''(B) LIMITATION.—A religious organization that is a program participant may require a program beneficiary who has elected in accordance with paragraph (1) to receive program services from such organization—

''(i) to actively participate in religious practice, worship, and instruction; and

''(ii) to follow rules of behavior devised by the organizations that are religious in content or origin.

''(g) FISCAL ACCOUNTABILITY.—

''(1) IN GENERAL.—Except as provided in paragraph (2), any religious organization that is a program participant shall be subject to the same regulations as other recipients of awards of Federal financial assistance to account, in accordance with generally accepted auditing principles, for the use of the funds provided under such awards.

''(2) LIMITED AUDIT.—With respect to the award involved, if a religious organization that is a program participant maintains the Federal funds in a separate account from non-Federal funds, then only the Federal funds shall be subject to audit.

''(h) COMPLIANCE.—With respect to compliance with this section by an agency, a religious organization may obtain judicial review of agency action in accordance with chapter 7 of title 5, United States Code.

''SEC. 583. LIMITATIONS ON USE OF FUNDS FOR CERTAIN PURPOSES.

''(a) IN GENERAL.—Except as provided in subsection (b), no funds provided directly to an entity under a designated program shall be expended for sectarian worship or instruction.

''(b) EXCEPTION.—Subsection (a) shall not apply to assistance provided to or on behalf of a program beneficiary if the beneficiary may choose where such assistance is redeemed or allocated.

''SEC. 584. ADMINISTRATION OF PROGRAM AND TREATMENT OF FUNDS.

''(a) FUNDS NOT AID TO INSTITUTIONS.—Financial assistance under a designated program provided to or on behalf of program beneficiaries is aid to the beneficiary, not to the organization providing program services. The receipt by a program beneficiary of program services at the facilities of the organization shall not constitute Federal financial assistance to the organization involved.

''(b) PROHIBITION ON STATE DISCRIMINATION IN USE OF FUNDS.—No provision in any State constitution or State law shall be construed to prohibit the expenditure of Federal funds under a designated program in a religious facility or by a religious organization that is a program participant. If a State law or constitution would prevent the expenditure of State or local public funds in such a facility or by such an organization, then the State or local government shall segregate the Federal funds from State or other public funds for purposes of carrying out the designated program.

''SEC. 585. EDUCATIONAL REQUIREMENTS FOR PERSONNEL IN DRUG TREATMENT PROGRAMS.

''(a) FINDINGS.—The Congress finds that—

''(1) establishing formal educational qualification for counselors and other personnel in drug treatment programs may undermine the effectiveness of such programs; and

''(2) such formal educational requirements for counselors and other personnel may hinder or prevent the provision of needed drug treatment services.

''(b) LIMITATION ON EDUCATIONAL REQUIREMENTS OF PERSONNEL.—

''(1) TREATMENT OF RELIGIOUS EDUCATION.—If any State or local government that is a program participant imposes formal educational qualifications on providers of program services, including religious organizations, such State or local government shall treat religious education and training of personnel as having a critical and positive role in the delivery of program services. In applying educational qualifications for personnel in religious organizations, such State or local government shall give credit for religious education and training equivalent to credit given for secular course work in drug treatment or any other secular subject that is of similar grade level and duration.

''(2) RESTRICTION OF DISCRIMINATION REQUIREMENTS.—

''(A) IN GENERAL.—Subject to paragraph (1), a State or local government that is a program participant may establish formal educational qualifications for personnel in organizations providing program services that contribute to success in reducing drug use among program beneficiaries.

''(B) EXCEPTION.—The Secretary shall waive the application of any educational qualification imposed under subparagraph (A) for an individual religious organization, if the Secretary determines that—

''(i) the religious organization has a record of prior successful drug treatment for at least the preceding 3 years;

''(ii) the educational qualifications have effectively barred such religious organization from becoming a program provider;

''(iii) the organization has applied to the Secretary to waive the qualifications; and

''(iv) the State or local government has failed to demonstrate empirically that the educational qualifications in question are necessary to the successful operation of a drug treatment program.''.

By Mr. SMITH of Oregon:

S. 1467. A bill to address the declining health of forests on Federal lands in the United States through a program of recovery and protection consistent with the requirements of existing public land management and environmental laws, to establish a program to inventory, monitor, and analyze public and private forests and their resources, and for other purposes; to the Committee on Energy and Natural Resources.

FOREST RECOVERY AND PROTECTION ACT OF 1997

Mr. SMITH of Oregon. Mr. President, today I am introducing the Senate companion bill to H.R. 2515, the Forest Recovery and Protection Act introduced by my good friend and colleague, Congressman BOB SMITH. My bill focuses on the western forest and Bureau of Land Management lands where there has been the most fire and disease damage.

Let me tell you what the forest lands are like in Oregon. On the eastside of my State, disease and bug infestation have ravaged forests, creating dangerous conditions for catastrophic fires. In 1996, I witnessed firsthand fires that burned vast acres of forest land and threatened many homes. This was a situation that didn't have to happen.

And yet, the political beliefs of a few have seemed to guide forest policy back in Washington, DC—where bureaucrats with personal agendas seem to rule the roost and sound public policy fails to get heard.

Teddy Roosevelt said: ''The nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased, and not impaired, in value.''

This legislation is a thoughtful approach to forest management—it includes accountability through reports to Congress, performance standards for forest inventory and analysis, and calls for the elimination of bureaucratic red tape and unnecessary delay that prevents on-the-ground results.

Concerns that environmentalists have about cutting of timber are addressed by ensuring that all forest health activities are carried out in compliance with existing forest plans. The legislation also prohibits entry into wilderness areas or other areas protected by law, court order, or forest plan. And finally, the bill provides for priority treatment of areas of greatest risk of destruction or degradation by severe natural disturbance.

The bill has a local component which gives the local community and concerned citizens the ability to identify Federal forest lands in need of recovery and allows them to petition the Secretary of the Interior and the Secretary of Agriculture to conduct forest recovery projects in the identified areas. In addition, money is provided to those agencies responsible for the forests at the local level with the necessary tools and incentives to address forest health problems in pro-active ways.

Furthermore, this legislation requires the Secretary of Agriculture and the Secretary of the Interior to commence a 5-year national program to restore and protect the health of forests located on Federal forest lands. The program includes the following components: Within 1 year of enactment, standards and criteria must be established for designating and assigning priority ranking to forest lands in need of recovery or protection; a requirement that the Secretary to publish in the Federal Register the proposed decisions on lands to be recovered or protected.

The bill also calls for no new forest management plans, but instead enhances existing ones. The bill requires that all forest health plans be carried out in compliance with existing forest plans; sets up an independent Scientific Advisory Panel, consisting of experts in forest management, to evaluate the Advance Recovery Projects which are basically pilot projects in areas of significant recovery or protection need as identified by the Secretary of the Interior and Secretary of Agriculture.

And finally, one of the most important components of this legislation is the inclusion of local citizens and the prioritization that directs more money on the ground. This component allows local citizens to petition the Secretary of the Interior and the Secretary of Agriculture in identifying problems in forests, such as dead and diseased timber; provides more money to the local levels of the agencies responsible for the forests.

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. 1467

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 ''Forest Recovery and Protection Act of 1997''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.
Sec. 4. National Program of Forest Recovery and Protection.
Sec. 5. Scientific Advisory Panel.
Sec. 6. Advance recovery projects.
Sec. 7. Forest Recovery and Protection Fund for National Forest System lands.
Sec. 8. Expansion of purpose of Forest Ecosystems Health and Recovery Fund for BLM lands.
Sec. 9. Effect of failure to comply with time limitations.
Sec. 10. Authorization of appropriations.
Sec. 11. Audit requirements.

SEC. 2. FINDINGS.

Congress finds the following:

(1) There are tradeoffs in values associated with proactive, passive, or delayed forest management, but the values gained by proactive management outweigh the values gained by delayed or passive management of certain Federal forest lands.

(2) Increases in both the number and severity of wildfire, insect infestation, and disease outbreaks on Federal forest lands are occurring as a result of high tree densities, species composition, and structure that are outside the historic range of variability. These disturbances cause or contribute to significant soil erosion, degradation of air and water quality, loss of watershed values, habitat loss, and damage to other forest resources.

(3) Serious forest health problems occur in all regions of the United States. Management activities to restore and protect forest health are needed in each region and should be designed to address region-specific needs.

(4) Between 35,000,000 and 40,000,000 of the 191,000,000 acres of Federal forest lands managed by the Forest Service are at an unacceptable risk of destruction by catastrophic wildfire. Additional tens of millions of Bureau of Land Management lands are in the same situation. The condition of these forests can pose a significant threat of destruction to human life as well as fish and wildlife habitats, public recreation areas, timber, and other important forest resources.

(5) Restoration of forest health requires active forest management involving a range of management activities, including thinning, salvage, prescribed fire (after appropriate thinning), insect and disease control, riparian and other habitat improvement, soil stabilization and other water quality improvement, and seedling planting and protection.

(6) A comprehensive, nationwide effort is needed to address forest health decline in an organized, timely, and scientific manner. There should be immediate action to improve the areas of Federal forest lands where forest health decline has been thoroughly inventoried and assessed or where serious resource destruction or degradation by natural disturbance is imminent.

(7) Frequent forest inventory and analysis of the status and trends in the conditions of forests and their resources are needed to identify and reverse declining forest health in a timely and effective manner. The present average 12- to 15-year cycle of forest inventory and analysis to comply with existing statutory requirements is too prolonged to provide forest managers with the data necessary to make timely and effective management decisions, particularly decisions responsive to changing forest health conditions.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) FEDERAL FOREST LANDS.—The term ''Federal forest lands'' means—

(A) forested lands created from the public domain that are under the jurisdiction of the Bureau of Land Management; and

(B) forested lands created from the public domain that are within the National Forest System.

(2) SECRETARY CONCERNED.—The term ''Secretary concerned'' means—

(A) with respect to Federal forest lands described in paragraph (1)(A), the Secretary of the Interior or the Secretary's designee; and

(B) with respect to Federal forest lands described in paragraph (1)(B), the Secretary of Agriculture or the Secretary's designee.

