

States; to the Committee on Commerce, Science, and Transportation.

By Mr. GRAMS:

S. 2291. A bill to amend title 17, United States Code, to prevent the misappropriation of collections of information; to the Committee on the Judiciary.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DODD (for himself, Mr. STEVENS, Mr. KENNEDY, Mr. MOYNIHAN, Mr. D'AMATO, Mr. TORRICELLI, Mr. LIEBERMAN, Mr. DASCHLE, Ms. COLLINS, Ms. LANDRIEU, Mr. REID, Mr. DEWINE, Ms. MOSELEY-BRAUN, Ms. MIKULSKI, Mrs. BOXER, Ms. SNOWE, Mrs. MURRAY, Mrs. FEINSTEIN, and Mr. LAUTENBERG):

S. 2285. A bill to establish a commission, in honor of the 150th Anniversary of the Seneca Falls Convention, to further protect sites of importance in the historic efforts to secure equal rights for women; to the Committee on Energy and Natural Resources.

#### WOMEN'S PROGRESS COMMEMORATION ACT

Mr. DODD. Mr. President, one hundred and fifty years ago this month, a remarkable group of women and men came together and wrote the single most important document of the nineteenth-century American women's movement and one of the most important writings of American freedom: The Seneca Falls Declaration of Sentiments and Resolutions. Modeled closely after the Declaration of Independence, this document is a declaration of women's independence. Radical at the time, it expounded such ideas as allowing women to vote, to become educated, and to participate in economic activities.

I believe we should take the occasion of the 150th anniversary of the Seneca falls convention to celebrate and focus on the rich and courageous history of American women and their struggle for equality. With this in mind, I am introducing the Women's Progress Commemoration Act.

I am very happy to be joined in introducing this legislation by my primary cosponsor, Senator TED STEVENS of Alaska, and the bipartisan group of 17 other original cosponsors: Senators MOYNIHAN and D'AMATO from New York, Senator KENNEDY, Senator TORRICELLI, Senator LIEBERMAN, Senator DASCHLE, Senator COLLINS, Senator LANDRIEU, Senator REID, Senator DEWINE, Senator MOSELEY-BRAUN, Senator MIKULSKI, Senator BOXER, Senator SNOWE, Senator MURRAY, Senator FEINSTEIN, and Senator LAUTENBERG.

This legislation will establish a commission to identify sites that have been instrumental in the women's movement and help to ensure their historic preservation. The history of American women has barely begun to be recorded. Consider these facts: (1) less than 5 percent of our Nation's historic landmarks chronicle women's achieve-

ments, (2) right here in the capitol, of the 197 statues exhibited in statuary hall, only seven are of women leaders, (3) according to a recent study, less than 2 percent of even our contemporary history textbooks are dedicated to women's contributions.

And yet, despite the virtual infancy of efforts to record women's history, we are doing even less to preserve the places where that history was made. That is why this bill is so important. If we don't preserve our past, we can lose our way into our future and our opportunity to teach not only girls and women but all students and citizens.

As I stand here today, numerous buildings and structures of deep historical significance to the American women's movement are in a state of disrepair—they have peeling paint, flooded basements, and structural deficiencies.

For example, the Sewall-Belmont House, just a block from the Capitol, was and still is the headquarters of the National Women's Party, which pressed for woman suffrage. This building was also the residency of Alice Paul, the legendary founder of this party. This is a prime example of a critical site in American women's history that is in need of preservation. Unfortunately, this house is plagued with water problems, deteriorating electrical wiring, and weather-damaged parts of the structure.

As we can see, I brought these two photographs, Mr. President, to indicate the condition of the Sewall Belmont Home, which I said is about a block from the Capitol and a house that many of my colleagues have visited over the years. This historic house is where some of the treasures of the women's suffrage movement are located and, sadly, as you can see in these pictures, the house is in desperate need of restoration. Even though, I am happy to report that efforts have begun by the Senate to save this house, there are many more examples of such sites throughout the country that are literally crumbling away.

Another example of a site in need of repair is the McClintock House in the Women's Rights Historical Park in upstate New York. This is where the actual Declaration of Sentiments was drafted during the Seneca Falls Convention.

Another site that the commission could choose would be the Rankin Ranch in Helena, Montana—the home of the first woman elected to the U.S. House of Representatives.

Or perhaps the Harriet Tubman home in Auburn, New York, which is already open to the public but still needs financial support.

This commission will highlight sites throughout the country, such as these, that deserve to be preserved.

In my home State of Connecticut there are some success stories of efforts to preserve women's sites such as the Prudence Crandall home, the first school for African-American girls in

this country, or the home of Harriet Beecher Stowe, the author of "Uncle Tom's Cabin."

Even though my State of Connecticut has been progressive about the preservation of women's sites, unfortunately, some of these efforts were too late. Sadly, some historic women's sites in Connecticut were not preserved and are relegated to a signpost or a plaque rather than a museum.

Hopefully, 150 years after the birth of the women's movement we can create more museums and fewer plaques.

Let me take a moment to explain very briefly the structure and goals of the commission. The commission will have 15 members appointed by the majority and minority leaders of the Senate and the House and by the administration. Members will be selected based on a knowledge of women's history and historical preservation. Not later than 1 year after the commission's initial meeting it will provide to the Secretary of the Interior a list of sites deserving recognition and preservation. It will also recommend actions to rehabilitate those sites. Thirty days after the submission of this report, the commission will cease to exist. The commission will not fund preservation but rather highlight the need, and hopefully the publicity will generate funds—whether it be private, public, or nonprofit—that would be used to help in the preservation of these sites.

I hope that the sites across this Nation that signify important points in women's history or celebrate remarkable women will be preserved for the public to come and learn. I hope that school children across our Nation will be making field trips to historic women's sites, along with their trips to the White House, the Capitol, Monticello, and the significant memorials here in this city and across our Nation.

Let's make women's contributions to our history known to generations yet unborn—their accomplishments an inspiration and their homes and workplaces opportunities where future generations can come and learn.

In July of 1848 the Seneca Falls Convention convened to consider the social conditions and civil rights of women. As I have said, this convention signaled the beginning of an admirable and courageous women's movement in this Nation. Today, for the 150th anniversary of this historic meeting, let us take the opportunity to preserve and teach the contributions of women to our Nation's history to future generations of Americans.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 2285

*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 "Women's Progress Commemoration Act".

**SEC. 2. DECLARATION.**

Congress declares that—

(1) the original Seneca Falls Convention, held in upstate New York in July 1848, convened to consider the social conditions and civil rights of women at that time;

(2) the convention marked the beginning of an admirable and courageous struggle for equal rights for women;

(3) the 150th Anniversary of the convention provides an excellent opportunity to examine the history of the women's movement; and

(4) a Federal Commission should be established for the important task of ensuring the historic preservation of sites that have been instrumental in American women's history, creating a living legacy for generations to come.

**SEC. 3. ESTABLISHMENT OF COMMISSION.**

(a) ESTABLISHMENT.—There is established a commission to be known as the "Women's Progress Commemoration Commission" (referred to in this Act as the "Commission").

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 15 members, of whom—

(A) 3 shall be appointed by the President;

(B) 3 shall be appointed by the Speaker of the House of Representatives;

(C) 3 shall be appointed by the minority leader of the House of Representatives;

(D) 3 shall be appointed by the majority leader of the Senate; and

(E) 3 shall be appointed by the minority leader of the Senate.

(2) PERSONS ELIGIBLE.—

(A) IN GENERAL.—The members of the Commission shall be individuals who have knowledge or expertise, whether by experience or training, in matters to be studied by the Commission. The members may be from the public or private sector, and may include Federal, State, local, or employees, members of academia, nonprofit organizations, or industry, or other interested individuals.

(B) DIVERSITY.—It is the intent of Congress that persons appointed to the Commission under paragraph (1) be persons who represent diverse economic, professional, and cultural backgrounds.

(3) CONSULTATION AND APPOINTMENT.—

(A) IN GENERAL.—The President, Speaker of the House of Representatives, minority leader of the House of Representatives, majority leader of the Senate, and minority leader of the Senate shall consult among themselves before appointing the members of the Commission in order to achieve, to the maximum extent practicable, fair and equitable representation of various points of view with respect to the matters to be studied by the Commission.

(B) COMPLETION OF APPOINTMENTS; VACANCIES.—The President, Speaker of the House of Representatives, minority leader of the House of Representatives, majority leader of the Senate and minority leader of the Senate shall conduct the consultation under subparagraph (3) and make their respective appointments not later than 60 days after the date of enactment of this Act.

(4) VACANCIES.—A vacancy in the membership of the Commission shall not affect the powers of the Commission and shall be filled in the same manner as the original appointment not later than 30 days after the vacancy occurs.

(c) MEETINGS.—

(1) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS.—After the initial meeting, the Commission shall meet at the call of the Chairperson.

(d) QUORUM.—A majority of the members of the Commission shall constitute a quorum

for the transaction of business, but a lesser number of members may hold hearings.

(e) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall select a Chairperson and Vice Chairperson from among its members.

**SEC. 4. DUTIES OF THE COMMISSION.**

Not later than 1 year after the initial meeting of the Commission, the Commission, in cooperation with the Secretary of the Interior and other appropriate Federal, State, and local public and private entities, shall prepare and submit to the Secretary of the Interior a report that—

(1) identifies sites of historical significance to the women's movement; and

(2) recommends actions, under the National Historic Preservation Act (16 U.S.C. 470 et seq.) and other law, to rehabilitate and preserve the sites and provide to the public interpretive and educational materials and activities at the sites.

**SEC. 5. POWERS OF THE COMMISSION.**

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out its duties of this Act.

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

**SEC. 6. COMMISSION PERSONNEL MATTERS.**

(a) COMPENSATION OF MEMBERS.—A member of the Commission who is not otherwise an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission. A member of the Commission who is otherwise an officer or employee of the United States shall serve without compensation in addition to that received for services as an officer or employee of the United States.

(b) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of service for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairperson of the Commission may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment and termination of an executive director shall be subject to confirmation by a majority of the members of the Commission.

(2) COMPENSATION.—The executive director shall be compensated at a rate not to exceed the rate payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code. The Chairperson may fix the compensation of other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such personnel may not exceed the rate payable for a position at level V of the Executive Schedule under section 5316 of that title.

(3) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee, with the approval of the head of the appropriate Federal agency, may be detailed to the Commission without reimbursement, and the detail shall be without interruption or loss of civil service status, benefits, or privilege.

(d) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay prescribed for a position at level V of the Executive Schedule under section 5316 of that title.

**SEC. 7. FUNDING.**

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as are necessary to carry out this Act.

(b) DONATIONS.—The Commission may accept donations from non-Federal sources to defray the costs of the operations of the Commission.

**SEC. 8. TERMINATION.**

The Commission shall terminate on the date that is 30 days after the date on which the Commission submits to the Secretary of the Interior the report under section 4(b).

**SEC. 9. REPORTS TO CONGRESS.**

Not later than 2 years and not later than 5 years after the date on which the Commission submits to the Secretary of the Interior the report under section 4, the Secretary of the Interior shall submit to Congress a report describing the actions that have been taken to preserve the sites identified in the Commission report as being of historical significance.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. I rise, of course, to support and endorse the proposal by the Senator from Connecticut, cosponsored by the senior Senator from Alaska, with one small anecdote.

The Women's Rights National Convention met 150 years ago at the Wesleyan Chapel on Fall Street in Seneca Falls. There will be a lot of ceremony this week and next. The First Lady will be there.

I was in Seneca Falls about 1978 and was having a beer with the county leader, George Souhan, in the Gould Hotel. Looking down at the street, I just happened to say to him, "Where was that chapel where the convention met?" He said, "It was just down the street." I said, "Let's go look." Down the street we went. What did we find, but a laundromat. The Wesleyan Chapel had become a laundromat on Fall Street and a garage behind.

We had it declared a national park in 1980. We went around the city, the village, and found the houses of the ladies of Seneca Falls—the Bloomer girls and Elizabeth Cady Stanton and the like. We went to Waterloo, where in the McClintock House the declaration was drafted. That needs repair; the Park Service should do it.

It is quite an achievement, but it makes the point that the Senator from Connecticut has just made that you better look after these important sites. That was the first original American political idea—that women were equal in civic rights with men. It didn't come

from Europe. It came right from central New York. It had almost vanished as a site until we came along.

If the Senator wishes to do more, more power to him. I thank my friend from Colorado.

Mr. DODD. If my friend from Colorado will yield once again, we realize the benefit of having the presence of our colleague from New York in our midst. Once again he was ahead in so many areas, and this is not an exception. As he pointed out, it was almost washed out. We are grateful that he stopped for a libation in Seneca Falls on that day in 1978.

By Mr. MURKOWSKI (for himself and Mr. BUMBERS) (by request):

S. 2287. A bill to provide for a more competitive electric power industry, and for other purposes; to the Committee on Energy and Natural Resources.

COMPREHENSIVE ELECTRICITY COMPETITION ACT

Mr. MURKOWSKI. Mr. President, at the request of the Administration, I am today introducing its proposed electric power industry legislation, the "Comprehensive Electric Competition Act." I do so not because I agree with all of the provisions of the Administration's legislation: I don't. I do so as a courtesy to the Administration and because I strongly support competition.

Mr. President, let me first say that I am a strong proponent of increased competition in the electric power industry. For the past century our electric utilities—investor-owned, municipally-owned, cooperatively-owned—have served this Nation well. Particularly as compared to the rest of the world, we have reasonably-priced, extremely reliable and nearly universal electric service. But with some well thought-out changes, our electric power industry can do even better. We have seen in a number of other industries—oil, natural gas, trucking and airlines, to name but a few—deregulation has greatly benefitted consumers. Market-based competition has reduced prices, increased supply and sparked innovation. There is no reason why increased competition in the electric power industry would not similarly benefit consumers, the economy and our international competitiveness.

I believe that there is a growing consensus that increased competition in the electric power industry is in the public interest. This is illustrated by the number of States that have already moved forward to promote retail competition. According to the Department of Energy, 18 States have already implemented retail competition, either through State legislation or by State public utility commission regulation. One hundred and twenty-one million people—49 percent of the U.S. population—live in these States. Of the remaining States, all but two (Florida and South Dakota) are now actively considering competition programs. This consensus is also illustrated by the 20 bills introduced to date in the

Senate and the House of Representatives relating to this issue. Moreover, it is further illustrated by the Administration's decision to propose this legislation.

Mr. President, as I see it, the issue isn't: Do we want competition in the electric power industry? We do. Instead, the issue is: How do we bring about competition without jeopardizing price and reliability or financially damaging the industry? There is a consensus on the first issue; unfortunately, on the latter there is no consensus.

At the risk of oversimplification, there are two camps of thought on how to go about the task of promoting competition. On the one hand, there are those who want to see government-managed competition, not market-based competition. They believe that government should continue to regulate all aspects of the industry—just do it differently. Moreover, they prefer the Federal government—FERC—be put in charge and the States pushed out of the way. On the other hand, there are those who believe that competition should be market-based. They believe that the most effective and efficient regulator of business is the discipline of the free market—not the discipline of the government regulator. I fall into the latter camp. Having seen all too often the results of failed government regulation—wage-and-price controls, oil price and allocation controls, and natural gas wellhead price controls, for example. I believe that for electric competition legislation to benefit consumers it must deregulate, streamline and empower States to promote retail competition. We don't need different regulation; we don't need government-managed competition. We need deregulation; we need market-based competition.

Turning now to the Administration's proposed legislation, let me first say that it contains several provisions that are in keeping with my philosophy. For example, it proposes to repeal the Public Utility Holding Company Act ("PUHCA"). This language is very similar to legislation Senator D'AMATO introduced, S. 621, which has been reported by the Banking Committee and awaits action by the Senate. I am a co-sponsor of S. 621, along with 22 other Senators. If we did nothing else, repeal of PUHCA would significantly promote competition in the electric power industry. This depression-era law, enacted in 1935, has long outlived its usefulness, and today is actually a significant impediment to competition. Repeal would allow both utilities and non-utilities to fully compete without fear of becoming tangled in PUHCA's regulatory spider web. More competitors mean more competition, and that would benefit consumers and our economy. Moreover, repeal of PUHCA would not diminish Federal and State consumer protections, which would remain in full force and effect.

Another provision of the Administration's bill that I strongly support is its

prospective repeal of the mandatory purchase requirement of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). PURPA is one of the few remaining vestiges of President Jimmy Carter's ill-fated 1978 "National Energy Plan" that we have yet to extinguish. PURPA requires electric utilities to purchase electricity from others whether or not they need it, and to pay so-called "full avoided cost" regardless of the actual market value of the power. This law has, and will until it is repealed, cost consumers billions of dollars in above-market prices for PURPA electricity. As just one example of how this is hurting consumers, just the other day the FERC refused to rescind the PURPA QF status of a powerplant even though the so-called "useful" thermal output of the facility is to produce distilled water that, at times, is just being dumped down the sewer. As a result, electric consumers in Brazos, Texas will pay an extra \$890 million for electricity over the life of the PURPA contract—\$148 per year for the average family of four living in Brazos. It is also essential that PURPA's mandatory purchase requirement be repealed as it is a key contributor to the so-called "stranded cost" problem that is plaguing industry restructuring efforts. Clearly, like PUHCA, it is time to repeal this anti-consumer and anti-competitive provision of PURPA.

While there are provisions such as these in the Administration's proposed legislation that I do support, there are many provisions that I am very concerned about—some of which raise serious Constitutional issues, others of which I just cannot support. For example, the Administration's bill imposes a Federal mandate on States; it imposes a new \$3+ billion per year Federal electricity tax on consumers; and it has a 5½ percent "renewable set-aside" mandate (that curiously ignores hydroelectric power as a renewable). Moreover, the Administration's proposed legislation includes numerous provisions that vastly expand FERC jurisdiction, largely at the expense of States.

