Water System, Inc.'', as amended in March 1995.

(2) PROJECT CONSTRUCTION BUDGET.—The term ''project construction budget'' means the description of the total amount of funds that are needed for the construction of the water supply system, as contained in the feasibility study.

(3) PUMPING AND INCIDENTAL OPERATIONAL REQUIREMENTS.—The term ''pumping and incidental operational requirements'' means all power requirements that are incidental to the operation of intake facilities, pumping stations, water treatment facilities, reservoirs, and pipelines up to the point of delivery of water by the Perkins County Rural Water System to each entity that distributes water at retail to individual users.

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

(5) WATER SUPPLY SYSTEM.—The term ''water supply system'' means the Perkins County Rural Water System, Inc., that is established and operated substantially in accordance with the feasibility study.

SEC. 4. FEDERAL ASSISTANCE FOR THE WATER SUPPLY SYSTEM.

(a) IN GENERAL.—The Secretary is authorized to make grants to the Perkins County Rural Water System, Inc., a nonprofit corporation, for the planning and construction of the water supply system.

(b) SERVICE AREA.—The water supply system shall provide for safe and adequate municipal, rural, and industrial water supplies, mitigation of wetlands areas, and water conservation in Perkins County, South Dakota.

(c) AMOUNT OF GRANTS.—Grants made available under subsection (a) to the Perkins County Water System, Inc., shall not exceed the amount authorized under section 10.

(d) LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.—The Secretary shall not obligate funds for the construction of the water supply system until—

(1) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) have been met;

(2) a final engineering report has been prepared and submitted to the Congress for a period of not less than 90 days before the commencement of construction of the system; and

(3) a water conservation program has been developed and implemented.

SEC. 5. WATER CONSERVATION.

(a) PURPOSE.—The water conservation program required under this section shall be designed to ensure that users of water from the water supply system will use the best practicable technology and management techniques to conserve water use.

(b) DESCRIPTION.—The water conservation programs shall include—

(1) low consumption performance standards for all newly installed plumbing fixtures;

(2) leak detection and repair programs;

(3) rate structures that do not include declining block rate schedules for municipal households and special water users (as defined in the feasibility study);

(4) public education programs;

(5) coordinated operation between the Perkins County Rural Water System and any preexisting water supply facilities within its service area; and

(6) coordinated operation between the Southwest Pipeline Project of North Dakota and the Perkins County Rural Water System, Inc., of South Dakota.

(c) REVIEW AND REVISION.—The programs described in subsection (b) shall contain provisions for periodic review and revision, in cooperation with the Secretary.

SEC. 6. MITIGATION OF FISH AND WILDLIFE LOSSES.

Mitigation of fish and wildlife losses incurred as a result of the construction and operation of the Perkins County Rural Water Supply System shall be on an acre-for-acre basis, based on ecological equivalency, concurrent with project construction, as provided in the feasibility study.

SEC. 7. USE OF PICK-SLOAN POWER.

(a) IN GENERAL.—From power designated for future irrigation and drainage pumping for the Pick-Sloan Missouri River Basin Program, the Western Area Power Administration shall make available the capacity and energy required to meet the pumping and incidental operational requirements of the water supply system during the period beginning May 1, and ending October 31, of each year.

(b) CONDITIONS.—The capacity and energy described in subsection (a) shall be made available on the following conditions:

(1) The water supply system shall be operated on a not-for-profit basis.

(2) The water supply system shall contract to purchase its entire electric service requirements, including the capacity and energy made available under subsection (a), from a qualified preference power supplier that itself purchases power from the Western Area Power Administration.

(3) The rate schedule applicable to the capacity and energy made available under subsection (a) shall be the firm power rate schedule of the Pick-Sloan Eastern Division of the Western Area Power Administration in effect when the power is delivered by the Administration.

(4) It shall be agreed by contract among—

(A) the Western Area Power Administration;

(B) the power supplier with which the water supply system contracts under paragraph (2);

(C) the power supplier of the entity described in subparagraph (B); and

(D) the Perkins County Rural Water System, Inc.,

that in the case of the capacity and energy made available under subsection (a), the benefit of the rate schedule described in paragraph (3) shall be passed through to the water supply system, except that the power supplier of the water supply system shall not be precluded from including, in the charges

of the supplier to the water system for the electric service, the other usual and customary charges of the supplier.

SEC. 8. NO LIMITATION ON WATER PROJECTS IN STATES.

This Act shall not limit the authorization for water projects in South Dakota and North Dakota under law in effect on or after the date of enactment of this Act.

SEC. 9. WATER RIGHTS.

Nothing in this Act—

(1) invalidates or preempts State water law or an interstate compact governing water;

(2) alters the rights of any State to any appropriated share of the waters of any body of surface or ground water, whether determined by past or future interstate compacts or by past or future legislative or final judicial allocations;

(3) preempts or modifies any Federal or State law, or interstate compact, dealing with water quality or disposal; or

(4) confers on any non-Federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource.

SEC. 10. FEDERAL COST SHARE.

The Secretary is authorized to provide funds equal to 75 percent of—

(1) the amount allocated in the total project construction budget for the planning and construction of the water supply system under section 4; and

(2) such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after May 1, 1994.

SEC. 11. NON-FEDERAL COST SHARE.

The non-Federal share of the costs allocated to the water supply system shall be 25 percent of—

(1) the amount allocated in the total project construction budget for the planning and construction of the water supply system under section 4; and

(2) such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after May 1, 1994.

SEC. 12. BUREAU OF RECLAMATION AUTHORIZATION.

(a) AUTHORIZATION.—The Secretary is authorized to allow the Bureau of Reclamation to provide construction oversight to the water supply system for those areas of the water supply system that are described in section 4(b).

(b) PROJECT OVERSIGHT ADMINISTRATION.—The amount of funds used by the Bureau of Reclamation for planning and construction of the water supply system may not exceed an amount equal to 3 percent of the amount provided in the total project construction budget for the portion of the project to be constructed in Perkins County, South Dakota.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $15,000,000 for the planning and construction of the water system under section 4, plus such sums as are necessary to defray increases in development costs reflected in appropriate engineering cost indices after May 1, 1994.

By Mr. HATCH (for himself and Mrs. HUTCHISON):

S. 2040. A bill to amend the Controlled Substances Act to provide a penalty for the use of a controlled substance with the intent to rape, and for other purposes; to the Committee on the Judiciary.

THE DRUG-INDUCED RAPE PREVENTION ACT OF 1996

Mr. HATCH. Mr. President, I rise today to introduce S. 2040, a bill to prevent the use of controlled substances to facilitate rape. This bill is to strike back at those who would use controlled substances to engage in the most reprehensible of crimes. Joining me in cosponsorship of this legislation is Senator HUTCHISON.

Mr. President, earlier in the year as a member of the congressional task force on national drug policy, I joined in issuing a report, ''Setting the Course: A National Drug Strategy.'' This report noted that every survey of teenage drug use in the past two years indicates not only increasing use of dangerous drugs among teens, but a disturbing change in the attitudes teens have about the dangers of drug use.

Two very important surveys have confirmed that teenage drug abuse is on the rise.

The first study is the national high school report, Monitoring the Future, which surveys over 50,000 students in some 400 public and private secondary schools. The second study is the annual survey by the Parents' Resource Institute for Drug Education, which surveys nearly 200,000 ninth to twelfth graders.

While these studies focused on the use of marijuana, the use of hallucinogens, stimulants, and other drugs are also on the rise. According to reports by the Center on Addiction and Substance Abuse, adolescents who use marijuana are 85 times more likely to move to other dangerous drugs, such as cocaine.

As a recent report that we issued from the Judiciary Committee, Losing Ground Against Drugs noted:

> The implication for public policy is clear. If such increases are allowed to continue for just two more years, America will be at risk of returning to the epidemic drug use of the 1970's.

While the overwhelming abuse of drugs by teenagers focuses on illicit drugs, the illegal diversion and misuse of medicines is also a growing problem in our country.

During the past few years, there has been increasing abuse of a drug called rohypnol. Rohypnol is not approved for marketing in the United States but it is a legitimate therapeutic agent that is approved for use in several countries to treat sleep disorders.

According to a report from the Haight Ashbury Free Clinic, several abuse patterns of rohypnol have evolved in the United States.

Rohypnol is being abused by heroin addicts as an enhancing agent for low-quality heroin, as well as in combination with cocaine. In some areas it is referred to as a ''club drug''—where it is used by so called ''recreational'' users who intermittently abuse a variety of substances.

However, the most disturbing use of rohypnol is its use to facilitate the rape of women. Reports continue to be made that rohypnol has been illicitly put into the drinks of unsuspecting victims before they are sexually assaulted.

I believe that the Federal Government must show that it will not tolerate the use of this drug—or any drug—to facilitate rape. I believe it is necessary and appropriate to establish a new provision that establishes tough penalties for the use of any controlled substance to facilitate rape.

Rohypnol abuse was initially reported in Florida and Texas, but its use has now become more widespread.

In an effort to stem the illegal flow of rohypnol into the United States, the U.S. Customs Service developed and implemented a ban on the importation of rohypnol into the United States.

Unfortunately, the problem continues to grow.

Rohypnol is a member of the widely-used class of prescription medications known as benzodiazapines. This class of drugs is used to treat sleep disorders, anxiety disorders and to control seizures, among other purposes. When used for legitimate medical purposes, this class of drugs is vital to the physical and mental health of thousands of Americans.

The Controlled Substances Act establishes five schedules of controlled substances, based primarily upon a drug's relative potential for abuse. Drugs listed in schedules I and II are those with the highest potential for abuse, while drugs listed in schedule V are those with the lowest potential for abuse.

Rohypnol is currently listed in Schedule IV of the Controlled Substances Act. In addition to rohypnol, more than twenty other benzodiazepine substances are listed as a Schedule IV substance.

Rohypnol is not marketed or manufactured in the United States. While not legally available for legitimate medical uses in the United States, rohypnol is widely used for legitimate medical purposes in many countries throughout the world.

In response to reports that the incidence of abuse of rohypnol was increasing, the Drug Enforcement Administration instituted the formal rescheduling process for this substance by submitting a formal request on April 11, 1996 to the Food and Drug Administration to conduct an evaluation of the scientific and medical evaluation of this substance. That evaluation is ongoing.

In a letter from Health and Human Services Secretary Donna E. Shalala to me on July 24, 1996, Secretary Shalala informed me that the goal of the rescheduling process was to make rohypnol subject to increased penalties for illicit use and trafficking.

Since this particular drug has become a leading agent of abuse and the focus of this debate, I agree with Secretary Shalala that it is appropriate to increase the penalties for illegal trafficking in rohypnol. This bill does that.

However, I am concerned about the precedent that rescheduling would have on this very useful class of medicines. I fee a more appropriate—and rapid—method to respond to this crisis is to implement the increased penalties

for illegal trafficking in rohypnol without having Congress circumvent the well-established process for rescheduling a substance.

As I mentioned previously, the rescheduling process requires a careful scientific and medical evaluation of the substance. This evaluation is completed by the FDA in consultation with HHS' National Institute on Drug Abuse. Congress does not have the resources or expertise to complete such an evaluation, and by considering rescheduling may establish an unintentional precedent with regard to scheduling of controlled substances which we may regret later on.

I believe that the Drug-Induced Rape Prevention Act of 1996 provides for a rapid, measured response to the problem that the abuse of rohypnol has presented, without establishing an unintended role for Congress with regard to the scheduling of controlled substances. I urge that this legislation be considered when we reconvene next month.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section analysis be place in the RECORD.

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

S. 2040

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 ''Drug-Induced Rape Prevention Act of 1996''.

SEC. 2. PENALTIES FOR DISTRIBUTION OF A CONTROLLED SUBSTANCE WITH INTENT TO RAPE.

Section 401(b) of the Controlled Substances Act is amended by adding at the end the following:

''(7)(A) Whoever, with intent to rape an individual, violates subsection (a) by distributing a controlled substance to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined as provided under title 18, United States Code.

''(B) As used in this paragraph—

''(i) the term 'intent to rape' means the intent to facilitate conducted defined in section 2241(b) or 2242(2) of title 18, United States Code; and

''(ii) the term 'without that individual's knowledge' means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.''.

SEC. 3. ADDITIONAL PENALTIES RELATING TO FLUNITRAZEPAM.

(a) GENERAL PENALTIES.—Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended—

(1) in subsection (b)(1)(C), by inserting ''or 1 gram of flunitrazepam'' after ''I or II''; and

(2) in subsection (b)(1)(D), by inserting ''or 30 milligrams of flunitrazepam,'' after ''schedule III,''.

(b) IMPORT AND EXPORT PENALTIES.—

(1) Section 1009(a) of the Controlled Substances Import and Export Act (21 U.S.C. 959(a)) is amended by inserting ''or flunitrazepam'' after ''I or II''.

(2) Section 1010(b)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended by inserting ''or flunitrazepam'' after ''I or II,''.

(3) Section 1010(b)(4) of the Controlled Substances Import and Export Act is amended by inserting ''(except a violation involving flunitrazepam)'' after ''III, IV, or V,''.

(c) SENTENCING GUIDELINES.—The United States Sentencing Commission shall amend the Sentencing Guidelines so that one dosage unit of flunitrazepam shall be equivalent to one gram of marihuana for determining the offense level under the Drug Quantity Table.

Section 1. Short Title: Establishes the title of the bill as the ''Drug-Induced Rape Prevention Act of 1996.''

Section 2. Penalties for Distribution of a Controlled Substance with Intent to Rape: Creates a specific violation under the Controlled Substances Act (CSA) for unlawful distribution, with the intent to rape, of a controlled substance to a person without that person's knowledge. The penalty will be up to 20 years without probation, and fines will be imposed of up to two million dollars for an individual. The definition of ''intent to rape'' is provided in section 2241(b) or 2242(2) of Title 18, U.S.C. and is referenced in this bill.