(3) LAND MANAGEMENT PLAN.—The term ''land management plan'' means—

(A) a land use plan prepared by the Bureau of Land Management pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712), or other multiple use plan in effect, for a unit of the Federal forest lands described in paragraph (1)(A); or

(B) a land and resource management plan (or, if no final plan is in effect, a draft land and resource management plan) prepared by the Forest Service pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) for Federal forest lands described in paragraph (1)(B).

(4) NATIONAL PROGRAM.—The term ''national program'' means the National Program of Forest Recovery and Protection required by section 4.

(5) SCIENTIFIC ADVISORY PANEL.—The term ''Scientific Advisory Panel'' means the advisory committee appointed under section 5.

(6) RECOVERY AREA.—The term ''recovery area'' means an area of Federal forest lands, designated by the Secretary concerned under section 4(c)—

(A) that has experienced disturbances from wildfires, insect infestations, wind, flood, or other causes, which have caused or contributed to significant soil erosion, degradation of water quality, loss of watershed values, habitat loss, or damage to other forest resources of the area; or

(B) in which the forest structure, function, or composition has been altered so as to increase substantially the likelihood of wildfire, insect infestation, or disease in the area and the consequent risks of damage to soils, water quality, watershed values, habitat, and other forest resources from wildfire, insect infestation, or disease.

(7) RECOVERY PROJECT.—The terms ''recovery project'' and ''forest health recovery project'' mean a project designed by the Secretary concerned to improve, preserve, or protect the soils, water quality, watershed values, habitat, and other forest resources within a designated recovery area, including stand thinning, salvage, and other harvesting activities, as well as activities in which the cutting of trees is not primarily featured, such as prescribed burning (after appropriate thinning), insect and disease control, riparian and other habitat improvement, soil stabilization and other water quality improvement, and seedling planting and protection.

(8) IMPLEMENTATION DATE.—The term ''implementation date'' means the first day of the first month beginning after the end of the 18-month period beginning on the date of enactment of this Act. However, if the implementation date would occur within 6 months before August 31 of the same fiscal year in which the implementation date would occur, the Secretary concerned may deem that August 31 to be the implementation date.

(9) FUND.—The terms ''Fund'' and ''affected Fund'' mean—

(A) with respect to implementation of the national program on Federal forest lands described in paragraph (1)(A), the revolving fund established under the heading ''(REVOLVING FUND, SPECIAL ACCOUNT)'' under the heading ''FOREST ECOSYSTEMS HEALTH AND RECOVERY'' under the heading ''BUREAU OF LAND MANAGEMENT'' in title I of the Department of the Interior and Related Agencies Appropriations Act, 1993 (Public Law 102–381; 106 Stat. 1376; 43 U.S.C. 1736a); and

(B) with respect to implementation of the national program on Federal forest lands described in paragraph (1)(B), the Forest Recovery and Protection Fund established under section 7.

SEC. 4. NATIONAL PROGRAM OF FOREST RECOVERY AND PROTECTION.

(a) NATIONAL PROGRAM REQUIRED.—Not later than the implementation date, the Secretary concerned shall commence a national program to restore and protect the health of forests located on Federal forest lands in the United States through the performance of recovery projects in designated recovery areas.

(b) STANDARDS AND CRITERIA.—

(1) INITIAL PUBLICATION.—Not later than the implementation date, the Secretary concerned shall publish in the Federal Register the standards and criteria to be used for the designation of, and the assignment of management priority rankings to, recovery areas. In establishing the standards and criteria, the Secretary concerned shall consider the standards and criteria recommended by the Scientific Advisory Panel under section 5. The Secretary concerned shall include in the Federal Register entry required by this paragraph an explanation of any significant differences between the recommendations of the Scientific Advisory Panel and the standards and criteria actually established by the Secretary concerned.

(2) MODIFICATION.—The Secretary concerned may modify the standards and criteria established pursuant to paragraph (1). Any such modification shall also be published in the Federal Register.

(c) ANNUAL NATIONAL PROGRAM DECISION.—

(1) DECISION REQUIRED.—To carry out the national program, the Secretary concerned shall render a decision for each fiscal year during the period of the national program regarding the designation and ranking of recovery areas and the selection of recovery projects for inclusion in the national program. In rendering the decision, the Secretary concerned shall comply with the requirements of subsections (d) and (e).

(2) PROPOSED DECISION.—For each fiscal year during the period of the national program, the Secretary concerned shall publish in the Federal Register a proposed decision regarding the designation and ranking of recovery areas and the selection of recovery projects. The proposed decision shall be published not later than the following:

(A) In the case of the initial proposal, the implementation date.

(B) In the case of each subsequent proposed decision, August 31 of each fiscal year after the fiscal year in which the implementation date occurs.

(3) FINAL DECISION.—Not later than 120 days after the date on which the proposed decision of the Secretary concerned is published for a fiscal year under paragraph (2), the Secretary concerned shall publish in the Federal Register the final decision of the Secretary concerned for that fiscal year regarding the designation and ranking of recovery areas and the selection of recovery projects (including the determinations required under subsection (e)(3)).

(d) REQUIREMENTS FOR AREA DESIGNATION AND RANKING.—In making the annual decision required by subsection (c), the Secretary concerned shall, in accordance with the standards and criteria established and in effect under subsection (b)—

(1) determine the total acreage requiring treatment under the national program during the fiscal year;

(2) identify recovery areas within which recovery projects would be appropriate; and

(3) rank the recovery areas for the purpose of determining the order in which the recovery areas will receive recovery projects.

(e) REQUIREMENTS FOR RECOVERY PROJECT SELECTION.—

(1) COMPLIANCE WITH LAND MANAGEMENT PLANS.—In making the annual decision required by subsection (c), the Secretary concerned shall ensure that each recovery project selected is consistent with the land management plan applicable to the recovery area within which the project will occur.

(2) CONSIDERATION OF ECONOMIC BENEFITS.—In the selection of forest health recovery projects, the Secretary concerned shall consider the economic benefits to be provided to local communities as a result of the forest health recovery projects, but only to the extent that such considerations are consistent with the standards and criteria for recovery areas established and in effect under subsection (b) and the priorities for ranking recovery areas under subsection (d)(3).

(3) TREATMENT ACREAGE AND COSTS.—As part of the selection of each forest project, the Secretary concerned shall determine the total acreage requiring treatment and the estimated costs for preparation and implementation of the project.

(4) TOTAL ACREAGE.—The total acreage included in recovery projects selected for a fiscal year under the national program shall not be less than the total acreage determined by the Secretary concerned under paragraphs (2) and (3) of subsection (c).

(5) PROHIBITED PROJECT LOCATIONS.—The Secretary concerned may not select or implement a recovery project under the authority of this Act in any unit of the National Wilderness Preservation System, any roadless area on Federal forest lands designated by Congress for study for possible inclusion in such System, or any other area in which the implementation of recovery projects is prohibited by law, a court order, or the applicable land management plan.

(f) PETITION PROCESS.—

(1) REQUEST FOR DESIGNATION.—Not later than May 31 of each fiscal year after the fiscal year in which the implementation date occurs, any interested person may petition the Secretary concerned to designate a specific area of the Federal forest lands of at least 1,000 acres in size as a recovery area.

(2) CONTENT.—The petition shall contain a reasonably precise description of the boundaries of the area included in the petition and the reasons why the petitioner believes the area meets the standards and criteria, established pursuant to subsection (b), required for designation as a recovery area.

(3) DETERMINATION.—If the Secretary concerned determines that an area described in a petition under this subsection warrants designation as a recovery area, the Secretary concerned shall include the area in the proposed and final decisions issued under paragraphs (2) and (3) of subsection (c). If the Secretary concerned determines that the area does not warrant designation as a recovery area, the Secretary concerned shall provide the reasons therefor in the same Federal Register entry containing the proposed or final decision under such subsection.

(g) ANNUAL REPORT TO CONGRESS.—

(1) REPORT REQUIRED.—Not later than the implementation date, and each August 31 thereafter, the Secretary concerned shall submit to Congress a report on the proposed decision regarding the designation and ranking of recovery areas and the selection of recovery projects to be published pursuant to subsection (c)(2).

(2) REPORT CONTENTS.—Each report required by paragraph (1) shall include the following:

(A) The reasons for each proposed designation of a recovery area and each proposed selection of a recovery project.

(B) The total acreage requiring treatment nationally during the fiscal year and the acreage proposed to be treated during that fiscal year by each proposed recovery project.

(C) The estimated preparation and implementation costs of each proposed recovery project.

(3) ADDITIONAL REQUIREMENTS.—After the initial report required by paragraph (1), each subsequent report shall also include the following:

(A) A description of the improvements to forest health achieved by each completed recovery project.

(B) An explanation of why any proposed recovery projects covered by the previous report were not begun, undertaken, or completed as scheduled.

(C) A comparison of projected and actual preparation and implementation costs for each completed recovery project.

(D) A description of the economic benefits to local communities achieved by each completed recovery project.

(4) NOTICE OF AVAILABILITY.—The Federal Register entry required for each fiscal year under subsection (c)(2) shall contain a notice of availability of the most recent report to Congress required by this subsection.

(h) EXCEPTIONS TO AGENCY ACTION.—The following do not constitute agency action for purposes of implementing or carrying out the provisions of this Act:

(1) The establishment and publication in the Federal Register of standards and criteria to be used for the designation and ranking of recovery areas under subsection (b).

(2) The proposed decision of the Secretary to designate and rank recovery areas and to select recovery projects under subsection (c) and the publication of such proposed decision in the Federal Register.

(3) The preparation and submission of the annual report to Congress under subsection (g).

(i) RULEMAKING.—To ensure commencement of the national program by the implementation date, the Secretary concerned shall promulgate rules governing operation of the national program by that date. The rules shall address the development of procedures that, within the discretion provided by other laws, would permit the Secretary concerned to make the final decision on the designation and ranking of recovery areas and the selection of recovery projects within the 120-day period required by subsection (c)(3).

SEC. 5. SCIENTIFIC ADVISORY PANEL.

(a) ESTABLISHMENT.—There is established a panel of scientific advisers to the Secretary of Agriculture and the Secretary of the Interior to be known as the ''Scientific Advisory Panel''.