I am also troubled by the Administration's proposed legislation because of what it does not contain. The Administration's transmittal letter acknowledges that its legislation does not address several key issues. For example, the Administration's legislation does not resolve the competitive status of the Federal utilities—the Tennessee Valley Authority and the Federal power marketing administrations. Nor, does it address the competitive advantage municipal utilities have from tax-exempt bonds and access to Federal preference power. Also, it does not address key issues necessary to ensure viability of nuclear power. I do not see how any bill can be considered "comprehensive" if it does not address these and other issues.

Mr. President, although I have serious reservations about many provisions of the Administration's proposed

legislation, I am willing to introduce it in the spirit of moving forward and trying to develop a consensus. That will not be an easy or a quick task. But, it is one that we must undertake if all consumers—residential, commercial and industrial—are to enjoy the benefits of increased competition in the electric power industry. I ask unanimous consent that the Administration's transmittal letter, its section-by-section analysis and its proposed legislation be printed in the RECORD.

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

S. 2287

*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 "Comprehensive Electricity Competition Act".

#### SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.

Sec. 2. Table of contents.

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Sec. 704. Elimination of antitrust review by the Nuclear Regulatory Commission.

Sec. 705. Environmental laws savings clause.

##### TITLE I—RETAIL ELECTRIC SERVICE

#### SEC. 101. RETAIL COMPETITION.

(a) The Public Utility Regulatory Policies Act of 1978 (referred to in this Act as

PURPA) is amended by adding after section 608 the following new section:

#### "SEC. 609. RETAIL COMPETITION.

"(a) DEFINITIONS.—For purposes of this section—

"(1) 'distribution utility' means a person, State agency, or any other entity that owns or operates a local distribution facility used or the sale of electric energy to an electric consumer;

"(2) 'nonregulated distribution utility' means a distribution utility not subject to the ratemaking authority of a State regulatory authority; and

"(3) 'retail stranded costs' means the amount of net costs incurred or obligations undertaken before the date of enactment of the Comprehensive Electricity Competition Act by a distribution utility that—

"(A) were incurred or undertaken by that distribution utility in order to comply with a legal obligation on that utility to provide electricity to electric consumers in its service territory; and

"(B) cannot be recovered because of implementation of retail competition under subsection (b).

"(b) RETAIL COMPETITION REQUIREMENT.—Except as provided in subsection (c), not later than January 1, 2003, any distribution utility that has the capability to deliver electric energy to an electric consumer over its facilities shall offer open access to those facilities for the sale of electric energy to the consumer and shall do so at rates, terms, and conditions that are not unduly discriminatory or preferential, as determined by the appropriate regulatory authority.

"(c) OPT OUT.—(1) A State regulatory authority (with respect to a distribution utility for which it has ratemaking authority) may direct a distribution utility not to implement the retail competition requirement described in subsection (b) if the State regulatory authority finds, after notice and opportunity for hearing, that implementation of the retail competition requirement by the distribution utility will have a negative impact on a class of customers of that utility that cannot be mitigated reasonably.

"(2) A nonregulated distribution utility may determine not to implement the retail competition requirement described in subsection (b) if it finds, after notice and opportunity for hearing, that implementation of the retail competition requirement by the distribution utility will have a negative impact on a class of customers of that utility that cannot be mitigated reasonably.

"(3) The State regulatory authority (with respect to a distribution utility for which it has ratemaking authority) or nonregulated distribution utility shall publish the determination and its basis and shall file a notice with the Commission of its determination by January 1, 2002.

"(d) NOTICE OF RETAIL COMPETITION.—A State regulatory authority (with respect to a distribution utility for which it has ratemaking authority) or nonregulated distribution utility shall file with the Commission a notice that the distribution utility has implemented or will implement retail competition consistent with subsection (b). The notice shall describe the implementation of retail competition. The notice is effective for purposes of section 118 of this Act and sections 212(h), 216, and 217 of the Federal Power Act on the date the notice is filed or the date of implementation of retail competition consistent with subsection (b) whichever is later.

"(e) CONSIDERATION OF RECOVERY OF RETAIL STRANDED COSTS.—If a State regulatory authority conducts a public proceeding before a distribution utility implements retail competition as required under subsection (b),

as part of this proceeding, the State regulatory authority shall consider the appropriate mechanism under State law to address recovery by a distribution utility for which it has ratemaking authority of retail stranded costs that are legitimate, prudent, and verifiable, if the utility has taken all reasonable steps to mitigate the costs. A charge imposed for purposes of recovering retail stranded costs should be imposed in a manner so as to minimize to the fullest extent possible any effect on an electric consumer's choice among competing suppliers or products.

"(f) ENFORCEMENT.—Any person may bring an action in the appropriate State court against a State regulatory authority, a distribution utility, or a nonregulated distribution utility for failure to comply with this section. Filing an action challenging whether retail competition is being implemented consistent with subsection (b) makes a notice of retail competition ineffective for purposes of section 118 of this Act and sections 212(h), 216, and 217 of the Federal Power Act until final resolution of the action. Notwithstanding any other law, a court created under Article III of the Constitution does not have jurisdiction over an action arising under this section."

"(b) DEFINITION.—Section 3 of PURPA is amended by adding after paragraph (21) the following new paragraph:

"(22) The term 'notice of retail competition' means a notice filed under section 609(d)."

#### SEC. 102. AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

PURPA is amended by adding the following new section 117:

#### "SEC. 118. AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

"(a) STATE REGULATORY AUTHORITY.—If a State regulatory authority files a notice of retail competition with respect to a distribution utility, beginning on the effective date of the notice, the State regulatory authority may prohibit any other distribution utility located in the United States over which it does not have ratemaking authority (and any affiliate of such a utility, as defined under the Public Utility Holding Company Act of 1998) from selling electric energy to electric consumers of a distribution facility covered by the notice of retail competition, unless a notice of retail competition has been filed with respect to the other distribution utility.

"(b) NONREGULATED DISTRIBUTION UTILITY.—If a nonregulated distribution utility files a notice of retail competition, beginning on the effective date of the notice, it may prohibit any other distribution utility located in the United States (or affiliate of the utility, as defined under the Public Utility Holding Company Act of 1998) from selling electric energy to electric consumers of the nonregulated distribution utility covered by the notice unless a notice of retail competition has been filed with respect to the other distribution utility.

"(c) DEFINITIONS.—For purposes of this section, 'distribution utility' and 'nonregulated distribution utility' have the meaning given them in section 609(a)."

#### SEC. 103. CONSUMER INFORMATION.

PURPA is amended by adding the following new section after section 118 as added by section 102 of this Act:

#### "SEC. 119. CONSUMER INFORMATION DISCLOSURE.

"(a) DISCLOSURE RULES.—Not later than January 1, 2000, the Secretary, in consultation with the Commission, the Administrator of the Environmental Protection Agency, and the Federal Trade Commission, shall issue rules prescribing the form, content, placement, and timing of the supplier disclosure required under subsections (b) and

(c) of this section. The rules shall be prescribed in accordance with section 553 of title 5, United States Code (the Administrative Procedure Act).

“(b) DISCLOSURE TO ELECTRIC CONSUMERS.—An electric utility that offers to sell electric energy to an electric consumer shall provide the electric consumer, to the extent practicable and in accordance with rules issued under subsection (a), a statement containing the following information:

“(1) the nature of the service being offered, including information about interruptibility or curtailment of service;

“(2) the price of the electric energy, including a description of any variable charges;

“(3) a description of all other charges associated with the service being offered including, but not limited to, access charges, exit charges, back-up service charges, stranded cost recovery charges, and customer service charges;

“(4) information concerning the type of energy resource used to generate the electric energy and the environmental attributes of the generation (including air emissions characteristics); and

“(5) any other information the Secretary determines can be provided feasibly and would be useful to consumers in making purchasing decisions.

“(c) DISCLOSURE TO WHOLESALE CUSTOMERS.—In every sale of electric energy for resale, the seller shall provide to the purchaser the information respecting the type of energy resource used to generate the electric energy and the environmental attributes of the generation required by rules established under subsection (a).

“(d) FEDERAL TRADE COMMISSION ENFORCEMENT.—A violation of a rule prescribed under this section shall constitute an unfair or deceptive act or practice in violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) and shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a). All functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance with this section notwithstanding jurisdictional limitations in the Federal Trade Commission Act.

“(e) AUTHORITY TO OBTAIN INFORMATION.—Authority to obtain information under section 11 of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796) is available to the Secretary to administer this section and to the Federal Trade Commission to enforce this section. In order to carry out its duties this section, the Federal Trade Commission may use any of its powers under sections 3, 6, 9, and 20 of the Federal Trade Commission Act (15 U.S.C. 43, 46, 49, and 57b-2) without regard to the limitations contained in section 20(b) of that Act (15 U.S.C. 57b-2(b)) or any jurisdictional limitations contained in that Act.

“(f) ENFORCEMENT BY STATES.—(1) When a State determines that the interests of its residents have been or are being threatened or adversely affected because any person is violating or has violated a rule of the Secretary under this section, the State may bring a civil action on behalf of its residents in an appropriate district court of the United States—

“(A) enjoin the violation;

“(B) enforce compliance with the rule of the Secretary;

“(C) obtain damages, restitution, or other compensation on behalf of its residents; or

“(D) obtain other relief the court considers appropriate.

“(2) The State shall serve prior written notice of any civil action under this subsection

upon the Federal Trade Commission and provide the Federal Trade Commission with a copy of its complaint, except that if it is not feasible for the State to provide this prior notice, the State shall serve the notice immediately upon instituting the action. Upon receiving a notice respecting a civil action, the Federal Trade Commission may—

“(A) intervene in the action, and

“(B) upon so intervening, be heard on all matters arising in the action and file petition for appeal.

“(3) For purposes of bringing any civil action under this subsection, this section does not prevent a State official from exercising the powers conferred by State law to conduct investigations, administer oaths or affirmations, or compel the attendance of witnesses or the production of documentary and other evidence.

“(4) While a civil action instituted by or on behalf of the Federal Trade Commission for violation of any rule prescribed under this subsection is pending, a State may not institute a civil action under this section against a defendant named in the complaint in the pending action for a violation alleged in the complaint.

“(5) A civil action brought under this subsection may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

“(6) This section does not prohibit a State from proceeding in State court on the basis of an alleged violation of a State civil or criminal statute.”

#### TITLE II—FACILITATING STATE AND REGIONAL REGULATION

##### SEC. 201. CLARIFICATION OF STATE AND FEDERAL AUTHORITY OVER RETAIL TRANSMISSION SERVICES.

(a) NONPREEMPTION OF STATE AUTHORITY TO ORDER RETAIL WHEELING AND TO IMPOSE LOCAL DELIVERY CHARGES.—Section 201(b) of the Federal Power Act (referred to in this Act as “the FPA”) is amended by adding the following new paragraph after paragraph (2):

“(3) This Act does not preempt or otherwise affect any authority under the law of a State or municipality to—

“(A) require unbundled transmission and local distribution services for the delivery of electric energy directly to an ultimate consumer, but if unbundled transmission is in interstate commerce, the rates, terms, and conditions of the transmission are subject to the exclusive jurisdiction of the Commission under this part, or

“(B) impose a delivery charge on an ultimate consumer’s receipt of electric energy.”

(b) OPEN ACCESS TRANSMISSION AUTHORITY; RETAIL WHEELING IN RETAIL COMPETITION STATES.—

(1) APPLICABILITY OF OPEN ACCESS TRANSMISSION RULES.—Section 206 of the FPA is amended by adding the following new subsection after subsection (d):

“(e) OPEN ACCESS TRANSMISSION SERVICES.—(1) Under section 205 and this section, the Commission may require, by rule or order, public utilities and transmitting utilities to provide open access transmission services, subject to section 212(h), and may authorize recovery of stranded costs, as defined by the Commission, arising from any requirement to provide open access transmission services. This section applies to any rule or order issued by the Commission before the date of enactment of the Comprehensive Electricity Competition Act.”

(2) AUTHORITY TO ORDER RETAIL WHEELING.—Section 212(h) of the FPA is amended—

(A) by inserting “(1)” before “No”;

(B) by striking “(1)”, “(2)”, “(A)”, and “(B)” and inserting in their places “(A)”, “(B)”, “(i)”, and “(ii)” respectively;

(C) by striking from redesignated paragraph (1)(B)(ii) “the date of enactment of this subsection” and inserting “October 24, 1992,” in its place; and

(D) by adding at the end a new paragraph as follows:

“(2) Notwithstanding paragraph (1), the Commission may issue an order that requires the transmission of electric energy directly or indirectly to an ultimate consumer if a notice of retail competition under section 609 of the Public Utility Regulatory Policies Act of 1978 has been filed and is in effect with respect to the ultimate consumer or if a distribution utility offers open access to its delivery facilities to the ultimate consumer.”

(3) CONFORMING AMENDMENTS.—

(A) Section 3(23) of the FPA is amended to read as follows:

“(23) ‘transmitting utility’ means any entity that owns, controls, or operates electric power transmission facilities that are used for the sale of electric energy, notwithstanding section 201(f) of this Act.”

(B) Section 3(24) of the FPA is amended to read as follows:

“(24) ‘transmission services’ means the transmission of electric energy sold or to be sold.”

(C) Section 211(a) of the FPA is amended by striking “for resale”.

(D) Section 212(a) of the FPA is amended by striking “wholesale” each time it appears, except the last time.

(c) APPLICABILITY OF COMMISSION JURISDICTION TO TRANSMITTING UTILITIES.—Section 206(e) of the FPA as added by subsection (b)(1) of this section is amended by adding the following new paragraphs after paragraph (1):

“(2)(A) The Commission has jurisdiction over the rates, terms, and conditions for transmission services provided by a transmitting utility that is not a public utility, subject to section 212(h).

“(B) In exercising its authority under this paragraph, the Commission—

“(i) shall take into account the different structural and operating characteristics of transmitting utilities, including the multi-tier structure and the not-for-profit operations of cooperatives;

“(ii) with respect to any transmitting utility that has outstanding loans made or guaranteed by the Rural Utilities Service, shall take into account the policies of the Department of Agriculture in implementing the Rural Electrification Act of 1936 and shall assure, to the extent practicable, that the utility will be able to meet any loan obligations under that Act; and

“(iii) shall not approve rates, terms, or conditions the Commission determines would have the effect of jeopardizing the tax exempt status of nonprofit electric cooperatives under the Internal Revenue Code of 1986.

“(C) Notwithstanding any other law, section 205, this section, and part III apply to a transmitting utility that is not a public utility for purposes of this section.

“(3) The Commission may suspend or modify for specified periods application of its rules on nondiscriminatory open access to one or more of the following entities: the Tennessee Valley Authority, the Bonneville Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, the Western Area Power Administration, a corporation or association with outstanding debt to the Administrator of the Rural Utility Service relating to electric utility facilities, or a full requirements wholesale customer of any of

these entities, if the Commission finds that the entity will not be able to recover stranded costs.

“(4) Any electric utility that owns, directly or indirectly, generation facilities financed in whole or in part with outstanding loans made or guaranteed by the Rural Utilities Service may apply to the Commission to impose a charge for the recovery of stranded costs as defined by the Commission. If the Commission determines that the proposed charge is just, reasonable, and not unduly discriminatory or preferential, the Commission may issue an order providing for the imposition of the charge on transmission service by the applicant or by another transmitting utility or on any electric utility or transaction subject to the Commission’s jurisdiction.”

**SEC. 202. INTERSTATE COMPACTS ON REGIONAL TRANSMISSION PLANNING.**

The FPA is amended by adding after section 214 the following new section:

**“INTERSTATE COMPACTS ON REGIONAL TRANSMISSION PLANNING**

“SEC. 215. (a) The consent of Congress is given for an agreement to establish a regional transmission planning agency, if the Commission determines that the agreement would—

“(1) facilitate coordination among the States within a particular region with regard to the planning of future transmission, generation, and distribution facilities,

“(2) carry out State electric facility siting responsibilities more effectively,

“(3) meet the other requirements of this section and rules prescribed by the Commission under this section, and

“(4) otherwise be consistent with the public interest.

“(b)(1) If the Commission determines that an agreement meets the requirements of subsection (a), the agency established under the agreement has the authority necessary or appropriate to carry out the agreement. This authority includes authority with respect to matters otherwise within the jurisdiction of the Commission, if expressly provided for in the agreement and approved by the Commission.

“(2) The Commission’s determination under this section may be subject to any terms or conditions the Commission determines are necessary to ensure that the agreement is in the public interest.

“(c)(1) The Commission shall prescribe—

“(A) criteria for determining whether a regional transmission planning agreement meets subsection (a), and

“(B) standards for the administration of a regional transmission planning agency established under the agreement.

“(2) The criteria shall provide that, in order to meet subsection (a)—

“(A) a regional transmission planning agency must operate within a region that includes all tribal governments and all or part of each State that is a party to the agreement,

“(B) a regional transmission planning agency must be composed of one or more members from each State and tribal government that is a party to the agreement,

“(C) each participating State and tribal government must vest in the regional transmission planning agency the authority necessary to carry out the agreement and this section, and

“(D) the agency must follow workable and fair procedures in making its decisions, in governing itself, and in regulating parties to the agreement with respect to matters covered by the agreement, including a requirement that all decisions of the agency be made by majority vote (or majority of weighted votes) of the members present and voting.

“(3) The criteria may include any other requirement for meeting subsection (a) that the Commission determines is necessary to

ensure that the regional transmission planning agency’s organization, practices, and procedures are sufficient to carry out this section and the rules issued under it.