Section 3. Additional Penalties Relating to Flunitrazepam:

(a) GENERAL PENALTIES.—Provides enhanced penalties for manufacturing, distributing, dispensing, or possessing with the intent to manufacture, dispense or distribute large quantities of the drug flunitrazepam (marketed under the name ''Rohypnol''). One gram or more of flunitrazepam will carry a penalty of not more than 20 years in prison, and 30 milligrams a penalty of not more than five years in prison.

(b) IMPORT AND EXPORT PENALTIES.—Extends the so-called ''long-arm'' provisions of 21 U.S.C. 959(a) to the unlawful manufacture and distribution of flunitrazepam outside the United States with the intent to import it unlawfully into this country.

(c) SENTENCING GUIDELINES.—Directs the U.S. Sentencing Commission to amend the Sentencing Guidelines so that flunitrazepam will be subject to the same base offense level as schedule I or II depressants.

By Mr. D'AMATO (for himself, Mr. MOYNIHAN, and Mr. FAIRCLOTH):

S. 2041. A bill to amend the Marine Protection, Research, and Sanctuaries Act of 1972 with respect to the dumping of dredged material in Long Island Sound, and for other purposes; to the Committee on Environment and Public Works.

THE LONG ISLAND SOUND PRESERVATION AND PROTECTION ACT

Mr. D'AMATO. Mr. President, I rise today to introduce legislation along with Senator MOYNIHAN and Senator FAIRCLOTH that will help guarantee that one of our Nation's most important estuaries is no longer used as a dumping ground for polluted dredged material. Long Island Sound is a spectacular body of water located between Long Island, NY and the State of Connecticut. Unfortunately, dumping of dredged material of questionable environmental impact has occurred in the sound for a number of years. It is high time that Congress put an end to this practice of willful pollution of the Sound.

The legislation that we are introducing today will prevent any individual or any Government agency from randomly dumping sediments into the ecologically sensitive sound. Specifically, the legislation prevents all sediments that contain any constituents prohibited as other than trace contaminants, as defined by Federal regulations, from being dumped into either Long Island Sound or Block Island Sound. Exceptions to the act can be made only in circumstances where the Administrator of the Environmental Protection Agency shows that the material will not cause undesirable effects to the environment or marine life.

Last fall, the U.S. Navy dumped over 1 million cubic yards of dredged material from the Thames River into the New London dump site located in the sound. Independent tests of this sediment indicated that contaminants were present in that dredged material that now lies at the bottom of the sound's New London dump site–contaminants such as dioxin, cadmium, pesticides, polyaromatic hydrocarbons, PCB's, and mercury. Right now, there is a question as to the long-term impact this material will have on the aquatic life and the environment in this area. Such concerns should not have to occur. It has taken years to come as far as we have in cleaning up Long Island Sound—we should not jeopardize those gains by routinely allowing the dumping of polluted sediments in these waters.

Over $1.2 billion in Federal, State, and local funds have been spent in the State of New York in the last quarter century combating pollution in the sound. However, over the last 25 years, we have continued to look the other way when it comes to dumping in the sound. Such actions are counterproductive in our efforts to restore the Sound for recreational activities such as swimming and boating as well as the economic benefits of sport fishing and the shellfish industry all of which bring more than $5.5 billion to the region each year. We can and must change our current direction. With the passage of this legislation, I am confident that we will do so, and the Long Island Sound will move forward on the road to recovery. I urge my colleagues to join us in cosponsoring this bill, and I encourage its swift passage in the Senate.

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

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

S. 2041

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 ''Long Island Sound Preservation and Protection Act of 1996''.

SEC. 2. DUMPING OF DREDGED MATERIALS IN LONG ISLAND SOUND.

Section 106(f) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1416(f)) is amended to read as follows:

''(f) DUMPING OF DREDGED MATERIAL IN LONG ISLAND SOUND.—

''(1) IN GENERAL.—No dredged material from any Federal or non-Federal project that contains any of the constituents prohibited as other than trace contaminants (as defined by the Federal ocean dumping criteria stated in section 227.6 of title 40, Code of Federal Regulations) may be dumped in Long Island Sound or Block Island Sound except in a case in which it is demonstrated to the Administrator, and the Administrator certifies by publication in the Federal Register, that the dumping of the dredged material containing the constituents will not cause significant undesirable effects, including the threat associated with bioaccumulation of such constituents in marine organisms.

(2) FEDERAL PROJECTS EXCEEDING 25,000 YARDS.—In addition to other provisions of law and notwithstanding the specific exclusion relating to dredged material of the first sentence in section 102(a), any dumping of dredged material in Long Island Sound from a Federal project (or pursuant to Federal authorization) by a non-Federal applicant in a quantity exceeding 25,000 cubic yards shall comply with the criteria established under the second sentence of section 102(a) relating to the effects of dumping.

''(3) RELATION TO OTHER LAW.—Subsection (d) shall not apply to this subsection.''.

By Mr. MACK (for himself, Mr. BOND, Mr. D'AMATO, and Mr. BENNETT):

S. 2042. A bill to reform the multifamily rental assisted housing programs of the Federal Government, maintain the affordability and availability of low-income housing, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE MULTIFAMILY ASSISTED HOUSING REFORM AND AFFORDABILITY ACT OF 1996

Mr. MACK. Mr. President, I am pleased to introduce, on behalf of Senator D'AMATO, BOND, and BENNETT, the Multifamily Assisted Housing Reform and Affordability Act of 1996. This bill is a serious effort to reform the Nation's assisted and insured multifamily housing portfolio in a responsible manner that balances both fiscal and public policy goals. This legislation will save scarce Federal subsidy dollars while maintaining the affordability and availability of decent and safe rental housing.

About 20 years ago, the Federal Government encouraged private developers to construct affordable rental housing by providing mortgage insurance through the Federal Housing Administration [FHA] and rental assistance through the Department of Housing and Urban Development's [HUD] project-based Section 8 programs. In addition, tax incentives for the development of low-income housing were provided through the tax code until 1986.

The combination of these financial incentives resulted in the creation of thousands of decent, safe, and affordable housing properties but, at a great cost to the American taxpayer. Flaws in the Section 8 rental assistance program allowed owners to receive more Federal dollars in rental subsidy than was necessary to maintain properties as decent and affordable rental housing. A recent HUD study found that almost two-thirds of assisted properties have contract rents greater than comparable market rents. Like the severely distressed public housing stock, some of these Section 8 projects have become targets and havens for crime and drug activities. Thus, in some cases, taxpayers are paying costly subsidies for inferior housing. We believe that a policy that pays excessive rental subsidies for housing is not fair to the American taxpayer, and it cannot be sustained in the current budget environment.

It is critical that this legislation be enacted this year because in the next several years, a majority of the Section 8 contracts on the 8,500 FHA-insured properties will expire. If contracts continue to be renewed at existing levels, the cost of renewing these contracts will grow from $1.2 billion in fiscal year 1997 to almost $4 billion in fiscal year 2000 and $8 billion 10 years from now. However, if these project-based assistance contracts are not renewed most of the FHA-insured mortgages—with an unpaid principal balance of $18 billion—will default and result in claims on the FHA insurance funds. This could lead to more severe actions such as foreclosure, which will adversely affect residents and communities.

Like public housing, federally assisted and insured housing provides critical housing to almost 1.6 million American families. There are other similarities to public housing. For one, the average annual income of residents that reside in project-based housing is less than $7,000. A significant percentage of residents are elderly or persons with disabilities. Many of these developments are located in rural areas where no other rental housing exists. some of these properties serve as ''anchors'' of neighborhoods where the economic stability of the neighborhoods is dependent upon the viability of these properties.

Unfortunately for residents and communities, HUD does not have the ability to administer and oversee its portfolio of multifamily housing properties. The General Accounting Office and the HUD Office of Inspector General [IG] have found that even though HUD has various enforcement tools to ensure that properties are properly maintained, poor management information systems and ineffective oversight of properties have impeded HUD's ability to identify problems and pursue enforcement actions in a timely fashion. HUD is further hampered by the lack of adequate staffing and inadequately trained staff. For example, the IG found that the average workload for a HUD loan servicer ranged from 28 projects per servicer to 105 projects per servicer. In comparison, State housing finance agencies averaged 12 to 16 projects per servicer.

The Multifamily Assisted Housing Reform and Affordability Act addresses these issues through a new comprehensive structure that provides a wide variety of tools to address the spiraling costs of Section 8 assistance without harming residents or communities. The bill will reduce the long-term ongoing costs of Federal subsidies by restructuring the underlying debt insured by FHA. This restructuring process will reduce the subsidy needs and costs of the properties and minimizes adverse tax consequences to good owners.

In recognition of HUD's inability to manage and service its housing inventory, this legislation would transfer the functions and responsibilities to capable State and local housing agencies who would act as participating administrative entities in managing this program. Incentives would be provided to these entities to ensure that the American taxpayer is paying the least amount of money to provide decent, safe, and affordable housing. Any amount of incentives provided to State and local entities would only be used for low-income housing purposes.

Horror stories of owners that have clearly violated housing quality standards would no longer be tolerated. Our bill screens out bad owners and managers and nonviable projects from the inventory and provides tougher and more effective enforcement tools that will minimize fraud and abuse of FHA insurance and assisted housing programs.

Lastly, our bill provides tools to recapitalize the assisted stock that suffer from deferred maintenance and empowers residents by providing for meaningful community and resident input into the process. Residents would also be empowered through opportunities to purchase properties.

Mr. President, I would like to reemphasize that it is critical that we address this issue this year. Delays will only harm the assisted housing stock, its residents and communities, and the financial stability of the FHA insurance funds. Further, HUD only has limited statutory authority to renew these contracts. In most cases, it cannot and does not have the capability to deal with this housing portfolio under current law.

This legislation will protect the Federal Government's investment in assisted housing and ensure that participating administrative entities are held accountable for their activities. It is also our goal that this process will ensure the long-term viability of these projects with minimal Federal involvement. It is a real effort to reduce the costs of the Federal Government while recognizing the needs of low-income families and communities throughout the Nation.

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

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

S. 2042

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 ''Multifamily Assisted Housing Reform and Affordability Act of 1996''.

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

Sec. 1. Short title; table of contents.
TITLE I—FHA-INSURED MULTIFAMILY HOUSING MORTGAGE AND HOUSING ASSISTANCE RESTRUCTURING
Sec. 101. Findings and purposes.
Sec. 102. Definitions.
Sec. 103. Authority of participating administrative entities.
Sec. 104. Mortgage restructuring and rental assistance sufficiency plan.
Sec. 105. Section 8 renewals and long-term affordability commitment by owner of project.
Sec. 106. Prohibition on restructuring.
Sec. 107. Restructuring tools.
Sec. 108. Shared savings incentive.
Sec. 109. Management standards.
Sec. 110. Monitoring of compliance.
Sec. 111. Review.
Sec. 112. GAO audit and review.
Sec. 113. Regulations.
Sec. 114. Technical and conforming amendments.
Sec. 115. Termination of authority.
TITLE II—ENFORCEMENT PROVISIONS
Sec. 201. Implementation.
Subtitle A—FHA Single Family and Multifamily Housing
Sec. 211. Authorization to immediately suspend mortgagees.
Sec. 212. Extension of equity skimming to other single family and multifamily housing programs.
Sec. 213. Civil money penalties against mortgagees, lenders, and other participants in FHA programs.
Subtitle B—FHA Multifamily
Sec. 220. Civil money penalties against general partners, officers, directors, and certain managing agents of multifamily projects.
Sec. 221. Civil money penalties for noncompliance with section 8 HAP contracts.
Sec. 222. Extension of double damages remedy.
Sec. 223. Obstruction of Federal audits.

TITLE I—FHA-INSURED MULTIFAMILY HOUSING MORTGAGE AND HOUSING ASSISTANCE RESTRUCTURING

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) there exists throughout the Nation a need for decent, safe, and affordable housing;

(2) as of the date of enactment of this Act, it is estimated that—

(A) the insured multifamily housing portfolio of the Federal Housing Administration consists of 14,000 rental properties, with an aggregate unpaid principal mortgage balance of $38,000,000,000; and

(B) approximately 10,000 of these properties contain housing units that are assisted with project-based rental assistance under section 8 of the United States Housing Act of 1937;

(3) FHA-insured multifamily rental properties are a major Federal investment, providing affordable rental housing to an estimated 2,000,000 low- and very low-income families;

(4) approximately 1,600,000 of these families live in dwelling units that are assisted with project-based rental assistance under section 8 of the United States Housing Act of 1937;

(5) a substantial number of housing units receiving project-based assistance have rents that are higher than the rents of comparable, unassisted rental units in the same housing rental market;

(6) many of the contracts for project-based assistance will expire during the several years following the date of enactment of this Act;

(7) it is estimated that—

(A) if no changes in the terms and conditions of the contracts for project-based assistance are made before fiscal year 2000, the cost of renewing all expiring rental assistance contracts under section 8 of the United States Housing Act of 1937 for both project-based and tenant-based rental assistance will increase from approximately $4,000,000,000 in fiscal year 1997 to over $17,000,000,000 by fiscal year 2000 and some $23,000,000,000 in fiscal year 2006;

(B) of those renewal amounts, the cost of renewing project-based assistance will increase from $1,200,000,000 in fiscal year 1997 to almost $8,000,000,000 by fiscal year 2006; and

(C) without changes in the manner in which project-based rental assistance is provided, renewals of expiring contracts for project-based rental assistance will require an increasingly larger portion of the discretionary budget authority of the Department of Housing and Urban Development in each subsequent fiscal year for the foreseeable future;

(8) absent new budget authority for the renewal of expiring rental contracts for project-based assistance, many of the FHA-insured multifamily housing projects that are assisted with project-based assistance will likely default on their FHA-insured mortgage payments, resulting in substantial claims to the FHA General Insurance Fund and Special Risk Insurance Funds;

(9) more than 15 percent of federally assisted multifamily housing projects are physically or financially distressed, including a number which suffer from mismanagement;

(10) due to Federal budget constraints, the downsizing of the Department of Housing and Urban Development, and diminished administrative capacity, the Department lacks the ability to ensure the continued economic and physical well-being of the stock of federally insured and assisted multifamily housing projects; and

(11) the economic, physical, and management problems facing the stock of federally insured and assisted multifamily housing projects will be best served by reforms that—

(A) reduce the cost of Federal rental assistance, including project-based assistance, to these projects by reducing the debt service and operating costs of these projects while retaining the low-income affordability and availability of this housing;

(B) address physical and economic distress of this housing and the failure of some project managers and owners of projects to comply with management and ownership rules and requirements; and

(C) transfer and share many of the loan and contract administration functions and responsibilities of the Secretary with capable State, local, and other entities.

