CONGRESSIONAL RECORD — SENATE

July 27, 2000

S. 2944. A bill to clarify that certain penalties provided for in the Oil Pollution Act of 1990 are the exclusive criminal penalties for any action or activity that may arise or occur in connection with certain discharges of oil or a hazardous substance; to the Committee on Environment and Public Works.

S. 294. A bill to clarify that certain penalties provided for in the Oil Pollution Act of 1990 are the exclusive criminal penalties for any action or activity that may arise or occur in connection with certain discharges of oil or a hazardous substance; to the Committee on Environment and Public Works.

S. 2944. A bill to clarify that certain penalties provided for in the Oil Pollution Act of 1990 are the exclusive criminal penalties for any action or activity that may arise or occur in connection with certain discharges of oil or a hazardous substance; to the Committee on Environment and Public Works.

Mr. BREAUX. Mr. President, I am pleased to introduce legislation to address a long-standing problem which adversely affects safe and reliable maritime transport of oil products. The legislation I am introducing today will eliminate the application and use of strict criminal liability statutes, statutes that do not require a showing of criminal intent or even the slightest degree of negligence, for maritime transportation-related oil spill incidents.

Through comprehensive Congressional action that led to the enactment and implementation of the Oil Pollution Act of 1990, the United States has successfully reduced the number of oil spills in the maritime environment and has established a cooperative public/private partnership to respond effectively in the diminishing number of situations when an oil spill occurs. Nonetheless, over the past decade, the use of the unrelated strict criminal liability statutes that I referred to above has undermined the spill prevention and response objectives of OPA90, the very objectives that were established by the Congress to preserve the environment, safeguard the public welfare, and promote the safe transportation of oil. The legislation I am introducing today will restore the delicate balance of interests reached in OPA90, and will reaffirm OPA90’s preeminent role as the statute providing the exclusive criminal penalties for oil spill incidents.

As stated in the Coast Guard’s own environmental enforcement directive, a company, its officers, employees, and mariners, in the event of an oil spill “could be convicted and sentenced to a criminal fine even where [they] took all reasonable precautions to avoid the discharge.” Responsible operators in my home state of Louisiana and elsewhere in the United States who transport oil are unavoids

Mr. BREAUX. Mr. President, I am pleased to introduce legislation to address a long-standing problem which adversely affects safe and reliable maritime transport of oil products. The legislation I am introducing today will eliminate the application and use of strict criminal liability statutes, statutes that do not require a showing of criminal intent or even the slightest degree of negligence, for maritime transportation-related oil spill incidents.

Through comprehensive Congressional action that led to the enactment and implementation of the Oil Pollution Act of 1990, the United States has successfully reduced the number of oil spills in the maritime environment and has established a cooperative public/private partnership to respond effectively in the diminishing number of situations when an oil spill occurs. Nonetheless, over the past decade, the use of the unrelated strict criminal liability statutes that I referred to above has undermined the spill prevention and response objectives of OPA90, the very objectives that were established by the Congress to preserve the environment, safeguard the public welfare, and promote the safe transportation of oil. The legislation I am introducing today will restore the delicate balance of interests reached in OPA90, and will reaffirm OPA90’s preeminent role as the statute providing the exclusive criminal penalties for oil spill incidents.

As stated in the Coast Guard’s own environmental enforcement directive, a company, its officers, employees, and mariners, in the event of an oil spill “could be convicted and sentenced to a criminal fine even where [they] took all reasonable precautions to avoid the discharge.” Responsible operators in my home state of Louisiana and elsewhere in the United States who transport oil are unavoids

Most liquid cargo transportation companies on the coastal and inland waterway system of the United States have embraced safe operation and risk management as two of the most important and fundamental values. For example, members of the American Waterways Operators (AWO) from Louisiana and other states have implemented stronger safety programs that have significantly reduced personal injuries to mariners. Tank barge fleets have been upgraded through construction of new state-of-the-art double hulled tank barges while obsolete single skin barges are being retired far in advance of the OPA90 timetable. Additionally, AWO members have dedicated significant time and financial resources to provide continuous and comprehensive education and training for vessel captains, crews and shoreside staff, not only in the operation of vessels at a technical level but also in the impact on the environment of oil pollution. OPA90 has provided a comprehensive and cohesive “blueprint” for proper planning, training, and resource identification to respond to an oil spill incident, and to ensure that such a response is properly and cooperatively carried out.

OPA90 also provides a complete statutory framework for proceeding against individuals for civil and/or criminal penalties arising out of oil spills in the marine environment. When Congress crafted this Act, it carefully balanced the imposition of stronger criminal and civil penalties with the need to promote enhanced cooperation among all of the parties involved in the spill prevention and response effort. In section 311, the Congress established the circumstances in which criminal penalties could be imposed for actions related to maritime oil spills, and added and/or substantially increased criminal penalties under the related laws which comprehensively govern the maritime transportation of oil and other petroleum products.

The legislation we are introducing today will not change in any way the tough criminal sanctions that were imposed. However, it will impose strict liability on law-abiding members of the maritime industry in Louisiana and elsewhere are concerned by the willingness of the Department of Justice and other federal agencies in the post-OPA90 environment to use strict criminal liability statutes in oil spill incidents. As you know, strict liability imposes criminal sanctions without requiring a showing of criminal knowledge, intent or even negligence. These federal actions imposing strict liability have created an atmosphere of extreme uncertainty for the maritime transportation industry about how to respond to and cooperate with the Coast Guard and other federal
agencies in cleaning up an oil spill. Criminal culpability in this country, both historically and as reflected in the comprehensive OPA90 legislation itself, typically requires wrongful actions or omissions by individuals through some degree of criminal intent or through the failure to use the required standard of care. However, Federal prosecutors have been employing other antiquated, seemingly unrelated "strict liability" statutes that do not require a showing of "knowledge" or "intent" as a basis for criminal prosecution for oil spill incidents. Such strict criminal liability statutes as the Migratory Bird Treaty Act and the Refugee Act, statutes that were enacted at the turn of the century to serve other purposes, have been used to harass and intimidate the maritime industry, and, in effect, have turned every oil spill into a potential crime scene without regard to the fault or intent of companies, corporate officers and employees, and mariners.

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.) provides that "it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, . . . any migratory bird . . . which is punishable by imprisonment and/or fines. Prior to the Exxon Valdez oil spill in 1989, the MBTA was primarily used to prosecute the illegal activities of hunters of migratory birds, as the Congress originally intended when it enacted the MBTA in 1918. In the Exxon Valdez case itself, and prior to the enactment of OPA90, the MBTA was first used to support a criminal prosecution against a vessel owner in relation to a maritime oil spill, and this "hunting statute" has been used ever since against the maritime industry. The "Refugee Act" (33 U.S.C. 407, 411) was enacted over 100 years ago at a time well before federal authorities in subsequent federal legislation essentially replaced it with comprehensive requirements and regulations specifically directed to the maritime transportation of oil and petroleum products. Such strict liability statutes are unrelated to the regulation and enforcement of oil transportation activities, and in fact were not included within the comprehensive OPA90 legislation as statutes in which criminal liability could be found. With the prosecutorial use of strict liability statutes, owners and mariners engaged in the transportation of oil cannot avoid exposure to criminal liability, regardless of how diligently they adhere to prudent practice and safe environmental standards. Although conscientious safety and training programs, state-of-the-art equipment, proper operational procedures, hortention maintenance programs, and the employment of qualified and experienced personnel will collectively prevent most oil spills from occurring, unfortunately spills will still occur.

To illustrate this point, please permit me to present a scenario that highlights the dilemma faced by the maritime oil transportation industry in Louisiana. Imagine, if you will, that a company is operating a towing vessel in compliance with Coast Guard regulations on the Mississippi River on a calm, clear day with several fully laden tank barges in tow. Suddenly, what was charted and previously identified to be a clear portion of the waterway, one of the tank barges strikes an unknown submerged object which shears off a significant portion of the vessel. The spill is catastrophic and the Coast Guard immediately undertakes coordinated spill response actions with the Coast Guard and other federal, state, and local agencies to safeguard the vessel and its crew, clean up the oil spill, and otherwise mitigate any damage to the surrounding environment. The overriding objectives at this critical moment are to assure personnel and public safety and to clean up the oil spill. If做不到, unknowingly or carelessly does not prevent a catastrophic oil spill, then they will support a criminal prosecution. Thus, in the early stages of a pollution incident, the prudent operator will quickly recognize, together with their attendant imprisonment and/or fines. Despite the reasonable care and precautions taken in the operation and navigation of the tow and in the spill response effort. Indeed, in the Coast Guard's environmental enforcement directive, the statement is made that "[t]he decision to commit the necessary Coast Guard resources to obtain the evidence that will support a criminal prosecution must often be made in the very early stages of a pollution incident." Any prudent operator will quickly recognize the dilemma in complying with the mandate to act cooperatively with all appropriate authorities in cleaning up the oil spill, while at the same time those very agencies may be conducting a criminal investigation of that operator. Vessel owners and their employees have traditionally been free to provide a strong disincentive for response. Consequently, increased criminalization of oil spill incidents introduces uncertainty into the response effort by discouraging full and open cooperation and cooperation and leaves vessel owners and operators criminally vulnerable for response actions taken in an effort to "do the right thing".

In the maritime industry's continuing effort to improve its risk management process, it seeks to identify and address all areas associated with the operation of its business. Through fleet modernization, personnel training, and other reasonable steps to address identified risks in its business, the industry still cannot manage or avoid the increased risks of strict criminal liability (again, a liability that has no regard to fault or intent). The only method available to companies and their officers to avoid the risk of criminal liability completely is to divest themselves from the parasitic business of transporting oil and other petroleum products, and leaves vessel owners and operators criminally vulnerable for response actions taken in an effort to "do the right thing".