“(d) The Commission, after notice and opportunity for comment, may terminate the approval of an agreement under this section at any time if it determines that the regional transmission planning agency fails to comply with this section or Commission prescriptions under subsection (c) or that the agreement is contrary to the public interest.

“(e) Section 313 applies to a rehearing before a regional transmission planning agency and judicial review of any action of a regional transmission planning agency. For this purpose, when section 313 refers to ‘Commission’, substitute ‘regional transmission planning agency’ and when section 313(b) refers to ‘licensee or public utility’, substitute ‘entity’.”

**SEC. 203. BACKUP AUTHORITY TO IMPOSE A CHARGE ON AN ULTIMATE CONSUMER’S RECEIPT OF ELECTRIC ENERGY.**

The FPA is amended by adding the following new section after section 215 as added by section 202 of this Act:

**“BACKUP AUTHORITY FOR CHARGE ON RECEIPT OF ELECTRIC ENERGY**

“SEC. 216. (a) If a State regulatory authority that has provided notice of retail competition under section 609 of the Public Utility Regulatory Policies Act of 1978 for a distribution utility determines that the utility should be authorized or required to impose a charge on an ultimate consumer’s receipt of electric energy but the State regulatory authority lacks authority to authorize or require imposition of such a charge, the State regulatory authority may apply to the Commission for an order providing for the imposition of the charge. If the Commission determines that the imposition of the charge is just, reasonable, and not unduly discriminatory or preferential; is consistent with the State regulatory authority’s policy regarding the imposition of the charge; and is not specifically prohibited by State law, the Commission may issue an order providing for the imposition of the charge.

“(b) If a utility that has outstanding loans made or guaranteed by the Rural Utilities Service and that has filed a notice of retail competition under section 609 of the Public Utility Regulatory Policies Act of 1978 determines that it is appropriate to impose a charge on an ultimate consumer’s receipt of electric energy, but lacks the authority to impose such a charge under State law, the utility may apply to the Commission for an order providing for the imposition of a charge. If the Commission determines that the proposed charge is just, reasonable, and not unduly discriminatory or preferential, the Commission may issue an order providing for the imposition of the charge.”

**SEC. 204. AUTHORITY TO ESTABLISH AND REQUIRE INDEPENDENT SYSTEM OPERATION.**

Section 202 of the FPA is amended by adding the following new subsection after subsection (g):

“(h) Upon its own motion or upon application or complaint and after notice and an opportunity for a hearing, the Commission may order the establishment of an entity for the purpose of independent operation and control of interconnected transmission facilities, may order a transmitting utility to relinquish control over operation of its transmission facilities to an entity established for the purpose of independent operation and control of interconnected transmission facilities, or may do both, if the Commission finds that—

“(1) this action is appropriate to promote competitive electricity markets and efficient, economical, and reliable operation of the interstate transmission grid;

“(2) the entity established for the purpose of independent operation and control of interconnected transmission facilities will operate the transmission facilities in a manner that assures that ownership of transmission facilities provides no advantage in competitive electricity markets; and

“(3) any transmitting utility ordered to transfer control of its transmission facilities will receive just and reasonable compensation for the use of its facilities.”

**TITLE III—PUBLIC BENEFITS**

**SEC. 301. PUBLIC BENEFITS FUND.**

PURPA is amended by adding after section 609, as added by section 101 of this Act, the following new section:

**“SEC. 610. PUBLIC BENEFITS FUND.**

“(a) DEFINITIONS.—For purposes of this section—

“(1) the term ‘Board’ means the Federal-State Joint Board established under subsection (b)(1);

“(2) the term ‘eligible public purpose program’ means a program that supports one or more of the following—

“(A) availability of affordable electricity service to low-income customers,

“(B) implementation of energy conservation and energy efficiency measures and energy management practices,

“(C) consumer education,

“(D) the development and demonstration of an electricity generation technology that the Secretary determines is emerging from research and development, provides environmental benefits, and—

“(i) has significant national commercial potential, or

“(ii) provides energy security or generation resource diversity benefits, or

“(E) rural assistance subsequent to a termination made under subsection (d)(4);

“(3) the term ‘fiscal agent’ means the entity designated under subsection (b)(2)(B);

“(4) the term ‘Fund’ means the Public Benefits Fund established under subsection (b)(2)(A); and

“(5) the term ‘State’ means each of the contiguous States and the District of Columbia.

“(b) FEDERAL-STATE JOINT BOARD.—(1) A Federal-State Joint Board is established whose membership is composed of two officers or employees of the United States Government appointed by the Secretary and five State commissioners appointed by the national organization of State commissions. The Secretary shall designate the Chair of the Board.

“(2) The Board shall—

“(A) establish a Public Benefits Fund upon petition of States and tribal governments wishing to participate in the program under this section,

“(B) appoint a fiscal agent, from persons nominated by the States and tribal governments petitioning to establish the Fund, and

“(C) administer the Fund as set forth in this section.

“(c) FISCAL AGENT.—The fiscal agent appointed by the Board shall collect and disburse the amounts in the Fund as set forth in this section.

“(d) SECRETARY.—The Secretary shall prescribe rules for—

“(1) the determination of charges under subsection (e);

“(2) the collection of amounts for the Fund, including provisions for overcollection or undercollection;

“(3) distribution of amounts from the Fund; and

“(4) the criteria under which the Board determines whether a State or tribal government’s program is an eligible public purpose

program, including a rural assistance program. A rural assistance program shall be an eligible public purpose program to the extent that the Secretary, in consultation with the Secretary of Agriculture, determines by rule that significant adverse economic effects on rural customers have occurred or will occur as a result of electricity restructuring that meets the retail competition requirements of this Act. After such a determination is made, the Secretary, in consultation with the Secretary of Agriculture, shall specify by rule the mechanism for distribution of funds to rural assistance programs, amounts to be provided, and variances to the overall requirements to the Public Benefits Fund under this section, if any. For the purposes of funding of rural assistance programs, the Secretary shall increase the charge for the Public Benefit Fund as necessary, up to a maximum of .17 mills per kilowatt hour. Funding for rural assistance programs under this section shall be provided exclusively from this increase in the charge.

“(e) PUBLIC BENEFITS CHARGE.—(1) As a condition of existing or future interconnection with facilities of any transmitting utility, each owner of an electric generating facility whose capacity exceeds one megawatt shall pay the transmitting utility a public benefits charge determined under paragraph (2), even if the generation facility and the transmitting facility are under common ownership or are otherwise affiliated. Each importer of electric energy from Canada or Mexico, as a condition of existing or future interconnection with facilities of any transmitting utility in the United States, shall pay this same charge for imported electric energy. The transmitting utility shall pay the amounts collected to the fiscal agent at the close of each month, and the fiscal agent shall deposit the amounts into the Fund.

“(2)(A) The Board shall notify the Commission of the sum of the requests of all States and tribal governments under subsection (f) within 30 days after receiving the requests.

“(B) The Commission shall calculate the rate for the public benefits charge for each calendar year at an amount, not in excess of 1 mill per kilowatt-hour, equal to the sum of the requests of all States and tribal governments under subsection (f) for programs described in subsection (a)(2)(A) through (a)(2)(D) divided by the estimated kilowatt hours of electric energy to be generated by generators subject to the charge. Every five years the Secretary shall review the charge and shall direct the Commission to revise the charge as appropriate to maintain a total Fund level relatively close to the target level of approximately \$3 billion per year nationwide, adjusted for inflation. If there are significant receipts from the sale of Renewable Energy Credits under section 611, the Secretary shall review the rate for this charge on a more frequent basis and may direct the Commission to reduce the charge by some portion of these receipts as long as sufficient funds remain to ensure that the Fund level is appropriate to achieve the environmental goals of this section and section 611 of this Act.

“(C) If a finding is made under subsection (d)(4) in relation to rural customers, the public benefit charge shall be increased as indicated under subsection (d)(4).

“(f) STATE AND TRIBAL GOVERNMENT PARTICIPATION.—(1) Not later than 90 days before the beginning of each calendar year, each State and tribal government seeking to participate in the Fund shall submit to the Board a request for payments from the Fund for the calendar year in an amount not in excess of 50 percent of the State or tribal government's estimated expenditures for eligible public purpose programs for the year, except as provided under rules issued under

subsection (d)(4) for rural assistance programs.

“(2) To the extent a State or tribal government generates all or part of its funds for eligible public purpose programs through a wires charge on an ultimate consumer's receipt of electric energy, the State or tribal government shall impose the charge on a non-discriminatory basis on all consumers within the State or tribal government jurisdiction.

“(3) Notwithstanding subsection (a)(5)—

“(A) Alaska may participate in the Fund as a State if it certifies to the Board that all generators within Alaska with a nameplate capacity exceeding one megawatt shall pay into the Fund at the rate calculated by the Board during the year in which Alaska seeks matching funds, and

“(B) Hawaii may participate in the Fund as a State if it certifies to the Board that all generators within Hawaii with a nameplate capacity exceeding one megawatt shall pay into the Fund at the rate calculated by the Board during the year in which Hawaii seeks matching funds.

“(g) DISBURSAL FROM THE FUND.—The Board shall review State and tribal government submissions and determine whether programs designated by the State or tribal government are eligible public purpose programs, using the criteria prescribed under subsection (d), and whether there is reasonable assurance that spending qualifying as State or tribal government matching funds will occur.

“(2) The fiscal agent shall disburse amounts in the Fund to participating States and tribal governments to carry out eligible public purpose programs in accordance with this subsection and rules prescribed under subsection (d).

“(3) To the extent the aggregate amount of funds requested by the States and tribal governments exceeds the maximum aggregate revenues eligible to be collected under subsection (e) and deposited as payment for Renewable Energy Credits under section 611, the fiscal agent shall reduce each participating State and tribal government's request proportionately.

“(4)(A) The fiscal agent shall disburse amounts for a calendar year from the Fund to a State or tribal government in twelve equal monthly payments beginning two months after the beginning of the calendar year. Amounts disbursed may not exceed the lesser of the State or tribal government's request for the fiscal year, after any reduction required under paragraph (3), or 50 percent of the State or tribal government's documented expenditures for eligible public purpose programs for a calendar year, except as provided under rules issued under subsection (d)(4) for rural assistance programs.

“(B) The fiscal agent shall make distributions to the State or tribal government or to an entity designated by the State or tribal government to receive payments. The State or tribal government may designate a non-regulated utility as an entity to receive payments under this section.

“(C) A State or tribal government may use amounts received only for the eligible public purpose programs the State or tribal government designated in its submission to the Board and the Board determined eligible.

“(h) REPORT.—One year before the date of expiration of this section, the Secretary shall report to Congress, after consultation with the Board, whether a public benefits fund should continue to exist.

“(i) SUNSET.—This section expires at midnight on December 31 of the fifteenth year after the year the Comprehensive Electricity Competition Act is enacted, except with regard to charges and funding for rural assistance programs.”.

#### SEC. 302. FEDERAL RENEWABLE PORTFOLIO STANDARD.

(a) STANDARD. PURPA is amended by adding after section 610, as added by section 301 of this Act, the following new section:

#### “SEC. 611. FEDERAL RENEWABLE PORTFOLIO STANDARD.

“(a) MINIMUM RENEWABLE GENERATION REQUIREMENT.—For each calendar year beginning with 2000, a retail electric supplier shall submit to the Secretary Renewable Energy Credits in an amount equal to the required annual percentage, specified in subsection (b), of the total electric energy sold by the retail electric supplier to electric consumers in the calendar year. The retail electric supplier shall make this submission before April 1 of the following calendar year.

“(2) For purposes of this section ‘renewable energy’ means energy produced by solar, wind, geothermal, or biomass.

“(3) This section does not preclude a State from requiring additional renewable energy generation in that State.

“(b) REQUIRED ANNUAL PERCENTAGE.—(1) The Secretary shall determine the required annual percentage that is to be applied to all retail electric suppliers for calendar years 2000-2004. This required annual percentage shall be equal to the percent of the total electric energy sold, during the most recent calendar year for which information is available before the calendar year of the enactment of this section, by retail electric suppliers to electric customers in the United States that is renewable energy.

“(2) The Secretary shall determine the required annual percentage for all retail electric suppliers for calendar years 2005-2009. This percentage shall be above the percentage in paragraph (1) and below the percentage in paragraph (3) and shall be selected to promote a smooth transition to the level in paragraph (3).

“(3) for calendar years 2010-2015, 5.5 percent.

“(c) SUBMISSION OF CREDITS.—A retail electric supplier may satisfy the requirements of subsection (a) through the submission of—

“(1) Renewable Energy Credits issued under subsection (d) for renewable energy generated by the retail electric supplier in the calendar year for which Credits are being submitted or any previous calendar year,

“(2) Renewable Energy Credits issued under subsection (d) to any renewable energy generator for renewable energy generated in the calendar year for which Credits are being submitted or a previous calendar year and acquired by the retail electric supplier, or

“(3) any combination of Credits under paragraphs (1) and (2).

“(d) ISSUANCE OF CREDITS.—The Secretary shall establish, not later than one year after the date of enactment of this section, a program to issue, monitor the sale or exchange of, and track Renewable Energy Credits.

“(2) Under the program, an entity that generates electric energy through the use of renewable energy may apply to the Secretary for the issuance of Renewable Energy Credits. The application shall indicate—

“(A) the type of energy used to produce the electricity,

“(B) the State in which the electric energy was produced, and

“(C) any other information the Secretary determines appropriate.

“(3) The Secretary shall issue to an entity one Renewable Energy Credit for each kilowatt-hour of electric energy the entity generates through the use of renewable energy in any State in 2000 and any succeeding year. To be eligible for a Renewable Energy Credit, the unit of electricity generated through the use of renewable energy may be sold or may be used by the generator. If both renewable energy and nonrenewable energy are

used to generate the electric energy, the Secretary shall issue credits based on the proportion of renewable energy used. The Secretary shall identify Renewable Energy Credits by type of generation and by the State in which the generating facility is located.

“(4) In order to receive a Renewable Energy Credit, the recipient of a Renewable Energy Credit shall pay a fee, calculated by the Secretary, in an amount that is equal to the administrative costs of issuing, recording, monitoring the sale or exchange of, and tracking the Credit or does not exceed five percent of the dollar value of the Credit, whichever is lower. The Secretary shall retain the fee and use it to pay these administrative costs.

“(5) When a generator sells electric energy generated through the use of renewable energy to a retail electric supplier under a contract subject to section 210 of this Act, the retail electric supplier is treated as the generator of the electric energy for the purposes of this section for the duration of the contract.

“(6) The Secretary shall disqualify an otherwise eligible renewable energy generator from receiving a Renewable Energy Credit if the generator has elected to participate in net metering under section 612.

“(7) If a generator using renewable energy receives matching funds under section 610, the Secretary shall reduce the number of Renewable Energy Credits the generator receives under paragraph (3) so that the aggregate value of those Credits plus the matching funds received under section 610 equals the aggregate value of the Credits the generator would have received absent this paragraph. For purposes of this paragraph, the Secretary shall value a Credit at a price that is representative of the price of a Credit in private transactions. In no event shall the Secretary use a price to establish values for purposes of this paragraph that exceeds the cost cap established under subsection (f).

“(e) SALE OR EXCHANGE.—A Renewable Energy Credit may be sold or exchanged by the entity to whom issued or by any other entity who acquires the Credit. A Renewable Energy Credit for any year that is not used to satisfy the minimum renewable generation requirement of subsection (a) for that year may be carried forward for use in another year.

“(f) RENEWABLE ENERGY CREDIT COST CAP.—Beginning January 1, 2000, the Secretary shall offer Renewable Energy Credits for sale. The Secretary shall charge 1.5 cents for each Renewable Energy Credit sold during calendar year 2000, and on January 1 of each following year, the Secretary shall adjust for inflation, based on the Consumer Price Index, the price charged per Credit for that calendar year. The Secretary shall deposit in the Public Benefits Fund established under section 610 the amount received from a sale under this subsection. That amount shall be used for the same purpose as other amounts in the Public Benefits Fund.

“(g) ENFORCEMENT.—The Secretary may bring an action in the appropriate United States district court to impose a civil penalty on a retail electric supplier that does not comply with subsection (a). A retail electric supplier who does not submit the required number of Renewable Energy Credits under subsection (a) is subject to a civil penalty of not more than three times the value of the Renewable Energy Credits not submitted. For purposes of this subsection, the value of a Renewable Energy Credit is the price of a Credit determined under subsection (f) for the year the Credits were not submitted.

“(h) INFORMATION COLLECTION.—The Secretary may collect the information necessary to verify and audit—

“(1) the annual electric energy generation and renewable energy generation of any entity applying for Renewable Energy Credits under this section,

“(2) the validity of Renewable Energy Credits submitted by a retail electric supplier to the Secretary, and

“(3) the quantity of electricity sales of all retail electric suppliers.

“(i) SUNSET.—This section expires December 31, 2015.”

“(b) DEFINITION.—Section 3 of PURPA is amended by adding after paragraph (22) as added by section 101 of this Act the following new paragraph:

“(23) The term ‘retail electric supplier’ means a person, State agency, or Federal agency that sells electric energy to an electric consumer.”

#### SEC. 303. NET METERING.

PURPA is amended by adding the following new section after section 611 as added by section 302 of this Act:

#### SEC. 612. NET METERING FOR RENEWABLE ENERGY.

“(a) DEFINITIONS.—For purposes of this section—

“(1) The term ‘eligible on-site generating facility’ means a facility on the site of an electric consumer with a peak generating capacity of 20 kilowatts or less that is fueled solely by a renewable energy resource.

“(2) The term ‘renewable energy resource’ means solar energy, wind, geothermal, or biomass.