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

(1) to preserve low-income rental housing affordability and availability while reducing the long-term costs of project-based assistance;

(2) to reform the design and operation of Federal rental housing assistance programs, administered by the Secretary, to promote greater multifamily housing project operating and cost efficiencies;

(3) to encourage owners of eligible multifamily housing projects to restructure their FHA-insured mortgages and project-based assistance contracts in a manner which is consistent with this title before the year in which the contract expires;

(4) to streamline and improve federally insured and assisted multifamily housing project oversight and administration;

(5) to resolve the problems affecting financially and physically troubled federally insured and assisted multifamily housing projects through cooperation with residents, owners, State and local governments, and other interested entities and individuals; and

(6) to grant additional enforcement tools to use against those who violate agreements and program requirements, in order to ensure that the public interest is safeguarded and that Federal multifamily housing programs serve their intended purposes.

SEC. 102. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) COMPARABLE PROPERTIES.—The term ''comparable properties'' means properties that are—

(A) similar to the eligible multifamily housing project in neighborhood (including risk of crime), location, access, street appeal, age, property size, apartment mix, physical configuration, property amenities, inapartment rental amenities, and utilities;

(B) unregulated by contractual encumbrances or local rent-control laws; and

(C) occupied predominantly by renters who receive no rent supplements or rental assistance.

(2) ELIGIBLE MULTIFAMILY HOUSING PROJECT.—The term ''eligible multifamily housing project'' means a property consisting of more than 4 dwelling units—

(A) with rents which, on an average per unit or per room basis, exceed the fair market rent of the same market area, as determined by the Secretary;

(B) that is covered in whole or in part by a contract for project-based assistance under—

(i) the new construction and substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1983);

(ii) the property disposition program under section 8(b) of the United States Housing Act of 1937;

(iii) the moderate rehabilitation program under section 8(e)(2) of the United States Housing Act of 1937;

(iv) the project-based certificate program under section 8 of the United States Housing Act of 1937;

(v) section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975);

(vi) the rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(vii) section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965; and

(C) financed by a mortgage insured under the National Housing Act.

(3) EXPIRING CONTRACT.—The term ''expiring contract'' means a project-based assistance contract attached to an eligible multifamily housing project which, under the terms of the contract, will expire.

(4) EXPIRATION DATE.—The term ''expiration date'' means the date on which an expiring contract expires.

(5) FAIR MARKET RENT.—The term ''fair market rent'' means the fair market rental established under section 8(c) of the United States Housing Act of 1937.

(6) KNOWING OR KNOWINGLY.—The term ''knowing'' or ''knowingly'' means having actual knowledge of or acting with deliberate ignorance or reckless disregard.

(7) LOW-INCOME FAMILIES.—The term ''low-income families'' has the same meaning as provided under section 3(b)(2) of the United States Housing Act of 1937.

(8) MULTIFAMILY HOUSING MANAGEMENT AGREEMENT.—The term ''multifamily housing management agreement'' means the agreement entered into between the Secretary and a participating administrative entity, as provided under section 103 of the title.

(9) PARTICIPATING ADMINISTRATIVE ENTITY.—The term ''participating administrative entity'' means a public agency, including a State housing finance agency or local housing agency, which meets the requirements under section 103(b).

(10) PROJECT-BASED ASSISTANCE.—The term ''project-based assistance'' means rental assistance under section 8 of the United States Housing Act of 1937 that is attached to a multifamily housing project.

(11) RENEWAL.—The term ''renewal'' means the replacement of an expiring Federal rental contract with a new contract under section 8 of the United States Housing Act of 1937, consistent with the requirements of this title.

(12) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.

(13) STATE.—The term ''State'' has the same meaning as in section 104 of the Cranston-Gonzalez National Affordable Housing Act.

(14) TENANT-BASED ASSISTANCE.—The term ''tenant-based assistance'' has the same meaning as in section 8(f) of the United States Housing Act of 1937.

(15) UNIT OF GENERAL LOCAL GOVERNMENT.—The term ''unit of general local government'' has the same meaning as in section 104 of the Cranston-Gonzalez National Affordable Housing Act.

(16) VERY LOW-INCOME FAMILY.—The term ''very low-income family'' has the same meaning as in section 3(b) of the United States Housing Act of 1937.

SEC. 103. AUTHORITY OF PARTICIPATING ADMINISTRATIVE ENTITIES.

(a) PARTICIPATING ADMINISTRATIVE ENTITIES.—

(1) IN GENERAL.—The Secretary shall enter into multifamily housing management agreements with participating administrative entities for the implementation of mortgage restructuring and rental assistance sufficiency plans to restructure FHA-insured multifamily housing mortgages, in order to—

(A) reduce the costs of current and expiring contracts for assistance under section 8 of the United States Housing Act of 1937;

(B) address financially and physically troubled projects; and

(C) correct management and ownership deficiencies.

(2) MULTIFAMILY HOUSING MANAGEMENT AGREEMENTS.—Each multifamily housing management agreement entered into under this subsection shall—

(A) be a cooperative agreement to establish the obligations and requirements between the Secretary and the participating administrative entity;

(B) identify the eligible multifamily housing projects or groups of projects for which the participating administrative entity is responsible for assisting in developing and implementing approved mortgage workout and rental assistance sufficiency plans under section 104;

(C) require the participating administrative entity to review and certify to the accuracy and completeness of a comprehensive needs assessment submitted by the owner of an eligible multifamily housing project, in accordance with the information and data requirements of section 403 of the Housing and Community Development Act of 1992, including such other data, information, and requirements as the Secretary may require to be included as part of the comprehensive needs assessment;

(D) identify the responsibilities of both the participating administrative entity and the Secretary in implementing a mortgage restructuring and rental assistance sufficiency plan, including any actions proposed to be taken under section 106 or 107;

(E) require each mortgage restructuring and rental assistance sufficiency plan prepared in accordance with the requirements of section 104 for each eligible multifamily housing project;

(F) indemnify the participating administrative entity against lawsuits and penalties for actions taken pursuant to the agreement, excluding actions involving gross negligence or willful misconduct; and

(G) include compensation for all reasonable expenses incurred by the participating administrative entity necessary to perform its duties under this Act, including such incentives as may be authorized under section 108.

(b) SELECTION OF PARTICIPATING ADMINISTRATIVE ENTITY.—

(1) SELECTION CRITERIA.—The Secretary shall select a participating administrative entity based on the following criteria—

(A) is located in the State or local jurisdiction in which the eligible multifamily housing project or projects are located;

(B) has demonstrated expertise in the development or management of low-income affordable rental housing;

(C) has a history of stable, financially sound, and responsible administrative performance;

(D) has demonstrated financial strength in terms of asset quality, capital adequacy, and liquidity; and

(E) is otherwise qualified, as determined by the Secretary, to carry out the requirements of this title.

(2) SELECTION OF MORTGAGE RISK-SHARING ENTITIES.—Any State housing finance agency or local housing agency which is designated as a qualified participating entity under section 542 of the Housing and Community Development Act of 1992 shall automatically qualify as a participating administrative entity under this section.

(3) ALTERNATIVE ADMINISTRATORS.—With respect to any eligible multifamily housing project that is located in a State or local jurisdiction in which the Secretary determines that a participating administrative entity is not located, is unavailable, or does not qualify, the Secretary shall either—

(A) carry out the requirements of this title with respect to that eligible multifamily housing project; or

(B) contract with other qualified entities that meet the requirements of subsection (b), with the exception of subsection (b)(1)(A), the authority to carry out all or a portion of the requirements of this title with respect to that eligible multifamily housing project.

(4) PREFERENCE FOR STATE HOUSING FINANCE AGENCIES AS PARTICIPATING ADMINISTRATIVE ENTITIES.—For each State in which eligible multifamily housing projects are located, the Secretary shall give preference to the housing finance agency of that State or, if a State housing finance agency is unqualified or has declined to participate, a local housing agency to act as the participating administrative entity for that State or for the jurisdiction in which the agency located.

(5) STATE PORTFOLIO REQUIREMENTS.—

(A) IN GENERAL.—If the housing finance agency of a State is selected as the participating administrative entity, that agency shall be responsible for all eligible multifamily housing projects in that State, except that a local housing agency selected as a participating administrative entity shall be responsible for all eligible multifamily housing projects in the jurisdiction of the agency.

(B) DELEGATION.—A participating administrative entity may delegate or transfer responsibilities and functions under this title to one or more interested and qualified public entities.

(C) WAIVER.—A State housing finance agency or local housing agency may request a waiver from the Secretary from the requirements of this paragraph for good cause.

SEC. 104. MORTGAGE RESTRUCTURING AND RENTAL ASSISTANCE SUFFICIENCY PLAN.

(a) IN GENERAL.—

(1) DEVELOPMENT OF PROCEDURES AND REQUIREMENTS.—The Secretary shall develop procedures and requirements for the submission of a mortgage restructuring and rental assistance sufficiency plan for each eligible multifamily housing project with an expiring contract.

(2) TERMS AND CONDITIONS.—Each mortgage restructuring and rental assistance sufficiency plan submitted under this subsection shall be developed at the initiative of an owner of an eligible multifamily housing project with a participating administrative entity, under such terms and conditions as the Secretary shall require.

(3) CONSOLIDATION.—Mortgage restructuring and rental assistance sufficiency plans submitted under this subsection may be consolidated as part of an overall strategy for more than one property.

(b) NOTICE REQUIREMENTS.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Secretary shall establish notice procedures and hearing requirements for tenants and owners concerning the dates for the expiration of project-based assistance contracts for any eligible multifamily housing project.

(B) 12-MONTH NOTICE.—Under the hearing requirements established under this paragraph, the owner shall provide 12 months notice in writing before the expiration of the initial project-based assistance contract to tenants of any eligible multifamily housing project.

(2) EXTENSION OF CONTRACT TERM.—Subject to agreement by a project owner, the Secretary may extend the term of any expiring contract or provide a section 8 contract with rent levels set in accordance with subsection (f)(2) for a period sufficient to facilitate the implementation of a mortgage restructuring and rental assistance sufficiency plan, as determined by the Secretary.

(c) TENANT RENT PROTECTION.—If the owner of a project with an expiring Federal rental assistance contract does not agree to extend the contract, the Secretary shall make tenant-based assistance available to tenants residing in units assisted under the expiring contract at the time of expiration.

(d) MORTGAGE RESTRUCTURING AND RENTAL ASSISTANCE SUFFICIENCY PLAN.—Each mortgage restructuring and rental assistance sufficiency plan shall—

(1) except as otherwise provided, restructure the project-based assistance rents for the eligible multifamily housing property in a manner consistent with subsection (e);

(2) require the owner or purchaser of an eligible multifamily mortgage housing project with an expiring contract to submit to the participating administrative entity a comprehensive housing needs assessment, in accordance with the information and data requirements of section 403 of the Housing and Community Development Act of 1992, including such other data, information, and requirements as the Secretary may require to be included as part of the comprehensive needs assessment;

(3) require the owner or purchaser of the project to provide or contract for competent management of the project;

(4) require the owner or purchaser of the project to take such actions as may be necessary to rehabilitate, maintain adequate reserves, and to maintain the project in decent and safe condition, based on housing quality standards established by—

(A) the Secretary; or

(B) local housing codes or codes adopted by public housing agencies that—

(i) meet or exceed housing quality standards established by the Secretary; and

(ii) do not severely restrict housing choice;

(5) require the owner or purchaser of the project to maintain affordability and use restrictions for 20 years, as the participating administrative entity determines to be appropriate, which restrictions shall be consistent with the long-term physical and financial viability character of the project as affordable housing;

(6) meet subsidy layering requirements under guidelines established by the Secretary; and

(7) require the owner or purchaser of the project to meet such other requirements as the Secretary determines to be appropriate.

(e) TENANT AND COMMUNITY PARTICIPATION AND CAPACITY BUILDING.—

(1) PROCEDURES.—

(A) IN GENERAL.—The Secretary shall establish procedures to provide an opportunity for tenants of the project and other affected parties, including local government and the community in which the project is located, to participate effectively in the restructuring process established by this title.

(B) CRITERIA.—These procedures shall include—

(i) the rights to timely and adequate written notice of the proposed decisions of the owner or the Secretary or participating administrative entity;

(ii) timely access to all relevant information (except for information determined to be proprietary under standards established by the Secretary);

(iii) an adequate period to analyze this information and provide comments to the Secretary or participating administrative entity (which comments shall be taken into consideration by the Administrator); and

(iv) if requested, a meeting with a representative of the Administrator and other affected parties.

(2) PROCEDURES REQUIRED.—The procedures established under paragraph (1) shall permit tenant, local government, and community participation in at least the following decisions or plans specified in this title:

(A) The Multifamily Housing Management Agreement.

(B) Any proposed expiration of the section 8 contract.

(C) The project's eligibility for restructuring pursuant to section 106 and the mortgage restructuring and rental assistance sufficiency plan pursuant to section 104.

(D) Physical inspections.

(E) Capital needs and management assessments, whether before or after restructuring.

(F) Any proposed transfer of the project.

(3) FUNDING.—

(A) IN GENERAL.—The Secretary may provide not more than $10,000,000 annually in funding to tenant groups, nonprofit organizations, and public entities for building the capacity of tenant organizations, for technical assistance in furthering any of the purposes of this title (including transfer of developments to new owners) and for tenant services, from those amounts made available under appropriations Acts for implementing this title.