(b) MEMBERSHIP.—The Scientific Advisory Panel shall consist of the following members:

(1) 2 members, consisting of 1 scientist specializing in natural resources and 1 State forester (or an individual with similar management or supervisory experience), appointed jointly by the Chairman of the Committee on Agriculture and the Chairman of the Committee on Resources of the House of Representatives, in consultation with their respective ranking Minority Members.

(2) 2 members, consisting of 1 scientist specializing in natural resources and 1 State forester (or an individual with similar management or supervisory experience), appointed jointly by the Chairman of the Committee on Agriculture, Nutrition, and Forestry and the Chairman of the Committee on Energy and Natural Resources of the Senate, in consultation with their respective ranking Minority Members.

(3) 2 members, consisting of 1 scientist specializing in natural resources and 1 State forester (or an individual with similar management or supervisory experience), appointed by the Secretary of Agriculture.

(4) 2 members, consisting of 1 scientist specializing in natural resources and 1 State forester (or individual with similar management or supervisory experience), appointed by the Secretary of the Interior.

(5) 1 member, consisting of a scientist specializing in natural resources, appointed by the National Academy of Sciences.

(c) APPOINTMENT.—

(1) TIME FOR APPOINTMENT.—Appointments shall be made within 90 days after the date of the enactment of this Act. Appointments shall be published in the Federal Register.

(2) TERM.—A member of the Scientific Advisory Panel shall be appointed for a term beginning on the date of the appointment and ending on the implementation date. A vacancy on the Scientific Advisory Panel shall be filled within 90 days in the manner in which the original appointment was made.

(d) QUALIFICATIONS.—

(1) NATURAL RESOURCE SCIENTISTS.—Scientists who are appointed as members of the Scientific Advisory Panel shall be required to have expertise in, and experience with, matters related to forest health, taking into account their breadth of knowledge in the natural sciences as such sciences relate to Federal forest lands and their familiarity with specific issues regarding Federal forest lands likely to be designated as recovery areas.

(2) OTHER MEMBERS.—State foresters (or individuals with similar management or supervisory experience) who are appointed as members of the Scientific Advisory Panel shall be required to have expertise with, and experience in, matters relating to forest management, taking into account their breadth of knowledge in management science and their familiarity with specific issues regarding Federal forest lands likely to be designated as recovery areas.

(e) CHAIRPERSON; INITIAL MEETING.—The Scientific Advisory Panel shall conduct its initial meeting as soon as possible after the first 4 members of the Panel are appointed. At the initial meeting, the members of the Scientific Advisory Panel shall select 1 member to serve as chairperson.

(f) DUTIES IN CONNECTION WITH IMPLEMENTATION.—During the period beginning on the initial meeting of the Scientific Advisory Panel and ending on the implementation date, the Scientific Advisory Panel shall be responsible for the following:

(1) The preparation and submission to the Secretary concerned and the Congress of recommendations regarding the standards and

criteria that should be used to designate recovery areas.

(2) The preparation and submission to the Secretary concerned and the Congress of recommendations regarding the ranking of recovery areas in the order in which the areas should host recovery projects.

(3) The preparation of and submission to the Secretary concerned and the Congress of a monitoring plan for the national program of sufficient duration to determine the long-term impacts of the national program.

(g) CONSIDERATIONS.—In the development of its recommendations under subsection (f), the Scientific Advisory Panel shall consider—

(1) the most current scientific literature regarding the duties undertaken by the Panel; and

(2) information gathered during the implementation of the advance recovery projects required under section 6.

(h) ALLOCATION OF FOREST SERVICE AND BUREAU OF LAND MANAGEMENT PERSONNEL.—The Forest Service and the Bureau of Land Management shall allocate administrative support staff to the Scientific Advisory Panel to assist the Panel in the performance of its duties as outlined in this section.

(i) FEDERAL ADVISORY COMMITTEE ACT COMPLIANCE.—The Scientific Advisory Panel shall be subject to sections 10 through 14 of the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 6. ADVANCE RECOVERY PROJECTS.

(a) SELECTION OF ADVANCE PROJECTS.—During the 18-month period beginning on the date of enactment of this Act, the Secretary concerned shall conduct a limited number (as determined by the Secretary concerned) of advance recovery projects on Federal forest lands. Subject to the approval of the Secretary concerned, advance recovery projects shall be selected by—

(1) regional foresters of the Forest Service, in consultation with State foresters of the States in which the projects will be conducted, with respect to recovery projects on Federal forest lands described in section 3(1)(B); and

(2) State directors of the Bureau of Land Management, in consultation with State foresters of the States in which the projects will be conducted, with respect to recovery projects on Federal forest lands described in section 3(1)(A).

(b) SELECTION CRITERIA.—To be eligible for selection as an advance recovery project, a proposed project shall be required to satisfy the requirements of section 4(e) for recovery projects conducted under the national program. Priority shall be given to those Federal forest lands—

(1) that pose a significant risk of loss to human life and property or serious resource degradation or destruction due to wildfire, disease epidemic, or severe insect infestation; or

(2) for which thorough forest health assessments and inventories have been completed, including Federal forest lands in the Pacific Northwest, the Interior Columbia Basin, the Sierra Nevada, the Southern Appalachian Region, and the Northern Forests of Maine, Vermont, New Hampshire, and New York.

(c) TIME PERIODS FOR SELECTION, IMPLEMENTATION, AND COMPLETION.—Final selection of advance recovery projects shall be completed within the 90-day period beginning on the date of enactment of this Act, and the Secretary concerned shall publish the list of selected advance recovery projects in the Federal Register by the end of that period. An advance recovery project shall be initiated (if the project is to be conducted by Federal employees) or awarded (if the project is to be conducted by an outside party) within 180 days after the date of enactment of this Act.

(d) REPORTING REQUIREMENTS.—Not later than the implementation date, and annually thereafter until completion of all advance recovery projects, the Secretary concerned shall submit to Congress a report on the implementation of advance recovery projects. The report shall consist of a description of the accomplishments of each advance recovery project and incorporate the requirements under paragraphs (2) and (3) of section 4(g).

(e) RULEMAKING.—No new rulemaking is required in order for the Secretary concerned to carry out this section.

SEC. 7. FOREST RECOVERY AND PROTECTION FUND FOR NATIONAL FOREST SYSTEM LANDS.

(a) ESTABLISHMENT.—There is established on the books of the Treasury a revolving fund to be known as the ''Forest Recovery and Protection Fund''. The Chief of the Forest Service shall be responsible for administering the Fund.

(b) CREDITS TO FUND.—There shall be credited to the Fund the following:

(1) Amounts authorized for and appropriated to the Fund.

(2) Unobligated amounts in the roads and trails fund provided for in the fourteenth paragraph under the heading ''FOREST SERVICE.'' of the Act of March 4, 1913 (37 Stat. 843, chapter 145; 16 U.S.C. 501) as of the date of enactment of this Act, and all amounts that would otherwise be deposited in such fund after such date.

(3) A 1-time transfer of $50,000,000 from amounts appropriated for fire operations under the heading ''WILDLAND FIRE MANAGEMENT'' under the heading ''BUREAU OF LAND MANAGEMENT'' in title I of the Department of the Interior and Related Agencies Appropriations Act, 1998.

(4) Subject to subsection (e), revenues generated by recovery projects undertaken pursuant to sections 4 and 6.

(5) Amounts required to be deposited in the Fund under section 9.

(c) USE OF FUND.—During the time period specified in section 10(a), amounts in the Fund shall be available to the Chief of the Forest Service, without further appropriation, to carry out the national program, to plan, carry out, and administer recovery projects under sections 4 and 6, and to administer the Scientific Advisory Panel.

(d) LIMITATION ON OVERHEAD EXPENSES.—Overhead expenses for a fiscal year for administration of the national program, including the cost of preparation of reports required by this Act and administration of the Fund, shall not exceed 12 percent of the amounts made available from the Fund for that fiscal year. In addition, not more than $1,000,000 may be expended from the Fund to finance the operation of the Scientific Advisory Panel.

(e) TREATMENT OF REVENUES AS MONEYS RECEIVED.—Revenues generated by recovery projects undertaken pursuant to sections 4 and 6 shall be considered to be money received for purposes of the sixth paragraph under the heading ''FOREST SERVICE.'' in the Act of May 23, 1908 (35 Stat. 260, chapter 192; 16 U.S.C. 500), and section 13 of the Act of March 1, 1911 (commonly known as the ''Weeks Act'') (36 Stat. 963, chapter 186; 16 U.S.C. 500).

(f) CONFORMING AMENDMENT.—The fourteenth paragraph under the heading ''FOREST SERVICE.'' of the Act of March 4, 1913 (37 Stat. 843, chapter 145; 16 U.S.C. 501), is amended by adding at the end the following: ''During the term of the Forest Recovery and Protection Fund, as established by section 7 of the Forest Recovery and Protection Act of 1997, amounts reserved under the authority of this paragraph shall be deposited into that Fund.''.

SEC. 8. EXPANSION OF PURPOSE OF FOREST ECOSYSTEMS HEALTH AND RECOVERY FUND FOR BLM LANDS.

The first paragraph under the heading ''(REVOLVING FUND, SPECIAL ACCOUNTS)'' under the heading ''FOREST ECOSYSTEMS HEALTH AND RECOVERY'' under the heading ''BUREAU OF LAND MANAGEMENT'' in title I of the Department of the Interior and Related Agencies Appropriations Act, 1993 (Public Law 102–381; 106 Stat. 1376; 43 U.S.C. 1736a), is amended by adding at the end the following: ''During the term of the National Program of Forest Recovery and Protection established by the Forest Recovery and Protection Act of 1997, unobligated amounts in the fund shall be available to carry out the national program and to plan, carry out, and administer recovery projects under sections 4 and 6 of that Act.''.

SEC. 9. EFFECT OF FAILURE TO COMPLY WITH TIME LIMITATIONS.

(a) NATIONAL PROGRAM.—If the final selection of a recovery project under the national program is not made within the time period specified in section 4(c)(3), the Secretary concerned may not use amounts in the affected Fund to carry out the project and shall promptly reimburse the affected Fund for any expenditures previously made from that Fund in connection with the project.