“(3) The term ‘net metering service’ means service to an electric consumer under which electricity generated by that consumer from an eligible on-site generating facility and delivered to the distribution system through the same meter through which purchased electricity is received may be used to offset electricity provided by the retail electric supplier to the electric consumer during the applicable billing period so that an electric consumer is billed only for the net electricity consumed during the billing period, but in no event shall the net be less than zero during the applicable billing period.

“(b) REQUIREMENT TO PROVIDE NET METERING SERVICE.—Each retail electric supplier shall make available upon request net metering service to any retail electric consumer whom the supplier currently serves or solicits for service.

“(c) REQUIREMENT TO PROVIDE INTERCONNECTION.—A distribution utility, as defined in section 609, shall permit the interconnection to its distribution system of an on-site generating facility if the facility meets the safety and power quality standards established by the Commission.

“(d) RULES.—The Commission shall prescribe safety and power quality standards and rules necessary to carry out this section. These standards and rules apply to any interconnections of an on-site generating facility with a distribution system, regardless of the size of the facility or the type of fuel used by the facility.

“(e) STATE AUTHORITY.—This section does not preclude a State from imposing additional requirements consistent with the requirements in this section. A State may impose a cap limiting the amount of net metering available in the State.”

#### SEC. 304. REFORM OF SECTION 210 OF PURPA.

Section 210 of PURPA is amended by adding the following new subsection after subsection (l):

“(m) REPEAL OF MANDATORY PURCHASE REQUIREMENT.—After the date of enactment of the Comprehensive Electricity Competition Act, an electric utility shall not be required to enter into a new contract or obligation to purchase electric energy under this section.”

## TITLE IV—REGULATION OF MERGERS AND CORPORATE STRUCTURE

### SEC. 401. REFORM OF HOLDING COMPANY REGULATION UNDER PUHCA.

Effective 18 months after the enactment of this Act, the Public Utility Holding Company Act of 1935 is repealed and the following is enacted in its place.

#### “SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Public Utility Holding Company Act of 1998’.

#### “SEC. 2. DEFINITIONS.

“For purposes of this Act—

“(1) the term ‘affiliate’ of a company means any company 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company;

“(2) the term ‘associate company’ of a company means any company in the same holding company system with such company;

“(3) the term ‘Commission’ means the Federal Energy Regulatory Commission;

“(4) the term ‘company’ means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing;

“(5) the term ‘electric utility company’ means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale;

“(6) the terms ‘exempt wholesale generator’ and ‘foreign utility company’ have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935, as those sections existed on the day before the effective date of this Act;

“(7) the term ‘gas utility company’ means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers, or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power;

“(8) the term ‘holding company’ means—

“(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

“(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this Act upon holding companies;

“(9) the term ‘holding company system’ means a holding company, together with its subsidiary companies;

“(10) the term ‘jurisdictional rates’ means rates established by the Commission for the transmission of electric energy, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use;

“(11) the term ‘natural gas company’ means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale;

“(12) the term ‘person’ means an individual or company;

“(13) the term ‘public utility’ means any person who owns or operates facilities used for transmission of electric energy or sales of electric energy at wholesale in interstate commerce;

“(14) the term ‘public utility company’ means an electric utility company or a gas utility company;

“(15) the term ‘State commission’ means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility company;

“(16) the term ‘subsidiary company’ of a holding company means—

“(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

“(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties and liabilities imposed by this Act upon subsidiary companies of holding companies; and

“(17) the term ‘voting security’ means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

### “SEC. 3. FEDERAL ACCESS TO BOOKS AND RECORDS.

“(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, records, memoranda, and other records as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates for the transmission of electric energy, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

“(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission deems relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

“(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission deems relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

“(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come

to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

### “SEC. 4. STATE ACCESS TO BOOKS AND RECORDS.

“(a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public utility company in a holding company system, the holding company or any associate company or affiliate thereof, other than such public utility company, wherever located, shall produce for inspection such books, accounts, memoranda, and other records that—

“(1) have been identified in reasonable detail in a proceeding before the State commission;

“(2) the State commission deems are relevant to costs incurred by such public utility company; and

“(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

“(b) LIMITATION.—Subsection (a) does not apply to any person that is a holding company solely by reason of ownership of one or more qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

“(c) CONFIDENTIALITY OF INFORMATION.—The production of books, accounts, memoranda, and other records under subsection (a) shall be subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information.

“(d) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, records, or any other information, or in any way limit the rights of any State to obtain books, records, or any other information under any other Federal law, contract, or otherwise.

“(e) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

### “SEC. 5. EXEMPTION AUTHORITY.

“(a) RULEMAKING.—Not later than 90 days after the effective date of this Act, the Commission shall promulgate a final rule to exempt from the requirements of section 3 any person that is a holding company, solely with respect to one or more—

“(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978;

“(2) exempt wholesale generators; or

“(3) foreign utility companies.

“(b) OTHER AUTHORITY.—If, upon application or upon its own motion, the Commission finds that the books, records, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company, or if the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company, the Commission shall exempt such person or transaction from the requirements of section 3.

### “SEC. 6. AFFILIATE TRANSACTIONS.

“Nothing in this Act shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public utility company from an associate company.

### “SEC. 7. APPLICABILITY.

“No provision of this Act shall apply to, or be deemed to include—

“(1) the United States;

“(2) a State or any political subdivision of a State;

“(3) any foreign governmental authority not operating in the United States;

“(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

“(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3) acting as such in the course of official duty.

### SEC 8. EFFECT ON OTHER REGULATIONS.

“Nothing in this Act precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

### “SEC. 9. ENFORCEMENT.

“The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825d–825p) to enforce the provisions of this Act.

### “SEC. 10. SAVINGS PROVISIONS.

“(a) IN GENERAL.—Nothing in this Act prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the effective date of this Act.

“(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this Act limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 et seq.) (including section 8 of that Act).

### “SEC. 11. IMPLEMENTATION.

“Not later than 18 months after the date of enactment of the Comprehensive Electricity Competition Act, the Commission shall—

“(1) promulgate such regulations as may be necessary or appropriate to implement this Act (other than section 4); and

“(2) submit to the Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this Act and the amendments made by this Act.

### “SEC. 12. TRANSFER OF RESOURCES.

“All books and records that relate primarily to the functions transferred to the Commission under this Act shall be transferred from the Securities and Exchange Commission of the Commission.

### “SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated such funds as may be necessary to carry out this Act.

### “SEC. 14. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.

“Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.”

### SEC. 402. ELECTRIC COMPANY MERGERS.

Section 203(a) of the FPA is amended by—

(1) striking “public utility” each time it appears and inserting in its place “person or electric utility company”;

(2) inserting after the first sentence the following: “Except as the Commission otherwise provides, a holding company in a holding company system that includes an electric utility company shall not, directly or indirectly, purchase, acquire, or take any security of an electric utility company or of a holding company in a holding company system that includes an electric utility company, without first securing an order of the Commission authorizing it to do so.”;

(3) striking “hearing” in the last sentence and inserting “oral or written presentation of views”;

(4) adding at the end the following: “For purposes of this subsection, the terms ‘electric utility company’, ‘holding company’, and ‘holding company system’ have the meaning given them in section 2 of the Public Utility Holding Company Act of 1998. Notwithstanding section 201(b)(1), generation facilities are subject to the jurisdiction of the

Commission for purposes of this section, except as the Commission otherwise may provide.”.

**SEC. 403. REMEDIAL MEASURES FOR MARKET POWER.**

The FPA is amended by adding the following new section after section 216 as added by section 203 of this Act:

“REMEDIAL MEASURES FOR MARKET POWER

“SEC. 217. (a) DEFINITIONS.—As used in this section—

“(1) ‘market power’ means the ability of an electric utility profitably to maintain prices above competitive levels for a significant period of time, and

“(2) ‘notice of retail competition’ has the meaning provided under section 3(22) of the Public Utility Regulatory Policies Act of 1978.

“(b) COMMISSION JURISDICTIONAL SALES.—

(1) If the Commission determines that there are markets in which a public utility that owns or controls generation facilities has market power in sales of electric energy for resale in interstate commerce, the Commission shall order that utility to submit a plan for taking necessary actions to remedy its market power, which may include, but is not limited to, conditions respecting operation or dispatch of generation, independent operation of transmission facilities, or divestiture of ownership of one or more generation facilities.

“(2) In consultation with the Attorney General and the Federal Trade Commission, the Commission shall review the plan to determine if its implementation would adequately mitigate the adverse competitive effects of market power. The Commission may approve the plan with or without modification. The plan takes effect upon approval by the Commission. Notwithstanding any State law, regulation, or order to the contrary and notwithstanding any other provision of this Act or any other law, the Commission has jurisdiction to order divestiture or other transfer of control of generation assets pursuant to the plan.

“(c) STATE JURISDICTIONAL SALES.—(1) If a State commission that has filed a notice of retail competition has reason to believe that an electric utility doing business in the State has market power, the State commission may apply for an order under this section.

“(2) If, after receipt of such an application and after notice and opportunity for a hearing, the Commission determines that the electric utility has market power in the sales of electric energy sold at retail in the State, this market power would adversely affect competition in the State, and the State commission lacks authority to effectively remedy such market power, the Commission may order the electric utility to submit a plan for taking necessary actions to remedy the electric utility’s market power. These actions may include conditions respecting operation or dispatch of generation, competitive procurement of all generation capacity or energy, independent operation of transmission facilities, or divestiture of ownership of one or more generation facilities of the electric utility.

“(3) After consultation with the Attorney General and the Federal Trade Commission, the Commission may approve the plan with or without modification. The plan shall take effect upon approval by the Commission.

“(4) Notwithstanding any State law, regulation, or order to the contrary and notwithstanding any other provision of this Act or any other law, the Commission has jurisdiction to order divestiture or other transfer of control of generation assets pursuant to the plan.”.

**TITLE V—ELECTRIC RELIABILITY**

**SEC. 501. ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT.**

(a) The FPA is amended by adding the following new section after section 217 as added by section 403 of this Act:

“ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT

“SEC. 218. (a) DEFINITION.—As used in this section:

“(1) The term ‘bulk-power system’ means all facilities and control systems necessary for operating the interconnected transmission grids, including high-voltage transmission lines; substations; control centers; communications, data, and operations planning facilities; and generating units necessary to maintain transmission system reliability.

“(2) The term ‘electric reliability organization’ or ‘organization’ means the organization registered by the Commission under subsection (d)(4).

“(3) The term ‘system operator’ means any entity that operates or is responsible for the operation of the bulk-power system, including control area operators, independent system operators, transmission companies, transmission system operators, and regional security coordinators.

“(4) The term ‘user of the bulk-power system’ means any entity that sells, purchases, or transmits electric power over the bulk-power system; owns operates or maintains facilities of the bulk-power system; or is a system operator.

“(b) COMMISSION AUTHORITY.—(1) The Commission has jurisdiction over the electric reliability organization, all systems operators, and all users of the bulk-power system for purposes of approving and enforcing compliance with standards in the United States.

“(2) The Commission may register an electric reliability organization and approve and oversee the activities in the United States of that electric reliability organization.

“(c) COMPLIANCE WITH EXISTING RELIABILITY STANDARDS.—A user of the bulk-power system shall comply with standards established by the North American Electric Reliability Council and the regional reliability councils that exist on the date of enactment of the Comprehensive Electricity Competition Act, consistent with any agreement entered into under subsection (f). Each standard remains in effect unless modified under this subsection or superseded by standards approved under subsection (e). The Commission, upon its own motion or upon request and consistent with any agreements entered into pursuant to subsection (f), may modify or suspend the application of a standard and may enforce a standard exercising the same authority that the electric reliability organization may exercise under subsection (k). The North American Electric Reliability Council and the regional reliability councils may monitor compliance with these standards.

“(d) ORGANIZATION REGISTRATION AND ESTABLISHMENT OF STANDARDS.—(1) Not later than 90 days after the date of enactment of this section, the Commission shall issue proposed rules specifying the procedures and requirements for an organization to apply for registration and file existing reliability standards. The Commission shall provide adequate opportunity for comment on the proposed rules. The Commission shall issue final rules under this subsection within 180 days after the date of enactment of this section.

“(2) Following the issuance of final Commission rules under paragraph (1), an electric reliability organization may apply for registration with the Commission. The organization shall include in its application its

governance, procedures, and funding mechanism, and shall file the standards in effect under subsection (c).

“(3) The Commission shall provide public notice of the application and the standards filed under this subsection and afford interested parties an opportunity to comment on the application and filing.

“(4) The Commission shall register the organization if the Commission determines that the organization—

“(A) has the ability to provide for an adequate level of reliability of the bulk-power system;

“(B) permits voluntary membership to any users of the bulk-power system or interested customer class or public interest group;

“(C) assures fair representation of its members in the selection of its directors and fair management of its affairs, taking into account the need for efficiency and effectiveness in decisionmaking and operations and the requirements for technical competency in the development of standards and the exercise of oversight of the reliability system, and assures that no single class of market participants has the ability to control the organization’s discharge of its responsibilities;

“(D) assesses reasonable dues, fees, or other charges necessary to support the organization and the purposes of this section and has a funding mechanism that is fair and not unduly discriminatory;

“(E) establishes procedures for standards development that provide reasonable notice and opportunity for public comment, taking into account the need for efficiency and effectiveness in decisionmaking and operations and the requirements for technical competency in the development of standards;

“(F) establishes fair and impartial procedures for enforcement of standards, including penalties; limitation of activity, function, or operations; or other appropriate sanctions;

“(G) establishes procedures for notice and opportunity for public observation of all meetings, except that the procedures for public observation may include alternative procedures for emergencies or for the discussion of information the directors determine should take place in closed session, including the discussion of information with respect to proposed enforcement or disciplinary action; and

“(H) addresses other matters that the Commission considers necessary or appropriate.

“(5) The Commission shall approve only one electric reliability organization. If the Commission receives timely applications from two or more applicants that satisfy the requirements of this subsection, the Commission shall approve only the application it concludes will best ensure a reliable bulk-power system.

“(e) REVIEW AND CHANGES OF MODIFICATIONS TO STANDARDS.—(1) The Commission shall review the standards submitted under subsection (d)(2), concurrent with its review of the application under subsection (d), and each standard remains effective if the Commission determines that it is just, reasonable, and not unduly discriminatory or preferential; is in the public interest; and provides for an adequate level of reliability of the bulk-power system.

“(2) With respect to a standard that the Commission determines should not remain effective under paragraph (1), the Commission shall refer that standard to the electric reliability organization for development of a new or modified standard under the organization’s procedures as approved by the Commission.

“(3)(A) The electric reliability organization shall file with the Commission any new

standard developed under paragraph (2) or a new standard or modification of a standard effective under paragraph (1) for review and approval. A new standard or modification does not take effect unless the Commission determines, after notice and opportunity for comment, that the standard or modification is just, reasonable, and not unduly discriminatory or preferential; is in the public interest; and provides for an adequate level of reliability of the bulk-power system, taking into account the purposes of this section to assure reliability of the bulk-power system and giving due weight to the technical competency of the registered electric reliability organization, and is consistent with any agreement entered into pursuant to subsection (f).

“(B) Any standard or modification that does not become effective under this paragraph shall be referred to the electric reliability organization for development of a new or modified standard under the organization’s procedures as approved by the Commission.

“(C) The Commission, on its own motion, may require that the electric reliability organization develop a new or revised standard if the Commission considers a new or revised standard necessary or appropriate to further the purposes of this section. The organization shall file the new or revised standard in accordance with this paragraph.

“(D) On its own motion or at the request of the electric reliability organization, the Commission may develop and, consistent with any agreement under subsection (f), require immediate implementation by the organization of a new or modified standard if it determines that immediate implementation is required to avoid a significant disruption of reliability that would affect public safety or welfare. If immediate implementation is required, the Commission shall not delay implementation for notice and comment but shall publish the standard for notice and comment in a timely manner.

“(4) A user of the bulk power system shall comply with any new or modified standard that takes effect under paragraph (1) or (3).

“(f) COORDINATION WITH CANADA AND MEXICO.—The United States may enter into international agreements with the governments of Canada and Mexico to provide for effective compliance with standards and to provide for the effectiveness of the electric reliability organization in carrying out its mission and responsibilities.

“(g) CHANGES IN ORGANIZATION PROCEDURES, GOVERNANCE, OR FUNDING.—(1) The electric reliability organization shall file with the Commission any proposed change in its procedures, governance, or funding and accompany the filing with an explanation of the basis and purpose for the change.

“(2)(A) A proposed procedural change may take effect 90 days after filing with the Commission if the change—

“(i) constitutes a statement of policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing procedure; or

“(ii) is concerned solely with administration of the organization.

A proposed procedural change that does not qualify under clause (i) or (ii) takes effect only upon a finding by the Commission that the change is just, reasonable, not preferential, and in the public interest.

“(B) The Commission, by order, either upon complaint or upon its own motion, may suspend an existing procedure or procedural change if it determines the procedure or the proposed change is unjust, unreasonable, unduly discriminatory or preferential, or is otherwise not in the public interest.

“(3) A change in the organization’s governance or funding does not take effect unless

the Commission finds that the change is consistent with any agreement under subsection (f) and is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

“(4) The Commission may require that the electric reliability organization amend its procedures, governance, or funding if the Commission considers the amendment necessary or appropriate to ensure the fair administration of the organization, conform the organization to the requirements of this section, or further the purposes of this section, consistent with any agreement entered into under subsection (f). The organization shall file the amendment in accordance with paragraph (1).

“(h) ORGANIZATION DELEGATIONS OF AUTHORITY.—(1) The organization may enter into an agreement under which it may delegate some or all of its authority to any person.