As this scenario demonstrates, the unjustified use of strict liability statutes is plainly undermining the very objectives which OPA90 sought to achieve, namely to enhance the prevention of and response to oil spills in Louisiana and elsewhere in the United States. As we are well aware, tremendous time, effort, and resources have been expended by the federal government and the maritime industry to eliminate oil spills to the maximum extent possible, and to plan for and undertake an immediate and effective response to mitigate any environmental damage from spills that do occur. Clearly unwarranted and improper prosecutorial use of strict liability statutes is having a "chilling" effect on our ability to take full advantage of the cooperation and response efforts. Indeed, even if we were to believe that criminal prosecution only follows intentional criminal conduct, the mere fact that strict criminal liability statutes are available at the prosecutor's discretion will intimidate even the most innocent and careful operator. With strict liability criminal enforcement, responsible members of the maritime transportation industry are faced with an extreme dilemma in the event of an oil spill—provide less than full cooperation and response as criminal defense attorneys will certainly direct, or cooperate fully despite the risk of criminal prosecution that could result from additional actions made during the course of the spill response. Consequently, increased criminalization of oil spill incidents introduces uncertainty into the response effort by discouraging full and open cooperation and cooperation and leaves vessel owners and operators criminally vulnerable for response actions taken in an effort to "do the right thing".
mariners are the only available crew to handle the most hazardous cargoes, or the least responsible operators are the only available carriers. Thus, the unavoidable risk of such criminal liability directly and adversely affects the safe transportation of oil products, an activity essential for the public, the economy, and the nation.

Therefore, despite the commitment and effort to provide trained and experienced vessel operators and employees, to comply with all safety and operational mandates of Coast Guard laws and regulations, and to provide for the safe transportation of oil as required by OPA90, maritime transportation companies in Louisiana, and elsewhere still cannot avoid criminal liability in the event of an oil spill. Responsible, law-abiding companies have unfortunately been forced to undertake the only prudent action that they could under the circumstances, namely the development of criminal liability action plans and retention of criminal counsel in an attempt to prepare for the unavoidable risks of such liability.

These are only preliminary steps and do not begin to address the many implications of increasing globalization of oil spills. The industry is now asking what responsibility does it have to educate its mariners and shore-side staff about the potential personal exposure they may face and wonder how to do this without creating many undesirable consequences? How should the industry organize spill management teams and educate them on how to cooperate openly and avoid unwitting exposure to criminal liability? Mr. President, I have thought about these issues a great deal and simply do not know how to resolve these dilemmas under current, strict liability law. In the event of an oil spill, a responsible party not only must manage the clean-up of the oil and the civil liability resulting to itself, but also must protect itself from the criminal liability that now exists due to the available and willing use of strict liability criminal laws by the federal government. Managing the pervasive threat of strict criminal liability, by its very nature, prevents a responsible party from cooperating fully and completely in response to an oil spill situation. The OPA90 “blueprint” is no longer clear. Is this serving the objectives this represents for the public welfare of our nation? Is this what Congress had in mind when it mandated its spill response regime? Is this in the interest of the most immediate, most effective oil spill cleanup in the unfortunate event of a spill? We think not.

To restore the delicate balance of interests reached in the enactment of OPA90 a decade ago, we intend to work with the Congress to reaffirm the OPA90 framework for criminal prosecutions in all spill incidents. The amendment of the legislation we are introducing today will ensure increased cooperation and responsiveness desired by all those interested in oil spill response issues without diluting the deterrent effect and stringent criminal penalties imposed by OPA90 itself.

I look forward to continuing the effort to upgrade the safety of marine operations in the navigable waters of the United States. 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. 2944

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

SECTION 1. AFFIRMATION OF PENALTIES UNDER OIL POLLUTION ACT OF 1990.

(a) IN GENERAL.—Notwithstanding any other provision or rule of law, section 403(c) and 402 of the Oil Pollution Act of 1990 (Public Law 101–380; 104 Stat. 579) and the amendments made by those sections provide the exclusive criminal penalties for any action or activity that may arise or occur in connection with a discharge of a hazardous substance referred to in section 311(b)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1221(b)(3)).

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit, or otherwise exempt any person from, liability for conspiracy to commit any offense against the United States, for any statements, or for the obstruction of justice.

By Mr. KENNEDY (for himself, Mr. TORRICELLI and Mr. HARKIN):

S. 2946. A bill to amend title I of the Employee Retirement Income Security Act of 1974 to ensure that employees are not improperly disqualified from benefits under pension plans and welfare plans based on a misclassification of their employee status; to the Committee on Health, Education, Labor, and Pensions.

EMPLOYEE BENEFITS ELIGIBILITY FAIRNESS ACT

Mr. KENNEDY. Mr. President, contingent workers in our society face significant problems, and they deserve our help in meeting them. These men and women—temporary and part-time workers, contract workers, and independent contractors—continue to suffer unfairly, even in our prosperous economy. A new report from the General Accounting Office emphasizes that contingent workers often lack income security and retirement security.

We know that for most workers today, a single lifetime job is a relic of the past. The world is long gone in which workers stay with their employer for many years, and then retire on a company pension. Since 1962 the number of temporary help jobs has grown 577 percent.

The GAO report shows that 30 percent of the workforce—38 million working Americans—now get their paychecks from contingent jobs.

Contingent workers have lower income than traditional, full-time workers and many are living in poverty. For example, 30 percent of agency temporary workers have family incomes below $15,000. By comparison, only 8 percent of standard full-time workers have family incomes below $15,000.

Contingent workers are less likely to be covered by employer health and retirement benefits than are standard, full-time workers. Even when employers do provide such benefits, contingent workers are less likely to participate in the plan, either because they are excluded or because the plan is too expensive. Only 21 percent of part-time workers are included in an employer-sponsored pension plan. By comparison, 80 percent of standard full-time workers are included in their employer’s pension plan.

Non-standard or alternative work arrangements can meet the needs of working families and employers alike, but these arrangements should not be used to divide the workforce into “haves” and “have-nots.” Flexible work arrangements, for example, can give working parents more time to care for their children, but many workers are not in their contingent jobs by choice. More than half of temporary workers would prefer a permanent job instead of their contingent job, but temporary work is all they can find.

As the GAO report makes clear, employers have economic incentives to cut costs by misclassifying their workers as temporary or contract workers. Too often, contingent arrangements are set-up by employers for the purpose of excluding workers from their employee benefit programs and evading their responsibilities to their workers. Millions of employees have been misclassified by their employers, and as a result they have been denied the benefits and protections that they rightly deserve and worked hard to earn.

All workers deserve a secure retirement at the end of their working years. Social Security has been and will continue to be the best foundation for that security. But the foundation is just that—the beginning of our responsibility, not the end of it. We cannot expect Americans to provide the security their lives, only to face poverty and hard times when they retire.

That is why I am introducing, with Senators TORRICELLI and HARKIN, the Employee Benefits Eligibility Fairness Act of 2000 to help contingent workers obtain the retirement benefits they deserve. This legislation clarifies employers’ responsibilities under the law so that they cannot exclude contingent workers from employee benefit plans based on artificial labels or payroll policies.

This is an issue of basic fairness for working men and women. It is unfair for individuals who work full-time, on an indefinite long-term basis for an employer to be excluded from the employer’s pension plan, merely because the employer classifies the workers as “temporary” when in fact they are not. The employer-employee relationship should be determined on the facts of
the working arrangement, not on artificial labels, not on artificial accounting practices, not artificial payroll practices.

It is long past time for Congress to recognize the plight of contingent workers and see that they get the employee benefits they deserve. These important changes are critical to improving the security of working families, and I look forward to their enactment.

Mr. President, I ask unanimous consent that the next 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. 2950

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 “Employee Benefits Eligibility Fairness Act of 2000.”

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) No intent of the Employee Retirement Income Security Act of 1974 to protect the pension and welfare benefits of workers is frustrated by the practice of mislabeling employees to exclude them from employee benefit plans. Employees are wrongly denied benefits when they are mislabeled as temporary employees, part-time employees, leased employees, agency employees, employees leasing firm employees, and contractors. If their true employment status were recognized, mislabeled employees would be eligible for employee benefit plans because such plans are offered to other employees performing the same or substantially the same work and working for the same employer.

(2) Mislabeled employees are often paid through staffing, temporary, employee leasing, or other similar firms to give the appearance that they are not employees of their worksite employer. Employment contracts and reports to government agencies also are used to give the erroneous impression that mislabeled employees work for staffing, temporary, employee leasing, or other similar firms, while the facts of the work and placement do not meet the common law standard for determining the employment relationship. Employees are also mislabeled as contractors and paid from non-payroll accounts to give the appearance that they are not employees of their worksite employer. These practices violate the Employee Retirement Income Security Act of 1974.

(3) Employers are amending their benefit plans to add provisions that exclude mislabeled employees from participation in the plan even in the event that such employees are determined to be common law employees and otherwise eligible to participate in the plan. These plan provisions violate the Employee Retirement Income Security Act of 1974.

(4) As a condition of employment or continued employment, mislabeled employees are often required to sign documents that purport to waive their right to participate in employee benefit plans. Such documents inaccurately claim to limit the authority of the courts and applicable Federal agencies to correct the mislabeling of employees and to enforce the terms of plans providing for their participation. This practice violates the Employee Retirement Income Security Act of 1974.

(b) PURPOSE.—The purpose of this Act is to clarify applicable provisions of the Employee Retirement Income Security Act of 1974 to ensure that employees are not improperly excluded from participation in employee benefit plans as a result of mislabeling of their employment status.

SEC. 3. ADDITIONAL STANDARDS RELATING TO MINIMUM PARTICIPATION REQUIREMENTS.

(a) REQUIRED INCLUSION OF SERVICE.—Section 202(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1052(a)(3)) is amended by adding at the end the following new subparagraph:

“(E) For purposes of this section, in determining ‘years of service’ and ‘hours of service’, service shall include all service for the employer as an employee under the common law, irrespective of whether the worker—

(1) is paid through a staffing firm, temporary help firm, payroll agency, employment agency, or other such similar arrangement,

(2) is paid directly by the employer under an arrangement purporting to characterize an employee under the common law as other than an employee, or

(3) is paid from an account not designated as a payroll account.”