(b) ADVANCE RECOVERY PROJECTS.—In the case of an advance recovery project under section 6, if the project is not selected, implemented, and completed within the time periods specified in subsection (c) of that section, the Secretary concerned may not use amounts in the affected Fund to carry out the project and shall promptly reimburse the affected Fund for any expenditures previously made from that Fund in connection with the project.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for fiscal year 1998 and each fiscal year thereafter through the fifth full fiscal year following the implementation date.

(b) DEPOSIT IN FUND.—All sums appropriated pursuant to this section for implementation of the national program on Federal forest lands described in section 3(1)(B) shall be deposited in the Forest Recovery and Protection Fund established under section 7. All sums appropriated pursuant to this section for implementation of the national program on Federal forest lands described in section 3(1)(A) shall be deposited in the revolving fund established under the heading ''(REVOLVING FUND, SPECIAL ACCOUNTS)'' under the heading ''FOREST ECOSYSTEMS HEALTH AND RECOVERY'' under the heading ''BUREAU OF LAND MANAGEMENT'' in title I of the Department of the Interior and Related Agencies Appropriations Act, 1993 (Public Law 102–381; 106 Stat. 1376; 43 U.S.C. 1736a).

(c) EFFECT ON EXISTING PROJECTS.—Any contract regarding a recovery project entered into before the end of the final fiscal year specified in subsection (a), and still in effect at the end of such fiscal year, shall remain in effect until completed pursuant to the terms of the contract.

SEC. 11. AUDIT REQUIREMENTS.

(a) AUDIT REQUIRED.—The Comptroller General shall conduct an audit of the national program at the end of the fourth-full fiscal year of the national program and submit such audit to the Congress by June 1 of the next fiscal year.

(b) ELEMENTS.—The audit shall include an analysis of—

(1) whether the program was carried out in a manner consistent with the provisions of this Act;

(2) the impact on the development and implementation of the national program of the advance recovery projects conducted under section 6;

(3) the extent to which the recommendations of the Scientific Advisory Panel were used to develop and implement the national program;

(4) the current and projected future financial status of each Fund; and

(5) the cost savings and efficiencies achieved under the national program.

By Mr. BINGAMAN:

S. 1468. A bill to provide for the conveyance of one (1) acre of land from Santa Fe National Forest to the Village of Jemez Springs, New Mexico, as the site of a fire sub-station; to the Committee on Energy and Natural Resources.

S. 1469. A bill to provide for the expansion of the historic community of El Rito, New Mexico, through the special designation of five acres of Carson National Forest adjacent to the cemetery; to the Committee on Energy and Natural Resources.

JEMEZ SPRINGS FIRE SUB-STATION AND EL RITO CEMETERY LEGISLATION

Mr. BINGAMAN. Mr. President, I rise today to introduce two bills that would have a significant impact on two communities within northern New Mexico. The villages of Jemez Springs, and El Rito, NM, are small communities that are completely surrounded by Forest Service land. Despite the fact that their populations are not growing rapidly, they do have some specific land needs; some of which are actually caused by their proximity to national forest land.

For example, on any given weekend, the Jemez National Recreation Area, within the Santa Fe National Forest will have over 50,000 visitors. Village of Jemez Springs is the only community wholly within the Jemez National Recreation Area. As such, this community of 460 people is often called upon for assistance with emergencies within the national forest. In fact, over 90 percent of the village's fire responses, emergency rescues, and ambulance calls are outside the town limits, placing enormous strain on the village's resources. To help address this problem, in 1996, the State of New Mexico provided funds to Jemez Springs to build a fire substation which would house three emergency vehicles. However, Jemez Springs does not have a suitable location for this facility, nor does the village have the tax base available to buy land for it.

Mr. President, what this first bill would do is to acknowledge the services that the Santa Fe National Forest currently receives from the village of Jemez Springs, and the additional benefit that a fire substation would provide to visitors to the forest. In recognition of these benefits, my bill would transfer one acre of land to Jemez Springs for use as the site of a fire substation.

Mr. President, my second bill concerns the venerable customs and religious practices of the people of El Rito, NM. El Rito is a community of a little over 2,000 people nestled within the Carson National Forest in New Mexico. It is a community that has existed for hundreds of years, that is now running out of space. Specifically the El Rito cemetery, where people have buried their dead for generations, is full. As a result, the residents of El Rito must now obtain special permission from the Forest Service in order to bury their family members on Forest Service land that is adjacent to their cemetery. This situation has created what can only be described as an unbecoming bureaucratic burden upon families just at the time that they are grieving.

To solve this problem, my first thought was to transfer a small portion of land from the Forest Service to El Rito for their cemetery. However despite its age, the community of El Rito is not an incorporated town so the Forest Service would not have a legal public entity to transfer the land to. In order to solve this problem, my bill does not transfer the land, but rather it recognizes the historic nature of this cemetery, and designates five acres of adjacent Forest Service land as special use land for expansion of that cemetery. This will remove the need for the residents of El Rito to obtain a special use permit each time someone dies.

Mr. President, I think all of the New Mexico delegation realizes that both of the problems addressed by these bills need to be resolved. In fact, the House has passed a bill concerning these two issues which was originally sponsored by former Representative Richardson, and is currently sponsored by Representative REDMOND. However in response to concerns raised by the Forest Service, the bill as passed by the House would require these small communities to either exchange land of equal value or pay for these lands. Mr. President I think the reality here is that being surrounded by Forest Service land, that it will be next to impossible for these communities to find land of equal value to exchange. These communities also do not have the financial resources for outright purchases of property.

I believe that the way my two bills are written can meet the concerns of the Forest Service and still resolve the underlying problems these communities are facing. I am committed to working with other Members of the delegation to move this legislation as quickly as possible.

Mr. President I ask unanimous consent that these two bills be entered into the RECORD.

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

S. 1468

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

SECTION 1. FINDINGS.

(a) The Village of Jemez Springs, New Mexico, (Jemez Springs) is an incorporated town under the laws of the State of New Mexico, and is completely surrounded the Jemez National Recreation Area within the Santa Fe National Forest;

(b) Jemez Springs is a small community of approximately 460 residents, however given it's location within the Jemez National Recreation Area, as many as 30,000 people will pass through this town on any given day;

(c) The large size of the tourist crowds within the surrounding national recreation area create a strain on Jemez Springs' emergency response capabilities. Over ninety (90) percent of the ambulance, fire, and emergency rescue calls are outside of the town limits.

(d) The State of New Mexico has appropriated funds for Jemez Springs to build a fire sub-station to handle the increase in emergency response needs, however, the town does not have suitable land upon which to build the sub-station.

SEC. 2 LAND CONVEYANCE, SANTA FE NATIONAL FOREST, NEW MEXICO

(a) CONVEYANCE.—The Secretary of Agriculture shall convey, to Jemez Springs all right, title, and interest of the United States in and to a parcel of real property, together with any improvements thereon, consisting of approximately one acre located in the Santa Fe National Forest in the State of New Mexico. The emergency services provided by Jemez Springs to the visitors of the Santa Fe National Recreation Area shall be deemed adequate consideration to the United States for the purposes of this conveyance.

(b) CONDITION OF CONVEYANCE.—The conveyance under subsection (a) shall be subject to the condition that Jemez Springs agrees to use the real property for the purpose of constructing and operating a fire sub-station for Jemez Springs.

(c) REVERSIONARY INTEREST.—If the Secretary determines that the real property conveyed under subsection (a) is not being used in accordance with the condition in subsection (b), all right, title, and interest in and to the property shall revert to the United States, and the United States shall have immediate right of entry thereon.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by Jemez Springs.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

S. 1469

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

Section 1. Findings.

(a) The village of El Rito, New Mexico, (El Rito) is a small community of approximately 2,500 residents, completely surrounded by the Carson National Forest in New Mexico.

(b) The historic community cemetery of El Rito is adjacent to the lands of the Carson National Forest in New Mexico. After generations of use, there is no more available space left in the cemetery and the community members are required to get special use permits to bury their deceased on Forest Service land.

(c) The requirement for special use permits creates an undue bureaucratic requirement upon families within the El Rito community when they are suffering from grief.

Sec. 2. Designation of Lands.

The Secretary of Agriculture, acting through the United States Department of Agriculture Forest Service shall designate five acres of land in the Carson National Forest adjacent to the historic El Rito cemetery as special use land for use as cemetery land for members of the El Rito community to bury their deceased.

By Mr. GRAHAM:

S. 1471. A bill to prohibit the Secretary of Health and Human Services from treating any Medicaid-related funds recovered as part of State litigation from one or more tobacco companies as an overpayment under the Medicaid Program; to the Committee on Finance.

MEDICAID LEGISLATION

Mr. GRAHAM. Mr. President, I rise for the purpose of introducing legislation which has been necessitated by a relatively arcane provision in the Social Security Act. That provision, Mr. President, is section 1903(d)3 which states that ''the pro-rata share to

which the United States is equitably entitled'' as determined by the secretary—this would be the Secretary of HHS—''of the net amount recovered during any quarter by a State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.''

Under that provision, Mr. President, the Health Care Financing Administration has sent a letter to the States stating that they will now be responsible for providing to the Federal Government through an offset against their otherwise entitled funds under Medicaid, the health financing program for the poor, that portion of any recovery that they have made under a tobacco settlement that would be attributable to the Federal Government's share of previous payments for those Medicaid beneficiaries who had been deemed to have suffered a disease or illness related to tobacco.

The letter states, Mr. President, that ''under current law,'' the law that I have just read, ''tobacco settlement recoveries must be treated like any other Medicaid recoveries.''

Mr. President, this is a situation which cries out for congressional attention. In the past, that section that I read had been interpreted to apply to those cases where there had been a billing error, where some Medicaid provider had overstated their reimbursement, the State had taken action to reduce that request for payment and had received funds from the provider that had been inappropriately paid in a previous account. This will be the first time that this section of the law is being used to really go to policy questions, and that is, what is the Federal Government's share of these tobacco settlements which have been negotiated by the States?

I believe that the reasons that Congress should take action on this are several. First, this is a policy issue and should not be settled at a bureaucratic level, applying a statute that was written to deal with much different, much less policy-oriented issues as the question of the State and Federal share of State-initiated tobacco settlements.