“(2) The organization shall file with the Commission any agreement entered into under this subsection and any information the Commission requires with respect to the person to whom authority is to be delegated. The Commission may approve the agreement, following public notice and an opportunity for comment, if it finds that the agreement is consistent with the requirements of this section. The agreement shall not take effect without Commission approval.

“(3)(A) The Commission may direct a modification to or suspend an agreement entered into under this subsection if it determines that—

“(i) the person to whom authority is delegated no longer has the capacity to carry out effectively or efficiently the person’s implementation responsibilities under that agreement; or

“(ii) the rules, practices, or procedures of the person to whom authority is delegated no longer provide for fair and impartial discharge of the person’s implementation responsibilities under the agreement.

“(B) If the agreement is suspended, the electric reliability organization shall assume the previously delegated responsibilities.

“(i) ORGANIZATION MEMBERSHIP.—Every system operator shall be a member of the electric reliability organization. The organization rules shall provide for voluntary membership to other users of the bulk-power system and any interested customer class or public interest group. A person required to become a member of the organization who fails to do so is subject to sections 314 and 316A of this Act upon notification from the organization to the Commission.

“(j) FAILURE TO APPLY FOR REGISTRATION.—(1) If an organization fails to apply for registration with the Commission within six months after the issuance date of final Commission rules for such a filing, or the Commission does not register an agreement within twelve months after the issuance date of final Commission rules for such a filing, the Commission shall convene a process to register an electric reliability organization.

“(2) Until an electric reliability organization is registered, the Commission has the same authority to enforce existing or modified standards that the electric reliability organization has under subsection (k).

“(k) DISCIPLINARY ACTION AND PENALTIES.—(1) Consistent with the range of actions approved by the Commission under subsection (d)(4)(F), the electric reliability organization may impose a penalty, take injunctive action, or impose other disciplinary action the organization finds appropriate against a user of the bulk-power system located in the United States if the organization finds, after notice and opportunity for a hearing, that the user has violated an organization procedure or standard.

“(2) An action taken under subparagraph (1) takes effect 30 days after the finding unless the Commission, on its own motion or upon application by the user of the bulk-power system who was the subject of the action, suspends the action. The action shall remain in effect or remain suspended until the Commission, after notice and opportunity for comment, sets aside, modifies, or reinstates the action.

“(3) The Commission, on its own motion, may impose a penalty, issue an injunction, or impose other disciplinary action the Commission finds appropriate against a user of the bulk power system located in the United States if the Commission finds, after notice and opportunity for a hearing, that the user has violated a procedure or standard of the electric reliability organization.

“(l) ADEQUACY, RELIABILITY, AND REPORTS.—The electric reliability organization shall conduct periodic assessments of the reliability and adequacy of the interconnected bulk-power system in North America and shall report annually to the Commission its findings and recommendations for monitoring or improving system reliability or adequacy.”

(b) Sections 316 and 316A of the FPA are amended by striking “or 214” each place it appears and inserting “214, or 218”.

#### SEC. 502. STATUTORY PRESUMPTION.

(a) FEDERAL POWER ACT.—Any reliability standard developed by the reliability organization, and any actions taken in good faith to comply with a reliability standard under section 218 of the FPA, are rebuttably presumed just and reasonable and not unduly discriminatory or preferential for purposes of that Act.

(b) ANTITRUST LAWS.—Notwithstanding section 703 of this Act, the following activities are rebuttably presumed to be in compliance with the antitrust laws of the United States:

(1) activities undertaken by the electric reliability organization under section 218 of the FPA or delegated person operating under an agreement in effect under section 218(h) of the FPA, and

(2) activities of a member of the electric reliability organization in pursuit of organization objectives under section 218 of the FPA undertaken in good faith under the rules of the organization.

#### TITLE VI—ENVIRONMENTAL PROTECTION

##### SEC. 601. NITROGEN OXIDES CAP AND TRADE PROGRAM.

(a) PURPOSE.—The purpose of this section is to facilitate the implementation of a regional strategy for reducing ambient concentrations of ozone through regional reductions in emissions of NO<sub>x</sub>.

(b) DEFINITIONS.—For purposes of this section—

(1) the term “Administrator” means the Administrator of the Environmental Protection Agency,

(2) the term “NO<sub>x</sub>” means oxides of nitrogen,

(3) the term “NO<sub>x</sub> allowance” means an authorization to emit a specified amount of NO<sub>x</sub> into the atmosphere, and

(4) the term “NO<sub>x</sub> allowance cap and trade program” means a program under which, in accordance with regulations issued by the Administrator, the Administrator establishes the maximum number of NO<sub>x</sub> allowances that may be allocated for specified control periods, allocates or authorizes a State to allocate NO<sub>x</sub> allowances, allows the transfer of NO<sub>x</sub> allowances for use in States subject to such a program, requires monitoring and reporting of NO<sub>x</sub> emissions that meet the requirements of section 412 of the Clean Air Act, and prohibits, and requires penalties and offsets for, any emissions of

NO<sub>x</sub> in excess of the number of NO<sub>x</sub> allowances held.

(c) PROGRAM IMPLEMENTATION.—(1) If the Administrator determines under section 110(a)(2)(D) of the Clean Air Act that any source or other type of emissions activity in a State emits NO<sub>x</sub> in amounts that will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any national ambient air quality standard for ozone, the Administrator shall establish by regulation, within 12 months of the determination for primary standards and as expeditiously as practicable for secondary standards, and shall administer a NO<sub>x</sub> allowance cap and trade program in all States in which such a source or other type of emissions activity is located.

(2) Any NO<sub>x</sub> allowance cap and trade program shall contribute to providing for emissions reductions that mitigate adequately the contribution or interference and shall be taken into account by the Administrator in determining compliance with section 110(a)(2)(D) of the Clean Air Act.

(3) For purposes of sections 113, 114, 304, and 307 of the Clean Air Act, regulations promulgated under this section shall be treated as regulations promulgated under title IV of the Clean Air Act (entitled Acid Deposition Control). A requirement of regulations promulgated under this section is considered an "emission standard" or "emission limitation" within the meaning of section 302 of the Clean Air Act and an "emission standard or limitation under this Act" within the meaning of section 304 of the Clean Air Act.

#### TITLE VII—OTHER REGULATORY PROVISIONS

##### SEC. 701. TREATMENT OF NUCLEAR DECOMMISSIONING COSTS IN BANKRUPTCY.

Section 523 of title 11, United States Code (section 523 of the Bankruptcy Code of 1978), is amended by adding the following new subsection after subsection (e):

"(f) Obligations to comply with, and claims resulting from compliance with, Nuclear Regulatory Commission regulations or orders governing the decontamination and decommissioning of nuclear power reactors licensed under section 103 or 104b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133 and 2134(b)) shall be given priority and shall not be rejected, avoided, or discharged under title 11 of the United States Code or in any liquidation, reorganization, receivership, or other insolvency proceeding under State or Federal law."

##### SEC. 702. STUDY OF IMPACTS OF COMPETITION IN ELECTRICITY MARKETS BY THE ENERGY INFORMATION ADMINISTRATION.

Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended by adding after subsection (l) the following new subsection:

"(m)(1) The Administrator shall collect and publish information regarding the impact of wholesale and retail competition on the electric power industry. The Administrator shall prescribe forms for collecting this information. Information to be collected may include, but is not limited to—

"(A) the ownership and control of electric generation, transmission, distribution, and related facilities;

"(B) electricity consumption and demand;

"(C) the transmission, distribution, and delivery of electric services;

"(D) the price of competitive electric services;

"(E) the costs, revenues, and rates of regulated electric services;

"(F) the reliability of the electric generation and transmission system, including the availability of adequate generation and transmission capacity to meet load require-

ments, generation and transmission capacity additions and retirements, and fuel suppliers and stocks for electric generation;

"(G) electric energy efficiency programs and services and their impacts on energy consumption;

"(H) the development and use of renewable electric energy resources; and

"(I) research, development and demonstration activities to improve the nation's electric system.

"(2) In carrying out the purposes of this subsection, the Administrator shall take into account reporting burdens and the protection of proprietary information as required by law."

##### SEC. 703. ANTITRUST SAVINGS CLAUSE.

This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede the operation of the antitrust laws. For purposes of this section, "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that it includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45), to the extent that section 5 applies to unfair methods of competition.

##### SEC. 704. ELIMINATION OF ANTITRUST REVIEW BY THE NUCLEAR REGULATORY COMMISSION.

Section 105 of the Atomic Energy Act of 1954 (42 U.S.C. 2135) is amended by adding the following after subsection c.:

"d. Subsection 105 c. does not apply to an application for a license to construct or operate a utilization or production facility under section 103 or 104 b. following the date of enactment of this subsection. This Act does not affect the Commission's authority to enforce antitrust conditions included in licenses issued under section 103 or 104 b. before the date of enactment of this subsection.

##### SEC. 705. ENVIRONMENTAL LAWS SAVINGS CLAUSE.

Nothing in this Act alters or affects environmental requirements imposed by Federal or State law, including, but not limited to, the Clean Air Act (42 U.S.C. 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.); the Federal Power Act (16 U.S.C. 791a et seq.); and the Endangered Species Act (16 U.S.C. 1531 et seq.).

#### SECTION-BY-SECTION ANALYSIS OF THE COMPREHENSIVE ELECTRICITY COMPETITION ACT

##### TITLE I—RETAIL ELECTRIC SERVICE

###### Section 101. Retail competition

This section would amend the Public Utility Regulatory Policies Act of 1978 (PURPA) to provide for customer choice through a flexible mandate. This provision would require each distribution utility to permit all of its retail customers to purchase power from the supplier of their choice by January 1, 2003, but would permit a State regulatory authority (with respect to a distribution utility for which it has ratemaking authority) or a non-regulated utility to opt out of this retail competition mandate if it finds, on the basis of a public proceeding, that consumers of the utility would be served better by the current monopoly system or an alternative State-crafted retail competition plan. The section also would establish a Federal policy that utilities should be able to recover prudently incurred, legitimate, and verifiable retail stranded costs that cannot be mitigated reasonably, but States would continue to determine recovery of retail stranded costs under State law. This section does not retrocede to States authority over Federal enclaves.

###### Section 102. Authority to impose reciprocity requirements

This section would amend PURPA to permit a State that has filed a notice indicating it is implementing retail competition to prohibit a distribution utility that is not under the ratemaking authority of the State and that has not implemented retail competition from selling electricity to the consumers covered by the State's notice. This section also would permit a nonregulated utility that has filed a notice of retail competition to prohibit any other utility that has not implemented retail competition from selling electricity to the consumers covered by the nonregulated utility's notice.

###### Section 103. Consumer information

This section would amend PURPA to permit the Secretary of Energy to require all suppliers of electricity to disclose information on price, terms, and conditions of sale; the type of energy resource used to generate the electric energy; and the environmental attributes of the generation, including air emissions characteristics. This requirement would be enforceable by the Federal Trade Commission and by individual States.

##### TITLE II—FACILITATING STATE AND REGIONAL REGULATION

###### Section 201. Clarification of State and Federal authority over retail transmission services

Subsection (a) would amend section 201(b) of the Federal Power Act (FPA) to clarify that the FPA does not prevent States from ordering retail competition or imposing conditions, such as a fee, on the receipt of electric energy by an ultimate customer within the State. This section also would clarify that FERC has jurisdiction over rates, terms, and conditions for unbundled retail transmission.

Subsection (b)(1) would amend section 206 of the FPA to reinforce FERC authority to require public utilities to provide open access transmission services and permit recovery of stranded costs. This section also would provide retroactive effect to Commission Order No. 888.

Subsection (b)(2) would amend section 212(h) of the FPA to clarify FERC authority to order retail transmission service to complete an authorized retail sale.

Subsection (b)(3) would make conforming amendments to the FPA.

Subsection (c) would amend the FPA to extend FERC's jurisdiction over transmission services to municipal and other publicly-owned utilities, cooperatives, the Tennessee Valley Authority, and the Federal Power Marketing Administrations. With this amendment, FERC would assure that the transmission rates, terms, and conditions of these entities are not unjust or unreasonable, taking into consideration the other responsibilities of these entities, but this amendment would not expand FERC's authority over the power business of these entities. However, FERC could suspend or modify application of FERC's open access transmission rules to the Tennessee Valley Authority, the Federal Power Marketing Administrations, and rural electric cooperatives with outstanding loans from the Rural Utilities Service, and their wholesale requirements customers, if FERC finds that adequate stranded cost recovery mechanisms are not yet available for those entities.

It should be noted that with regard to the Federal Power Marketing Administrations and TVA, the Administration considers this subsection as placeholder language pending development of language that more thoroughly addresses the question of the appropriate role of the Federal power marketing agencies in the new competitive market.

*Section 202. Interstate compacts on regional transmission planning*

This section would amend the FPA to permit FERC to approve interstate compacts that establish regional transmission planning agencies if the agencies meet certain criteria relating to their governance (e.g., uniform authority from each participating state and a workable governance protocol to avoid regulatory stalemate). This section also would permit FERC to terminate a compact if it is inconsistent with the public interest or if there are other specified reasons.

*Section 203. Backup authority to impose a charge on an ultimate consumer's receipt of electric energy*

This section would amend the FPA to reinforce FERC's authority to provide a back-up for the recovery of retail stranded costs and public benefits program if a State, or a utility that has outstanding loans made or guaranteed by the Rural Utilities Service, has filed a retail competition notice and concludes that such charges are appropriate but lacks authority to impose a charge on the consumer's receipt of electric energy.

*Section 204. Authority to establish and require independent system operation*

This section would amend section 202 of the FPA by permitting FERC to establish an entity for independent operation and control of interconnected transmission facilities and to require a transmitting utility to relinquish control over operation of its transmission facilities to an independent system operator.

TITLE III—PUBLIC BENEFITS

*Section 301. Public benefits fund*

This section would amend PURPA by establishing a Public Benefits Fund administered by a Federal-State Joint Board that would disburse matching funds to participating States and tribal governments to carry out programs that support affordable electricity service to low-income customers; implement energy conservation and energy efficiency measures and energy management practices; provide consumer education; and develop emerging electricity generation technologies. Funds for the Federal share would be collected from generators, which, as a condition of interconnection with facilities of any transmitting utility, would pay to the transmitting utility a charge, not to exceed one mill per kilowatt-hour. The transmitting utility then would pay the collected amounts to a fiscal agent for the Fund. States and tribal governments would have the flexibility to decide whether to seek funds and how to allocate funds among public purposes. In addition, a rural safety net would be created if the Secretary of Energy determines, in consultation with the Secretary of Agriculture, that significant adverse economic effects on rural areas have occurred or will occur as a result of electric restructuring.

*Section 302. Federal renewable portfolio standard*

This section would amend PURPA to establish a Federal Renewable Portfolio Standard (RPS) to guarantee that a minimum level of renewable generation is developed in the United States. The RPS would require electricity sellers to have renewable credits based on a percentage of their electricity sales. The seller would receive credits by generating power from non-hydroelectric renewable technologies, such as wind, solar, biomass, or geothermal generation; purchasing credits from renewable generators; or a combination of these. The RPS requirement for 2000-2004 would be set at the current ratio of RPS-eligible generation to retail electricity sales. Between 2005-2009, the

Secretary of Energy would determine the required annual percentage, which would be greater than the baseline percentage but less than 5.5%. In 2010-2015, the percentage would be 5.5%. The RPS credits would be subject to a cost cap of 1.5 cents per kilowatt hour.

*Section 303. Net metering*

This section would amend PURPA by requiring all retail electric suppliers to make available to consumers "net metering service," through which a consumer would offset purchases of electric energy from the supplier with electric energy generated by the consumer at a small, on-site renewable generating facility and delivered to the distribution system.

*Section 304. Reform of section 210 of PURPA*

This section would repeal prospectively the "must buy" provision of section 210 of PURPA. Existing contracts would be preserved, and the other provisions of section 210 would continue to apply.

TITLE IV—REGULATION OF MERGERS AND CORPORATE STRUCTURE

*Section 401. Reform of holding company regulation under PUHCA*

This section would repeal the Public Utility Holding Company Act of 1935 (PUHCA) and would enact in its place the Public Utility Holding Company Act of 1998. Under this Act, FERC and State commissions would be given greater access to the books and records of holding companies and the affiliates of public utilities within the holding companies.

*Section 402. Electric company mergers*

This section would amend section 203(a) of the FPA by conferring on FERC jurisdiction over the merger or consolidation of electricity utility holding companies and generation-only companies. This section also would streamline FERC's review of mergers.

*Section 403. Remedial measures for market power*

This section would amend the FPA to authorize FERC, on its own motion or upon complaint, to remedy market power in wholesale markets. This section also would authorize FERC, upon petition from a State, to remedy market power in retail markets if retail competition is being implemented, the State finds market power, and the State has insufficient authority to remedy the market power. In these circumstances, FERC could require generators with market power to submit a plan to mitigate market power, which FERC could approve with or without modification. This section would authorize FERC to order divestiture to the extent necessary to mitigate market power.

TITLE V—ELECTRIC RELIABILITY

*Section 501. Electric reliability organization and oversight*

This section would amend the FPA to give FERC authority to register and oversee an electric reliability organization to prescribe and enforce mandatory reliability standards. Membership in the organization would be open to all entities that use the bulk-power system and would be required for all entities critical to system reliability. Until the reliability organization is registered, existing standards established by the North American Electric Reliability Council and regional reliability councils would be mandatory and enforced by the Commission.

*Section 502. Statutory presumption*

This section would establish a rebuttable presumption that actions taken to comply with the mandatory reliability standards would be deemed just and reasonable for purposes of the FPA. This section would also establish a rebuttable presumption that the activities of an electric reliability organiza-

tion and the activities of a member of the organization in pursuit of organization objectives are in compliance with the antitrust laws of the United States.