(b) EXCLUSION PRECLUDED WHEN RELATED TO CERTAIN PURPORTED CATEGORIZATIONS.—Section 202 of such Act (29 U.S.C. 1052) is amended further by adding at the end the following new subsection:

“(c)(1) Subject to paragraph (2), a pension plan shall be treated as failing to meet the requirements of this section if any individual who—

(A) is an employee under the common law, and

(B) performs the same work (or substantially the same work) for the employer as other employees who generally are not excluded from participation in the plan, is excluded from participation in the plan, irrespective of the placement of such employee in any category of workers (such as temporary employees, part-time employees, leased employees, agency employees, staffing firm employees, contractors, or any similar category) which may be specified under the plan as ineligible for participation.

(2) Nothing in paragraph (1) shall be construed to preclude the exclusion from participation in a pension plan of individuals who in fact do not meet a minimum service period or other requirements related to participation in the plan as a result of the exclusion provided for under the terms of the plan and which is otherwise in conformity with the requirements of this section.

SEC. 4. WAIVERS OF PARTICIPATION INEFFECTIVE IF RELATED TO MISCLASSIFICATION OF EMPLOYEE.

Section 202 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1052) (as amended by section 3) is amended further by adding at the end the following new subsection:

“(d) Any waiver or purported waiver by an employer of a requirement that an employee be eligible for participation in a pension plan or welfare plan shall be ineffective if related, in whole or in part, to the a misclassification of the employee in 1 or more ineligible categories.

SEC. 5. OBJECTIVE ELIGIBILITY CRITERIA IN PLAN INSTRUMENTS.

Section 402 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) is amended by adding at the end the following new subsection:

“(c)(1) The written instrument pursuant to which an employee benefit plan is maintained shall set forth eligibility criteria which—

(A) Include and exclude employees on a uniform basis; and

“(C) are based on objective criteria stated in the instrument itself for the inclusion or exclusion (other than the mere listing of an employee as included or excluded);

(2) No plan instrument may permit an employer or plan sponsor to exclude an employee under the common law from participation irrespective of the placement of such employee in any category of workers (such as temporary employees, leased employees, agency employees, staffing firm employees, contractors, or any similar category) if the employee—

(A) is an employee of the employer under the common law,

(B) performs the same work (or substantially the same work) for the employer as other employees who generally are not excluded from participation in the plan, and

(C) meets a minimum service period or minimum age which is required under the terms of the plan.”

SEC. 6. ENFORCEMENT.


(1) by striking “or” in clause (i) and inserting a comma,

(2) by striking the semicolon at the end of clause (ii) and inserting “, or”, and

(3) by adding at the end the following:

“(iii) to provide relief to employees who have been misclassified in violation of sections 202 and 402.”

SEC. 7. EFFECTIVE DATE.
The amendments made by this Act shall apply with respect to plan years beginning on or after the date of the enactment of this Act.

By Mr. CAMPBELL:

S. 2950. A bill to authorize the Secretary of the Interior to establish the Sand Creek Massacre Historic Site in the State of Colorado; to the Committee on Energy and Natural Resources.

INTRODUCTION OF LEGISLATION TO CREATE THE SAND CREEK NATIONAL HISTORIC SITE

Mr. CAMPBELL. Mr. President, today I introduce the Sand Creek Massacre National Historic Site Establish- ment Act of 2000, legislation which will finally recognize and memorialize the shameful event in our country's history.

The Sand Creek Massacre of November 27, 1868, was a watered-down version of the plains Indian wars upon the plains Indians in the territories of the Western United States in the latter half of the 19th century. However, what has been lost for more than a century is a comprehensive understanding of the events of that day in a grove of cottonwood trees along Sand Creek river in Colorado. In some cases denial of the events of the day or a sense that “the Indians had it coming” has occurred.

This legislation finally recognizes a shameful event in our country's history based on scientific studies, and
makes it clear America has the strength and resolve to face its past and learn the painful lessons that come with intolerance.

The indisputable facts are these: 700 members of the Colorado militia, commanded by John Chivington, struck at dawn that November day, attacking a camp of Cheyenne and Arapaho Indians settled under the U.S. Flag and a white flag which the Indian Chiefs Black Kettle and White Antelope were told by the U.S. would protect them. Chivington's men reportedly desecrated the bodies of the dead after the massacre, and newspaper reports from Denver at the time told of the troops displaying Indian body parts in a gruesome display as they rode through the streets of Colorado's largest city following the attack.

This legislation is one of this horrible attack which left Indian women and even babies dead, were never brought to justice even after a congressional investigation concerning this brutality.

The legislation I introduce today authorizes the National Park Service to enter into negotiations with willing sellers only, in an attempt to secure property inside a boundary which encompasses approximately 12,470 acres as identified by the National Park Service, as a lasting memorial to events of that fateful day.

This legislation has been developed over the course of the last 18 months. It represents a remarkable effort which brought divergent points of view together to define the events of that day and to plan for the future protection of this site. The National Park Service, with the cooperation of the Kiowa County Commissioners, the Cheyenne and Arapaho Tribes of Oklahoma, the Northern Cheyenne Tribe and the Northern Arapaho Tribe, the State of Colorado and many local landowners and volunteers have completed extensive cultural, geomorphological and physical studies of the area where the massacre occurred.

All of those involved in this project agree, not acting now is not a option. This legislation does not compel any private property owner to sell his or her property to the federal government. It allows the National Park Service to acquire property with willing sellers to secure property at fair market value, for a national memorial. This process could take years. However, several willing sellers have come forward and are willing to negotiate with the NPS. The property they own has been identified by the NPS as suitable for a memorial. Additional acquisitions of property from willing sellers could come in the future. However, the Sand Creek National Historic Site could never extend beyond the 12,470 acres identified by the site resource study already completed.

This legislation has come to being because all of those involved have exhibited an extraordinary ability to put aside their differences, look with equal measure at the scientific evidence and the oral traditions of the Tribes, and come up with a plan that equally honors the memory of those killed and the rights of the private property owners who have been responsible stewards of this site. We have a window of opportunity here that will not always be available. I encourage my colleagues to respect the memory of those so brutally killed and support the creation of a Sand Creek National Historic Site on this hallowed ground in Kiowa County, in Colorado.

I ask unanimous consent that the bill and other research material associated with the Sand Creek site be printed in the Record for my colleagues or the public to review.

By Mr. TORRICELLI:
S. 2953. A bill to amend title 38, United States Code, to improve outreach programs carried out by the Department of Veterans Affairs to provide for more fully informing veterans of benefits available to them under laws administered by the Secretary of Veterans Affairs, to authorize the Department to enter into agreements with the Sands Creek site to create a historic site and to improve outreach programs concerning this brutality.

Mr. TORRICELLI. Mr. President, I rise today to introduce the Veterans' Right to Know Act which will assist millions of brave Americans who have served this nation in times of war. This legislation would ensure that all veterans are fully informed of the various benefits that they have earned through their brave and dedicated service to their country.

Throughout the history of the United States, the interests of our nation have been championed by ordinary citizens who willingly defend our nation when called upon. During the times of crisis which threatened the very existence of our nation because of young men and women from all walks of life who took up arms to defend the ideals by which this nation was founded. Whether it was winning our freedom from an oppressive empire, preserving our Union, defeating fascism or battling the spread of communism, the American people have time and time again answered the call to defend liberty, justice and democracy at home and throughout the world.

Our growing debt of gratitude to each and every one of our veterans, and we must make a concerted effort to show our appreciation for their valiant service. The Department of Veterans Affairs (VA) provides the necessary health care services and benefits that have been faithful and reliable to our men and women. However, over half of the veterans in the United States are not fully aware of the benefits or pensions to which they are entitled.

The bill I introduced today is straightforward and it does not call for the creation of new benefits. Rather, it seeks to ensure that our veterans are well informed of the benefits they are entitled to as a result of their service or injuries sustained during their service to their country.

This legislation would require the VA to inform veterans about their eligibility for benefits and health care services. However, they may be eligible for any benefit with the VA. Furthermore, many times, widows and surviving family members of veterans are not aware of the special benefits available to them when their family member passed. My bill would ensure that individuals in their time of loss by instructing the VA to inform them of the benefits for which they are eligible on the passing of their loved one.

My legislation also seeks to reach out to those veterans who are not currently enrolled in the VA system by calling upon the Secretary of Veterans Affairs to prepare an annual outreach plan that will encourage eligible veterans to register with the VA as well as keeping current enrollees aware of any changes to benefits or eligibility requirements.

This bill will help ensure that our government and its services for veterans are there for the men and women who have served this nation in the armed forces. I am hopeful that my colleagues in the Senate will recognize the tremendous service that our veterans have given and support this reasonable measure to ensure that our veterans receive the benefits they deserve.

By Mr. HOLLINGS (for himself, Ms. SNOWE, Mr. KERRY, Mr. STEVENS, Mr. BREAUX, and Mr. CLELAND):
S. 2954. A bill to establish the Dr. Nancy Foster Marine Biology Scholarship Program; to the Committee on Commerce, Science, and Transportation.

THE NANCY FOSTER SCHOLARSHIP ACT

Mr. HOLLINGS. Mr. President, I rise today to introduce the Nancy Foster Scholarship Act. This legislation would create a scholarship program in marine biology or oceanography in honor of Dr. Nancy Foster, head of the National Ocean Service at the National Oceanic and Atmospheric Administration (NOAA) until her passing on Tuesday, June 27, 2000. I am proud to introduce legislation to commemorate the life and work of such a wonderful leader, mentor, and coastal advocate. I thank my colleagues Senators SNOWE, KERRY, STEVENS, BREAUX, and CLELAND for joining me in recognizing Dr. Foster’s strong commitment to improving the conservation and scientific understanding of our precious coastal resources.