(B) ALLOCATION.—The Secretary may allocate any funds made available under subparagraph (A) through existing technical assistance programs and procedures developed pursuant to any other Federal law, including the Low-Income Housing Preservation and Resident Homeownership Act of 1990 and the Multifamily Property Disposition Reform Act of 1994.

(C) PROHIBITION.—None of the funds made available under subparagraph (A) may be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by the Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation.

(f) RENT LEVELS.—

(1) IN GENERAL.—Except as provided in paragraph (2), each mortgage restructuring and rental assistance sufficiency plan pursuant to the terms, conditions, and requirements of this title shall establish for units assisted with project-based assistance in eligible multifamily housing projects adjusted rent levels that—

(A) are equivalent to rents derived from comparable properties, if—

(i) the participating administrative entity makes the rent determination not later than 60 days after the owner submits a mortgage restructuring and rental assistance sufficiency plan; and

(ii) the market rent determination is based on not less than 2 comparable properties; or

(B) if those rents cannot be determined, are equal to 90 percent of the fair market rents for the relevant market area.

(2) EXCEPTIONS.—

(A) IN GENERAL.—A contract under this section may include rent levels that exceed the rent level described in paragraph (1) at rent levels that do not exceed 120 percent of the local fair market rent if the participating administrative entity—

(i) determines, that the housing needs of the tenants and the community cannot be adequately addressed through implementation of the rent limitation required to be established through a mortgage restructuring and rental assistance sufficiency plan under paragraph (1); and

(ii) follows the procedures under paragraph (3).

(B) EXCEPTION RENTS.—In any fiscal year, a participating administrative entity may approve exception rents on not more than 20 percent of all units in the geographic jurisdiction of the entity with expiring contracts in that fiscal year, except that the Secretary may waive this ceiling upon a finding of special need in the geographic area served by the participating administrative entity.

(3) RENT LEVELS FOR EXCEPTION PROJECTS.—For purposes of this section, a project eligible for an exception rent shall receive a rent calculation on the actual and projected costs of operating the project, at a level that provides income sufficient to support a budget-based rent that consists of—

(A) the debt service of the project;

(B) the operating expenses of the project, as determined by the participating administrative entity, including—

(i) contributions to adequate reserves;

(ii) the costs of maintenance and necessary rehabilitation; and

(iii) other eligible costs permitted under section 8 of the United States Housing Act of 1937;

(C) an adequate allowance for potential operating losses due to vacancies and failure to collect rents, as determined by the participating administrative entity;

(D) an allowance for a reasonable rate of return to the owner or purchaser of the project, as determined by the participating administrative entity, which shall not exceed 7 percent of the return on equity; and

(E) other expenses determined by the participating administrative entity to be necessary for the operation of the project.

(g) EXEMPTIONS FROM RESTRUCTURING.—Subject to section 106, the Secretary shall renew project-based assistance contracts at existing rents if—

(1) the project was financed through obligations such that the implementation of a mortgage restructuring and rental assistance plan under this section is inconsistent with applicable law or agreements governing such financing;

(2) in the determination of the Secretary or the participating administrative entity, the refinancing would not result in significant savings to the Secretary; or

(3) the project has an expiring contract under section 8 of the United States Housing Act of 1937 but does not qualify as an eligible multifamily project pursuant to section 102(6) of this title.

SEC. 105. SECTION 8 RENEWALS AND LONG-TERM AFFORDABILITY COMMITMENT BY OWNER OF PROJECT.

(a) SECTION 8 RENEWALS OF RESTRUCTURED PROJECTS.—Subject to the availability of amounts provided in advance in appropriations Acts, the Secretary shall enter into contracts with participating administrative entities pursuant to which the participating administrative entity shall offer to renew or extend an expiring section 8 contract on an eligible multifamily project, and the owner of the project shall accept the offer, provided the initial renewal is in accordance with the terms and conditions specified in the mortgage restructuring and rental sufficiency plan.

(b) REQUIRED COMMITMENT.—After the initial renewal of a section 8 contract pursuant to this section, the owner shall accept each offer made pursuant to subsection (a) to renew the contract, for a period of 20 years from the date of the initial renewal, if the offer to renew is on terms and conditions specified in the mortgage restoration and rental sufficiency plan.

SEC. 106. PROHIBITION ON RESTRUCTURING.

(a) PROHIBITION ON RESTRUCTURING.—The Secretary shall not consider any mortgage restructuring and rental assistance sufficiency plan or request for contract renewal if the participating administrative entity determines that—

(1) the owner or purchaser of the project has engaged in material adverse financial or managerial actions or omissions with regard to this project (or with regard to other similar projects if the Secretary determines that those actions or omissions constitute a pattern of mismanagement that would warrant suspension or debarment by the Secretary), including—

(A) knowingly and materially violating any Federal, State, or local law or regulation with regard to this project or any other federally assisted project;

(B) knowingly and materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937;

(C) knowingly and materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity;

(D) repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the property;

(E) materially failing to maintain the property according to housing quality standards after receipt of notice and a reasonable opportunity to cure; or

(F) committing any actions or omissions that would warrant suspension or debarment by the Secretary;

(2) the owner or purchaser of the property materially failed to follow the procedures

and requirements of this title, after receipt of notice and an opportunity to cure; or

(3) the poor condition of the project cannot be remedied in a cost effective manner, as determined by the participating administrative entity.

(b) OPPORTUNITY TO DISPUTE FINDINGS.—

(1) IN GENERAL.—During the 30-day period beginning on the date on which the owner or purchaser of an eligible multifamily housing project receives notice of a rejection under subsection (a) or of a mortgage restructuring and rental assistance sufficiency plan under section 104, the Secretary or participating administrative entity shall provide that owner or purchaser with an opportunity to dispute the basis for the rejection and an opportunity to cure.

(2) AFFIRMATION, MODIFICATION, OR REVERSAL.—

(A) IN GENERAL.—After providing an opportunity to dispute under paragraph (1), the Secretary or the participating administrative entity may affirm, modify, or reverse any rejection under subsection (a) or rejection of a mortgage restructuring and rental assistance sufficiency plan under section 104.

(B) REASONS FOR DECISION.—The Secretary or the participating administrative entity, as applicable, shall identify the reasons for any final decision under this paragraph.

(C) REVIEW PROCESS.—The Secretary shall establish an administrative review process to appeal any final decision under this paragraph.

(c) FINAL DETERMINATION.—Any final determination under this section shall not be subject to judicial review.

(d) DISPLACED TENANTS.—Subject to the availability of amounts provided in advance in appropriations Acts, for any low-income tenant that is residing in a project or receiving assistance under section 8 of the United States Housing Act of 1937 at the time of rejection under this section, that tenant shall be provided with tenant-based assistance and reasonable moving expenses, as determined by the Secretary.

(e) TRANSFER OF PROPERTY.—For properties disqualified from the consideration of a mortgage restructuring and rental assistance sufficiency plan under this section because of actions by an owner or purchaser in accordance with paragraph (1) or (2) of subsection (a), the Secretary shall establish procedures to facilitate the voluntary sale or transfer of a property as part of a mortgage restructuring and rental assistance sufficiency plan, with a preference for tenant organizations and tenant-endorsed community-based nonprofit and public agency purchasers meeting such reasonable qualifications as may be established by the Secretary.

SEC. 107. RESTRUCTURING TOOLS.

(a) RESTRUCTURING TOOLS.—For purposes of this title, and to the extent these actions are consistent with this section, an approved mortgage restructuring and assistance sufficiency plan may include one or more of the following:

(1) FULL OR PARTIAL PAYMENT OF CLAIM.—Making a full payment of claim or partial payment of claim under section 541(b) of the National Housing Act.

(2) REFINANCING OF DEBT.—Refinancing of all or part of the debt on a project, if the refinancing would result in significant subsidy savings under section 8 of the United States Housing Act of 1937.

(3) MORTGAGE INSURANCE.—Providing FHA multifamily mortgage insurance, reinsurance or other credit enhancement alternatives, including multifamily risk-sharing mortgage programs, as provided under section 542 of the Housing and Community Development Act of 1992. Any limitations on the number of units available for mortgage insurance under section 542 shall not apply to eligible multifamily housing projects. Any credit subsidy costs of providing mortgage insurance shall be paid from the General Insurance Fund and the Special Risk Insurance Fund.

(4) CREDIT ENHANCEMENT.—Any additional State or local mortgage credit enhancements and risk-sharing arrangements may be established with State or local housing finance agencies, the Federal Housing Finance Board, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, to a modified first mortgage.

(5) COMPENSATION OF THIRD PARTIES.—Entering into agreements, incurring costs, or making payments, as may be reasonably necessary, to compensate the participation of participating administrative entities and other parties in undertaking actions authorized by this title. Upon request, participating administrative entities shall be considered to be contract administrators under section 8 of the United States Housing Act of 1937 for purposes of any contracts entered into as part of an approved mortgage restructuring and rental assistance sufficiency plan.

(6) RESIDUAL RECEIPTS.—Applying any acquired residual receipts to maintain the long-term affordability and physical condition of the property. The participating administrative entity may expedite the acquisition of residual receipts by entering into agreements with owners of housing covered by an expiring contract to provide an owner with a share of the receipts, not to exceed 10 percent.

(7) REHABILITATION NEEDS.—Assisting in addressing the necessary rehabilitation needs of the project, except that assistance under this paragraph shall not exceed the equivalent of $5,000 per unit for those units covered with project-based assistance. Rehabilitation may be paid from the provision of grants from residual receipts or, as provided in appropriations Acts, from budget authority provided for increases in the budget authority for assistance contracts under section 8 of the United States Housing Act of 1937, or through the debt restructuring transaction. Each owner that receives rehabilitation assistance shall contribute not less than 25 percent of the amount of rehabilitation assistance received.

(8) MORTGAGE RESTRUCTURING.—Restructuring mortgages to provide a structured first mortgage to cover rents at levels that are established in section 104(f) and a second mortgage equal to the difference between the restructured first mortgage and the mortgage balance of the eligible multifamily housing project at the time of restructuring. The second mortgage shall bear interest at a rate not to exceed the applicable Federal rate for a term not to exceed 40 years. If the first mortgage remains outstanding, payments of interest and principal on the second mortgage shall be made from all excess project income only after the payment of all reasonable and necessary operating expenses (including deposits in a reserve for replacement), debt service on the first mortgage, and such other expenditures as may be approved by the Secretary. Except as required by the preceding sentence, during the period in which the first mortgage remains outstanding, no payments of interest or principal shall be required on the second mortgage. The second mortgage shall be assumable by any subsequent purchaser of any multifamily housing project, pursuant to guidelines established by the Secretary. The principal and accrued interest due under the second mortgage shall be fully payable upon disposition of the property, unless the mortgage is assumed under the preceding sentence. The owner shall begin repayment of the second mortgage upon full payment of the first mortgage in equal monthly installments in an amount equal to the monthly principal and interest payments formerly paid under the first mortgage. The principal and interest of a second mortgage shall be immediately due and payable upon a finding by the Secretary that an owner has failed to materially comply with this title or any requirements of the United States Housing Act of 1937 as those requirements apply to the applicable project. Any credit subsidy costs of providing a second mortgage shall be paid from the General Insurance Fund and the Special Risk Insurance Fund.

(b) ROLE OF FNMA AND FHLMC.—Section 1335 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4565) is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) paragraph (4), by striking the period at the end and inserting ''; and'';

(3) by striking ''To meet'' and inserting the following:

''(a) IN GENERAL.—To meet''; and

(4) by adding at the end the following:

''(5) assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts, as defined under the Multifamily Assisted Housing Reform and Affordability Act of 1996.

''(b) AFFORDABLE HOUSING GOALS.—Actions taken under subsection (a)(5) shall constitute part of the contribution of each entity in meeting their affordable housing goals under sections 1332, 1333, and 1334 for any fiscal year, as determined by the Secretary.''.

(c) PROHIBITION ON EQUITY SHARING BY THE SECRETARY.—The Secretary is prohibited from participating in any equity agreement or profit-sharing agreement in conjunction with any eligible multifamily housing project.

SEC. 108. SHARED SAVINGS INCENTIVE.

(a) IN GENERAL.—At the time a participating administrative entity is designated, the Secretary shall negotiate an incentive agreement with the participating administrative entity, which agreement may provide such entity with a share of savings from any restructured mortgage and reduced subsidies resulting from actions under section 107. The Secretary shall negotiate with participating administrative entities a savings incentive formula that provides for periodic payments over a 5-year period, which is allocated as incentives to participating administrative entities and to project owners.

(b) USE OF SAVINGS.—Notwithstanding any other provision of law, the incentive agreement under subsection (a) shall require any savings provided to a participating administrative entity under that agreement to be used only for providing decent, safe, and affordable housing for very low-income families and persons with a priority for eligible multifamily housing projects; and

SEC. 109. MANAGEMENT STANDARDS.

Each participating administrative entity shall establish and implement management standards, including requirements governing conflicts of interest between owners, managers, contractors with an identity of interest, pursuant to guidelines established by the Secretary and consistent with industry standards.

SEC. 110. MONITORING OF COMPLIANCE.

(a) COMPLIANCE AGREEMENTS.—Pursuant to regulations issued by the Secretary after public notice and comment, each participating administrative entity, through binding contractual agreements with owners and

otherwise, shall ensure long-term compliance with the provisions of this title. Each agreements shall, at a minimum, provide for—

(1) enforcement of the provisions of this title; and

(2) remedies for the breach of those provisions.

(b) PERIODIC MONITORING.—

(1) IN GENERAL.—Not less than annually, each participating administrative entity shall review the status of all multifamily housing projects for which a mortgage restructuring and rental assistance sufficiency plan has been implemented.

(2) INSPECTIONS.—Each review under this subsection shall include onsite inspection to determine compliance with housing codes and other requirements as provided in this title and the multifamily housing management agreements.