TITLE VI—ENVIRONMENTAL PROTECTION

*Section 601. Nitrogen oxides trading program*

This section would clarify Environmental Protection Agency authority to require a cost-effective interstate trading system for nitrogen oxide pollutant reductions addressing the regional transport contributions needed to attain and maintain the National Ambient Air Quality Standards for ozone.

TITLE VII—OTHER REGULATORY PROVISIONS

*Section 701. Treatment of nuclear decommissioning costs in bankruptcy*

This section would amend the Bankruptcy Act to provide that decommissioning costs be a nondischargeable priority claim.

*Section 702. Study of impacts of competition in electricity markets by the Energy Information Administration*

This section would amend the Department of Energy Organization Act to direct the Energy Information Administration to collect and publish information on the impacts of wholesale and retail competition.

*Section 703. Antitrust savings clause*

This section would provide that nothing in this Act would supersede the operation of the antitrust laws.

*Section 704. Elimination of antitrust review by the Nuclear Regulatory Commission*

This section would eliminate Nuclear Regulatory Commission antitrust review of an application for a license to construct or operate a commercial utilization or production facility.

*Section 705. Environmental law savings clause*

This section would provide that nothing in this Act would alter environmental requirements of Federal or State law.

THE SECRETARY OF ENERGY,

Washington, DC, June 26, 1998.

Hon. ALBERT GORE,  
President of the Senate,  
Washington, DC.

DEAR MR. PRESIDENT: Enclosed is legislation to bring competition and consumer choice to the electricity industry, the "Comprehensive Electricity Competition Act" ("CECA"). It is based upon the legislative specifications the Administration provided Congress on March 25, 1998, when we released our Comprehensive Electricity Competition Plan.

The basic Federal regulatory framework for the electric power industry was established with the enactment of the Public Utility Holding Company Act of 1935 and Title II of the Federal Power Act. These statutes are premised upon State-regulated monopolies rather than competition. Now, however, economic forces are beginning to forge a new era in the electricity industry, one in which generation prices will be determined primarily by the market rather than by legislation and regulation. Consequently, federal electricity laws need to be updated so that they stimulate, rather than stifle, competition.

In this new era of retail competition, consumers will choose their electricity supplier. The Department of Energy estimates that in making these choices, consumers will save at least \$20 billion a year on their electricity bills. This translates into direct savings to the typical family of four of \$104 per year and additional indirect savings from lower costs of other goods and services of \$128 per year. Competition will also spark innovation in the American economy and create new industries, jobs, products, and services, just as

telecommunications reform spawned cellular phones and other new technologies.

Competition will also benefit the environment. Under retail competition, the market rewards a generator who wrings as much energy as possible from every unit of fuel. More efficient fuel use means lower emissions. In addition, competition provides increased opportunities to sell energy efficiency services and green power. Moreover, CECA's renewable portfolio standard and enhanced public benefit funding will lead to substantial environmental benefits. The Department estimates that CECA will reduce greenhouse gas emissions by 25 to 40 million metric tons by 2010.

The following are key provisions of CECA:

All electric consumers would be able to choose their electricity supplier by January 1, 2003, but a State may opt out of retail competition if it believes its consumers would be better off under the status quo or an alternative State-crafted retail competition plan.

States would be encouraged to allow the recovery of prudently incurred, legitimate, and verifiable retail stranded costs that cannot be reasonably mitigated.

All participants in transactions on the transmission grid would comply with mandatory reliability standards. The Federal Energy Regulatory Commission (FERC) would approve and oversee a private, self-regulating organization that would develop and enforce these standards.

FERC would have the authority to require transmitting utilities to turn over operational control of transmission facilities to an independent system operator.

The Secretary of Energy would be authorized to require all retail electric suppliers to disclose, in a uniform format, information on prices, terms, and conditions of service; the type of energy resource used to generate the electric energy; and the environmental attributes of the generation (including air emissions characteristics).

A Renewable Portfolio Standard would be established to ensure that by 2010 at least 5.5 percent of all electricity sales consist of generation from renewable energy sources.

A Public Benefits Fund would be established to provide matching funds of up to \$3 billion to States and Indian tribes for low-income assistance, energy-efficiency programs, consumer information, and the development and demonstration of emerging technologies, particularly renewable technologies. A rural safety net would be created if the Secretary of Energy determines, in consultation with the Secretary of Agriculture, that significant adverse economic effects on rural areas have occurred or will occur as a result of electric restructuring.

Environmental Protection Agency authority would be clarified to require interstate nitrogen oxides trading to facilitate attainment of the ambient standard for ozone in the United States.

Federal electricity law would be modernized to achieve the right balance of competition without market abuse, including repealing outdated laws like the Public Utility Holding Company Act of 1935 and the "must buy" provision of the Public Utility Regulatory Policies Act of 1978 and giving FERC enhanced authority to address market power.

CECA promotes healthy changes to the electricity industry. It will result in lower prices, a cleaner environment, and increased innovation.

The Administration intends to transmit the proposed legislative changes to the tax code described in the March 25, 1998 Comprehensive Electricity Competition Plan to the Congress separately at a later date.

The Omnibus Budget Reconciliation Act (OBRA) requires that all revenue and direct

spending legislation meet a pay-as-you-go (PAYGO) requirement. That is, no such bill should result in a net budget cost; and if it does, it could contribute to a sequester if it is not fully offset. The net PAYGO effect of this legislative proposal is currently estimated to be zero.

The Office of Management and Budget advises that there is no objection to the presentation of this legislation to the Congress and that it is in accord with the program of the President.

Sincerely,

FEDERICO PEÑA.

By Mr. WARNER:

S. 2288. A bill to provide for the reform and continuing legislative oversight of the production, procurement, dissemination, and permanent public access of the Government's publications, and for other purposes; to the Committee on Rules and Administration.

WENDELL H. FORD GOVERNMENT PUBLICATIONS  
ACT OF 1998

Mr. WARNER. Now, Mr. President, it is my distinct pleasure and honor, together with the distinguished ranking member of the Rules Committee, which I am privileged to chair, to submit legislation to the Senate. In my capacity as chairman of the committee, I have taken it upon myself, after consultation with colleagues on the committee, to name this bill in honor of our distinguished ranking member, Senator Wendell FORD of Kentucky, who will be retiring from a very distinguished Senate career at the conclusion of this Congress.

The bill is entitled the "Wendell H. Ford Government Publications Reform Act of 1998." If I just might hold this bill up, it is quite voluminous. That size reflects the tireless effort of my distinguished colleague from Kentucky and many others—over a period in excess of a decade—including Senator STEVENS, the distinguished chairman of the Appropriations Committee, who have worked on this concept. I sort of picked it up and continued to work with Senator FORD in the course of my privileged service as chairman.

Senator FORD has served four terms in the U.S. Senate. During that time he has dedicated himself to many causes, but this has been one very dear to his heart. I think it is a magnificent way of paying a respectful tribute to this Senator.

We want to ensure that our Government produces its publications in the most cost-effective manner possible and that to the best of its ability the Government makes these publications accessible to the American public. They pay for them. But over the course of a number of years, like so many institutions' procedures and practices, it has gotten sort of tangled up. This prodigious document, hopefully, will be accepted by the Senate and accepted by the House and will go a long way to put this system back on track.

Over the past decade there has been a steady and precipitous migration of printing, publication service procurement, and publication dissemination

away from the Government Printing Office, which was established for the very purpose of making these documents available.

In part, this migration occurred because of evolutions in technology. In part, this migration occurred because of the identified weakness and constant inability of the Joint Committee on Printing to enforce the work of the agencies and the departments of the executive branch in telling them to procure and disseminate their publications through the GPO. In part, this migration occurred because of the open encouragement by the current administration—through decisions and through the National Performance Review known as the NPR—for agencies to use printing and dissemination facilities other than the Government Printing Office. And in part, this migration occurred because the GPO has been slow to change and be more responsive to the ever-changing agency and Congressional needs, demands, and expectations.

When I make reference to agencies and departments of the Government, I am talking about all three branches of the Government. We are not singling out any one as being less participatory of the desired result in publication and cost effectiveness. We are all in it together. This straightens it out.

Despite the best efforts of Senator FORD and a long line of other Senators, successive administrations just have not been able to grapple and change the process and these problems are with us today.

When I became chairman of the Senate Committee on Rules and Administration, Senator FORD urged that together we continue the work that he and others had started. Indeed, Senator FORD and I became partners in resolving these issues. We directed our staffs to work together, to analyze the problems and identify the key solutions to bringing successful reform to the Government's printing, publishing, and dissemination services.

Senator FORD and I held a series of hearings during which we built a record to support the very bill that we introduce today. This bill primarily has four goals.

First, it resolves the conflicts between the branches of Federal Government—executive, legislative, and judicial—and brings about cost savings in printing and production. It seems to me it eliminates the problems with public access. It is in here in great detail.

Secondly, it guarantees the right of the public to access publications paid for by the taxpayers. We have to stress, they paid for this, so why shouldn't they have it? It requires that the Superintendent of Government Publications Access Programs—what a title; I will repeat that—the Superintendent of Government Publications Access Programs be notified when an agency creates a new publication whether on

paper or electronically. That major advancement of dissemination in electronics has not been an easy one to deal with in this bill.

Third, it promotes public availability of Government information in the electronic age through a Federal publications access program requiring no-fee availability, regardless of format, by requiring agencies to provide the same notification to the Superintendent for electronic publications that they are required to provide for printed publications, and by requiring the Superintendent to head a study which will recommend to Congress additional legislation which may be needed to further safeguard the public's access rights.

Finally, the fourth goal is to facilitate the production and public access to Government publications by promoting the efficient and economic production of publications in an effective and equitable system of dissemination.

It was James Madison who established as an essential element of America's democracy the principle of an informed citizenry. According to scholars, Madison's vision for the success of this Nation rested on the ability of an informed citizenry to participate in the democratic process and to hold Government accountable for its actions. Democracy requires the free flow of information. Access to the Government's publications is fundamental to our free society.

Senator FORD and I and other members of the Committee on Rules and Administration, together with our staff, worked diligently and in a most nonpartisan manner to craft this legislation. The legislation is a culmination of nearly 18 months of discussion and negotiation. We consulted with the private sector, the printing industry, the information industry, representatives of the administration, the judicial branch, various legislative branch organizations, GPO, and, most importantly, the unions who really safeguard the future of employees throughout the printing system and other systems involved in this. My understanding is, and I think Senator FORD will have similar comments, that they recognize the need for change and have been a very constructive and helpful working partner in achieving this result. This bill, we feel, reflects a consensus among these interests and is to my mind one of the best examples of bipartisan cooperation in good public policy.

At this time, of course, both Senator FORD and I want to recognize the invaluable services of Eric Peterson, staff director of the Joint Committee on Printing, Kennie Gill of Senator FORD's staff, Grayson Winterling and Ed Edens of my staff, and the many others who have worked on this during the past 18 months. We look forward to receiving the support of our colleagues in passing and enacting this important reform legislation in the concluding days of this Congress.

I yield the floor.

The PRESIDING OFFICER. The very distinguished Senator from Kentucky.

Mr. FORD. I thank the Chair for the description.

Mr. President, it is a great pleasure for me to join with my colleague, the distinguished chairman of the Rules Committee. He is my friend. He is a gentleman in the best tradition of Virginia. I appreciate the honor that he has proposed for me this morning. It will be the first piece of legislation in 24 years that carries my name. I hope it doesn't impede the progress, however. I am grateful to the Senator from Virginia, Mr. WARNER, for his gracious remarks this morning. Hopefully, that tenor will continue through the consideration of this legislation by all of our colleagues, because our heart is right as it relates to the introduction of this legislation.

I hope our minds have put together a piece of legislation that will be lasting. But there is one thing about this institution; once it settles in and you find some problems with it, you always have the opportunity to correct those problems. Most of the time, we do not "throw the baby out with the bath water"; we take the changes and do them in an appropriate way.

So I join my colleague in introducing this legislation today to ensure one thing, Mr. President—that the American public continues to have access to the Government information. As my friend has said, it pays to produce. It is the people's access to Government, Government information, that forms the basis of our system of Government and ensures that democracy survives.

A Kentuckian that was born in Virginia—we claim him in Kentucky, however—and a statesman, Henry Clay, said:

Government is a trust, and the officers of the Government are trustees; and both the trust and the trustees are created for the benefit of the people.

This legislation ensures that the decisions of the trustees of Government in all 3 branches will continue to be available for the benefit of the people who placed them there.

Since 1813, Congress has assured that our decisions have been available to the public through the depository libraries. In 1857, depository libraries began disseminating other Federal information and, in 1895, the Superintendent of Public Documents was moved from the Department of the Interior to the Government Printing Office.

Throughout our history, Mr. President, libraries have been the permanent repositories of the written history of our development as a Nation and the gateways to accessing the decision of its leaders. How important libraries are. You can be self-educated if you could read and go to the libraries and be able to secure information. Books that will do that. For almost 200 years, libraries have been the principal means by which citizens have come to learn of the decisions of their Government. Armed with that knowledge, the American public expresses its will through the democratic election process, which is the bedrock of our society.

For over 100 years, GPO has printed or procured the printing of Government information and then automatically—and I underscore "automatically"—made that information available, at no charge to the American people, through the 1,400 depository libraries located across this great land. And that information is maintained permanently by the regional depository libraries in order to ensure that future generations have access to it.

What I am trying to do here this afternoon is to say why this bill is so important. It has been so important to our past and it will be so important to our future. In turn, the depository libraries provide numerous access services, at no cost to the Federal Government, to the public who uses them to keep informed of their Government's decisions. In fact, the depository libraries, and numerous other public and private libraries that work in cooperation with the depositories, are the trustees of Government information for the people. For all of the criticisms of GPO, no one can dispute that a centralized printing and dissemination system for Government information has worked to keep the American people informed about their Government.

Mr. President, it was Thomas Jefferson who said, "To inform the minds of people, and to follow their will, is the chief duty of those placed at their head." That is the purpose of this legislation, the very root of the growth of this legislation. We, in a bipartisan manner, a friendly manner, desire to be sure that our citizens are informed, and that is the reason we are introducing this legislation today—to ensure that the American people are informed of the actions of their trustees so they can, in turn, inform us of their will.

This constant exchange of Government information and the people's informed will is the cornerstone of our representative democracy, and without the free flow of information about the actions of their Government, the people's will cannot be ascertained, and democracy is jeopardized.

While the centralized printing and dissemination system provided through GPO has served us well over the years, advances in technology, and recent Supreme Court rulings regarding separation of powers, have taxed the ability of a central agency to ensure that all Government information gets into the hands of the American public. So what did we do? We sat down, as we are supposed to do, to work out a way to continue to strengthen democracy and work the will of the American people's representatives. Some have responded that it is time to decentralize the dissemination of Government information and disjoin the procurement and dissemination functions. I could not disagree more strongly.

Instead, it is time to reform the system and bring it into the 21st century

so that both Government and the American people, through the depository library system, can be served for another 100 years through enhanced information dissemination and access.

Title 44 and the Government Printing Office have not undergone a major revision in over 30 years. During this time, the Rules Committee has held numerous hearings, as my distinguished friend has said, on Government printing policies and public access to Government information. In the past 2 years, the committee has heard from the general public, those in the library community, and at GPO, and from officials in the executive and judicial branches, about the challenges and also the opportunities facing agencies who must comply with title 44.

Mr. President, at the beginning of the 105th Congress—this Congress—I outlined what I believed were the 3 principal issues that had to be addressed by any reform legislation.

First, elimination of the constitutional barriers to compliance with title 44 created by the administrative oversight functions of the Joint Committee on Printing; secondly, the expansion of title 44 to recognize the changes in technology, particularly the explosion of electronic publishing and the Internet as a means of disseminating Government information to the people; third, the need for enforcement—I underscore enforcement—of title 44 to ensure that executive agencies comply with the centralized printing and dissemination requirements that otherwise lead to the creation of fugitive documents. I use that word lovingly.

The legislation Senator WARNER and I are introducing today is designed to address these 3 issues in a manner that will ensure, in my opinion, the continued free flow of information to the public while at the same time recognizing the efficiencies and enhanced opportunity for dissemination that technology creates. The legislation reaffirms congressional intent, and 100 years of experience, that a centralized publishing production and procurement agency best ensures that the American public gets the greatest efficiencies for its tax dollar and the broadest access to Government information. The proposed legislation restructures the Government Printing Office to provide increased accountability and efficiencies, while affording the Congress the maximum oversight of the agency's policies and regulations.

This legislation removes the disincentives to compliance with title 44 by eliminating the constitutional problems created by the Joint Committee on Printing. The bill would eliminate the Joint Committee on Printing and download those authorities to the agency, with enhanced legislative oversight—let me underscore that—enhanced legislative oversight and authority over congressional printing by the Senate Committee on Rules and Administration and the Committee on House Oversight.

Most importantly, the proposed legislation recognizes the changes in technology and updates title 44 to ensure that as government information moves from printed material to electronically disseminated publications, the American public will continue to be able to access that information, at no charge, through the depository libraries. The role of the depository libraries is “key” to the success of government's transition from printed material to new technologies. America's libraries provide the safety net that guarantees that this Nation does not become a country of information “haves” and “have nots.”

Finally, the bill creates enforcement mechanisms that will ensure that agencies comply with title 44 so that the American people continue to have access to the decisions of their government, regardless of whether those decisions are printed, posted on the Internet, or transmitted through some yet undiscovered technology.

I congratulate my colleague, the distinguished Chairman, and his capable staff for their dedication and diligence in crafting this legislation. No committee is blessed with better staff. We do fuss and fume every once in a while, but we always come out at the right place.

I want to publicly acknowledge the substantial contribution that the library community has made to this effort, particularly the American Library Association and the Inter-Association Working Group on Government Information Policy, chaired by Mr. Dan P. O'Mahony of Brown University.