My legislation would create a Nancy Foster Marine Biology Scholarship Program within the Department of Commerce. This Program would provide scholarship funds to outstanding women and minority graduate students to support and encourage independent study and research in marine biology. It is my hope that this scholarship program will promote the development of future leaders of Dr. Foster’s caliber.
Dr. Foster was the first woman to direct a NOAA line office, and during her 23 years at NOAA rose to one of the most senior levels a career professional can achieve. She directed the complete modernization of NOAA’s essential marine observing programs and created a ground-breaking partnership with the National Geographic Society to launch a 5-year undersea exploration program called the Sustainable Seas Expedition. Dr. Foster was a strong and enthusiastic mentor to a long string of a staunch ally to her colleagues, and for this reason, I believe the legislation I am introducing today to be the most appropriate way for us all to ensure that her deep commitment to marine science continues on in others.

Mr. President, we will all feel Dr. Foster’s loss deeply for years to come. The creation of a scholarship program in her honor is one small way we can thank a person who did so much for us all.

By Mr. D. EWINE (for himself, Mr. HATCH, Mr. Voinovich, and Mr. LEAHY):

S. 2955. A bill to amend the Internal Revenue Code of 1986 to provide relief for the payment of asbestos-related claims; to the Committee on Finance.

ASBESTOS-RELATED CLAIMS RELIEF LEGISLATION

Mr. HATCH. Mr. President, I rise today as an original cosponsor of the bill introduced today by my friend and colleague from Ohio, Senator DeWine, that would provide relief for payment of asbestos-related claims. I urge my colleagues on the Finance Committee to take a close look at the serious problem this bill addresses. Certain manufacturers who were required by government specification to use asbestos in their products are facing a severe financial crisis arising from claims made by individuals who are suffering health problems from asbestos-related diseases. These claims have put several of these companies into bankruptcy, and several more appear to be on the brink of insolvency. Thousands of jobs may be at stake, as may be the proper compensation of the victims of the illnesses.

A major part of the underlying justification for this measure is that the federal government shares some culpability in the harm caused by the asbestos-related products manufactured by these companies. For example, from World War II through the Vietnam War, the government required that private contractors and shipyard workers use asbestos to insulate navy ships from so-called “secondary fires.” Because of sovereign immunity, however, the government has not had to share in paying the damages, leaving American companies to bear the full and ongoing financial burden of compensation.

The legislation we are introducing today is a step toward recognizing that the federal government is partially responsible for payment of these claims. It does so through two income tax provisions, both of which directly benefit the victims of the illnesses.

The first provision exempts from income tax the income earned by a designated settlement fund established for the principal purpose of resolving and satisfying present and future claims relating to asbestos illnesses. The effect of this provision, Mr. President, is to increase the amount of money available for the payment of these claims.

The second provision allows taxpayers with specified liability losses attributable to asbestos to carry back those losses to the tax year in which the taxpayer, or its predecessor company, was first involved in producing or distributing products containing asbestos.

This provision is a matter of fairness, Mr. President. Because of the long latency period related to asbestos-related diseases, which can be 40 years or more, many of these claims are just now arising. Current law provides for the carryback of this kind of liability losses, but only for a ten-year period.

Many of the companies involved earned profits, paid taxes on those profits in the years the asbestos-related products were made or distributed. However, it is now clear, many years after the taxes were paid, that there were no profits earned at all, since millions of dollars of health claims relating to those products must now be paid.

It is only fair, and it is sound tax policy, to allow relief for situations like these. Again, it should be emphasized that the primary beneficiaries of this tax change will not be the corporations, but the victims of the illnesses, because the taxpayer would be required to devote the entire amount of the tax reduction to paying the claims.

This is not the federal government has been at least partially responsible for health problems of citizens that arose many years after the event that initially triggered the problem. During the Cold War, America conducted above ground atomic tests during which the wind blew the fallout into communities and ranches of Utah, New Mexico and Arizona. The government also demanded quantities of uranium, which is harmful to those who mined and milled it. The incidence of cancers and other diseases caused by this activity among the “downwinders,” miners and millers has been acknowledged by the federal government.

The least we can do for those manufacturers forced to use asbestos instead of other materials is provide some tax relief for their compensation funds.

This legislation has substantial bipartisan backing. It is sponsored in the House by both the Chairman and Ranking Minority Member of the Judiciary Committee. It is backed by the by the U.S. Chamber of Commerce and by at least one related labor union. This bill addresses a very serious problem and is the right thing to do. I hope we can pass it expeditiously.

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

The Recorded Vote. Without objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2955

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

SECTION 1. EXEMPTION FOR ASBESTOS-RELATED SETTLEMENT FUNDS.

(a) EXEMPTION FOR ASBESTOS-RELATED SETTLEMENT FUNDS.—Subsection (b) of section 468B of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(6) EXEMPTION FROM TAX FOR ASBESTOS-RELATED DESIGNATED SETTLEMENT FUNDS.—Notwithstanding paragraph (1), no tax shall be imposed under this section or any other provision of this subtitle on any designated settlement fund established for the principal purpose of resolving and satisfying present and future claims relating to asbestos.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 468B(b) of the Internal Revenue Code of 1986 is amended by striking “There” and inserting “Except as provided in paragraph (6), there”.

(2) Subsection (g) of section 468B of such Code is amended by inserting “(other than subsection (b)(6))” after “Nothing in any provision of law”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of enactment of this Act.

SEC. 2. MODIFY TREATMENT OF ASBESTOS-RELATED NET OPERATING LOSSES.

(a) ASBESTOS-RELATED NET OPERATING LOSSES.—Subsection (d) of section 172 of the Internal Revenue Code of 1986 is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and by inserting after paragraph (3) the following new paragraph:

“(4) SPECIAL RULES FOR ASBESTOS LIABILITY LOSSES.—

“(A) IN GENERAL.—At the election of the taxpayer, the portion of any specified liability loss that is attributable to asbestos may, for purposes of subsection (b)(1)(C), be carried back to the taxable year in which the taxpayer, including any predecessor corporation, was first involved in the production or distribution of products containing asbestos and each subsequent taxable year.

“(B) COORDINATION WITH CREDITS.—If a deduction is allowable for any taxable year by reason of a carryback described in subparagraph (A)—

“(i) the credits allowable under paragraph (4)(A) of section 38 shall be determined without regard to such deduction, and

“(ii) the amount of taxable income taken into account with respect to the carryback under subsection (b)(2) for such taxable year shall be reduced by an amount equal to—

“(I) the increase in the amount of such credits allowable for such taxable year solely by reason of clause (i), and

“(II) the maximum rate of tax under subsection 1 or 11 (whichever is applicable) for such taxable year.

“(C) CARRYFORWARDS TAKEN INTO ACCOUNT BEFORE ASBESTOS-RELATED DEDUCTIONS.—For purposes of this section—

“(i) in determining whether a net operating loss carryforward shall be carried under subsection (b)(2) to a taxable year, taxable income for such year shall be determined
ambient SCOTT MCINNIS.

atteinable scenic, recreational, multiple use opportunities (including grazing), paleontologi- cal, natural, and wildlife components en- hanced by the rural western setting of the Conservation Area; and such activities are conducted in a manner that is consistent with the other provisions of this Act.

The areas proposed for Wilderness Protection are the Black Ridge and Ruby Canyons of the Grand Valley and Rabbit Valley near Grand Junction, Colorado. They contain unique and valuable geologic, recreational, multiple use, paleontological, natural, and wildlife components. This historic rural western setting provides extensive opportunities for recreational activities, and are publicly used for hiking, camping, and grazing. This area is truly worthy of additional protection as a national conservation area.

This legislation has the support of the administration and should easily be signed into law. The only issue confronting us is the limited amount of time left in the 106th Congress. I hope we will be able to move this legislation quickly through the process and that it will not get bogged down in partisan politics. It simply is the right thing to do.

I ask unanimous consent that the bill be printed in the RECORD following my remarks.

Thank you, Mr. President. I yield the floor.

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

S. 2956

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

SECTION 1. SHORT TITLE. —This Act may be cited as the “Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000”.

SEC. 2. FINDINGS AND PURPOSE. —(a) FINDINGS.—Congress finds that certain areas located in the Grand Valley in Mesa County, Colorado, and Grand County, Utah, have unique and valuable scenic, recreational, multiple use opportunities (including grazing), paleontological, natural, and wildlife components, and are used for hiking, camping, and grazing, and are worthy of additional protection as a national conservation area.

(b) PURPOSE.—The purpose of this Act is to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the unique and nationally important values of the public lands described in section 4(b), including geological, cultural, recreational, environmental, biological, wild-

erness, wildlife education, and scenic re- sources of such public lands, by establishing the Colorado Canyons National Conservation Area and the Black Ridge Canyons Wilder- ness in the State of Colorado and the State of Utah.

SEC. 3. DEFINITIONS. —In this Act:

(1) CONSERVATION AREA.—The term “Con- servation Area” means the Colorado Can- yons National Conservation Area established by section 4(a).

(2) COUNCIL.—The term “Council” means the Colorado Canyons National Conservation Area Advisory Council established under section 8.

(3) MANAGEMENT PLAN.—The term “man- agement plan” means the management plan developed for the Conservation Area under section 8(h).

(4) MAP.—The term “Map” means the map entitled “Proposed Colorado Canyons Na- tional Conservation Area and Black Ridge Canyons Wilderness Area” and dated July 18, 2000.

(5) SECRETARY.—The term “Secretary” means the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(6) WILDERNESS.—The term “Wilderness” means the Black Ridge Canyons Wilderness so designated in section 5.

SEC. 4. COLORADO CANYONS NATIONAL CONSERVATION AREA AND BLACK RIDGE CANYONS WILDERNESS DESIGNATION. —(a) IN GENERAL.—There is established the Colorado Canyons National Conservation Area in the State of Colorado and the State of Utah.

(b) AREAS INCLUDED.—The Conservation Area shall consist of approximately 122,900 acres of public land as generally depicted on the Map.

(c) MANAGEMENT.—The Conservation Area shall be managed by the Secretary, as appropriate, in accordance with the Wilderness Act of 1975 (16 U.S.C. 1131 et seq.), and the Black Ridge Canyons Wilderness.

(i) HUNTING, TRAPPING, AND FISHING.—(1) IN GENERAL.—Hunting, trapping, and fishing shall be allowed within the Conserva- tion Area and the Wilderness in accordance
with applicable laws and regulations of the United States and the States of Colorado and Utah.