(c) AUDIT BY THE SECRETARY.—The Comptroller General of the United States, the Secretary, and the Inspector General of the Department of Housing and Urban Development may conduct an audit at any time of any multifamily housing project for which a mortgage restructuring and rental assistance sufficiency plan has been implemented.

SEC. 111. REVIEW.

(a) ANNUAL REVIEW.—In order to ensure compliance with this title, the Secretary shall conduct an annual review and report to the Congress on actions taken under this title and the status of eligible multifamily housing projects.

(b) SUBSIDY LAYERING REVIEW.—The participating administrative entity shall certify, pursuant to guidelines issued by the Secretary, that the requirements of section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 are satisfied so that the combination of assistance provided in connection with a property for which a mortgage is to be restructured shall not be any greater than is necessary to provide affordable housing.

SEC. 112. GAO AUDIT AND REVIEW.

(a) INITIAL AUDIT.—Not later than 18 months after the effective date of interim or final regulations promulgated under this title, the Comptroller General of the United States shall conduct an audit to evaluate a representative sample of all eligible multifamily housing projects and the implementation of all mortgage restructuring and rental assistance sufficiency plans.

(b) REPORT.—

(1) IN GENERAL.—Not later than 18 months after the audit conducted under subsection (a), the Comptroller General of the United States shall submit to the Congress a report on the status of all eligible multifamily housing projects and the implementation of all mortgage restructuring and rental assistance sufficiency plans.

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) a description of the initial audit conducted under subsection (a); and

(B) recommendations for any legislative action to increase the financial savings to the Federal Government of the restructuring of eligible multifamily housing projects balanced with the continued availability of the maximum number of affordable low-income housing units.

SEC. 113. REGULATIONS.

(a) RULEMAKING AND IMPLEMENTATION.—The Secretary shall issue interim regulations necessary to implement this title not later than the expiration of the 6-month period beginning on the date of enactment of this Act. Not later than 1 year after the date of enactment of this Act, in accordance with the negotiated rulemaking procedures set forth in subchapter III of chapter 5 of title 5, United States Code, the Secretary shall implement final regulations implementing this title.

(b) REPEAL OF FHA MULTIFAMILY HOUSING DEMONSTRATION AUTHORITY.—

(1) IN GENERAL.—Beginning upon the expiration of the 6-month period beginning on the date of enactment of this Act, the Secretary may not exercise any authority or take any action under section 210 of the Balanced Budget Down Payment Act, II.

(2) UNUSED BUDGET AUTHORITY.—Any unused budget authority under section 210(f) of the Balanced Budget Down Payment Act, II, shall be available for taking actions under the requirements established through regulations issued under subsection (a).

SEC. 114. TECHNICAL AND CONFORMING AMENDMENTS.

(a) CALCULATION OF LIMIT ON PROJECT-BASED ASSISTANCE.—Section 8(d) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)) is amended by adding at the end the following new paragraph:

''(5) CALCULATION OF LIMIT.—Any contract entered into under section 104 of the Multifamily Assisted Housing Reform and Affordability Act of 1996 shall be excluded in computing the limit on project-based assistance under this subsection.''.

(b) PARTIAL PAYMENT OF CLAIMS ON MULTIFAMILY HOUSING PROJECTS.—Section 541 of the National Housing Act (12 U.S.C. 1735f–19) is amended—

(1) in subsection (a), in the subsection heading, by striking ''AUTHORITY'' and inserting ''DEFAULTED MORTGAGES'';

(2) by redesignating subsection (b) as subsection (c); and

(3) by inserting after subsection (a) the following new subsection:

''(b) EXISTING MORTGAGES.—Notwithstanding any other provision of law, the Secretary, in connection with a mortgage restructuring under section 104 of the Multifamily Assisted Housing Reform and Affordability Act of 1996, may make a one time, nondefault partial payment of the claim under the mortgage insurance contract, which shall include a determination by the Secretary or the participating administrative entity, in accordance with the Multifamily Assisted Housing Reform and Affordability Act of 1996, of the market value of the project and a restructuring of the mortgage, under such terms and conditions as the Secretary may establish.''.

SEC. 115. TERMINATION OF AUTHORITY.

(a) IN GENERAL.—Except as provided in subsection (b), this title is repealed effective October 1, 2001.

(b) EXCEPTION.—The repeal under this section does not apply with respect to projects and programs for which binding commitments have been entered into before October 1, 2001.

TITLE II—ENFORCEMENT PROVISIONS

SEC. 201. IMPLEMENTATION.

(a) ISSUANCE OF NECESSARY REGULATIONS.—Notwithstanding section 7(o) of the Department of Housing and Urban Development Act or part 10 of title 24, Code of Federal Regulations (as in existence on the date of enactment of this Act), the Secretary shall issue such regulations as the Secretary determines to be necessary to implement this title and the amendments made by this title in accordance with section 552 or 553 of title 5, United States Code, as determined by the Secretary.

(b) USE OF EXISTING REGULATIONS.—In implementing any provision of this title, the Secretary may, in the discretion of the Secretary, provide for the use of existing regulations to the extent appropriate, without rulemaking.

Subtitle A—FHA Single Family and Multifamily Housing

SEC. 211. AUTHORIZATION TO IMMEDIATELY SUSPEND MORTGAGEES.

Section 202(c)(3)(C) of the National Housing Act (12 U.S.C. 1708(c)(3)(C)) is amended by inserting after the first sentence the following new sentence: ''Notwithstanding paragraph (4)(A), a suspension shall be effective upon issuance by the Board if the Board determines that there exists adequate evidence that immediate action is required to protect the financial interests of the Department or the public.''.

SEC. 212. EXTENSION OF EQUITY SKIMMING TO OTHER SINGLE FAMILY AND MULTIFAMILY HOUSING PROGRAMS.

Section 254 of the National Housing Act (12 U.S.C. 1715z–19) is amended to read as follows:

''SEC. 254. EQUITY SKIMMING PENALTY.

''(a) IN GENERAL.—Whoever, as an owner, agent, or manager, or who is otherwise in custody, control, or possession of a multifamily project or a 1- to 4-family residence that is security for a mortgage note that is described in subsection (b), willfully uses or authorizes the use of any part of the rents, assets, proceeds, income, or other funds derived from property covered by that mortgage note for any purpose other than to meet reasonable and necessary expenses that include expenses approved by the Secretary if such approval is required, in a period during which the mortgage note is in default or the project is in a nonsurplus cash position, as defined by the regulatory agreement covering the property, or the mortgagor has failed to comply with the provisions of such other form of regulatory control imposed by the Secretary, shall be fined not more than $500,000, imprisoned not more than 5 years, or both.

''(b) MORTGAGE NOTES DESCRIBED.—For purposes of subsection (a), a mortgage note is described in this subsection if it—

''(1) is insured, acquired, or held by the Secretary pursuant to this Act;

''(2) is made pursuant to section 202 of the Housing Act of 1959 (including property still subject to section 202 program requirements that existed before the date of enactment of the Cranston-Gonzalez National Affordable Housing Act); or

''(3) is insured or held pursuant to section 542 of the Housing and Community Development Act of 1992, but is not reinsured under section 542 of the Housing and Community Development Act of 1992.''.

SEC. 213. CIVIL MONEY PENALTIES AGAINST MORTGAGEES, LENDERS, AND OTHER PARTICIPANTS IN FHA PROGRAMS.

(a) CHANGE TO SECTION TITLE.—Section 536 of the National Housing Act (12 U.S.C. 1735f–14) is amended by striking the section heading and the section designation and inserting the following:

''SEC. 536. CIVIL MONEY PENALTIES AGAINST MORTGAGEES, LENDERS, AND OTHER PARTICIPANTS IN FHA PROGRAMS.''.

(b) EXPANSION OF PERSONS ELIGIBLE FOR PENALTY.—Section 536(a) of the National Housing Act (12 U.S.C. 1735f–14(a)) is amended—

(1) in paragraph (1), by striking the first sentence and inserting the following: ''If a mortgagee approved under the Act, a lender holding a contract of insurance under title I of this Act, or a principal, officer, or employee of such mortgagee or lender, or other person or entity participating in either an insured mortgage or title I loan transaction under this Act or providing assistance to the borrower in connection with any such loan, including sellers of the real estate involved,

borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents and dealers, knowingly and materially violates any applicable provision of subsection (b), the Secretary may impose a civil money penalty on the mortgagee or lender, or such other person or entity, in accordance with this section. The penalty under this paragraph shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.''; and

(2) in paragraph (2)—

(A) in the first sentence, by inserting ''or such other person or entity'' after ''lender''; and

(B) in the second sentence, by striking ''provision'' and inserting ''the provisions''.

(c) ADDITIONAL VIOLATIONS FOR MORTGAGEES, LENDERS, AND OTHER PARTICIPANTS IN FHA PROGRAMS.—Section 536(b) of the National Housing Act (12 U.S.C. 1735f–14(b)) is amended—

(1) by redesignating paragraph (2) as paragraph (3);

(2) by inserting after paragraph (1) the following new paragraph:

''(2) The Secretary may impose a civil money penalty under subsection (a) for any knowing and material violation by a principal, officer, or employee of a mortgagee or lender, or other participants in either an insured mortgage or title I loan transaction under this Act or provision of assistance to the borrower in connection with any such loan, including sellers of the real estate involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, and dealers for—

''(A) submission to the Secretary of information that was false, in connection with any mortgage insured under this Act, or any loan that is covered by a contract of insurance under title I of this Act;

''(B) falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity; or

''(C) failure by a loan correspondent or dealer to submit to the Secretary information which is required by regulations or directives in connection with any loan that is covered by a contract of insurance under title I of this Act.''; and

(3) in paragraph (3), as redesignated, by striking ''or paragraph (1)(F)'' and inserting ''or (F), or paragraph (2)(A), (B), or (C)''.

(d) CONFORMING AND TECHNICAL AMENDMENTS.—Section 536 of the National Housing Act (12 U.S.C. 1735f–14) is amended—

(1) in subsection (c)(1)(B), by inserting after ''lender'' the following: ''or such other person or entity'';

(2) in subsection (d)(1)—

(A) by inserting ''or such other person or entity'' after ''lender''; and

(B) by striking ''part 25'' and inserting ''parts 24 and 25''; and

(3) in subsection (e), by inserting ''or such other person or entity'' after ''lender'' each place that term appears.

Subtitle B—FHA Multifamily

SEC. 220. CIVIL MONEY PENALTIES AGAINST GENERAL PARTNERS, OFFICERS, DIRECTORS, AND CERTAIN MANAGING AGENTS OF MULTIFAMILY PROJECTS.

(a) CIVIL MONEY PENALTIES AGAINST MULTIFAMILY MORTGAGORS.—Section 537 of the National Housing Act (12 U.S.C. 1735f–15) is amended—

(1) in subsection (b)(1), by striking ''on that mortgagor'' and inserting the following: ''on that mortgagor, on a general partner of a partnership mortgagor, or on any officer or director of a corporate mortgagor'';

(2) in subsection (c)—

(A) by striking the subsection heading and inserting the following:

''(c) OTHER VIOLATIONS.—''; and

(B) in paragraph (1)—

(i) by striking ''VIOLATIONS.—The Secretary may'' and all that follows through the colon and inserting the following:

''(A) LIABLE PARTIES.—The Secretary may also impose a civil money penalty under this section on—

''(i) any mortgagor of a property that includes five or more living units and that has a mortgage insured, coinsured, or held pursuant to this Act;

''(ii) any general partner of a partnership mortgagor of such property;

''(iii) any officer or director of a corporate mortgagor;

''(iv) any agent employed to manage the property that has an identity of interest with the mortgagor, with the general partner of a partnership mortgagor, or with any officer or director of a corporate mortgagor of such property; or

''(v) any member of a limited liability company that is the mortgagor of such property or is the general partner of a limited partnership mortgagor or is a partner of a general partnership mortgagor.

''(B) VIOLATIONS.—A penalty may be imposed under this section upon any liable party under subparagraph (A) that knowingly and materially takes any of the following actions:'';

(ii) in subparagraph (B), as designated by clause (i), by redesignating the subparagraph designations (A) through (L) as clauses (i) through (xii), respectively;

(iii) by adding after clause (xii), as redesignated by clause (ii), the following new clauses:

''(xiii) Failure to maintain the premises, accommodations, any living unit in the project, and the grounds and equipment appurtenant thereto in good repair and condition in accordance with regulations and requirements of the Secretary, except that nothing in this clause shall have the effect of altering the provisions of an existing regulatory agreement or federally insured mortgage on the property.

''(xiv) Failure, by a mortgagor, a general partner of a partnership mortgagor, or an officer or director of a corporate mortgagor, to provide management for the project that is acceptable to the Secretary pursuant to regulations and requirements of the Secretary.''; and

(iv) in the last sentence, by deleting ''of such agreement'' and inserting ''of this subsection'';

(3) in subsection (d)—

(A) in paragraph (1)(B), by inserting after ''mortgagor'' the following: '', general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property''; and

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

''(5) PAYMENT OF PENALTY.—No payment of a civil money penalty levied under this section shall be payable out of project income.'';

(4) in subsection (e)(1), by deleting ''a mortgagor'' and inserting ''an entity or person'';

(5) in subsection (f), by inserting after ''mortgagor'' each place such term appears the following: '', general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property'';

(6) by striking the heading of subsection (f) and inserting the following: ''CIVIL MONEY PENALTIES AGAINST MULTIFAMILY MORTGAGORS, GENERAL PARTNERS OF PARTNERSHIP MORTGAGORS, OFFICERS AND DIRECTORS OF CORPORATE MORTGAGORS, AND CERTAIN MANAGING AGENTS''; and

(7) by adding at the end the following new subsection:

''(k) IDENTITY OF INTEREST MANAGING AGENT.—For purposes of this section, the terms 'agent employed to manage the property that has an identity of interest' and 'identity of interest agent' mean an entity—

''(1) that has management responsibility for a project;

''(2) in which the ownership entity, including its general partner or partners (if applicable) and its officers or directors (if applicable), has an ownership interest; and

''(3) over which the ownership entity exerts effective control.''.