I look forward to hearings on this measure in the Rules Committee and encourage my colleagues to cosponsor this measure and pass it into law. We cannot afford to delay; the very survival of democracy rests on our actions.

I want to also say that those who represent the employees, the unions, at the Government Printing Office have been thoroughly involved in this decision and just this morning assured me of their enthusiastic support of this legislation, because they understand that if they don't comply with the needs of the advancement of technology and the desires and hopes of the 21st century, they will not last.

Mr. President, I look forward to hearings on this measure in the Rules Committee. I encourage my colleagues to cosponsor this measure and to very quickly pass it into law, because I feel we cannot delay. We cannot afford to delay. The very survival of democracy rests on our actions here today.

I yield the floor.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, those of us who are privileged to hear the remarks of our distinguished colleague from Kentucky might well clearly tell in the tenor of his voice and the forcefulness of his remarks the sincerity

with which he believes in this very important goal.

It is my fervent hope that the Senate will act quickly on this measure.

He closed with the comment with regard to unions, which have a very important role in the past, today, and, indeed, in the future in the publication of our documents. It is the credibility which Mr. FORD brings to this institution that enables us to cross that last bridge and gain their support.

The bottom line is that the men and women who work in this system, union members and all, want to have a more cost-effective, a more productive system, one that is compatible with the rapid movement of technology all across our land.

Mr. President, I thank my colleague. I hope that the Senate will turn to this legislation at the earliest possible opportunity. The Committee on Rules and Administration will have a hearing and will promptly issue a report. At that point, it is my expectation that the distinguished majority leader, in consultation with the Democratic leader, will make the appropriate decisions at the time.

I yield the floor.

By Mr. BUMPERS:

S. 2289. A bill to amend the Federal Rules of Criminal Procedure, relating to grand jury proceedings, and for other purposes; to the Committee on the Judiciary.

GRAND JURY REFORM ACT OF 1998

Mr. BUMPERS. Mr. President, recently I introduced S. 2030, the Grand Jury Due Process Act, to provide witnesses who are subpoenaed by federal grand juries with a right to the presence of counsel in the grand jury room. I am today introducing more comprehensive grand jury reform legislation which will remedy several major flaws in the grand jury system which today undermine the fairness of America's judicial system.

Criminal justice must provide for more than swift and sure punishment. It must ensure fairness and due process to the accused as well as to witnesses and victims of crime. In the majority of cases, our courts provide a greater measure of justice than any other system known to man. Yet our system remains far from perfect.

Of all aspects of America's criminal justice system, the grand jury has become the weakest link in ensuring due process of law. It is telling that most States have discarded grand juries entirely. Yet, the Federal Government is constrained by the fifth amendment constitutional requirement for grand juries, so we have to find ways to make the grand jury system work better.

The legislation I am introducing makes five critical grand jury reforms:

First, it directs the district courts to give basic legal instructions to the grand jurors at the time they begin their work. These instructions will include basic legal principles—the power to call witnesses, the power to investigate, and the power to indict on

whatever charges the grand jury deems appropriate. No one would disagree with these basic instructions, but they are not required in the present grand jury system. Instead, grand jurors are told only as much about the law as the prosecutor chooses to tell them. My bill will change that.

Second, this bill gives grand jury witnesses the right to be accompanied by counsel in the grand jury room. This section is virtually identical to S. 2030 which I have already introduced. It also requires that a witness subpoenaed to testify before a grand jury be advised of his right to be accompanied by counsel, of the privilege against self-incrimination and other basic rights when the subpoena is issued.

Third, this bill strengthens enforcement of the existing rule on grand jury secrecy, which is a matter of first importance to the integrity of the justice system. News reports indicate that grand jury secrecy is now being violated on a regular basis.

Fourth, this bill mandates that prosecutors disclose to the grand jury any substantial evidence they possess which indicates that the accused is not, or may not be, guilty. While this may seem elementary to most Americans, it is contrary to a Supreme Court decision, *United States v. Williams*—a very recent decision—which held that the prosecutor has no such constitutional obligation.

Fifth and finally, this bill entitles a defendant to a transcript of the grand jury testimony of all witnesses who are called against him at trial. This is a matter of basic fairness. Anyone charged with a crime should have a right to know what a witness against him has told the grand jury. Knowing the witness's prior testimony is the essence of the right of cross-examination enshrined in the confrontation clause of the sixth amendment.

#### BACKGROUND

Grand juries have enormous power and they offer few protections to those who are called as witnesses or who are subject to investigation. Under the fifth amendment to the Constitution, Federal felony prosecutions must include indictment by a grand jury. This provision was intended to protect citizens against prosecutions which are without merit or which are politically motivated. The Founding Fathers had plenty of experience with prosecutorial misconduct by the English crown. That is the reason they inserted the grand jury into the Constitution. The Grand Jury was to be a bulwark against a tyrannical government.

My own observations of grand juries go back to my years as a small town defense lawyer, but they are reinforced by present day cases and news reports. Too often, I have seen criminal prosecutions which should never have been brought, or witnesses who have been abused by prosecutors. Recently, newspapers are filled with stories of secret grand jury testimony—often attributed to prosecution sources—and of wit-

nesses who have been called back to testify a fourth or fifth or sixth time before the same grand jury. Many of these witnesses are obviously not criminals, at least in a reasonable person's understanding of the word.

To understand today's grand jury system, you must understand history. The grand jury, Mr. President, is one of the common law's most ancient institutions. Its roots go back even further than Magna Carta. In 1166, King Henry II proclaimed the Assize of Clarendon which required that 12 "lawful men" out of every hundred be sworn to tell whether they knew of any crimes committed in their towns. In these early days, grand juries operated mostly on the personal knowledge of the grand jurors.

The grand jury then, like today, only had power to accuse. In those days, trial was by ordeal. The accused either had his hand placed in boiling water or was bound and thrown into a lake. If he survived without injury, this was an acquittal. It was not until the 13th Century that our English forbearers secured the right to a trial by jury.

Trial by ordeal was supposedly abolished long ago, but I wonder whether many of today's grand jury witnesses might dispute this.

In English and American history up until the time of the Constitution, grand juries were a bulwark of freedom which stood between oppressive government and the individual. Grand juries often disagreed with English and colonial judges who were in service to the Crown. These feuds helped define both the power of the grand jury and the liberties of free people. For example, grand jurors in colonial Massachusetts adamantly refused demands by the Crown to indict the colonists who had participated in the Stamp Act riots.

Unhappily, the grand jury's role as defender of liberty, has changed dramatically for the worse over the years. Too often, the grand jury has become an arm of the executive branch and a rubber stamp for the prosecutor. In modern times, the Supreme Court has held that a grand jury may call witnesses to satisfy the mere suspicion that a crime may have been committed.

Grand juries have been judged so superfluous by the states that about half of them decided long ago to eliminate grand juries and allow criminal charges to be brought directly by prosecutors.

The chief judge of the State of New York remarked several years ago that most grand juries would indict "a ham sandwich" if the prosecutor so requested. A recent Supreme Court decision, *United States v. Williams*, the Court has held that the District Courts have no supervisory power over grand juries, and that grand juries are not even part of the judiciary. I disagree strenuously with Justice Scalia's conclusions in the *Williams* case. If grand juries are not accountable to the courts, then who are they accountable to?

#### INSTRUCTIONS OF LAW

Under present Federal law, grand jurors receive no instructions on the law except for whatever the prosecutor may choose to tell them. This bill will provide for the District Court which empanels the grand jury to give some very basic legal instructions to the jurors before they begin their work. Included among these are the grand jury's duty to inquire into criminal offenses that have been committed in the jurisdiction; the right to call and interrogate witnesses; the right to request production of documents, including exculpatory evidence; the necessity of finding credible evidence of each element of the crime before returning an indictment; the right to ask the prosecutor to draft indictments for charges other than those originally presented; the obligations of grand jury secrecy; and such other rights and duties as the court deems appropriate.

Mr. President, there is no good reason why these instructions should not be given. These rules of law are universally accepted. It makes no sense for the grand jury not to be told what its legal powers and duties are, and I cannot imagine that this provision would be disputed.

#### RIGHT TO COUNSEL

Mr. President, as I indicated before, the institution of the grand jury goes back more than 800 years in Anglo-American legal history. but it was not until 1963 that the Supreme Court held in *Gideon v. Wainwright* that a man may not be sent to prison without having had a lawyer at trial. Under *Gideon*, a person unable to pay for a lawyer must have counsel appointed to represent him, or else the requirement of due process of law has not been met.

In 1964, the Court held in *Miranda v. Arizona* that criminal defendants must be advised by the police of their right to counsel and of the Fifth Amendment privilege against self-incrimination. These rights are basic American freedoms which are the hallmarks of due process of law. And nobody today would take us back to the old days when those rules were not in effect.

Our ideas of due process have changed for the better over the centuries. One legal tradition which has not changed, however, is the lack of counsel before the grand jury. A witness who is not a criminal defendant but who is legally summoned to testify by the grand jury may not have his lawyer in the room. This rule of law is perverse to say the least in that it gives criminals, or accused criminals, more rights than innocent people.

A criminal defendant today has greater rights than an ordinary, unaccused witness testifying before a grand jury. The Federal Rule of Criminal Procedure which prohibits the presence of counsel for a witness is an anachronism, and it will be changed by this bill, as well as by S. 2030 which I previously introduced.

#### EXCULPATORY EVIDENCE

Even with a lawyer for the witness present, the grand jury will always be

a one-sided affair in which only the prosecutor presents evidence. My bill will not change that. The prosecutor will naturally present only the evidence most favorable to the government. The Supreme Court has held that a prosecutor has no constitutional obligation to present the grand jury with any exculpatory evidence. This case, *United States v. Williams*, was a 5-4 decision written by Justice Scalia and as I said, in my opinion, it could not be more wrong.

If due process of law means anything at all, it means that both sides of a case must be heard. How can due process permit the government to withhold evidence which might prevent the indictment from even being issued?

My bill today reverses *United States v. Williams* by amending the Rules of Criminal Procedure to require that prosecutors present the grand jury any substantial evidence which directly negates the guilt of the accused.

This bill will not make the grand jury a "mini-trial" since the accused will not be able to present evidence or to cross-examine. But the Government will be required to tell the grand jury, before it decides to indict, of substantial evidence against guilt. Due process of law requires no less. Those who are not guilty. It is no answer to say that evidence of innocence can be considered at trial, and the jury will correct mistakes of the grand jury. If the Government has evidence which—if it were shown to be the grand jury—would lead the grand jury not to indict, the government must share that evidence with those who have power to indict. *U.S. v. Williams* is a gross misreading of due process which cries out for correction.

#### GRAND JURY SECRECY

Mr. President, the secrecy of grand jury proceedings is a matter of fundamental importance which is already clearly required by Rule 6(e) of the Federal Rules. Yet the rule is flouted on almost a regular basis. Weekly, if not daily, the newspapers have carried stories about the several Independent Counsels' investigations which begin, "Sources close to the investigation report \* \* \*" Every time the law regarding grand jury secrecy is violated, a fair and impartial trial is impossible.

Grand jury secrecy is as ancient as the institution itself. Without it, our judicial system would degenerate into a horrific state. An indictment is already tantamount to guilt in the opinion of most people. At the same time, the grand jurors must be insulated from outside pressure which might influence their decisions to indict or not. Grand jury secrecy is necessary for the protection of both witnesses and grand jurors.

The grand jury hears all kinds of testimony—some true, some scurrilous. Many things said to the grand jury may be incredibly damaging to people if they are revealed. Since the accused and his lawyer are not in the room, there is no safeguard of cross-examination. False testimony can easily go un-

discovered until trial, which is one reason grand jury secrecy is so important.

If the public learns that a witness has made some horrendous accusation, it will be cold comfort that the grand jury later decides not to believe the testimony and not to indict.

More than one witness has lost his life when it was learned that he had testified against a leader of organized crime or a murderer. Grand jury secrecy can literally be a matter of life and death. Its importance to law enforcement and the cause of justice cannot be overstated.

At the same time, a witness who has testified before a grand jury is perfectly free, if he so chooses, to go on television and tell the world what he or she has testified to.

Present law places responsibility for enforcing grand jury secrecy on the prosecutor. If a member of the prosecution staff is leaking to the press, this is the clearest conflict of interest. Asking any prosecutor to investigate his own conduct is an obvious conflict of interest. Yet that is what present law provides.

Mr. President, the way to resolve this problem is to place authority for investigating violations of grand jury secrecy on the District Court which empaneled the grand jury in the first place. My bill does exactly that by giving the Court power to appoint an investigator or counsel if necessary to determine the source of leaks. It should be the exceptional case where such action will be necessary.

The existence of the possibility of an independent investigation should be enough to deter any prosecutor from breaching grand jury secrecy.

Mr. President, the public's confidence in law enforcement, in the courts, and in the administration of justice for all Americans has taken a beating in recent years. Time and again, we have seen misconduct by police and prosecutors, as well as jury verdicts and court judgments that seem to defy reason and common sense. This Congress has an extraordinary opportunity to restore public confidence in the judicial system. Almost every point in this bill is long-standing policy supported by the American Bar Association. I believe the public and the bar will widely support these changes, and I hope my colleagues will move swiftly to enact this bill into law.

Mr. President, I yield the floor.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Virginia.

Mr. WARNER. Thank you.

I listened with great interest to my colleague's presentation of his bill, and it is quite interesting. You have never ceased in this institution to take on some of the toughest challenges.

Mr. BUMBERS. Thank you.

Mr. WARNER. I foresee some tough hills to climb within this legislation before it is through. But anyway, you are the man to do it if it is to be done. I cannot pass judgment at this time,

but having been a prosecutor and having spent some time myself in this area, it is quite interesting.

Mr. BUMBERS. Mr. President, I ask unanimous consent that the text of the Grand Jury Reform Act, which I am introducing today, be printed in the RECORD.

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

S. 2289

*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 "Grand Jury Reform Act of 1998".

#### SEC. 2. GRAND JURIES.

(a) IN GENERAL.—Rule 6 of the Federal Rules of Criminal Procedure is amended—

(1) in subdivision (a), by adding at the end the following:

"(3) INSTRUCTION ON RIGHTS, RESPONSIBILITIES, AND DUTIES.—Upon impaneling a grand jury, the court shall instruct and charge the grand jury on the rights, responsibilities, and duties of the grand jury under this rule, including—

"(A) the duty to inquire into criminal offenses that are alleged to have been committed within the jurisdiction;

"(B) the right to call and interrogate witnesses;

"(C) the right to request production of a book, paper, document, or other object, including exculpatory evidence;

"(D) the necessity of finding credible evidence of each material element of the crime charged before returning a true bill;

"(E) the right to request that the attorney for the government draft indictments for charges other than those originally requested by that attorney;

"(F) the obligation of secrecy under subdivision (e)(2); and

"(G) such other rights, responsibilities, and duties as the court determines to be appropriate.";

(2) in subdivision (d), by inserting "and counsel for that witness (as provided in subdivision (i))" after "under examination";

(3) in subdivision (e)(2), by adding at the end the following: "The court shall have the authority to investigate any violation of this paragraph, including the authority to appoint counsel to investigate and report to the court regarding any such violation."; and

(4) by adding at the end the following:

"(h) NOTICE TO WITNESSES.—Upon service of any subpoena requiring any witness to testify or produce information at any proceeding before a grand jury impaneled before a district court, the witness shall be given adequate and reasonable notice of—

"(1) his or her right to counsel, as provided in subdivision (i);

"(2) his or her privilege against self-incrimination;

"(3) the subject matter of the grand jury investigation;

"(4) whether his or her own conduct is under investigation by the grand jury;

"(5) the criminal statute, the violation of which is under consideration by the grand jury, if such statute is known at the time of issuance of the subpoena;

"(6) his or her rights regarding immunity; and

"(7) any other rights and privileges which the court deems necessary or appropriate.

(i) COUNSEL FOR GRAND JURY WITNESSES.—

"(1) IN GENERAL.—

“(A) RIGHT OF ASSISTANCE.—Each witness subpoenaed to appear and testify before a grand jury in a district court, or to produce books, papers, documents, or other objects before that grand jury, shall be allowed the assistance of counsel during such time as the witness is questioned in the grand jury room.

“(B) RETENTION OR APPOINTMENT.—Counsel for a witness described in subparagraph (A)—

“(i) may be retained by the witness; or

“(ii) in the case of a witness who is determined by the court to be financially unable to obtain counsel, shall be appointed as provided in section 3006A of title 18, United States Code.

“(2) POWERS AND DUTIES OF COUNSEL.—A counsel retained by or appointed for a witness under paragraph (1)—

“(A) shall be allowed to be present in the grand jury room only during the questioning of the witness and only to advise the witness; and

“(B) shall not be permitted to address any grand juror, or otherwise participate in the proceedings before the grand jury.

“(3) POWERS OF THE COURT.—

“(A) IN GENERAL.—If the court determines that counsel retained by or appointed for a witness under this subdivision has violated paragraph (2), or that such action is necessary to ensure that the activities of the grand jury are not unduly delayed or impeded, the court may remove the counsel and either appoint new counsel or order the witness to obtain new counsel.

“(B) NO EFFECT ON OTHER SANCTIONS.—Nothing in this paragraph shall be construed to affect the contempt powers of the court or the power of the court to impose other appropriate sanctions.

“(j) EXCULPATORY EVIDENCE.—An attorney for the government shall disclose to the grand jury any substantial evidence of which that attorney has knowledge that directly negates the guilt of the accused. Failure to disclose such evidence may be the basis for a motion to dismiss the indictment, if the court determines that the evidence might reasonably be expected to lead the grand jury not to indict.