(2) AREA AND ZONE CLOSURES.—The head of the Colorado Division of Wildlife (in reference to land within the State of Colorado), the head of the Utah Division of Wildlife (in reference to land within the State of Utah), or the head of another Division of Wildlife of a State adjacent to the Colorado Division of Wildlife (in reference to land within the State of Colorado) or the head of the Utah Division of Wildlife (in reference to land within the State of Utah), may issue regulations designating zones where, and establishing limited periods when, grazing, hunting, fishing or other activities are prohibited in the Conservation Area or the Wilderness for reasons of public safety, administration, or public use and enjoyment.

(3) GRAZING.—(1) IN GENERAL.—Except as provided by paragraph (2), the Secretary shall issue and administer any grazing leases and permits on or under the jurisdiction of the Bureau of Land Management.

(2) GRAZING IN WILDERNESS.—Grazing of livestock on lands within the boundaries of the Wilderness shall not be allowed in any part of the Wilderness without a permit issued by the Secretary.

(4) NEW PROJECTS.—(A) As used in this paragraph, the term "water resource facility" means irrigation and power projects, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects, and transmission and other ancillary facilities for water conversion, storage, and carriage structures. Such term does not include any such facilities related to or used for the purpose of livestock grazing.

(B) Except as otherwise provided by section 6(g) or other provisions of this Act, on and after the date of the enactment of this Act, the Secretary may not issue, or renew, any permit for the construction of a water resource facility (as defined in paragraph (A) of this subsection) on lands outside the boundary of a Wilderness, that would be located in any part of the Wilderness, to the extent that such facility would not be allowed in any part of the Wilderness, or the Secretary may not authorize activities or uses on lands outside the Conservation Area or the Wilderness that would be allowed in any part of the Wilderness, and the Secretary may conduct such operations as are necessary to preserve the character of the Wilderness.

(5) BOUNDARIES ALONG COLORADO RIVER.—(A) Neither the Conservation Area nor the Wilderness shall include any part of the Colorado River to the 100-year high water mark.

(B) Nothing in this Act shall affect the authority of the Secretary to manage the public lands between the boundary of the Conservation Area and the edge of the Colorado River.

(C) Subject to valid existing rights, all lands owned by the Federal Government between the 100-year high water mark on each shore of the Colorado River, as designated on the Map from the line labeled "Line A" on the east boundary to the boundary between the States of Colorado and Utah, are hereby withdrawn from—

(i) all forms of entry, appropriation, or disposal under the public land laws;

(ii) location, entry, and patent under the mining laws;

(iii) the operation of the mineral leasing, mineral materials, and geothermal leasing laws.

SEC. 7. MAPS AND LEGAL DESCRIPTIONS.

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Secretary shall submit to Congress a copy of the Map and a legal description of the Conservation Area and the Wilderness.

(b) FORCE AND EFFECT.—The Map and legal descriptions shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in the Map and the legal descriptions.

(c) PUBLIC AVAILABILITY.—Copies of the Map and the legal descriptions shall be on file and available for public inspection in—

(i) the Office of the Director of the Bureau of Land Management;

(ii) the Grand Junction District Office of the Bureau of Land Management in Colorado;

(iii) the appropriate office of the Bureau of Land Management in Utah.

(d) MAP CONTROLLING.—Subject to section 6(l)(3), in the case of a discrepancy between the Map and the descriptions, the Map shall control.

SEC. 8. ADVISORY COUNCIL.

(a) ESTABLISHMENT.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall establish an Advisory council to be known as the "Colorado Canyons National Conservation Area Advisory Council".

(b) DUTIES.—The Council shall advise the Secretary with respect to preparation and implementation of the management plan, including budgetary matters, for the Conservation Area and the Wilderness.

(c) APPLICABLE LAW.—The Council shall be subject to—

(1) the Federal Advisory Committee Act (5 U.S.C. App.); and

(2) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).
MEMBERS.—The Council shall consist of 10 members to be appointed by the Secretary including, to the extent practicable: (a) A member of or nominated by the Mesa County Commission; (b) A member nominated by the permittees holding grazing allotments within the Conservation Area or the Wilderness; (c) A member nominated by the Northwest Resource Advisory Council; (d) Seven members residing in, or within reasonable proximity to, Mesa County, Colorado, with recognized backgrounds reflecting—(A) the purposes for which the Conservation Area or Wilderness was established; and (B) the diverse stakeholder interests that are affected by the planning and management of the Conservation Area and the Wilderness.

SEC. 9. PUBLIC ACCESS. (a) In General.—The Secretary shall continue to allow private landowners reasonable access to inholdings in the Conservation Area and Wilderness; (b) Glade Park.—The Secretary shall continue to allow public right of access, including commercial vehicles, to Glade Park, Colorado, with the decision of the Board of County Commissioners of Mesa County v. Watt (634 F. Supp. 1265 (D.Colo.: May 2, 1986)).

By Mr. ROTH:

S. 2957. A bill to amend title XVIII of the Social Security Act to preserve coverage of drugs and biologicals under part B of the medicare program; to the Committee on Finance.

MEDICARE SELF-ADMINISTERED MEDICATIONS ACT

Mr. ROTH. Mr. President, today I am introducing a bill to address a serious problem regarding Medicare's treatment of self-injectable drugs. Section 1862(a) of the Social Security Act defines covered "medical and other health services" for purposes of coverage under Medicare Part B. Included in the definition are—(2) services and supplies (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) furnished as incident to a physician's professional service, of kinds which are commonly furnished in physicians' offices and are commonly furnished without charge or included in the physicians' bills.

Regulations at 42 C.F.R. 410.29 provide further limitations on drugs and biologicals, but they do not define the phrase "cannot be self-administered." Individual Medicare carriers have reportedly applied different policies when considering whether a drug or biological can or cannot be self-administered. Some carriers have based the determination on the typical means of administration while others have assessed the individual patient's ability to administer the drug.

On August 13, 1997, HCFA issued a memorandum to Medicare carriers which was intended to clarify program policy. The memorandum stated that the inability to self-administer is to be based on the typical means of administration of the drug, not on the individual patient's ability to administer the drug. The memorandum stated that: "The individual patient's mental or physical ability to administer any drug is not a consideration for this purpose."

As a result of this memorandum, certain patients, for example patients with multiple sclerosis or some forms of cancer, lose Medicare coverage for certain drugs. However, implementation of this policy directive has been halted for FY2000. On November 29, 1999, the President signed into law the Consolidated Appropriations Act for 2000. Section 219 of General Provisions in Title II, Department of Health and Human Services contains a provision relating to the memorandum. The provision prohibits the use of any funds to carry out the August 13, 1997, transmittal or to promulgate any regulation or other transmittal or policy directive that has the effect of imposing (or clarifying the imposition of) a restriction on the coverage of injectable drugs beyond those applied on the day before issuance of the transmittal.

The definition of covered services continues to be of concern to policymakers. On March 23, 2000, the House Commerce Committee, Subcommittee on Health & Environment held a hearing on this issue. I understand that there was a very productive discussion of other policy options during the question and answer period. One witness, Dr. Earl Steinberg of Johns Hopkins University, suggested having the beneficiary's physician determine whether the medication cannot be self-injected. The bill I am introducing today follows that expert advice and introduces the judgment of the physician into the decision process.

On May 17, 2000 I sent a letter to HCFA Administrator DeParle, requesting her serious attention to this problem. I went further to ask her to propose an administrative remedy for the inequity that existed. In her reply, she stated that she was "very troubled by the predicament of beneficiaries whose drugs are not covered under the law." But it is clear from Administrator DeParle's letter, that without legislation the problem continues.

The bill I am introducing today allows a Medicare beneficiary's own physician to make the determination of whether the beneficiary can or cannot administer their medication. I would ask for my colleagues' support in this legislation. This issue is of vital importance to some of our most gravely ill Medicare beneficiaries. These beneficiaries, many with advanced cases of multiple sclerosis or cancer, deserve our help and they deserve it today. I ask consent that the full text be printed in the RECORD. There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2957

Be it enacted by the Congress of the United States of America in Congress assembled,
individual retirement plans; to the Committee on Finance.

Mr. WYDEN. Mr. President, I am pleased today to introduce the Capital Construction Fund Reform Act of 2000. The Capital Construction Fund (CCF) was originally created by the Merchant Marine Act as a way to encourage the construction and use of American-owned vessels in U.S. waters. For fishermen, the Capital Construction Fund authorized the accumulation of funds, free from taxes, for the purpose of buying or refitting commercial fishing vessels. The program has been a success in promoting the domestic fishing industry. However, the usefulness of the CCF has not kept up with the times. Today it is actually exacerbating the problems facing U.S. fishermen by forcing fishermen to keep their money in fishing vessels, rather than allowing them to retire from fishing and pursue other interests.

Qualification’s fisheries are collapsing. Over the past year, fisheries in New England, Alaska and the West Coast have been officially declared disasters by the Secretary of Commerce. Plainly speaking, there are too many boats and not enough fish. Along the West Coast, a mere 200 of the 1400 boats currently fishing could catch the entire allowable harvest of groundfish. That means we could buyout 85 percent of the boats and still not reduce capacity in our fisheries. Since 1966, Congress has appropriated $140 million to buy fishing vessels and permits back from fishermen. Clearly, more needs to be done. This legislation empowers the fisherman to make his own choices about to stay or leave the fishery with his own money.

In these times when we ought to be reducing the number of boats in our fisheries, it does not make sense for federal policy to encourage fishermen to buy more vessels. Yet current law prohibits fishermen from getting their own money out of CCF accounts for any purpose other than building boats. If they do, they lose up to 70 percent of their money in taxes and penalties. When fishermen have already been hit with increasingly severe harvest restrictions over the past few years, it is just not fair to hold their own money hostage.

That is why I am introducing a bill that allows fishermen to withdraw their funds from the Capital Construction Fund if they retire from the fishery. My bill would allow fund holders to roll their funds over into an Individual Retirement Account (IRA) or other retirement fund. It would also allow them to use their own money to participate in buyback programs. This bill also eliminates the tax-penalty for withdrawals for those folks wishing to leave the industry.