(b) IMPLEMENTATION.—

(1) PUBLIC COMMENT.—The Secretary shall implement the amendments made by this section by regulation issued after notice and opportunity for public comment. The notice shall seek comments primarily as to the definitions of the terms 'ownership interest in' and 'effective control', as those terms are used in the definition of the terms 'agent employed to manage the property that has an identity of interest' and 'identity of interest agent'.

(2) TIMING.—A proposed rule implementing the amendments made by this section shall be published not later than one year after the date of enactment of this Act.

(c) APPLICABILITY OF AMENDMENTS.—The amendments made by subsection (a) shall apply only with respect to—

(1) violations that occur on or after the effective date of the final regulations implementing the amendments made by this section; and

(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation that occurs on or after that date.

SEC. 221. CIVIL MONEY PENALTIES FOR NONCOMPLIANCE WITH SECTION 8 HAP CONTRACTS.

(a) BASIC AUTHORITY.—Title I of the United States Housing Act of 1937 is amended by adding at the end the following new section:

''SEC. 27. CIVIL MONEY PENALTIES AGAINST SECTION 8 OWNERS.

''(a) IN GENERAL.—

''(1) EFFECT ON OTHER REMEDIES.—The penalties set forth in this section shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed regardless of whether the Secretary imposes other administrative sanctions.

''(2) FAILURE OF SECRETARY.—The Secretary may not impose penalties under this section for a violation, if a material cause of the violation is the failure of the Secretary, an agent of the Secretary, or a public housing agency to comply with an existing agreement.

''(b) VIOLATIONS OF HOUSING ASSISTANCE PAYMENT CONTRACTS FOR WHICH PENALTY MAY BE IMPOSED.—

''(1) LIABLE PARTIES.—The Secretary may impose a civil money penalty under this section on—

''(A) any owner of a property receiving project-based assistance under section 8;

''(B) any general partner of a partnership owner of that property; and

''(C) any agent employed to manage the property that has an identity of interest with the owner or the general partner of a partnership owner of the property.

''(2) VIOLATIONS.—A penalty may be imposed under this section for a knowing and material breach of a housing assistance payments contract, including the following—

''(A) failure to provide decent, safe, and sanitary housing pursuant to section 8; or

''(B) knowing or willful submission of false, fictitious, or fraudulent statements or requests for housing assistance payments to

the Secretary or to any department or agency of the United States.

''(3) AMOUNT OF PENALTY.—The amount of a penalty imposed for a violation under this subsection, as determined by the Secretary, may not exceed $25,000 per violation.

''(c) AGENCY PROCEDURES.—

''(1) ESTABLISHMENT.—The Secretary shall issue regulations establishing standards and procedures governing the imposition of civil money penalties under subsection (b). These standards and procedures—

''(A) shall provide for the Secretary or other department official to make the determination to impose the penalty;

''(B) shall provide for the imposition of a penalty only after the liable party has received notice and the opportunity for a hearing on the record; and

''(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing and judicial review, as provided under subsection (d).

''(2) FINAL ORDERS.—

''(A) IN GENERAL.—If a hearing is not requested before the expiration of the 15-day period beginning on the date on which the notice of opportunity for hearing is received, the imposition of a penalty under subsection (b) shall constitute a final and unappealable determination.

''(B) EFFECT OF REVIEW.—If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order.

''(C) FAILURE TO REVIEW.—If the Secretary does not review that determination or order before the expiration of the 90-day period beginning on the date on which the determination or order is issued, the determination or order shall be final.

''(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (b), the Secretary shall take into consideration—

''(A) the gravity of the offense;

''(B) any history of prior offenses by the violator (including offenses occurring before the enactment of this section);

''(C) the ability of the violator to pay the penalty;

''(D) any injury to tenants;

''(E) any injury to the public;

''(F) any benefits received by the violator as a result of the violation;

''(G) deterrence of future violations; and

''(H) such other factors as the Secretary may establish by regulation.

''(4) PAYMENT OF PENALTY.—No payment of a civil money penalty levied under this section shall be payable out of project income.

''(d) JUDICIAL REVIEW OF AGENCY DETERMINATION.—Judicial review of determinations made under this section shall be carried out in accordance with section 537(e) of the National Housing Act.

''(e) REMEDIES FOR NONCOMPLIANCE.—

''(1) JUDICIAL INTERVENTION.—

''(A) IN GENERAL.—If a person or entity fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (b), after the determination or order is no longer subject to review as provided by subsections (c) and (d), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against that person or entity and such other relief as may be available.

''(B) FEES AND EXPENSES.—Any monetary judgment awarded in an action brought under this paragraph may, in the discretion of the court, include the attorney's fees and other expenses incurred by the United States in connection with the action.

''(2) NONREVIEWABILITY OF DETERMINATION OR ORDER.—In an action under this subsection, the validity and appropriateness of the determination or order of the Secretary imposing the penalty shall not be subject to review.

''(f) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

''(g) DEPOSIT OF PENALTIES.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, if the mortgage covering the property receiving assistance under section 8 is insured or formerly insured by the Secretary, the Secretary shall apply all civil money penalties collected under this section to the appropriate insurance fund or funds established under this Act, as determined by the Secretary.

''(2) EXCEPTION.—Notwithstanding any other provision of law, if the mortgage covering the property receiving assistance under section 8 is neither insured nor formerly insured by the Secretary, the Secretary shall make all civil money penalties collected under this section available for use by the appropriate office within the Department for administrative costs related to enforcement of the requirements of the various programs administered by the Secretary.

''(h) DEFINITIONS.—For the purposes of this section—

''(1) the term 'agent employed to manage the property that has an identity of interest' means an entity—

''(A) that has management responsibility for a project;

''(B) in which the ownership entity, including its general partner or partners (if applicable), has an ownership interest; and

''(C) over which such ownership entity exerts effective control; and

''(2) the term 'knowing' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.''.

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply only with respect to—

(1) violations that occur on or after the effective date of final regulations implementing the amendments made by this section; and

(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation that occurs on or after such date.

(c) IMPLEMENTATION.—

(1) REGULATIONS.—

(A) IN GENERAL.—The Secretary shall implement the amendments made by this section by regulation issued after notice and opportunity for public comment.

(B) COMMENTS SOUGHT.—The notice under subparagraph (A) shall seek comments as to the definitions of the terms ''ownership interest in'' and ''effective control'', as such terms are used in the definition of the term ''agent employed to manage such property that has an identity of interest''.

(2) TIMING.—A proposed rule implementing the amendments made by this section shall be published not later than one year after the date of enactment of this Act.

SEC. 222. EXTENSION OF DOUBLE DAMAGES REMEDY.

Section 421 of the Housing and Community Development Act of 1987 (12 U.S.C. 1715z–4a) is amended—

(1) in subsection (a)(1)—

(A) in the first sentence, by striking ''Act; or (B)'' and inserting the following: ''Act; (B) a regulatory agreement that applies to a multifamily project whose mortgage is insured or held by the Secretary under section 202 of the Housing Act of 1959 (including property subject to section 202 of such Act as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act of 1990); (C) a regulatory agreement or such other form of regulatory control as may be imposed by the Secretary that applies to mortgages insured or held by the Secretary under section 542 of the Housing and Community Development Act of 1992, but not reinsured under section 542 of the Housing and Community Development Act of 1992; or (D)''; and

(B) in the second sentence, by inserting after ''agreement'' the following: '', or such other form of regulatory control as may be imposed by the Secretary,'';

(2) in subsection (a)(2), by inserting after ''Act,'' the following: ''under section 202 of the Housing Act of 1959 (including section 202 of such Act as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act of 1990) and under section 542 of the Housing and Community Development Act of 1992,'';

(3) in subsection (b), by inserting after ''agreement'' the following: '', or such other form of regulatory control as may be imposed by the Secretary,'';

(4) in subsection (c)—

(A) in the first sentence, by inserting after ''agreement'' the following: '', or such other form of regulatory control as may be imposed by the Secretary,''; and

(B) in the second sentence, by inserting before the period the following: ''or under the Housing Act of 1959, as appropriate''; and

(5) in subsection (d), by inserting after ''agreement'' the following: '', or such other form of regulatory control as may be imposed by the Secretary,''.

SEC. 223. OBSTRUCTION OF FEDERAL AUDITS.

Section 1516(a) of title 18, United States Code, is amended by inserting after ''under a contract or subcontract,'' the following: ''or relating to any property that is security for a mortgage note that is insured, guaranteed, acquired, or held by the Secretary of Housing and Urban Development pursuant to any Act administered by the Secretary,''.

SUMMARY OF THE MULTIFAMILY ASSISTED HOUSING REFORM AND AFFORDABILITY ACT OF 1996

Restructures the oversubsidized portfolio and reduces Section 8 subsidy costs while maintaining the affordable housing stock. Projects with subsidy contract rents above the fair market rent would be restructured in a manner that would reduce the rents by restructuring the underlying debt. Rents would be ''marked'' to comparable market rents where comparable properties exist or at 90 percent of fair market rents (FMR) if comparable properties do not exist.

In some cases (such as properties that provide special services to elderly and disabled households or because of the local market rent conditions), even if debt is restructured, setting rents at comparable market rent levels of 90 percent of FMR may be inadequate to cover the costs of operation. In these cases, a budget-based process would be used to set rents at the minimum level necessary to support proper operations and maintenance costs.

Screens out troubled multifamily properties and noncompliant owners. Nonviable housing projects and bad owners would be screened out from the renewal and debt restructuring process. Community and resident involvement would be used in resolving these problems. Potential outcomes could include demolition or change of ownership to other entities including nonprofits. Alternative housing would be provided to affected residents in cases of demolition. Stronger FHA and Section 8 enforcement authorities would also be provided to address troubled

properties and bad owners. In addition, stronger enforcement remedies would be an integral part of all restructuring transactions, to ensure that restructured properties would continue to provide high quality affordable housing.

Recapitalizes the assisted stock that suffer from deferred maintenance. In some cases, recapitalization is needed to address deferred maintenance for properties under portfolio restructuring. Rehabilitation grants or deeper debt writedowns would be used.

Utilizes capable public entities to restructure portfolio and recognizes HUD's limited capacity. Portfolio restructuring is being undertaken to reform and improve the programs from a financial and operating perspective, but not to abandon the long-term commitment to resident protection and ongoing affordability. As a result, balancing the fiscal goals of reducing costs with the public policy goals of maintaining affordable housing requires an intermediary accountable to the public interest. With HUD's acknowledged lack of capacity to address these issues, public intermediaries that have demonstrated expertise in affordable housing and responsible management would be selected. State housing finance agencies would be given a priority in acting as Participating Administrative Entities (PAE). Incentives would be negotiated with the PAEs to protect the financial interests of the Federal Government.

Addresses the tax issues facing debt restructuring. Under current tax law, debt restructuring could result in the triggering of a large income tax liability on the owners/investors without generating sufficient cash with which the owners/investors could pay the tax. As a result, a tax solution is needed to avoid resistance and delays from owners and investors. Debt restructuring results in an event that reduces the outstanding mortgage that is owed by the owners and investors. This reduction in the mortgage amount will result in a tax liability—referred to as ''cancellation of indebtedness'' or COD. COD is generally treated as ordinary taxable income under the Internal Revenue Code.

The bill addresses this problem by bifurcating the existing mortgage into two obligations. The first piece would be determined on the amount the mortgage could be supported by the rental income stream. Payment on the second piece would be deferred until the first mortgage is paid off. According to Treasury officials, this practice would not result in an immediate tax liability to owners and investors.

Provides for resident and community input into the restructuring process. To ensure that portfolio restructuring does not adversely affect the residents or local communities in which the properties are located, communities, residents, and local government officials would be provided an opportunity to comment on the process.

Strengthens HUD and FHA enforcement authority. This bill contains important provisions that will minimize the incidence of fraud and abuse of federally assisted programs. Such key provisions include (1) expanding HUD's ability to impose sanctions on lenders, (2) expanding equity skimming prohibitions, and (3) broadening the use of civil money penalties.

Mr. BOND. Mr. President, I stand in strong support of the Multifamily Assisted Housing Reform and Affordability Act of 1996. This bill goes a long way toward developing a constructive and comprehensive section 8 mark-to-market contract renewal program for reducing the costs of expiring project-based section 8 contracts, limiting the financial exposure of the FHA multifamily housing insurance fund for FHA-insured section 8 projects, and preserving, to the maximum extent possible, the section 8 project-based housing stock for very-low- and low-income families.

I congratulate Senators D'AMATO, MACK, and BENNETT for their contribution and commitment to this comprehensive legislation, as well as their commitment to finding a bipartisan approach to the many difficult issues associated with the renewal of over subsidized section 8 project-based contracts. This legislation is a meaningful step in developing a reasonable policy toward the concerns raised by these expiring section 8 project-based contracts.

Over the last 25 years, a number of HUD programs were established for the construction of affordable, low-income housing by providing FHA mortgage insurance while financing the cost of the housing through section 8 project-based housing assistance. Currently, there are some 8,500 projects with almost 1 million units that are both FHA-insured and whose debt service is almost totally dependent on rental assistance payments made under section 8 project-based contracts. Most of these projects serve very-low-income families, with approximately 37 percent of the stock serving elderly families.

The crisis facing this housing stock is that the section 8 project-based housing assistance was initially budgeted and appropriated through 15- and 20-year section 8 project-based contracts that are now expiring and for which contract renewal is prohibitively expensive. For example, at least 75 percent of this housing stock have rents that exceed the fair market rent of the local area.