I will read, Mr. President, from a letter dated November 7 to the President and signed by nine of our Nation's Governors in which they state:

> The issue of control of the settlement funds will be difficult to resolve, and clearly a discussion of the distribution of hundreds of billions of dollars demands congressional involvement. Unfortunately, it appears that the Health Care Financing Administration is not prepared to wait for Congress to act.

Then the letter goes on to recount the fact that on November 3 the Health Care Financing Administration contacted the State Medicaid directors to begin the process of collecting what it, the Health Care Financing Administration, perceives to be the Federal portion of settlement funds attributable to Medicaid.

Second, the reality is that the Federal Government has known about these suits initiated by the States since their pendency. In the case of the State of Florida, that means approximately 4 years. But the Federal Government has been passive. It did not ask or respond to requests to be listed as a coplaintiff and therefore be actively involved in litigation. It has provided none of the financing of the litigation, which in some cases has amounted to tens of millions of dollars, and yet now after a successful recovery, it wants to insert itself through this provision, that was designed to deal with reimbursements of minor amounts, to collect major amounts under these tobacco settlements.

Finally, the Federal Government is not restricted from initiating its own effort to collect what funds it thinks it is due from the tobacco settlements. If the Federal Government feels—whether it is Medicare; programs under CHAMPUS, the health care for military personnel and their dependents; the Veterans Administration; or any other program in which the Federal Government is paying all or a substantial portion of health care costs—if the Federal Government feels that it has a legitimate case for recovery, it ought to do the same thing that the States have done, and that is initiate direct action toward such a recovery. But it is unseemly for the Federal Government to now be coming in after the fact and trying to collect on the good efforts that the States have taken.

I have met with representatives of the White House and will continue to meet to determine if it is felt that specific legislation might be required in order to give the Federal Government the potential to recover those funds that the national taxpayers have paid which they should not have paid because they were due to illnesses or disease occasioned by the use of tobacco. I suggest that the representatives of the White House look closely at State legislation such as that which was passed in Florida, upon which Florida's successful settlement was predicated.

Mr. President, I will be sending to the desk legislation which will state that the provision that I cited and other provisions analogous to it shall not apply to any amount recovered or paid to a State as part of a settlement or judgment reached in litigation initiated or pursued by a State against one or more manufactures of tobacco products. This would clearly state that as a matter of congressional policy it was not our intention that that arcane accounting provision should be applied to a major policy issue such as the allocation of funds between the Federal Government and the States that were recovered as a result of State-initiated litigation against a tobacco company.

Rather, that is an issue which should be resolved by the policymakers before the Federal Government; that is, the United States Congress, in appropriate consultation with the President.

So, Mr. President, I send this legislation to the desk and ask for its immediate referral.

The PRESIDING OFFICER. The bill will be received and referred to the appropriate committee.

Mr. GRAHAM. I ask unanimous consent to have printed in the RECORD those documents which I referred to during my remarks.

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

HEALTH CARE
FINANCING ADMINISTRATION,
Baltimore, MD, November 3, 1997.

DEAR STATE MEDICAID DIRECTOR: A number of States have settled suits against one or more tobacco companies to recoup costs incurred in treating tobacco-related illnesses. This letter describes the proper accounting and reporting for Federal Medicaid purposes of amounts received from such settlements that are subject to Section 1903(d) of the Social Security Act.

As described in the statute, States must allocate from the amount of any Medicaid-related expenditure recovery ''the pro-rata share to which the United States (Federal government) is equitably entitled.'' As with any recovery related to a Medicaid expenditure, payments received should be reported on the Quarterly Statement of Expenditures for the Medicaid Assistance Program (HCFA–64) for the quarter in which they are received. Specifically, these receipts should be reported on the Form HCFA–64 Summary Sheet, Line 9E. This line is reserved for special collections. The Federal share should be calculated using the current Federal Medicaid Assistance Percentage. Please note that settlement payments represent a credit applicable to the Medicaid program whether or not the monies are received directly by the State Medicaid agency. States that have previously reported receipts from tobacco litigation settlements must continue to report settlement payments as they are received.

State administrative costs incurred in pursuit of Medicaid cost recoveries from tobacco firms qualify for the normal 50 percent Federal financial participation (FFP). They should be reported on the Form HCFA–64.10, Line 14 (Other Financial Participation).

Only Medicaid-related expenditure recoveries are subject to the Federal share requirement. To the extent that some non-Medicaid expenditures and/or recoveries were also included in the underlying lawsuits, HCFA will accept a justifiable allocation reflecting the Medicaid portion of the recovery, as long as the State provides necessary documentation to support a proposed allocation.

Under current law, tobacco settlement recoveries must be treated like any other Medicaid recoveries. We recognize that Congress will consider the treatment of tobacco settlements in the context of any comprehensive tobacco legislation next year. Given the States' role in initiating tobacco lawsuits and in financing Medicaid programs, States will, of course, have an important voice in the development of such legislation, including the allocation of any resulting revenues. The Administration will work closely with States during this legislative process as these issues are decided.

If you would like to discuss the appropriate reporting of recoveries with HCFA, please call David McNally of my staff at (410) 786–3292 to arrange for a meeting or conversation. We look forward to providing any assistance needed in meeting a State's Medicaid obligation.

Sincerely,

SALLY K. RICHARDSON,
Director, Center for Medicaid and State Operations.

NATIONAL GOVERNORS ASSOCIATION,
Washington, DC, November 7, 1997.

THE PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: When Congress reconvenes in January, one of its most important priorities will be the development of national tobacco settlement legislation. The nation's Governors look forward to working with you and with members of Congress to ensure that a final, comprehensive solution is found to the dozens of state lawsuits pending against the tobacco industry. The very fact that a solution is in reach is because of the hard work and leadership of Governors and the state attorneys general on behalf of the states.

An important component of the legislative debate will be the issue of control of tobacco settlement funds. The Governors attach the highest priority to clarifying that settlement funds negotiated by the states to settle state lawsuits must go to the states. Any efforts by the federal government to seek to recoup federal costs must be separate and distinct. Enclosed is a copy of the settlement funds policy we, the Executive Committee of the National Governors' Association, adopted last month.

This issue of control of the settlement funds will be difficult to resolve, and clearly a discussion of the distribution of hundreds of billions of dollars demands congressional involvement. Unfortunately, it appears that the Health Care Financing Administration (HCFA) is not prepared to wait for Congress to act.

On November 3rd, HCFA contacted state Medicaid directors to begin the process of collecting what it perceives to be the federal portion of settlement funds attributable to Medicaid. Although in its letter HCFA mentions the importance of the congressional process, it effectively preempts that process by beginning to collect funds from those states that have already settled their individual lawsuits.

The Governors believe that no action should be taken by HCFA to withhold state Medicaid reimbursement prior to congressional development of settlement legislation. Further, the Governors will strongly support clarification in that legislative package that tobacco settlement funds are not subject to federal recoupment. Recoupment is more appropriate for addressing billing errors than for inserting a federal claim into the multibillion-dollar, state-driven tobacco settlement. Accordingly, the Governors are supporting legislation developed by Senator Bob Graham clarifying that funds made available to the states through individual state tobacco settlements or a national settlement are not subject to federal recoupment.

We appreciate your consideration of our concerns. If we can provide you with any additional background information, please do not hesitate to let us know.

Sincerely,

George V. Voinovich, Governor of Ohio; David M. Beasley, Governor of South Carolina; Howard Dean, M.D., Governor of Vermont; Bob Miller, Governor of Nevada; Tommy G. Thompson, Governor of Wisconsin; Thomas R. Carper, Governor of Delaware; Lawton Chiles, Governor of Florida; Michael O. Leavitt, Governor of Utah; Roy Romer, Governor of Colorado.

By Ms. MOSELEY-BRAUN (for herself and Mr. KENNEDY):

S. 1472. A bill to amend the Internal Revenue Code of 1986 to provide a tax credit for public elementary and secondary school construction, and for other purposes; to the Committee on Finance.

THE SCHOOL REPAIR AND CONSTRUCTION ACT OF 1997

Ms. MOSELEY-BRAUN. Mr. President, today I am pleased to introduce the School Repair and Construction Act of 1997. This bill would help States and school districts rebuild our crumbling schools by providing tax credits to developers and builders who build new schools or renovate crumbling schools at below-market rates.

Under this proposal, the Treasury would allocate pools of tax credits to States. States would allocate the credits to school districts. School districts would be able to give these tax credits to developers and builders to cover a portion of the cost of their school repair, renovation, modernization, and construction projects. By allocating tax credits in this manner, the bill would reduce the cost to school districts of school improvement projects by up to 30 percent.

The School Repair and Construction Act of 1997 creates a mechanism for paying for this proposal that is contingent upon our future economic prosperity. If actual revenue into the Federal Treasury exceeds the revenue projections, a portion of those excess revenues would be deposited in a School Infrastructure Improvement Trust Fund. The money in this Trust Fund—up to $1 billion per year—would be available for disbursement to States in the form of the allocable tax credits.

Earlier this year, the Congress enacted broad tax legislation designed to generate wealth and spur economic growth and prosperity. If we are right and that promise comes true, our children ought to benefit from our prosperity. The legislation I am introducing today will guarantee that these revenues are used to rebuild and modernize our schools so they can serve all our children into the 21st century.

According to the U.S. General Accounting Office, 14 million children attend schools in such poor condition they need major renovations or should be replaced outright; 12 million children attend schools with leaky roofs; and 7 million children attend schools with life-threatening safety-code violations. These conditions exist in every type of American community. Thirty-eight percent of urban schools, 30 percent of rural schools, and 29 percent of suburban schools are falling down around our children. According to the GAO, it will cost $112 billion just to bring schools up to good, overall condition.

The $112 billion price tag does not include the cost of upgrading schools for technology, the cost of upgrading electrical systems and installing outlets in classrooms that were built decades ago. The FCC recently issued a landmark ruling that will give millions of children access to modern computer and communications technology. Too many children, however, will be unable to take advantage of this opportunity, because their schools lack the basic infrastructure necessary to allow their teachers to plug computers into the classroom walls. According to the GAO, 15 million children attend schools that lack enough electrical power to fully use computers and communications technology. Almost 50 percent of schools lack the necessary electrical wiring to deploy computers to classrooms.