“(k) AVAILABILITY OF GRAND JURY TRANSCRIPTS AND OTHER STATEMENTS.—

“(1) IN GENERAL.—Subject to paragraph (2), not later than 10 days before trial (unless the court shall for good cause determine otherwise), and after the return of an indictment or the filing of any information, a defendant shall, upon request, and as the court determines to be reasonable, be entitled to examine and duplicate a transcript or electronic recording of—

“(A) the grand jury testimony of all witnesses to be called at trial;

“(B) all statements relating to the defendant's case made to the grand jury by the court, the attorney for the government, or a special attorney;

“(C) all grand jury testimony or evidence which in any manner could be considered exculpatory; and

“(D) all other grand jury testimony or evidence that is determined by the court to be material to the defense.

“(2) EXCEPTION.—The court may refuse to allow a defendant to examine and duplicate a transcript or electronic recording of any testimony, statement, or evidence described in paragraph (1), if the court determines that such examination or duplication would endanger any witness.”

(b) CONFORMING AMENDMENTS.—Section 3500(e) of title 18, United States Code, is amended—

(1) in paragraph (1), by adding “or” at the end;

(2) in paragraph (2), by striking “, or” and inserting a period; and

(3) by striking paragraph (3).

By Mr. BREAUX:

S. 2290. A bill to promote the construction and operation of cruise ships in the United States; to the Committee on Commerce, Science, and Transportation.

U.S. FLAG CRUISE VESSELS LEGISLATION

• Mr. BREAUX. Mr. President, today I introduce legislation which I believe will help achieve the development of a United States cruise vessel industry and generate numerous economic benefits for our country through the operation of United States-flag cruise vessels between American ports.

There is little doubt that we should take significant and innovative action so that American ports, businesses and workers can share in the economic benefits that can be realized through the operation of cruise vessels in the United States domestic trade.

Recently, the Subcommittee on Surface Transportation and Merchant Marine held an oversight hearing on the need to generate cruise vessel operations between American ports. In fact, as a result of the hearing, many of our colleagues, including the Chairman of our Commerce Committee Senator MCCAIN, are committed to moving forward on cruise vessel legislation this year so our port economies throughout the country can begin to benefit through cruise vessel operations.

As strongly as I am committed to helping ports in my state of Louisiana and throughout our country to attract and benefit from increased cruise vessel operations, I am equally convinced that we will not achieve the full measure of these economic benefits if we simply allow foreign flag passenger vessels to operate between America's ports. Rather, I believe we should be directing our efforts to develop a large, modern and competitive cruise vessel fleet comprised of vessels built in the United States, operated under the United States-flag, and crewed by United States citizens. Otherwise, we would simply be allowing foreign companies and foreign workers to receive all the privileges and benefits that come with operating in the United States domestic trade without any of the associated and resultant obligations and responsibilities we impose on American companies and American workers.

The legislation I am introducing today is intended to reflect the economic realities facing companies seeking to enter the domestic cruise trade and the desire of American ports to attract cruise vessels as quickly as possible. It will jumpstart the domestic cruise vessel industry by allowing American companies to acquire foreign built cruise vessels and operate those ships in the domestic cruise trade under very specific and limited circumstances. These vessels will be documented under the laws of the United States, run with American citizen crews, and operated in compliance with all applicable United States laws, regulations and tax obligations.

My legislation reflects the principles embodied in our Nation's cabotage laws while recognizing that a waiver of the Passenger Vessel Services Act, under specific terms and conditions, is absolutely necessary to attract United States-flag cruise vessels into our domestic trades.

Especially significant is the fact that in order to take advantage of the authority to operate such vessels in the domestic trades, the owner must agree, and my legislation requires, that they will first enter into a contract to build a replacement vessel or vessels in a United States shipyard.

I share the desire of Senator MCCAIN and our colleagues to develop legislation that will immediately and dramatically increase domestic cruise vessel operations. However, I am convinced that we should not let this present opportunity pass by—we have a legitimate opportunity to increase the size of the oceangoing United States-flag cruise vessel fleet and to greatly increase the opportunity for American ports to attract and benefit from cruise vessel activity. I am aware of at least one American company ready to take advantage of this legislation, acquire two modern, attractive, large cruise vessels and operate them under the United States-flag under the terms and conditions set forth in my proposal.

I ask all my colleagues to join with me in support of this proposal so we can achieve the operation and construction of United States-flag cruise vessels.

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. 2290

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

**SECTION 1. PURPOSE.**

The purpose of this Act is to allow foreign-constructed vessels to be documented as vessels of the United States with the right to engage in the domestic coastwise cruise trade in connection with the construction of cruise vessels in the United States.

**SEC. 2. COASTWISE TRANSPORTATION OF PASSENGERS.**

(a) REFLAGGING.—

(1) IN GENERAL.—Notwithstanding section 12106(a)(2) of title 46, United States Code, section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), the Act of June 19, 1886 (46 U.S.C. App. 289), or any other provision of law, the Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement for a cruise vessel not constructed in the United States to a person who enters into a binding contract for construction in the United States of a cruise vessel or vessels with a total combined berth or stateroom capacity equal to at least 75 percent of the total combined berth or stateroom capacity of the cruise vessel or vessels for which the certificate is to be issued under this paragraph.

(2) CERTIFICATE SUNSET.—A certificate of documentation issued to a vessel under paragraph (1) shall terminate 2 years after the date on which all vessels constructed under the binding contract have been delivered.

## (b) LIMITATIONS.—

(1) NO COMPETITION WITH U.S.-BUILT VESSELS.—A vessel issued a certificate of documentation under subsection (a)(1) may not operate in the coastwise cruise trade on a route served by a cruise vessel built in the United States operating under the authority of section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), the Act of June 19, 1886 (46 U.S.C. App. 289), section 12106(a)(2) of title 46, United States Code, or any other authority of law in effect on or before the date of enactment of this Act.

(2) HAWAIIAN ROUTES PROHIBITED.—A vessel issued a certificate of documentation under subsection (a)(1), or constructed under a binding contract referred to in that subsection, may not operate between or among the islands of Hawaii.

**SEC. 3. CONSTRUCTION STANDARDS.**

A vessel issued a certificate of documentation under subsection (a)(1) that meets the standards and conditions for the issuance of a control verification certificate for a cruise vessel documented under the laws of a foreign country embarking passengers in the United States is deemed to be in compliance with section 3309 of title 46, United States Code.

**SEC. 4. FOREIGN TRANSFER.**

Notwithstanding section 9(c) of the Shipping Act, 1916 (46 U.S.C. App. 808), a cruise vessel issued a certificate of documentation under subsection (a)(1), or constructed under a binding contract referred to in that subsection, may be placed under foreign registry after its documentation under subsection (a) or its initial documentation (in the case of a vessel so constructed), but the Secretary shall revoke the coastwise endorsement issued for any such vessel when it is placed under foreign registry.

**SEC. 5. DEFINITIONS.**

In this Act:

(1) COASTWISE CRUISE TRADE.—The term “coastwise cruise trade” means the transportation of passengers in coastwise trade between points in the United States, either directly or by way of a foreign point, or originating and terminating at the same point in the United States.

(2) CRUISE VESSEL.—The term “cruise vessel” means a vessel that—

(A) is at least 10,000 gross tons as measured under chapter 142 of title 46, United States Code; and

(B) has berth or stateroom accommodations for at least 275 passengers.●

By Mr. GRAMS:

S. 2291. A bill to amend title 17, United States Code, to prevent the misappropriation of collections of information; to the Committee on the Judiciary.

**COLLECTIONS OF INFORMATION ANTIPIRACY ACT**

Mr. GRAMS. Mr. President, I rise today to introduce the “Collections of Information Antipiracy Act.” This legislation is similar to H.R. 2652, legislation already passed unanimously by our colleagues in the House of Representatives on May 19 of this year that is currently pending before the Judiciary Committee.

My legislation presents a much-needed Federal, legislative protection for databases. It is a fair and balanced bill that recognizes the need for database owners to receive adequate legal protection that provides them the incentives necessary to continue investing in database production.

The bill also acknowledges that users must continue to have access to timely

and innovative database products and services.

America produces and uses some 65 percent of the world’s databases.

Our database industry spans an enormous range of products and services—from collection of information about antidotes to poisons, to valuable collections of business and financial data, to databases of medical procedures and practice guidelines used to assure reliable and effective patient care.

These companies have been pioneers in offering innovative and easily accessible databases in any number of formats that meet consumer needs.

The myriad of databases produced in the United States are used by the business community, researchers, educators, government officials, and citizens to gain knowledge and make decisions that affect every aspect of our lives.

Yet, despite technological innovations, creating and offering databases in the marketplace is neither cheap nor easy.

Not only must database owners expend substantial resources on the collection of data, they must also maintain and distribute these information products, while continually updating them and responding to the demands of their customers.

Many American jobs depend on a healthy, vibrant U.S. database industry. These companies employ thousands of editors, researchers, and others. They invest millions of dollars in hardware and software to manage these large masses of information.

Despite the enormous value of these databases to our economy and society, American database owners are under a dual threat.

On the one hand, after a 1991 Supreme Court decision, it is increasingly unclear whether most databases are adequately protected from piracy by U.S. copyright law.

Lower courts since 1991 have handed down several decisions that have diminished the number and types of databases that are protected under the compilation copyright provisions in the 1976 Copyright Act.

In addition, these decisions have stated that even if databases as a whole may qualify for this limited copyright protection, the facts contained in them are freely available for the taking and re-use by others—including competing database producers—without authorization or compensation.

Although database producers do have means other than a new Federal law to seek protection, none has proven adequate, as is evidenced in the study completed by the U.S. Copyright Office last August.

Contract law, for example, binds only the parties to the contract and in any case varies from State to State and it also varies from country to country.

Technological protections are beginning to appear and are slowly being implemented in the online world, but

they offer no protection to databases that are produced in other formats.

Some States have adopted doctrines of misappropriation; however, these legal protections are far from being uniform and offer no solace to database producers in States where such legal safeguards are not in place.

The European Union has begun implementing a new directive protecting databases in their own countries, but only those produced in the European Union or in countries that offer comparable protections. This law clearly is designed to disadvantage database owners not located in an EU country. Great Britain, Germany, Spain, and most Scandinavian nations have already made changes in their own laws to implement the EU directive, and also a European official recently predicted that within a few years, as many as 35 of our trading partners in Europe and the Russian Federation will have similar laws in place.

Unless the United States passes a law that is comparable to that now governing Europe, more and more American database owners may feel the need to move some or all of their operations overseas in an effort, to thwart potential piracy of their products and services by unscrupulous competitors or vendors.

As I mentioned previously, Mr. President, American database producers are anxious to continue producing valuable databases for worldwide use. However, the technologies present in today’s world that allow for easy copying and redistribution of information threaten a producer’s ability to continue receiving a fair return on the tremendous investments required to produce quality databases.

Coupled with the inadequacy of U.S. law to protect investment in databases and the threat posed by the EU directive, it is clear to me that Congress—and more importantly, the Senate—must act quickly if we are to preserve the American lead in database production and use.

The “Collections of Information Antipiracy Act” offers a solution to the threats faced by American database owners by helping to provide the right to stop harmful practices that affect the marketplace for that database.

This legislation uses Congress’ powers under the Commerce clause of the Constitution to protect only those databases used in commerce.

Protection is limited to those databases whose owners have invested substantial monetary or other resources in gathering, organizing, or maintaining a collection of information.

It contains a definition of what constitutes a protected collection that is broad enough to offer effective protection to the wide range of products and services that would benefit from a new Federal law.

This legislation also contains numerous and important exceptions to the protections granted. For example, it makes clear that databases may be

used for legitimate purposes of verification and news reporting. It offers special exceptions to nonprofit users, such as researchers, scientists, and educators. The bill also states clearly that no one is precluded from gathering the same facts contained on one database owner's product and creating another database—but again, as long as those facts are not stolen from the original database owner. Finally, the bill recognizes the importance of unfettered public access to Government databases by specifically denying protection to any database created by a governmental entity—whether Federal, State, or local—or any database that a Government agency seeks to have created and distributed under an exclusive licensing arrangement. Mr. President, the concepts that lie behind the Collections of Information Antipiracy Act, and many of its specific provisions, have been debated for more than 2 years now. The House-passed bill now before the Senate Judiciary Committee was the subject of two hearings that included witnesses from nearly every affected community—both producers and users of databases. Indeed, the bill I introduce today is a much-improved version of the legislation first introduced in the House, and many provisions have been added that strike a fair balance between the needs of database producers for adequate protection and the also requirements that users have fair access to these private-sector products and services. There should be no fear that database producers will exert extraordinary control over their products and services. But, this legislation contains not only a special savings clause preserving our antitrust laws, but it also specifies low penalties against any nonprofit user who may run afoul of this new law. In closing, Mr. President, I am convinced it is time for this body to act to protect the interests of database owners and users in the United States. The bill I am introducing today represents a reasonable and fair means of doing so, and I urge my colleagues to join with me in working during these few remaining days of the 105th Congress to consider and pass this very important piece of legislation.

#### ADDITIONAL COSPONSORS

S. 778

At the request of Mr. LUGAR, the name of the Senator from Texas (Mr. GRAMM) was added as a cosponsor of S. 778, a bill to authorize a new trade and investment policy for sub-Saharan Africa.

S. 1251

At the request of Mr. D'AMATO, the name of the Senator from Georgia (Mr. COVERDELL) was added as a cosponsor of S. 1251, a bill to amend the Internal Revenue Code of 1986 to increase the amount of private activity bonds which may be issued in each State, and to index such amount for inflation.

S. 1754

At the request of Mr. FRIST, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 1754, a bill to amend the Public Health Service Act to consolidate and reauthorize health professions and minority and disadvantaged health professions and disadvantaged health education programs, and for other purposes.

S. 1758

At the request of Mr. LUGAR, the name of the Senator from Hawaii (Mr. INOUE) was added as a cosponsor of S. 1758, a bill to amend the Foreign Assistance Act of 1961 to facilitate protection of tropical forests through debt reduction with developing countries with tropical forests.

S. 1976

At the request of Mr. HARKIN, his name was added as a cosponsor of S. 1976, a bill to increase public awareness of the plight of victims of crime with developmental disabilities, to collect data to measure the magnitude of the problem, and to develop strategies to address the safety and justice needs of victims of crime with developmental disabilities.

S. 2128

At the request of Mr. STEVENS, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 2128, a bill to clarify the authority of the Director of the Federal Bureau of Investigation regarding the collection of fees to process certain identification records and name checks, and for other purposes.

#### SENATE CONCURRENT RESOLUTION 107

At the request of Mr. LOTT, the name of the Senator from Indiana (Mr. COATS) was added as a cosponsor of Senate Concurrent Resolution 107, a concurrent resolution affirming United States commitments to Taiwan.

#### AMENDMENT NO. 3109

At the request of Mr. ABRAHAM his name was added as a cosponsor of amendment No. 3109 proposed to S. 1882, a bill to reauthorize the Higher Education Act of 1965, and for other purposes.

#### AMENDMENTS SUBMITTED

#### AFFIRMING U.S. COMMITMENTS UNDER THE TAIWAN RELATIONS ACT

#### LOTT AMENDMENT NO. 3121

Mr. LOTT proposed an amendment to the concurrent resolution (S. Con. Res. 107) affirming U.S. commitments under the Taiwan Relations Act; as follows:

On page 2, line 8, strike "with the consent of the people of Taiwan,".

#### RELATIVE TO TAIWAN ADMISSION TO MULTILATERAL ECONOMIC INSTITUTIONS

#### HELMS AMENDMENT NO. 3122

Mr. GRAMS (for Mr. HELMS) proposed an amendment to the concurrent resolution (S. Con. Res. 30) expressing the sense of the Congress that the Republic of China should be admitted to multilateral economic institutions, including the International Monetary Fund and the International Bank for Reconstruction and Development; as follows:

Strike all after the resolving clause and insert the following: That it is the sense of the Senate (the House of Representatives concurring) that it should be United States policy to—

(1) support changes to the International Monetary Fund Charter that would allow the Republic of China on Taiwan and other qualified economies to become members of the International Monetary Fund; and

(2) support the admission of Taiwan to membership in other international economic organizations for which it is qualified, including the International Bank for Reconstruction and Development.

Strike the preamble and insert the following:

Whereas the Republic of China on Taiwan (hereafter referred to as "Taiwan") possesses a free economy with the 19th largest gross domestic product in the world;

Whereas Taiwan has the 14th largest trading economy in the world and the 7th largest amount of foreign investment in the world and holds one of the largest amounts of foreign exchange reserves in the world;

Whereas Taiwan is a democracy committed to the economic and political norms of the international community;

Whereas the purpose of the International Monetary Fund (hereafter referred to as "IMF") is to promote exchange stability, to establish a multilateral system of payments, to facilitate the expansion of world trade, and to provide capital to assist developing nations;

Whereas changes to the IMF Charter that would allow Taiwan and other qualified economies to become members of the IMF would benefit the world economy, especially those developing countries in need of capital, and would contribute to the purposes of the IMF;

Whereas the IMF aims to further economic liberalization and globalization and conducts conferences, exchanges, and training programs in international monetary management which would be beneficial to Taiwan;

Whereas membership in the IMF is a prerequisite for accession to the International Bank for Reconstruction and Development and to regional banks in which Taiwan's membership would be beneficial; and

Whereas Taiwan is already a member of regional multilateral economic institutions including the Asia-Pacific Economic Cooperation Forum and the Asian Development Bank; Now, therefore, be it

Amend the title so as to read: "Expressing the sense of Congress that the rules of multilateral economic institutions, including the International Monetary Fund and the International Bank for Reconstruction and Development, should be amended to allow membership for the Republic of China on Taiwan and other qualified economies."