Since current law prohibits HUD from renewing these section 8 contracts at rents above 100 percent of the fair market rent, with some exceptions not to exceed 120 percent, in many cases, the failure to renew expiring section 8 project-based contracts at existing rents will leave owners without the financial ability to pay the mortgage debt on these projects. This means that owners likely will default on their FHA-insured mortgage liabilities, resulting in FHA mortgage insurance claims and foreclosures. HUD would then own and be responsible for managing these low-income multifamily housing projects. This bill is intended to avoid this potential crisis through a fiscally responsible and housing sensitive strategy.

In addition, the cost of the section 8 contracts on these projects reemphasizes the difficult budget and appropriation issues facing the Congress. In particular, according to HUD estimates, the cost of all section 8 contract renewals, both tenant-based and project-based, will require appropriations of about $4.3 billion in fiscal year 1997, $10 billion in fiscal year 1998, and over $16 billion in fiscal year 2000. In addition, the cost of renewing the section 8 project-based contracts will grow from $1.2 billion in fiscal year 1997 to almost $4 billion in fiscal year 2000, and to some $8 billion in 10 years.

Since the HUD appropriations account cannot sustain these exploding costs, this legislation is intended to be a comprehensive response which will reduce the financial cost and exposure to the Federal Government and preserve this valuable housing resource. The Senate bill would generally preserve this low-income housing by using various tools to restructure these multifamily housing mortgages to the market value of the housing with resulting reductions in section 8 costs.

I also am troubled by some of the other section 8 mark-to-market proposals being promoted, including the position taken by HUD which, in general, opposes preserving this housing as FHA-insured or as assisted through section 8 project-based assistance, including the elderly assisted housing, in favor of vouchers. This position is very questionable, and I emphasize that it is widely opposed by the housing industry and tenant groups and advocates.

I highlight the underlying principles of the bill which would authorize the establishing of participating administrative entities [PAE's] which would generally be a public agency, with a first preference that a PAE be a State housing finance agency or, second, a local housing agency. These entities would be contracted by HUD to develop work-out plans in conjunction with owners of FHA-insured projects with expiring, oversubsidized section 8 contracts. Each PAE would develop mortgage restructuring and rental assistance sufficiency plans as workout instruments to reduce the section 8 subsidy needs of projects through mortgage restructuring.

The basic tool provided in the draft bill, and the likely key to any successful strategy to preserve this housing, is to authorize the restructuring of the mortgage debt on these oversubsidized section 8 multifamily housing projects. In particular, the bill would allow the restructuring of these high cost mortgages with a new first mortgage reflecting, generally, the market value of a project, and a soft second mortgage held by HUD, with interest at the applicable Federal rate, covering the remainder of the original mortgage debt and payable upon disposition or upon full payment of the first mortgage. This provision will reduce the cost of section 8 assistance and minimize any loss to the FHA multifamily insurance fund. In addition, this approach ensures that there is no taxable event by virtue of the mortgage restructuring.

I also think it would be beneficial to look at some kind of exit tax relief to encourage owners, especially limited partners, to divest their interest in these properties, to encourage new investment in and revitalization of these properties. Nevertheless, I am convinced that the tax committees are unlikely to take up this issue during this

Congress and that any discussion on tax relief will have to wait for another time.

Finally, I emphasize that it is time to act now. I am currently sponsoring a section 8 mark-to-market demonstration to be included in the VA–HUD fiscal year 1997 appropriations bill which is similar to the Multifamily Assisted Housing Reform and Affordability Act and which represents an interim approach to the section 8 mark-to-market contract renewal issue. This appropriation language indicates my strong belief that we can no longer afford, as a matter of housing policy and fiscal responsibility, to renew expiring section 8 project-based contracts at the existing, over-market rents. Nevertheless, I strongly prefer that section 8 reform legislation be acted on by the authorizing committees before the end of the fiscal year, with the full benefit of hearings and discussion on these very difficult policy issues.

I look forward to working with my colleagues on the legislation and hope that the Housing Subcommittee and Banking Committee can act in an expeditious manner on this measure. I emphasize the need to work together and I look forward to moving this legislation through Congress and onto the desk of the President.

Mr. D'AMATO. Mr. President, I rise today to cosponsor the Multifamily Assisted Housing Reform and Affordability Act of 1996. I wish to thank my colleagues, Senators CONNIE MACK and KIT BOND, for their outstanding efforts in crafting and advancing this vitally important piece of legislation to restructure the Department of Housing and Urban Development's [HUD] Federal Housing Administration [FHA] insured and section 8 assisted multifamily housing portfolio. Also,I would like to thank Senator BENNETT for his diligence in confronting the complex issues surrounding our federal multifamily housing programs.

Mr. President, this legislation represents a significant step forward in addressing the complicated and vexing problem of the rising costs of HUD's section 8 assisted housing program. Over the course of the next several years, the costs of renewing expiring section 8 contracts at their current rent levels will skyrocket from $4.3 billion in fiscal year 1997 to $20 billion in fiscal year 2002—a figure which represents the entire existing HUD budget. This is the result of the expiration of long-term housing assistance contracts which were entered into 15 to 20 years ago. In addition, many of these contracts support projects with rents that are far higher than local market rents. While these rising costs are clearly significant and represent a formidable challenge, the expiration of these long-term contracts also presents us with an opportunity to address the oversubsidized and often inflated costs of the section 8 program.

During the course of the past year, the Banking Committee has held hearings and has conducted an ongoing dialogue with residents, lenders, servicers, public officials and leading professionals within the housing community to find a consensus solution to the problems associated with the section 8 program. This legislation represents the culmination of that important effort.

Mr. President, I would like to emphasize the guiding principles of this legislation: To contain the growth of the expanding costs of the section 8 program; to protect existing tenants; to maintain the existing stock of decent, safe and affordable housing for future needs; to remove bad owners and managers; to protect the FHA insurance fund and minimize the liability of the Federal taxpayer; and to provide for local control and flexibility while reducing HUD's administrative burden.

This legislation seeks to: Reduce inflated contract rents to market-rate and budget-based rent levels; screen out bad owners, replace corrupt managers and encourage transfers to resident-supported nonprofit corporations; and provide must needed capital and facilitate private financing to address backlogged maintenance needs. This comprehensive approach will allow us to reduce the costs of the section 8 program while protecting the FHA insurance fund and minimizing the liability of the federal taxpayer. The outstanding debt on the oversubsidized portfolio would be restructured to reflect market rent levels. This debt restructuring would include the continuation of project-based subsidies as well as FHA multifamily insurance. This bill also addresses the significant tax dilemma which would be caused by debt restructuring. In order to avoid adverse tax consequences, a bifurcation of the mortgage into two separate obligations is proposed.

The legislation recognizes the lack of capacity at HUD and seeks to maximize local control and flexibility in carrying out debt restructuring in order to reduce inflated rents. A preference would be provided to State and local housing finance agencies to oversee mortgage workouts. These public entities are ideally suited for this role and are already accountable to the public interest in their own jurisdictions. Also, residents of affected properties would be provided with input in a communitywide consultation process, and will be provided adequate notice, access to information, and an adequate time period for analysis and comment.

In conclusion, let me reiterate my appreciation for my colleagues who made tremendous contributions to the effort to stem this impending crisis. As chairman of the Subcommittee on Housing Opportunity and Community Development, Senator MACK has charted a reasonable and rational course for us to follow. He has utilized a fair and bipartisan approach in the development of this legislation, and should be commended for his efforts. Also, Senator BOND, chairman of the Subcommittee on VA–HUD Appropriations and my fellow colleague on the Banking Committee, has been very instrumental in moving the process forward. Throughout, he has insisted on our continued federal commitment to providing affordable housing and the protection of the interests of existing low and moderate income tenants.

I thank all members of the Banking Committee for their tireless efforts on behalf of affordable housing and look forward to pursuing our bipartisan commitment to resolving the HUD section 8 crisis as expeditiously as possible.

By Mr. KERRY:

S. 2043. A bill to require the implementation of a corrective action plan in States in which child poverty has increased; to the Committee on Finance.

CHILD POVERTY LEGISLATION

Mr. KERRY. Mr. President, the welfare bill we passed this week would allow States to experiment with various welfare policies. Many States may implement innovative welfare policies to move parents from welfare to work. But if we are sending Federal money to States, if we are going to take this risk and allow States to experiment, we must be sure that child poverty does not increase.

There is nothing more important than constantly reminding ourselves that our focus is—or ought to be—this Nation's children. That was the focus when under Franklin Roosevelt's leadership title IV–A of the Social Security Act was originally enacted. The objective here is to help impoverished children.

This bill I am introducing today says that if child poverty increases in a State after the date of enactment of the welfare bill, then that State would be required to submit a corrective action plan. Although a weaker version of my bill passed and was included in the welfare bill, I am introducing this as a separate bill in the hope that ultimately we will be able to pass the strongest possible version.

What would this bill do? This bill says that if the most recent State child poverty rate exceeds the level for the previous year by 5 percent or more then the State would have to submit to the HHS Secretary within 90 days a corrective action plan describing the actions the state shall take to reduce child poverty rates.

Mr. President, I want to be clear that this bill in no way intrudes on a State's ability to design its own welfare program. State flexibility would not be decreased in any way. This bill simply says that if a state's welfare system increases child poverty, that state must take corrective action.

Mr. President, I believe all of us regardless of party can agree on two things at least: We can all agree that the child poverty rate in this country is too high. The fact is that 15.3 million U.S. children live in poverty. This

means that more than 1 in 5 children—21.8 percent—live in poverty. In Massachusetts, there are more than 176,000 children who live in poverty. And despite the stereotypes, Mr. President, the majority of America's poor children are white (9.3 million) and live in rural or suburban areas (8.4 million) rather than central cities (6.9 million).

The other thing on which we can all agree, because it is a fact rather than an opinion, is that the child poverty rate in this country is dramatically higher than the rate in other major industrialized countries. According to an excellent, comprehensive recent report by an international research group called the Luxembourg Income Study, the child poverty rate in the United Kingdom is less than half our rate (9.9 percent), the rate in France is less than one-third of our rate (6.5 percent), and the rate in Denmark (3.3 percent) is about one-sixth our rate.

Mr. President, we know that poverty is bad for children. This should be obvious. Nobel prizewinning economist Robert Solow and the Children's Defense Fund recently conducted the first-ever long-term impact of child poverty. They found that their lowest estimate was that the future cost to society of a single year of poverty for the 15 million poor children is $36 billion in lost output per worker. When they included lost work hours, lower skills, and other labor market disadvantages related to poverty, they found that the future cost to society was $177 billion.

With this bill, I want to make sure that, at the very least, if a State's welfare plan increases child poverty—instead of increasing the number of parents moving from welfare to work and self-sufficiency—that State will take immediate steps to refocus its program.

Mr. President, I urge all my colleagues to support this bill to ensure that welfare reform results in more parents working, not more child poverty.

By Mr. SANTORUM:

S. 2044. A bill to provide for modification of the State agreement under title II of the Social Security Act with the State of Pennsylvania with respect to certain students; to the Committee on Finance.

LEGISLATION HELPING PENNSYLVANIA STUDENTS

Mr. SANTORUM. Mr. President, I wanted to take a few minutes of Senate business today to introduce legislation of importance to the Pennsylvania state system of higher education and to the students enrolled and working at our state-related universities.

The bill is a companion measure to legislation in the House of Representatives. The House proposal was introduced by my friend and distinguished colleague from Pennsylvania, Representative BILL CLINGER.

Mr. President, this legislation will affect students and graduate assistants employed by Pennsylvania's public universities and will allow them to keep more of their pay from campus employment. Currently, student employees of Pennsylvania's State system of higher education are covered under FICA and pay taxes unlike working students at schools in most other states. Only a change in the law would enable Pennsylvania's colleges and universities to exempt their student employees from FICA coverage.

This legislation would make Pennsylvania schools more attractive and competitive with the other states who have opted out of Social Security coverage. Graduate students are often called upon to perform paid assistant teaching duties. The current system and application of FICA coverage does not make Pennsylvania institutions as competitive with other out of state graduate programs.

If a student or graduate student compares their employment earning possibilities with other states, Pennsylvania students are at a distinct disadvantage. At a time in young adults' lives when resources are usually limited, it makes practical sense to free up more funds for student employees who are working hard toward their educational goals.

Today, colleges and universities are being called upon to downsize and make better use of dollars. This legislation is an easy way to support individuals who are attaining goals while attending Pennsylvania state-related universities.

By Mr. HATFIELD:

S. 2045. A bill to provide regulatory relief for small business concerns, and for other purposes; to the Committee on Small Business.

THE NATIONAL SMALL BUSINESS REGULATORY RELIEF ACT

Mr. HATFIELD. Mr. President, one of the most common small business complaints my constituents bring to my attention is the issue of burdensome government regulations. As we all recognize, small businesses rarely have the expertise or resources necessary to keep up to date with changing Federal requirements. Consequently, many small businesses are not in compliance with Federal regulations and face potential fines. Fines or costly compliance procedures can be devastating to small businesses which characteristically operate at a very narrow profit margin.

All across this Nation conscientious small business owners are frustrated with Federal regulations simply because they cannot get concise and specific answers to their compliance questions. How can we realistically expect to increase environmental protection, work place safety or tax compliance, if these respective agency's regulations are so complex that professionals in these fields cannot determine the meanings and applications of these rules? While our regulatory reform efforts have done much to change the rulemaking process and the sheer volume of regulations, very little has been done to translate rules written by bureaucrats into easy to understand language that the owner of any small firm can implement.

Mr. President, according to a 1995 study by the Small Business Administration's Office of Advocacy, 94 percent of small businesses were unsure of what they needed to do to comply with Federal regulations. The same study revealed that it is difficult, if not impossible, for small businesses to obtain concise answers to compliance questions from a Federal agency. It is no wonder that so many business owners, who have honestly believed they were in compliance, have either lost or had their businesses crippled because they were uninformed or misunderstood Federal regulations which applied to them.

Congress has considered several proposals which would scale back intrusive Federal regulations. However, we must realize that Federal regulations will continue in some capacity. Consequently, it is vital to establish a mechanism which assists small businesses in complying with these regulations.