In addition, public high school enrollment is expected to increase 15 percent by the year 2007. Just to maintain current class sizes, we will need to build 6,000 new schools by the year 2007.

I have visited schools in Illinois where study halls are literally held in hallways because of a lack of space. I have seen stairway landings converted into computer labs. There is a school where the lunchroom has been converted into two classrooms, students eat in the gym, and instead of gym class, many children have what the school calls adaptive physical education, while they stand next to their desks.

These overcrowded and dilapidated conditions are no accident. They are predictable results of the way we fund education. As long as we continue to rely on the local property tax to fund school infrastructure improvements, the conditions of schools will not improve.

The local property tax is simply an inadequate way of paying for school infrastructure improvements. According to the GAO, poor- and middle-class school districts try the hardest to raise revenue, but the system works against them. In 35 States, poor districts have higher tax rates than wealthy districts—but raise less revenue because there is less property wealth to tax.

These districts cannot rely on State support. The GAO found that in fiscal year 1994, State governments only contributed $3.5 billion to the school infrastructure crisis—barely 3 percent of the total need.

This local funding model does not work for school infrastructure, just as it would not work for highways or other infrastructure. Imagine what would happen if we based our system of roads on this same funding model. Imagine if every community were responsible for the construction and maintenance of the roads within its borders. In all likelihood, there would be smooth, good roads in the wealthy towns, a patchwork of mediocre roads in middle-income ones, and very few roads at all in poor communities. Transportation would be hostage to the vagaries of wealth and geography. Commerce and travel would be difficult, and navigation of such a system would not serve the interests of the whole country. That hypothetical, unfortunately, precisely describes our school funding system.

The time has come for us to heed the call of superintendents, parents, teachers, architects, mayors, governors, contractors, and children from around the country and create a partnership to fix our Nation's crumbling schools.

Winston Churchill once said, ''We shape our buildings; thereafter, they shape us.'' No where is that more true than in schools. The poor condition of America's schools has a direct affect on the ability of our students to learn the kinds of skills they will need to compete in the 21st century, global economy. America can't compete if our students can't learn, and our students can't learn if their schools are crumbling down around them.

This School Repair and Construction Act of 1997 is a sensible way of helping States and school districts meet their school repair, renovation, modernization and construction needs. I urge all of my colleagues to join me in sponsoring this important legislation.

Mr. President, I ask unanimous consent that the text of the School Repair and Construction Act of 1997 and a summary of the legislation be printed in the RECORD.

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

S. 1472

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 ''School Repair and Construction Act of 1997''.

SEC. 2. PURPOSE.

It is the purpose of this Act to help school districts to improve their crumbling and overcrowded school facilities through the use of Federal tax credits.

SEC. 3. TAX CREDIT FOR PUBLIC ELEMENTARY AND SECONDARY SCHOOL CONSTRUCTION.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to general business credits) is amended by adding at the end the following new section:

''SEC. 45D. CREDIT FOR PUBLIC ELEMENTARY AND SECONDARY SCHOOL CONSTRUCTION.

''(a) IN GENERAL.—For purposes of section 38, the amount of the school construction credit determined under this section for an eligible taxpayer for any taxable year with respect to an eligible school construction project shall be an amount equal to the lesser of—

''(1) the applicable percentage of the qualified school construction costs, or

''(2) the excess (if any) of—

''(A) the taxpayer's allocable school construction amount with respect to such project under subsection (d), over

''(B) any portion of such allocable amount used under this section for preceding taxable years.

''(b) ELIGIBLE TAXPAYER; ELIGIBLE SCHOOL CONSTRUCTION PROJECT.—For purposes of this section—

''(1) ELIGIBLE TAXPAYER.—The term 'eligible taxpayer' means any person which—

''(A) has entered into a contract with a local educational agency for the performance of construction or related activities in connection with an eligible school construction project, and

''(B) has received an allocable school construction amount with respect to such contract under subsection (d).

''(2) ELIGIBLE SCHOOL CONSTRUCTION PROJECT.—

''(A) IN GENERAL.—The term 'eligible school construction project' means any project related to a public elementary school or secondary school that is conducted for 1 or more of the following purposes:

''(i) Construction of school facilities in order to ensure the health and safety of all students, which may include—

''(I) the removal of environmental hazards,

''(II) improvements in air quality, plumbing, lighting, heating and air conditioning, electrical systems, or basic school infrastructure, and

''(III) building improvements that increase school safety.

''(ii) Construction activities needed to meet the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

''(iii) Construction activities that increase the energy efficiency of school facilities.

''(iv) Construction that facilitates the use of modern educational technologies.

''(v) Construction of new school facilities that are needed to accommodate growth in school enrollments.

''(vi) Such other construction as the Secretary of Education determines appropriate.

''(B) SPECIAL RULES.—For purposes of this paragraph—

''(i) the term 'construction' includes reconstruction, renovation, or other substantial rehabilitation, and

''(ii) an eligible school construction project shall not include the costs of acquiring land (or any costs related to such acquisition).

''(c) QUALIFIED SCHOOL CONSTRUCTION COSTS; APPLICABLE PERCENTAGE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified school construction costs' means the aggregate amounts paid to an eligible taxpayer during the taxable year under the contract described in subsection (b)(1).

''(2) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, in the case of an eligible school construction project related to a local educational agency, the higher of the following percentages:

''(A) If the local educational agency has a percentage or number of children described in clause (i)(I) or (ii)(I) of section 1125(c)(2)(A) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6335(c)(2)(A)), the applicable percentage is 10 percent.

''(B) If the local educational agency has a percentage or number of children described in clause (i)(II) or (ii)(II) of such section, the applicable percentage is 15 percent.

''(C) If the local educational agency has a percentage or number of children described in clause (i)(III) or (ii)(III) of such section, the applicable percentage is 20 percent.

''(D) If the local educational agency has a percentage or number of children described in clause (i)(IV) or (ii)(IV) of such section, the applicable percentage is 25 percent.

''(E) If the local educational agency has a percentage or number of children described in clause (i)(V) or (ii)(V) of such section, the applicable percentage is 30 percent.

''(d) ALLOCABLE AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—Subject to paragraph (3), a local educational agency may allocate to any person a school construction amount with respect to any eligible school construction project.

''(2) TIME FOR MAKING ALLOCATION.—An allocation shall be taken into account under paragraph (1) only if the allocation is made at the time the contract described in subsection (b)(1) is entered into (or such later time as the Secretary may by regulation allow).

''(3) COORDINATION WITH STATE PROGRAM.—A local educational agency may not allocate school construction amounts for any calendar year—

''(A) which in the aggregate exceed the amount of the State school construction ceiling allocated to such agency for such calendar year under subsection (e), or

''(B) if such allocation is inconsistent with any specific allocation required by the State or this section.

''(e) STATE CEILINGS AND ALLOCATION.—

''(1) IN GENERAL.—A State educational agency shall allocate to local educational agencies within the State for any calendar year a portion of the State school construction ceiling for such year. Such allocations shall be consistent with the State application which has been approved under subsection (f) and with any requirement of this section.

''(2) STATE SCHOOL CONSTRUCTION CEILING.—

''(A) IN GENERAL.—The State school construction ceiling for any State for any calendar year shall be an amount equal to the State's allocable share of the national school construction amount.

''(B) STATE'S ALLOCABLE SHARE.—The State's allocable share of the national school construction amount for a fiscal year shall bear the same relation to the national school construction amount for the fiscal year as the amount the State received under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the preceding fiscal year bears to the total amount received by all States under such section for such preceding fiscal year.

''(C) NATIONAL SCHOOL CONSTRUCTION AMOUNT.—The national school construction amount for any calendar year is the lesser of—

''(i) $1,000,000,000, or

''(ii) the amount made available for such year under the School Infrastructure Improvement Trust Fund established under section 9512,

reduced by any amount described in paragraph (3).

''(3) SPECIAL ALLOCATIONS FOR INDIAN TRIBES AND TERRITORIES.—

''(A) ALLOCATION TO INDIAN TRIBES.—The national school construction amount under paragraph (2)(C) shall be reduced by 1.5 percent for each calendar year and the Secretary of Interior shall allocate such amount among Indian tribes according to their respective need for assistance under this section.

''(B) ALLOCATION TO TERRITORIES.—The national school construction amount under paragraph (2)(C) shall be reduced by 0.5 percent for each calendar year and the Secretary of Education shall allocate such amount among the territories according to their respective need for assistance under this section.

''(4) REALLOCATION.—If the Secretary of Education determines that a State is not making satisfactory progress in carrying out the State's plan for the use of funds allocated to the State under this section, the Secretary may reallocate all or part of the State school construction ceiling to 1 or more other States that are making satisfactory progress.

''(e) STATE APPLICATION.—

''(1) IN GENERAL.—A State educational agency shall not be eligible to allocate any amount to a local educational agency for any calendar year unless the agency submits to the Secretary of Education (and the Secretary approves) an application containing such information as the Secretary may require, including—

''(A) an estimate of the overall condition of school facilities in the State, including the projected cost of upgrading schools to adequate condition;

''(B) an estimate of the capacity of the schools in the State to house projected student enrollments, including the projected cost of expanding school capacity to meet rising student enrollment;

''(C) the extent to which the schools in the State have the basic infrastructure elements necessary to incorporate modern technology into their classrooms, including the projected cost of upgrading school infrastructure to enable the use of modern technology in classrooms;

''(D) the extent to which the schools in the State offer the physical infrastructure needed to provide a high-quality education to all students; and

''(E) an identification of the State agency that will allocate credit amounts to local educational agencies within the State.