Mr. President, I believe this bill enjoys wide support from a variety of organizations with an interest in our nation’s fisheries. Environmental groups, trawlers, with an interest in our nation’s fish—leave the industry.

There being no objection, the bill was ordered to be printed in the Record.

The Act may be cited as “The Capital Construction Fund (CCF) Qualified Withdrawal Act of 2000”.

SECTION 1. SHORT TITLE

This legislation empowers the fisherman. Clearly, more needs to be done.

The Act may be cited as “The Capital Construction Fund (CCF) Qualified Withdrawal Act of 2000”.

SECTION 2. EXPANSION OF PURPOSES OF THE CAPITAL CONSTRUCTION FUND BY AMENDING THE MERCHANT MARINE ACT OF 1936

Section 607(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1177(a)) is amended by striking “off this section,” and inserting “of this section. Any agreement entered into under this section may be modified for the purpose of enabling or assisting any person or persons owning or operating fishing vessels and permits back from fishermen to use their own money to retire from fishing vessels and other retirement fund. It would also eliminate the tax-penalty for withdrawals for those folks wishing to leave the industry.

Mr. President, I believe this bill enjoys wide support from a variety of organizations with an interest in our nation’s fisheries. Environmental groups, trawlers, with an interest in our nation’s fish—leave the industry.

There being no objection, the bill was ordered to be printed in the Record.

The Act may be cited as “The Capital Construction Fund (CCF) Qualified Withdrawal Act of 2000”.

Mr. SMITH of New Hampshire. Mr. President, today I have introduced legislation, S. 2962, which I believe will deal once and for all with the MTBE problem that is facing us all across America, specifically New Hampshire. In the Northeast, as well as California and other areas of the country, we are beginning to see evidence of MTBE in ground water. This is a serious environmental problem that must be addressed.

I arise today to speak for my constituents in New Hampshire who are now having their wells, several a week by the way, being contaminated by MTBE. This is my home State. This is a serious problem there. I am here to offer this legislation to help my constituents in New Hampshire get relief from MTBE, which is a pollutant in their wells. But I am also here to speak for all Americans across the country who have MTBE in their wells, whether they be in California or New Hampshire.

MTBE has done more damage to our drinking water than we would care to know. MTBE has been a component of our fuel supply for over two decades. In 1990, we amended the Clean Air Act to include a clean gasoline program. Unfortunately, we did not look at the science that was probably more evident than not. Because we did not look at that science, we have now created another environmental problem of a huge magnitude, which is probably going to cost billions of dollars to clean up. If there is a moral here, or lesson, it should be: Use good science. Look carefully before you leap into some of these environmental dilemmas.

That program in the 1990 Clean Air Act amendment mandated use of 2 percent oxygen in the gas, which was otherwise 93 percent.

In other words, 2 percent of the weight of a gallon of gasoline should be oxygen. That was put in the fuel.

MTBE was one of two options that could be used. The problem with MTBE is that it has this ability to migrate through the ground very quickly and then into the water table. What is MTBE? It is an ether, and in the event of a leak or gas spill, the MTBE will separate from the gas and migrate through the ground very quickly. The real problem starts when MTBE finds its way into the ground water, which it frequently does.
Several States have had gasoline leaks, or spills, that led to the closure of wells because of MTBE. It smells. It tastes horrible. It is not the kind of thing you want to see come out of your shower or your faucet when you are ready for it. This is a serious problem. Some have made light of it, frankly, in this body, in the sense that maybe it is not such a serious problem and maybe we should look at some other alternatives other than banning it. But we need to ban MTBE. The legislation I am introducing today will do that. It does it in a responsible manner, which I will explain.

Several States have had these leaks or spills, as I said. So this bill will address the problems associated with MTBE, but—and this is a very important point—will not reduce any of the environmental benefits of the clean air program. That cannot be said with every option that has been presented on this issue. Again, we can ban MTBE, but we reduce any environmental benefit that the MTBE has brought to clean the air and that is important.

Briefly, this bill will allow the Governor to apply to waive the gasoline oxygen requirement of the Clean Air Act—waive it. But it will preserve the environmental benefits. It will also grant the State and the Federal Government authority to ban MTBE. It authorizes an additional $300 million out of the Underground Storage Tank Fund to clean up MTBE where these wells have been contaminated because of these leaking tanks. In other words, if we could repair those leaking tanks, we are going to cut back on the amount of problems we are going to have in the future. So it is important we have this as part of the legislation to get the money there to fix these tanks, to cut back on the amount of MTBE that gets into the ground water. If it does leak out of the tank, it will not get into the ground water. But it is leaking out of tanks and we have to fix it.

The bill also authorizes an extensive study of numerous environmental consequences of our current fuel use. It was my hope to have marked up and sent to the floor from the Environment and Public Works Committee, which I chair, a bill this past week. In fact, it was our goal to do it yesterday, but we could not get all parties together. So I needed to make this bill a reality, in the sense that it would pass. We could have introduced a bill, could have marked a bill, perhaps, but it would not have passed because we would not have the support. This problem is too serious to play politics with.

MTBE is a pollutant in our wells. We need to get it out. We have to have legislation to do it and it has to pass. There is no point introducing a bill that will not pass. There are people who are dug in on all sides of this issue for various reasons. But the point is, we need to compromise. We all cannot get what we want, but the end result must be that we get MTBE out of our ground water. That is the bottom line.

So I agreed, reluctantly, but I agreed, in the interests of working together with my colleagues, to hold off until September in order to resolve the few remaining issues to hold off until that markup in September. In fact, the specific date is September 7. In that legislation that we mark up, we will ban MTBE.

The issues that are in this legislation include the treatment of ethanol. I am pleased with the recent progress we have made on this. But there is a serious problem that we have to deal with, those who advocate more ethanol in fuel. I expect these issues to be resolved. We are working behind the scenes very hard to resolve these issues before the September 7 markup. It will give the staff something to do during the August recess. I know they will work out the details. But I thank the many Senators on both sides of the table for working with very closely to resolve these issues. This is a tough, tough issue, and it is hard to get agreement. Everybody is not going to get what they want, but the bottom line is, we have to get MTBE out of the water.

Let me address the ethanol issue for a moment. Some weeks ago I circulated a draft that included a clean alternative fuels program. This is a very complex issue. What are alternative fuels? How do you define gasoline? It could be natural gas. It could be electricity. It could be fuel cells. It could be ethanol. But if you say "renewable fuels," then you are talking for the most part only ethanol. So when we are talking alternative fuels, what alternatives do we have to MTBE that would help us meet these requirements in the Clean Air Act? This has proven to be a good step toward addressing the ethanol question.

The bill also addresses the need to enhance the development of cleaner and more efficient cars which will help with the Clean Air Act issues as well. There has been growing support for this alternative fuels approach since the time we first brought this up. We do not want to create more MTBE problems. We do not want to create dirtier air by eliminating MTBE because we created dirty water by putting MTBEs in gasoline.

So last week in an effort, again, to reach out, I received a letter supporting that approach from 32 States represented by air quality planners in the northeastern States and the Governors' Ethanol Coalition. So for the first time we now have ethanol, and the Northeast, you have specific problems here with the MTBE issue, talking, working together, and, as we said, from this letter of support from 32 States, they support this approach.

We have not dotted every "i" and crossed every "t" yet, but in concept they support the approach.

The bill I am offering today, while that bill does not include the exact language they are talking about in that letter—and I want to make that clear—it is a bridge. It is a bridge from where my legislation is to where they are. Actually, simultaneously to the bill I have introduced, I have also offered an amendment No. 4026, which crosses the issues. This is a compromise bill that I would like to have, what I believe is the most cost-effective method to deal with this problem, but I recognize that even though it is the least costly, it does not have the amount of support I need to pass it. So I have offered another amendment to my own bill, which is my way of saying: OK, you offered me the bridge. I am willing to walk across it and meet you at least halfway.

I will describe this bill in a little more detail first. This is a complex issue. The Environmental and Public Works Committee has been struggling with this, certainly in the last 7 or 8 months. I have been chairman of the committee, and I am sure they were struggling with it many months before that. I have tried to craft a solution that is direct and balanced. I believe I have accomplished that. That is my goal. It is not to try to invent anything through to make anybody angry. It is a legitimate attempt to get a consensus deal with a serious environmental problem, not to deal with everybody's opinions.

If anybody comes to the table and says: If I do not get this, I will leave the table—I tell the people who say that: Don't bother coming to the table; you are wasting my time and yours. If you want to talk about and reach a rational conclusion, I am willing to talk, and Senators on all sides of this have done just that. We have talked to many industry folks and environmental people as well on this very issue.

The bill waives the oxygen mandate. The Reformulated Gasoline Program, or RFG, requires at least 2 percent of gasoline by weight to be oxygen. MTBE and alcohol are the principal additives that help satisfy this requirement. It is ethanol or MTBE. They will bring us to that 2 percent oxygenate requirement. Because MTBE is rarely used outside the Reformulated Gas Program, a sensible starting point was to allow each State, if they wish, to waive the oxygen requirement.

What about the so-called environmental backsliding; in other words, slipping back and allowing more dirty air? There is concern that if we have to be flexible and not be strict with MTBE, it will affect the environmental benefit—clean air—of the Reformulated Gas Program.

Let me be very clear: My bill ensures that there will be no environmental backsliding. We are not walking away from the requirements of the Clean Air Act. If this bill is adopted, the environment—at least the air—will not know the difference. There will be no negative impact on the air, and the water will be cleaner.

Phaseout of MTBE: Eliminating the 2 percent oxygen mandate alone does not
mean the elimination of MTBE. MTBE is an effective octane booster, and refiners still may want to use it. Since only a very small amount of MTBE will cause a tremendous amount of damage, it is important to consider the fate of MTBE.

This bill will give the EPA Administrator the authority to ban it immediately. If EPA does not do so in 4 years, then this bill will, by law, ban MTBE. The EPA has 4 years to ban it. If they do not, the bill will.