The Small Business Development Centers have established themselves as a valuable resource for small businesses. They have an existing network of over 950 centers nationwide which have been providing education and technical assistance to small business owners for years.

The Oregon Small Business Development Center Network has distinguished itself as a national model of how SBDC's can play an integral role in ensuring the success of small businesses. In April 1995 I conducted a field hearing in Portland, OR on a proposal to expand the responsibilities of the SBDC's to include regulatory compliance assistance. At that hearing, I heard from several Oregon small business owners who testified about their experience with the Oregon Small Business Development Center Network and the positive benefits these centers have had on small businesses in the State of Oregon.

The proposal to accomplish a shift in Federal regulatory policy from enforcement to education was at a conceptual stage at the time of the Oregon field hearing. However, this idea was extremely intriguing and the small business owners who discussed this issue were impressive in conveying their vision for the future of this proposal. Since that time, I have worked with the National Association of Small Business Development Center and the Director of the Oregon SBDC Network to develop this concept into the legislation I am introducing today.

The National Small Business Regulatory Relief Act provides comprehensive regulatory assistance to small firms by enlisting the nationwide network of over 950 Small Business Development Centers (SBDC's). Over 550,000 small businesses each year seek SBDC

help in drafting business plans and expansion strategies, developing financing and marketing tactics, improving management and personnel skills, and addressing many other business needs. The locally controlled and managed SBDC network's long-standing confidentiality policy and its proven track record of success make it an ideal, cost-effective and user-friendly delivery system for meaningful compliance assistance. Even though SBDC's are funded by all 50 States and the Federal Government they do not have enough resources to provide the regulatory help small businesses so desperately need.

Mr. President this legislation provides the resources necessary to expand SBDC assistance, creating a one-stop shop business resource that can explain how a company's marketing, finance, personnel, international trade, procurement and technology strategies comport with the regulatory requirements of EPA, OSHA, and IRS. The result will be a holistic delivery system of business assistance that will not only increase compliance with today's regulations, but will help small businesses bring about a cleaner environment, safer work place and better tax compliance. Most importantly, by utilizing the vast SBDC network, the cost of making comprehensive regulatory assistance available to all of America's small businesses is minimized for a program of this magnitude.

This legislation authorizes appropriations to the Occupational Safety and Health Administration, the Environmental Protection Agency and the Internal Revenue Service to accomplish the goals I described earlier. However, I would like to point out that similar legislation has been introduced in the House of Representatives which directs each of these three Federal agencies to set-aside a percentage of their overall budget for SBDC compliance assistance activities. While I sympathize with the intentions of the House sponsors of this measure to use existing funds for this program, as Chairman and a longtime member of the Senate Appropriations Committee I feel the appropriations process is the proper way to distribute Federal discretionary dollars. I believe that the goals of this proposal can be accomplished using existing Federal dollars.

Mr. President, America's small businesses are frustrated by the current Federal regulatory situation and have been pleading for help. The National Small Business Regulatory Relief Act is a creative approach towards balancing economic growth with regulatory compliance. I urge my colleagues to join me in this important effort to assist our Nation's small businesses in complying with Federal regulations.

I ask unanimous consent that a letter from the Oregon Small Business Development Center Network in support of this legislation be included in the RECORD.

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

OREGON SMALL BUSINESS DEVELOPMENT CENTER NETWORK,
Eugene, OR, January 8, 1996.

Hon. MARK O. HATFIELD,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HATFIELD: Thank you for taking time from your busy schedule to meet with me and John Eskildsen regarding the Oregon Small Business Development Center Network and the National Small Business Extension Network proposal. We appreciate your strong support and advocacy for the OSBDCN and the NSBEN proposal.

I believe that the NSBEN proposal represents a tremendous opportunity to reduce the federal regulatory burden on small business while simultaneously reducing the federal budget. This legislation, if enacted, will enable small business owners in Oregon and throughout the United States to meet federal regulatory standards without fear of reprisal.

Thank you again for your leadership and support for small business.

Sincerely,

SANDY CUTLER,
State Director, Oregon Small Business Development Center Network.

By Mr. ROCKEFELLER:

S. 2046. A bill to amend section 29 of the Internal Revenue Code of 1986 to allow a credit for qualified fuels produced from wells drilled during 1997, and for other purposes; to the Committee on Finance.

THE MARGINAL WELL DRILLING INCENTIVE ACT OF 1996

Mr. ROCKEFELLER. Mr. President, today I offer a bill that is very important to my State of West Virginia, and can benefit the entire Nation. This very small bill will have a very big impact on the ability of small oil and gas producers in my State and across the Nation to compete. The bill creates a new tax incentive, modeled on the old section 29 tax credit, to help small marginal well drillers.

I offer this with a measure of frustration, based on the fact that while Congress managed to incorporate a great number of narrowly targeted amendments into the small business tax bill passed today, the final bill did not include this provision that I propose today. I am pleased that the tax package includes an extension of the part of section 29 dealing with facilities that manufacture gas from biomass and coal. That is helpful to a variety of States, including West Virginia. But for less than one tenth the cost of that provision, we could and should have done something to help drillers get gas from devonian shale and other nonconventional sources.

The original section 29 credit for drilling expired in 1992 after some of the larger gas companies in this country put emphasis on getting relief from the alternative minimum tax instead of renewing section 29. They got that, but it didn't help a lot of the smaller drillers, which happen to include most of the gas producers in West Virginia.

Mr. President, I'd like the record to show that since the credit expired, drilling for margin gas wells in West Virginia has dropped off by more than 30 percent. In 1992, the last year of the credit, 760 wells were drilled in West Virginia. By 1995, that number had fallen to 530 wells. In that same timeframe, the number of rigs actively drilling wells in the Appalachian basin declined from 73 to 45—a 48-percent decline. That translates directly into jobs, as the average rig employs about 25 people. When you add to that all the jobs associated with a well (from transportation to bookkeeping), you have a job loss of more than 1,500 in the Appalachian Basin, which stretches from New York to Kentucky, and from Ohio to Virginia.

Mr. President, this is about more than jobs. I have spoken in the past of the great problem our Nation has with oil dependency. Following the oil shocks of the 1970's, Congress made a concerted effort to help ease our dependency on foreign energy sources. That effort showed much success in the 1980's when imports fell by more than 40 percent from 1970's highs. However, the 1990's have seen import totals steadily rise, to today when more than 50 percent of our oil is imported. In fact, Mr. President, the biggest 1-year rise in imports since 1986 came in the year following the expiration of section 29, in 1993.

The Senate knows well the problem raised by energy dependency. The Gulf war was fought largely to protect our foreign oil sources in the Middle East, and 19 brave American soldiers died in June for that very same cause. Our energy dependency, in addition to years of cheap oil and an exceptionally harsh winter, also led to the outrage earlier this spring when gas prices at the pump rose steeply.

For all these reasons, Mr. President, it is important that we foster the development of new sources of domestic energy. Gas in my State, and many others, is hard to get at. It is locked in rock formations that yield their fuel much more slowly, and at lower profits, than wells in the oil patch out West.

This bill is specifically designed to offer a very modest incentive to those producers, when the price of natural gas gets so low that they can't make a profit from their wells. Unlike the original section 29, the credit will be available only for the first 10 million cubic feet of gas produced each year by each well. Additionally, the credit will only be available to wells that produce less than 100 million cubic feet of gas per year.

Mr. President, I have intentionally limited the scope of this bill so that it is only available to smaller wells, and only there, for a limited amount of gas. The idea behind this bill is not to have a big giveaway for big oil and gas producers. But instead, it is designed to give a little bit of insurance to risk-taking drillers who make their living tilling nonconventional sources for fuel.

This is a modest bill, but one that can make a big difference in certain places that have the potential for more prosperity, more job growth, and more economic growth like West Virginia. Reviving and revising section 29 will put an incentive in place to seize more of this potential while reducing the entire country's dependence in foreign oil. I urge the Senate to find a way to make this bill a reality—the sooner, the better.

By Mr. HATCH (for himself, Mr. CONRAD, Mr. PRESSLER, Mr. PRYOR, Mr. NICKLES, and Mr. BAUCUS):

S. 2047. A bill to amend the Internal Revenue Code of 1986 to modify the application of the pension nondiscrimination rules to governmental plans; to the Committee on Finance.

NONDISCRIMINATION RULES FOR GOVERNMENT PENSION PLANS LEGISLATION

Mr. HATCH. Mr. President, I rise today to introduce legislation with Senators CONRAD, PRESSLER, PRYOR, NICKLES, and BAUCUS that would make permanent the current moratorium on the application of the pension nondiscrimination rules to State and local government pension plans.

For nearly 20 years, State and local government pension plans have been deemed to satisfy the complex nondiscrimination rules of the Internal Revenue Code for qualified retirement plans until Treasury can figure out how or if these rules are applicable to unique Government pension plans. This bill simply puts an end to this stalled process and dispels over 20 years of uncertainty for administrators of State and local retirement plans. Let me summarize the evolution of this issue and why this bill is being introduced today.

Mr. President, the Federal Government has a long-established policy of encouraging tax deferred retirement savings. Most retirement plans that benefit employees are employer sponsored tax deferred retirement plans. Over the years, Congress has required that these plans meet strict nondiscrimination standards designed to ensure that they do not provide disproportionate benefits to business owners, officers, or highly compensated individuals.

In response to the growing popularity of employer sponsored tax deferred pension plans, Congress passed the Employee Retirement Income Security Act [ERISA] in 1974 to enhance the rules governing pension plans. However, during consideration of ERISA Congress recognized that nondiscrimination rules for private pension plans were not readily applicable to public pension plans because of the unique nature of governmental employers. Former Representative Ullman, during Ways and Means Committee consideration of ERISA, stated, ''The committee exempted Government plans from the new higher requirements because adequate information is not now available to permit a full understanding of the impact these new requirements would have on Governmental plans.'' Thus, Congress was not prepared to apply nondiscrimination rules to public plans. After studying the issue, the Internal Revenue Service on August 10, 1977, issued News Release IR–1869, which stated that issues concerning discrimination under State and local government retirement plans would not be raised until further notice. Thus, an indefinite moratorium was placed on the application of the new rules to government plans.

In 1986, Congress passed the Tax Reform Act of 1986, which made further changes to pension laws and the general nondiscrimination rules. On May 18, 1989, the Department of the Treasury, in proposed regulations, lifted the 12-year public sector moratorium and required that public sector plans comply with the new rules immediately. However, further examination revealed, and Treasury and the IRS recognized, that a separate set of rules was required for State and local government plans because of their unique features. Consequently, through final rules issued in September 1991, the Treasury reestablished the moratorium on a temporary basis until January 1, 1993, and solicited comments for consideration. In addition, government pension plans were deemed to satisfy the statutory nondiscrimination requirements for years prior to 1993. Since then, the moratorium has been extended three more times, the latest of which began this year and is in effect until 1999.

Mr. President, here we are, in August 1996, 22 years since the passage of ERISA and State and local government pension plans are still living under the shadow of having to comply with the cumbersome, costly, and complex nondiscrimination rules. Experience over the past 20 years has shown that the existing nondiscrimination rules have limited utility in the public sector. Furthermore, the long delay in action illustrates the seriousness of the problem and the doubtful issuance of nondiscrimination regulations by the Department of the Treasury.

Mr. President, last year during consideration of another extension of the moratorium, a coalition of associations representative of State and local governmental plans summarized their current position in a letter to IRS Commissioner Margaret Richardson dated October 13, 1995.

> In our discussions with Treasury over the past two years, there have been no abuses or even significant concerns identified that would warrant the imposition of such a cumbersome thicket of federal rules on public plans that already are the subject of State and local government regulation.
>
> Accordingly, while we always remain open to further discussion, as our Ways and Means statement indicates the experience of the past two years in working with Treasury to develop a sensible and workable set of nondiscrimination rules for governmental plans has convinced us that the task ultimately is a futile one—portending tremendous cost, complexity, and disruption of sovereign State operations in the absence of any identifiable problem.

Mr. President, the sensible conclusion of this 20 year exercise is to admit that the Treasury is not likely to issue regulations for State and local pension plans and Congress should make the temporary moratorium permanent.

Furthermore, there are examples to support this legislation. Relief from the pension nondiscrimination rules is not a new concept. Multiemployer plans are currently not covered by the nondiscrimination rules under the theory that labor-management collective bargaining will ensure nondiscriminatory treatment to rank-and-file workers. In reality, Mr. President, State and local government pension plans face an even higher level of scrutiny. State law generally requires publicly elected legislators to amend the provisions of a public plan. Electoral accountability to the voters and media scrutiny serve as protections against abusive and discriminatory benefits.

Moreover, further precedent exists for Congress to grant relief from the nondiscrimination rules. In 1986, the Congress established the Thrift Savings Fund for Federal employees. As originally enacted, the Fund was required to comply with the 401(k) nondiscrimination rules on employee contributions and matching contributions to the fund. However, in 1987, as part of a Continuing Appropriations Act for 1988, the Congress passed a provision that made these nondiscrimination rules inapplicable to the Federal Thrift Savings Fund. Thus, Congress has reaffirmed the need to treat Governmental pension plans as unique.

Mr. President, this legislation is not sweeping nor does it grant any new treatment to these plans. Because of moratorium, governmental plans are currently treated as satisfying the nondiscrimination rules. Lifting the moratorium would impose on governmental pension plans the costly task of testing for discrimination when no significant abuses or concerns exist. In fact, finally imposing these rules may require benefits to be reduced for State and local government employees and force costly modifications to these retirement plans. This legislation coincides with the principle of allowing a State to enjoy the right to determine the compensation of its employees.

Mr. President, with another expiration of the moratorium looming in the future, I believe it is time to address this issue. I am under no delusion that it will be resolved quickly. The complexities of these rules and the uniqueness of governmental plans have brought us to where we are today. I believe that as members better understand the history of this issue they will agree with us that the appropriate step is to end this uncertainty and make the temporary moratorium permanent.