''(2) SPECIFIC ITEMS IN ALLOCATION.—The State shall include in the State's application the process by which the State will allocate the credits to local educational agencies within the State. The State shall consider in its allocation process the extent to which—

''(A) the school district served by the local educational agency has—

''(i) a high number or percentage of the total number of children aged 5 to 17, inclusive, in the State who are counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)); or

''(ii) a high percentage of the total number of low-income residents in the State;

''(B) the local educational agency lacks the fiscal capacity, including the ability to raise funds through the full use of such agency's bonding capacity and otherwise, to undertake the eligible school construction project without assistance;

''(C) the local area makes an unusually high local tax effort, or has a history of failed attempts to pass bond referenda;

''(D) the local area contains a significant percentage of federally owned land that is not subject to local taxation;

''(E) the threat the condition of the physical facility poses to the safety and well-being of students;

''(F) there is a demonstrated need for the construction, reconstruction, renovation, or rehabilitation based on the condition of the facility;

''(G) the extent to which the facility is overcrowded; and

''(H) the extent to which assistance provided will be used to support eligible school construction projects that would not otherwise be possible to undertake.

''(3) IDENTIFICATION OF AREAS.—The State shall include in the State's application the process by which the State will identify the areas of greatest needs (whether those areas are in large urban centers, pockets of rural poverty, fast-growing suburbs, or elsewhere) and how the State intends to meet the needs of those areas.

''(4) ALLOCATIONS ON BASIS OF APPLICATION.—The Secretary of Education shall evaluate applications submitted under this subsection and shall approve any such application which meets the requirements of this section.

''(g) REQUIRED ALLOCATIONS.—Notwithstanding any process for allocation under a State application under subsection (f), in the case of a State which contains 1 or more of the 100 school districts within the United States which contains the largest number of poor children (as determined by the Secretary of Education), the State shall allocate each calendar year to the local educational agency serving such districts that portion of the State school construction ceiling which bears the same ratio to such ceiling as the number of children in such district for the preceding calendar year who are counted for purposes of section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)) bears to the total number of children in such State who are so counted.

''(h) DEFINITIONS.—For purposes of this section—

''(1) ELEMENTARY SCHOOL; LOCAL EDUCATIONAL AGENCY; SECONDARY SCHOOL; STATE EDUCATIONAL AGENCY.—The terms 'elementary school', 'local educational agency', 'secondary school', and 'State educational agency' have the meanings given the terms in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

''(2) TERRITORIES.—The term 'territories' means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

''(3) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.''

(b) INCLUSION IN GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Section 38(b) of the Internal Revenue Code of 1986 is amended by striking ''plus'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', plus'', and by adding at the end the following new paragraph:

''(13) the school construction credit determined under section 45D(a).''

(2) TRANSITION RULE.—Section 39(d) of such Code is amended by adding at the end the following new paragraph:

''(8) NO CARRYBACK OF SECTION 45D CREDIT BEFORE ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to the school construction credit determined under section 45D may be carried back to a taxable year ending before the date of the enactment of section 45D.''

(c) ESTABLISHMENT OF SCHOOL INFRASTRUCTURE IMPROVEMENT TRUST FUND.—

(1) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

''SEC. 9512. SCHOOL INFRASTRUCTURE IMPROVEMENT TRUST FUND.

''(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'School Infrastructure Improvement Trust Fund', consisting of such amounts as may be credited or paid to such Trust Fund as provided in this section or section 9602(b).

''(b) TRANSFERS TO TRUST FUND.—

''(1) IN GENERAL.—There are hereby appropriated to the Trust Fund for any calendar year an amount equal to the lesser of—

''(A) the revenue surplus determined under paragraph (2) for the preceding calendar year, or

''(B) $1,000,000,000.

''(2) REVENUE SURPLUS.—The revenue surplus determined under this paragraph for any calendar year is an amount equal to the excess (if any) of—

''(A) the Secretary's estimate of revenues received in the Treasury of the United States for the calendar year, over

''(B) the amount the Director of the Congressional Budget Office estimated would be so received in the report provided to the Committees on the Budget of the House and the Senate pursuant to section 202(f)(1) of the Congressional Budget Act of 1974.

''(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Trust Fund shall be transferred to the general fund of the Treasury at such times as the Secretary determines appropriate to offset any decrease in Federal revenues by reason of credits allowed under section 38 which are attributable to the school construction credit determined under section 45D.''

(2) CONFORMING AMENDMENT.—The table of section for subchapter A of chapter 98 of such Code is amended by adding at the end the following new item:

''Sec. 9512. School Infrastructure Improvement Trust Fund.

(d) CONFORMING AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 45D. Credit for public elementary and secondary school construction.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

SUMMARY: SCHOOL REPAIR AND CONSTRUCTION ACT OF 1997

A proposal to lower the cost of school repair, renovation, modernization, and construction projects by providing tax credits to developers and builders to cover a portion of the costs of school improvement projects. The credits are allocated to States, who have flexibility to award the credits to their elementary and secondary school districts with the greatest needs.

AWARD OF TAX CREDITS TO STATES

A total of $1 billion worth of tax credits allocated every year to States, using a formula based on the number of school-aged children in the State who are eligible for federal education assistance. Two percent of funds reserved for Indian schools and territories.

ALLOCATION OF TAX CREDITS WITHIN STATES

States shall develop a system for allocating the credits to their school districts. States are required to take into account criteria relating to the needs of school districts and the ability of the school districts to finance the improvements without assistance, and are required to identify their highest-priority areas first and develop plans for meeting those needs.

AWARD OF TAX CREDITS TO DEVELOPERS

The developer or builder performing the school improvement project receives the tax credits upon completion of the project. The credits could then be counted against the developer's income under the rules of general business tax credits.

The amount of the tax credit available to the developer is based on the local area's ability to pay and the total cost of the project. It cannot exceed 30 percent of the total cost of construction, renovation, repair, or modernization, not including land acquisition or other associated costs.

ELIGIBLE PROJECTS

The credits can be used by States and districts to meet their highest priority projects, including school repairs or renovations of substantial size, retrofitting schools for modern technologies, and building new schools to alleviate overcrowding.

TRUST FUND

Funds for this tax credit are made available only if actual revenues into the Federal Treasury exceed CBO revenue projections. In that case, up to $1 billion of excess revenues shall be deposited annually into a School Infrastructure Improvement Trust Fund, and disbursed to States in the form of allocable tax credits.

DETAILED DESCRIPTION: SCHOOL REPAIR AND CONSTRUCTION ACT OF 1997

A proposal to lower the cost of school repair, renovation, modernization, and construction projects by providing tax credits to developers and builders to cover a portion of

the costs of school improvement projects. The credits are allocated to States, who have flexibility to award the credits to their elementary and secondary school districts with the greatest needs.

AWARD OF CREDITS TO STATES

Each State educational agency (or other designated agency) shall receive a portion of a total of $1 billion/year worth of tax credits.

Allocation—Each State's share is based on the State's prior year's relative share of funding under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6331 et seq.)

State Minimum—No State shall receive less under this program than its percentage allocation under section 1124(d) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6334(d)) for the previous fiscal year.

Reallocation—If a State fails to submit an approvable application for its credits, the Secretary of Treasury shall redistribute that State's share to other States in the same proportions as the original allocations were made.

Indians & Outlying Territories—Of the total amount of tax credits available, one and one-half percent is set aside for Indian schools to be allocated at the discretion of the Secretary of Interior, and one-half percent is set aside for outlying territories, to be allocated at the discretion of the Secretary of Education.

STATE APPLICATIONS

In order to be eligible for tax credits, the State educational agency (or other designated entity) shall submit an application containing information including:

(1) an estimate of the overall condition of school facilities in the State, including the projected cost of upgrading schools to adequate condition;

(2) an estimate of the capacity of the schools in the State to house projected enrollments, including the projected cost of expanding school capacity to meet rising enrollment;

(3) the extend to which the schools in the State have the basic infrastructure elements necessary to incorporate modern technology into their classrooms, including the projected cost of upgrading school infrastructure to enable the use of modern technology in classrooms;

(4) the extend to which the schools in the State offer the physical infrastructure needed to provide a high-quality education to all students; and

(5) an identification of the State agency that will receive the credits.

The State shall also include in its application a plan for the within-state allocation of credits, which shall be based on criteria including the following:

(1) whether a district has high numbers or percentages of the total number of children aged 5 to 17, inclusive, residing in the geographic area served by an eligible local educational agency who are counted under title 1 of the Elementary and Secondary Education Act of 1965, or a high percentage of low-income residents;

(2) whether the eligible local educational agency lacks the fiscal capacity, including the ability to raise funds through the full use of such agency's bonding capacity and otherwise, to undertake the project without assistance;

(3) whether the local area makes an unusually high local tax effort, or has a history of failed attempts to pass bond referenda;

(4) whether the local area contains a significant percentage of Federally-owned land that is not subject to local taxation;

(5) the threat the condition of the physical plant poses to the safety and well-being of students;

(6) the demonstrated need for the construction, reconstruction, or renovation based on the condition of the facility;

(7) the extent to which the assistance will alleviate overcrowding; and

(8) the extent to which the assistance provided will support projects that would not otherwise have been possible to undertake, or will increase the size of school infrastructure improvement projects.

The State shall identify its areas of greatest need and develop a plan for meeting the needs of those areas first.

The Secretary of Education shall evaluate State applications and approve those that will maximize school infrastructure improvements in school districts with the greatest needs and the least ability to raise revenue to meet those needs. Once a State's application is approved, the State educational agency (or other designated agency) receives its share of the tax credits. States shall be required to reapply for the credits every five years.

ALLOCATION OF CREDITS WITHIN STATES

For a period of five years, any State containing one of the 100 school districts with the largest numbers of poor children shall make available to those districts amounts of tax credits proportional to those districts' relative shares of funding under section 1124A of the Elementary and Secondary Education Act of 1965.

Other credits shall be allocated within the State in accordance with the criteria described in the State's application to the Secretary of Education. School districts shall apply to the designated State agency for the authority to allocate tax credits to developers working on school improvement projects within their districts.

AWARD OF CREDITS TO DEVELOPERS

School districts will be able to offer developers or builders tax credits from the State based on the cost of their proposed projects.

The developer or builder performing the eligible project would receive the tax credits upon completion of the project. The credits could be counted against the developer's income under the rules of general business tax credits.

The amount of the tax credit available to the developer would be based on the local area's ability to pay and the total cost of the project, up to 30 percent of the total cost of the project, using the following formula.