EPA, however, cannot turn a blind eye by simply banning MTBE. They must find another way to help. They did what they were asked to do. They produced this additive to clean up groundwater. Since a Federal mandate caused this pollution, this is not the fault of the MTBE producers. They did what they were asked to do. They produced this additive to clean up the air. Since a Federal mandate caused this pollution, it was irresponsible for the Federal Government not to bear some of the financial burden associated with the cleanup. Unfortunately, that is the case.

I do not like to spend taxpayers' dollars, but this was a mandate, and because of that mandate, we have a problem.

It is also important to point out that although it is not part of my legislation, it is reasonable to think of some way of phasing out the use of MTBE. If we do not, we will be responsible for the Federal Government not to bear some of the financial burden associated with the cleanup. Unfortunately, that is the case.

I do not like to spend taxpayers' dollars, but this was a mandate, and because of that mandate, we have a problem.

It is also important to point out that although it is not part of my legislation, it is reasonable to think of some way of phasing out the use of MTBE. If we do not, we will be responsible for the Federal Government not to bear some of the financial burden associated with the cleanup. Unfortunately, that is the case.

Finally, the bill authorizes a comprehensive study of the environmental consequences of our current fuel supply. In order to be better informed to make future environmental decisions regarding fuel policy, the bill directs the EPA to undertake a study of our motor fuel.

I will talk a little bit about the cost, a very important point.

Lately, we have heard a great deal about gasoline prices, certainly fuel oil prices, as well, in New England. These concerns underscore the question of the costs associated with limiting MTBE use.

MTBE, like it or not, is clean. It is cheap, and it helps to clean up our air. Placing it in our fuel supply and keeping the fuel supply clean will have a cost. We have to replace it. We cannot backslide. We do not want to dirty the air while we take MTBE out.

It is my belief the Senate is not prepared to reduce our clean air standards or allow for the continued contamination of our drinking water. However, we have a mandate. Contaminated drinking water and we backslide off the clean air provision. I believe my colleagues in the Senate are willing to work with me to clean up the water to get the MTBE out of our wells and to preserve the integrity of the Clean Air Act and not backslide or move back from the cleaner air we have accomplished by using MTBE.

The question, though, becomes: What is the most effective and cost-friendly option for achieving this goal? I have a chart which will help illustrate the options. Each one of these options—the red line, yellow line, blue line—bans MTBE, but it is a little more complicated than that.

One option for elimination of MTBE with no other changes in the law. That is the red line. These show costs. This is the highest cost option because it is about an 8-cent increase in gas prices per gallon. This is a ban of MTBE, and it replaces it with ethanol. That is the orange line. One might think: That is fine, it is ethanol, produced by corn, a nice natural product; what is wrong with that? Let's do it.

The problem is, in areas in the Northeast, such as New Hampshire, and in other States such as Texas, these States would have to use ethanol to meet that oxygenate requirement because there is no other option. In order to meet the 2-percent oxygenate requirement if MTBE is removed, they have to use ethanol.

One may say: What is wrong with that? Ethanol makes gas evaporate more quickly and those fumes would add to smog and haze in New England and other parts of the country. Obviously, California would have the same problem.

Refiners would have to make gas less evaporative and thereby increasing the cost. In other words, they would have to work around the Clean Air Act and not backslide. I happen to have that problem because I am from New Hampshire, and as the chairman of the committee, I need to work with all regions of the country to get a compromise that is acceptable to everybody that we do not have more environmental problems in New England or California or some other place by simply banning MTBE and letting ethanol take over. Some want that.

One option for elimination of MTBE is the elimination of the oxygen mandate, but that does not help us. We do not want to create more problems. That is not a responsible approach, I say with all due respect.

There is another option for elimination of MTBE. One option is simply the elimination of MTBE. That is fine, it is ethanol, produced by corn, a nice natural product; what is wrong with that? Let's do it.

One may say: What is wrong with that? Ethanol makes gas evaporate more quickly and those fumes would add to smog and haze in New England and other parts of the country. Obviously, California would have the same problem.

Refiners would have to make gas less evaporative and thereby increasing the cost. In other words, they would have to work around the Clean Air Act and not backslide. I happen to have that problem because I am from New Hampshire, and as the chairman of the committee, I need to work with all regions of the country to get a compromise that is acceptable to everybody that we do not have more environmental problems in New England or California or some other place by simply banning MTBE and letting ethanol take over. Some want that.

One option for elimination of MTBE is the elimination of the oxygen mandate, but that does not help us. We do not want to create more problems. That is not a responsible approach, I say with all due respect.

The next line is the orange line in terms of cost. That is the Clinton administration's position. That represents the cost of eliminating the oxygen mandate, but replacing it with a national ethanol mandate. It would cost more than other alternatives.

The cost of mandating a threefold increase in ethanol sales is very expensive. So the options represented by the orange line shown on the chart cost significantly more than the red line because it does not mandate that the reformulated gas contain ethanol. It does not mandate it, but that is what is going to happen. But, shown with this orange line on the chart, it simply mandates the total ethanol market. So you are mandating the market here, and that is no good. That does not work. Unlike what is shown with the red line, there would be no regional constraint. It would not be accepted.

Now, what is shown on the chart with the blue line is legislation that I am introducing today, without the amendment initially. In my view, that is the cheapest and most responsible way to deal with this problem. However, for those who disagree, I would ask them to agree with me. I do not agree with them, but I respect them—it does not have enough support, either, to pass the Senate. I recognize that, but I want everybody to know where I am coming from.

As I have said, what is shown with the blue line is the bill I have introduced. That bill will cost more to make clean gas without MTBE, but because we place the fewest requirements on the refiners on how to achieve that clean gas, this bill would cost the economy less than all other options. It is very important for me to repeat that. We place the fewest requirements on the refiners on how to achieve the clean gas. We want clean gas achieved. That is the goal. This bill would cost the economy less than all of those other options.

While my bill addresses all of the concerns with MTBE, I am also sensitive to the concerns of the Senators who understand that this bill might have an impact on ethanol. So in order to address these concerns, I have prepared an amendment to my own legislation, amendment No. 4026, which I have already sent to the desk.

This amendment seeks to address the concerns over ethanol that Members have. I am hoping that over the course of the next 30 days we will be able to build this bridge from what is shown by the blue line to what is shown by the
green line, to get to what I think is an acceptable and responsible approach. I indicated earlier there is a lot of interest. Thirty-two States have expressed interest in this, in my letter. This amendment seeks to address the concerns of the ethanol industry by establishing a segment of the fuel market that must be comprised of either ethanol or fuel used to power superclean vehicles.

About 10 days ago, I had the opportunity to ride in a fuel-cell bus. It had hydrogen cells. I had never experienced anything like it: No fumes, no smell, very little sound, and no pollutants whatsoever. I rode several miles in it.

The current occupant of the Chair, the Senator from Utah, Senator Bennett, drives a hybrid car which is part electric, part gas. You see, we are moving in the right direction. Hybrid cars, fuel cells, coal—everything. There is nothing more we do that, the less we need of any type of gasoline, whether it is ethanol or just oil based. It does not matter.

The point is, we are moving in the right direction. That is what we want to encourage. This bill will establish a segment of the fuel market that must be comprised of either ethanol or fuel used to power those clean vehicles. We do not want to stop them from having that option.

If we just go with the renewables that the administration wants, all they can use is ethanol. What we want them to do is use ethanol, if they wish, but to use them actively. I encourage that, encourage fuel cells, whatever, or premium gas, but let the market deal with it.

So there are a lot of exciting things happening. This amendment is going to create competition. There is nothing wrong with competition, good old competition. You pick winners and losers—no guarantees—with competition between the ethanol industry and the clean vehicle market. So why mandate ethanol for clean vehicles? It does not make any sense.

So the estimated cost of this approach is represented by the green line on the chart. This is a very good approach that I believe is a compromise that gets us there. It costs us a little more, but it gets us there. Because we can get there with what is represented by the blue line, I am willing to go there, with what is represented by the green line.

Mr. President, I know my time is pretty close to expiring, I am sure. To those who will ask, why does this have to be so complicated, I did not create the issue. I have spent the last 6 months trying to understand and learn about it. I think I am getting there, with a lot of help. It is a complex issue, with many competing interests. That is the thing. But a simple ban of MTBE does not get everybody there, all the regions of the country. It does not get it done.

So a simple ban of MTBE makes gas more expensive and air more dirty. It is not acceptable. We cannot do that. A stand-alone mandate of ethanol does not get you there, either. Smog concerns, cost concerns—particularly in New Hampshire, and other areas of the Northeast, as well as California—that does not make any sense.

Simply eliminating the reformulated gas mandate does not work, either. That is another option. MTBE would continue to be used and the potential adverse impact on ethanol would be there.

I am committed, I say to my colleagues, to a solution that, one, cleans up our Nation’s drinking water, and, two, preserves the environmental benefits of the reformulated gasoline program, which is the most cost-effective option for the whole Nation. And that is shown right there with the green line. That is the one we can get it done with. I wish it were here with what is depicted with the blue line, but this will get us there with what is depicted with the green line; and we will do it.

So I am convinced this is the right approach. I look forward to working with my colleagues. This is an honest attempt of compromise everybody and get to a resolution, because to continue to argue about this and debate this, while more and more wells every day get polluted with MTBE, is irresponsible. It is totally irresponsible.

We should not be talking about somebody’s profit at the expense of somebody else’s well being polluted. Let’s compromise. We will work with you. You can make some profit, but you are not going to make so much profit that we have to stand around and have our wells polluted. That is simply wrong. It is unacceptable. It is irresponsible. I am not going to stand for it. I don’t think anybody would who had these kinds of problems. It is irresponsible.

So we are moving in the right direction.

I am very encouraged by the folks, especially the ethanol Senators, who I have talked with, and their staffs. We have talked to folks in the oil industry. They are not real thrilled about some of this, but, again, this is a solution that we must find. We cannot continue to say we will talk about it next week or we will deal with it in conference or we will deal with it next year. We need to deal with it now. This is a responsible effort to do that.