A project located within a local educational agency described in—

(1) clause (i)(I) or clause (ii)(I) of section 1125(c)(2)(A) of the Elementary and Secondary Education Act, shall be eligible for a credit of 10 percent;

(2) clause (i)(II) or clause (ii)(II) of section 1125(c)(2)(A), shall be eligible for a credit of 15 percent;

(3) clause (i)(III) or clause (ii)(III) of section 1125(c)(2)(A), shall be eligible for a credit of 20 percent;

(4) clause (i)(IV) or clause (ii)(IV) of section 1125(c)(2)(A), shall be eligible for a credit of 25 percent; and

(5) clause (i)(V) or clause (ii)(V) of section 1125(c)(2)(A), shall be eligible for a credit of 30 percent;

of the total cost of the project.

The ''total cost'' of the project includes the cost of construction, renovation, repair, or modernization, but not land acquisition or other associated costs.

ELIGIBLE PROJECTS

The tax credits shall be used by States to help support projects of substantial size and scope such as:

(1) the repair or upgrade of classrooms or structures related to academic learning, including the repair of leaking roofs, crumbling walls, inadequate plumbing, poor ventilation equipment, and inadequate heating or lighting equipment;

(2) an activity to increase physical safety at the educational facility involved;

(3) an activity to enhance the educational facility involved to provide access for students, teachers, and other individuals with disabilities;

(4) an activity to improve the energy efficiency of the educational facility involved;

(5) an activity to address environmental hazards at the educational facility involved, such as poor ventilation, indoor air quality, or lighting;

(6) the provision of basic infrastructure that facilitates educational technology, such as communications outlets, electrical systems, power outlets, or a communication closet;

(7) the construction of new schools to meet the needs imposed by enrollment growth; and

(8) any other activity the Secretary determines achieves the purpose of this title;

as long as such projects are located in a school as defined under section 12012(2) of the Elementary and Secondary Education Act of 1965.

TRUST FUND

Funds for this tax credit are made available only if actual revenues into the Federal Treasury exceed CBO revenue projections. In that case, up to $1 billion of excess revenues shall be deposited annually into a School Infrastructure Improvement Trust Fund, and disbursed to States in the form of allocable tax credits.

Mr. KENNEDY. Mr. President, I give my strong support to the bill being introduced today by Senator MOSELEY-BRAUN TO PROVIDE UP TO $1 BILLION A YEAR FOR IMPROVING AMERICA'S SCHOOL FACILITIES.

Good education begins with good places to learn. We can't expect children to learn, when school roofs are crumbling, pipes are leaking, and boilers are failing. Adequate school facilities are essential to prepare children for the 21st century. It's preposterous to pretend that we can prepare students for the 21st century in dilapidated 19th century classrooms.

We can no longer ignore this national crisis. We need to develop effective public-private partnerships to address these needs. Senator MOSELEY-BRAUN's bill provides that opportunity.

Schools across the country are facing enormous problems with crumbling facilities. 14 million children in one-third of the nation's schools are now learning in substandard school buildings. Over half of all schools report at least one major building in disrepair, with cracked foundations, leaking roofs, or other major problems.

This bill can be a major start toward repairing the nation's crumbling schools, by encouraging business and government to work together. It offers tax credits to developers and builders to cover costs of school improvements. Each state will receive funds based on the number of school-age children in the state who are eligible for federal education assistance. The states will have the flexibility to award the tax credits to developers in school districts with the greatest need. The credits will

be taken against the developer's income, like other business tax credits.

I urge my colleagues to support Senator MOSELEY-BRAUN's bill to help local communities rebuild America's crumbling schools. I look forward to continuing to work with her to make sure that Congress does its part to help address this national need.

By Mr. D'AMATO (for himself, Ms. MOSELEY-BRAUN, and Mr. COCHRAN):

S. 1476. A bill to authorize the President to enter into a trade agreement concerning Northern Ireland and certain border counties of the Republic of Ireland, and for other purposes; to the Committee on Finance.

NORTHERN IRELAND/BORDER COUNTIES FREE TRADE, DEVELOPMENT AND SECURITY ACT

Mr. D'AMATO. Mr. President, today I introduce the Northern Ireland/Border Counties Free Trade, Development and Security Act. This legislation is a carbon copy of S. 1976, legislation that I introduced in the 104th Congress. Joining me as original cosponsors are my friends and colleagues, the senior Senator from Illinois, Senator MOSELEY-BRAUN and the Senator from Mississippi, Mr. COCHRAN.

The Northern Ireland Free Trade, Development and Security Act reintroduced today will—by University of Ulster estimates, create 12,000 jobs within the twelve counties of Northern Ireland and the Border Counties. It will produce an additional $1.5 billion into that economy annually. The new jobs it will create will be targeted to those areas that need the most, areas where the current unemployment rate ranges between 30 percent and 50 percent, areas that have never felt the effects of real economic expansion or growth. Further, this legislation will provide those jobs and hope without any discernable impact upon our nations trade or budget deficit, as was the case with Gaza/West Bank legislation. This bill will operate in harmony with stated goals of the European Union, United Kingdom and the Irish Republic. It will additionally comport with the requirements of the World Trade Organization.

Mr. President, the paradox of Northern Ireland is that she has given so much to other cultures and lands but has been incapable of fully reaping the rewards of her own peoples skills and strengths at home. The unfortunate reality is that as in the Republic of Ireland, a large majority of the North's highly educated and skilled younger generation has been forced to emigrate due to high unemployment levels which are as high as 70 percent in some areas. These disadvantaged areas are the ones which this legislation has been especially designed to target. Joint cooperation and joint economic development between the United States, Northern Ireland and the European Union will integrate the most distressed parts of Northern Ireland and the Border Counties into a dynamic economy that—while firmly rooted in the European Union—continues to expand and cement new trading relationships beneficial to all trading partners.

Northern Ireland's peace process must move forward and the aspirations and goodwill of the vast majority of its citizens must be accompanied by hard work and endeavor. A more prosperous economy with more evenly spread and meaningful job opportunities can only serve to bridge the social and economic disparities that exist in this region. In conclusion this opportunity cannot be overlooked, after 25 years since the outbreak of the ''troubles,'' the people of Northern Ireland have suffered enough violence and depravity. Now it is time to embark on a rebuilding process that will give no chance to the terrorist but every chance to peace and reconciliation.

Mr. President, it is time to roll up our sleeves and do something real and substantive for all the people of Northern Ireland. This legislation goes far beyond symbolic gestures and grand statements of concern. It will provide a real and solid foundation that the people of Northern Ireland can use to build that new and brighter future. This legislation represents the Senate's down payment on that future.

Mr. President, I ask unanimous consent that a public statement of support from Minister James McDaid, the Minister of Tourism and Trade for the Republic of Ireland, found in today's Irish News—be printed in the RECORD.

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

[From the Irish News]

MINISTER GIVES BACKING TO U.S. FREE TRADE BILL FOR NORTH

(By Jim Fitzpatrick)

The Republic's tourism minister Dr. Jim McDaid has given his backing to the American free trade bill for Northern Ireland and the border counties.

The Irish News reported last month that the proposed bill, which a University of Ulster study concluded would create at least 12,000 jobs, was facing opposition from officials in London, Dublin and Brussels.

But Fianna Fail minister Dr. McDaid gave his unqualified backing to the proposal yesterday, saying that he felt special measures were necessary to redress the economic imbalance on the island.

The bill would allow companies based in the northern twelve counties of Ireland to sell products directly into the U.S. without any tariffs.

Its backers argue that it would be a massive boost for foreign investment and create thousands of jobs because it would allow companies free access the two largest markets in the world—north America and Europe.

But the legislation, which is in the early stages of development in the U.S. Congress, has faced opposition from some sections of the Irish political establishment.

Dr. McDaid's predecessor, Fine Gael minister Enda Kenny who also held responsibility for trade, said the bill would require customs posts to be set up within the Republic along the border of the zone.

But Dr. McDaid rejected that suggestion: ''I don't agree that this bill will mean the 're-partition of Ireland'. The bill addresses an area which has already been recognized by the European Union and the International Fund for Ireland as needing special assistance.''

He said there was a need for ''positive discrimination'' and a radical economic plan to tackle the economic problems of the northern part of Ireland so that the ''whole of the island'' can share in its economic success.

He said the bill would undoubtedly be a boost to the peace process, and help redress the economic imbalance crested by the years of violence in the north.

Dr. McDaid said he felt that the free trade status would probably have to be granted on a time-limited basis—perhaps for 25 years or more.

It's understood that support for the free trade bill has been growing within Irish political circles, although the Irish government has not taken a formal position on the matter.

A number of senators and MEPs from border counties have submitted letters of support to the U.S. Congress.

The U.S. Congressman pushing the bill wrote to the Irish News recently calling on people in the region to publicly support the initiative.

Massachusetts Congressman Marty Meehan praised the Clinton administration's current efforts to bring new investment to the north, and called on the people of the north to work with the influential American politicians who are backing the free trade initiative.

''I encourage the people of Northern Ireland and the border counties to work with me through trade associations, councils and elected representatives to help pass this bill as well as other related measures. Together, we can help lay the groundwork for a sound economic future in Northern Ireland,'' he wrote.

Mr. Meehan stressed in his letter that, contrary to some of the criticisms levelled against the bill, his legislation would comply fully with European Union law.

By Mr. D'AMATO:

S. 1477. A bill to amend the Harmonized Tariff Schedule of the United States to provide that certain goods may be reimported into the United States without additional duty; to the Committee on Finance.

U.S. CATALOGUE MERCHANTS EXPORT PROMOTION ACT OF 1997

Mr. D'AMATO. Mr President, I rise today to introduce legislation necessary to correct a problem faced by an important segment of the American exporting community, catalogue merchants. Catalogue merchants are multi-billion dollar export businesses in New York State and across the nation. Due to an anomaly in our customs law, some products sold by these merchants face double duties when the goods are returned to them by customers abroad. The bill I am introducing today seeks to correct this problem by making sure that duties are only assessed once—as the law intended—the first time a product comes into this country from abroad.

If I may Mr. President, let me explain the problem by first telling you how the system is supposed to work. When a catalogue merchant imports a product directly from abroad, as the