So, again, I look forward to working with my colleagues, and I look forward to that markup on September 7. I intend to be ready for it, and to send that bill out of the EPW Committee and on to the calendar in the Senate.

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

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

S. 2962

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 ‘Federal Reformulated Fuels Act of 2000’.

SEC. 2. WAIVER OF OXYGEN CONTENT REQUIREMENT FOR REFORMULATED GASOLINE.

Section 211(k)(1) of the Clean Air Act (42 U.S.C. 7545(k)(1)) is amended by striking ‘Within 1 year after the enactment of the Clean Air Act Amendments of 1990,’ and inserting the following:

'(A) in general.—Not later than November 15, 1991,'; and

(2) by adding at the end the following:

'(B) WAIVER OF OXYGEN CONTENT REQUIREMENT.—

'(i) AUTHORITY OF THE GOVERNOR.—

'(I) in general.—Notwithstanding any other provision of this subsection, a Governor of a State, upon notification by the Governor to the Administrator during the 90-day period beginning on the date of enactment of this subparagraph, may waive the application of paragraphs (2)(B) and (3)(A)(v) to gasoline sold or dispensed in the State.

'(II) OPT-IN AREAS.—A Governor of a State that submits an application under paragraph (6) may, as part of that application, waive the application of paragraphs (2)(B) and (3)(A)(v) to gasoline sold or dispensed in the State.

'(ii) TREATMENT AS REFORMULATED GASOLINE.—In the case of a State for which the Governor invokes the waiver described in clause (i), gasoline that complies with all requirements of this subsection other than paragraphs (2)(B) and (3)(A)(v) shall be considered to be reformulated gasoline for the purposes of this subsection.

'(III) EFFECTIVE DATE OF WAIVER.—A waiver under clause (i) shall take effect on the earlier of—

'(I) the date on which the performance standard under subparagraph (C) takes effect; or

'(II) the date that is 270 days after the date of enactment of this subparagraph.

'(B) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSION REDUCTIONS.—

'(i) IN GENERAL.—As soon as practicable after the date of enactment of this subsection, the Administrator shall—

'(I) promulgate regulations consistent with subparagraph (A) and paragraph (3)(B)(ii) to ensure that reductions of toxic air pollutants achieved under the reformulated gasoline program under this section before the date of enactment of this subparagraph are maintained in States for which the Governor waives the requirement under subparagraph (B)(i); and

'(II) determine that the requirement described in clause (iv)—

'(a) is consistent with the bases for a performance standard described in clause (ii); and

'(b) shall be deemed to be the performance standard under clause (ii) and shall be applied in accordance with clause (iii).

'(ii) PERFORMANCE STANDARD.—The Administrator, in regulations promulgated under clause (i), shall establish an annual average performance standard based on—

'(I) compliance survey data;

'(II) the annual aggregate reductions in emissions of toxic air pollutants achieved under the reformulated gasoline program during calendar years 1998 and 1999, determined on the basis of the volume of reformulated gasoline dispensed in the United States during each calendar year; and

'(III) such other information as the Administrator determines to be appropriate.

'(iii) APPLICABILITY.—

'(I) IN GENERAL.—The performance standard under clause (ii) shall be applied on an annual average basis to the refining of all reformulated gasoline that is sold or introduced into commerce by the refinery in a...
State for which the Governor waives the oxygenate requirement under subparagraph (B)(i).

(12) MORE STRINGENT REQUIREMENTS.—The performance standard under clause (ii) shall not apply to the extent that any requirement under section 202(i) is more stringent than the performance standard.

(II) DETERMINATION BY THE ADMINISTRATOR.—The performance standard under clause (ii) shall not apply in any State that has received a waiver under section 209(b).

(13) IN GENERAL.—Subject to clause (H), if the regulations promulgated under clause (i)(I) have not been promulgated by the date that is 270 days after the date of enactment of this subparagraph, the requirement described in paragraph (5), for the performance standard described in paragraph (A), for the period described in subparagraph (A)(i).''.

(iv) STATUTORY PERFORMANCE STANDARD.—

(1) IN GENERAL.—Subject to subparagraph (H), if the regulations promulgated under clause (i) have not been promulgated by the date that is 270 days after the date of enactment of this subparagraph, the requirement described in paragraph (5), for the performance standard described in paragraph (A), for the period described in subparagraph (A)(i).''.

(2) by inserting ''air pollution, or water pollution, or human health.''

The Administrator may establish by regulation a schedule to phase out the use of methyl tertiary butyl ether in gasoline sold or introduced into commerce during any calendar year by all refiners, blenders, or importers contains on average not more than 1 percent by volume methyl tertiary butyl ether.

(i) TEMPORARY WAIVER OF LIMITATIONS.—

(1) IN GENERAL.—If the Administrator, in consultation with the Secretary of Energy, finds, on the own motion or on petition of any person, that there is an insufficient domestic capacity to produce or import gasoline, the Administrator may, in accordance with section 307, temporarily waive the limitations imposed under subparagraph (A).

(2) by inserting after subsection (n) the following:

(o) COMPREHENSIVE FUEL STUDY.—

(1) IN GENERAL.—Not later than 5 years after the date of enactment of this paragraph and every 5 years thereafter, the Administrator shall submit to Congress a report—

(A) describing reductions in emissions of criteria air pollutants listed under section 108, or precursors of those pollutants, that result from implementation of this section;

(B) describing regulatory options to reduce toxic air pollutants that result from implementation of this section;

(C) in consultation with the Secretary of Energy, describing reductions in greenhouse gas emissions that result from implementation of this section; and

(D) describing regulatory options to address reductions in greenhouse gas emissions that result from implementation of this section.

The Administrator shall make the determination under clause (i) without regard to, and the regulations promulgated under clause (i)(II) shall not apply to, any State that has received a waiver under section 209(b).

(2) by striking paragraph (4); and

(b) ELIMINATION OF ETHANOL WAIVER.—Section 211(b)(2) of the Clean Air Act (42 U.S.C. 7545(b)(2)) is amended—

(i) by striking ''may also'' and inserting ''shall, on a regular basis;'';

(2) by striking subparagraph (A) and inserting the following:

(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and

(b) ELIMINATION OF ETHANOL WAIVER.—Section 211(b)(2) of the Clean Air Act (42 U.S.C. 7545(b)(2)) is amended—

(i) by striking ''may also'' and inserting ''shall, on a regular basis;'';

(2) by striking subparagraph (A) and inserting the following:

(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and

(b) ELIMINATION OF ETHANOL WAIVER.—Section 211(b)(2) of the Clean Air Act (42 U.S.C. 7545(b)(2)) is amended—

(i) by striking ''may also'' and inserting ''shall, on a regular basis;'';

(2) by striking subparagraph (A) and inserting the following:

(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and

(b) ELIMINATION OF ETHANOL WAIVER.—Section 211(b)(2) of the Clean Air Act (42 U.S.C. 7545(b)(2)) is amended—

(i) by striking ''may also'' and inserting ''shall, on a regular basis;'';

(2) by striking subparagraph (A) and inserting the following:

(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and

(b) ELIMINATION OF ETHANOL WAIVER.—Section 211(b)(2) of the Clean Air Act (42 U.S.C. 7545(b)(2)) is amended—

(i) by striking ''may also'' and inserting ''shall, on a regular basis;'';

(2) by striking subparagraph (A) and inserting the following:

(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and

(b) ELIMINATION OF ETHANOL WAIVER.—Section 211(b)(2) of the Clean Air Act (42 U.S.C. 7545(b)(2)) is amended—

(i) by striking ''may also'' and inserting ''shall, on a regular basis;'';

(2) by striking subparagraph (A) and inserting the following:

(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and

(b) ELIMINATION OF ETHANOL WAIVER.—Section 211(b)(2) of the Clean Air Act (42 U.S.C. 7545(b)(2)) is amended—

(i) by striking ''may also'' and inserting "shall, on a regular basis;"; and

(2) by striking subparagraph (A) and inserting the following:

(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and

(b) ELIMINATION OF ETHANOL WAIVER.—Section 211(b)(2) of the Clean Air Act (42 U.S.C. 7545(b)(2)) is amended—

(i) by striking "may also" and inserting "shall, on a regular basis;"; and

(2) by striking subparagraph (A) and inserting the following:

(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and

(b) ELIMINATION OF ETHANOL WAIVER.—Section 211(b)(2) of the Clean Air Act (42 U.S.C. 7545(b)(2)) is amended—

(i) by striking "may also" and inserting "shall, on a regular basis;"; and

(2) by striking subparagraph (A) and inserting the following:

(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and
implementation of this section over the entire life cycle of the fuels and fuel additives.

SEC. 7. ADDITIONAL OPT-IN AREAS UNDER REFORMULATED GASOLINE PROGRAM. Section 211(k)(6) of the Clean Air Act (42 U.S.C. 7545(k)(6)) is amended—

(1) by striking "(6) OPT-IN AREAS.—(A)'' and inserting the following:

"(6) OPT-IN AREAS.—

"(A) CLASSIFIED AREAS.—

"(i) IN GENERAL.—Upon

(2) in subparagraph (B), by striking "(B)'' and inserting the following:

"(ii) EFFECT OF INSUFFICIENT DOMESTIC CAPACITY TO PRODUCE REFORMULATED GASOLINE.—Section 211(k)(6)(B) of the Clean Air Act (42 U.S.C. 7545(k)(6)(B)) is amended—

(3) in subparagraph (A)(ii) (as so redesignated)—

(A) in the first sentence, by striking "paragraph (A)'' and inserting "clause (i)''; and

(B) in the second sentence, by striking "this paragraph'' and inserting "this subparagraph;'' and

(4) by adding at the end the following:

"(B) NONCLASSIFIED AREAS.—

"(i) IN GENERAL.—In accordance with section 211(k)(6)(A) of the Clean Air Act (42 U.S.C. 7545(k)(6)(A)), any State that is not a covered area or an area referred to in subparagraph (A)(i).

"(ii) EFFECT OF INSUFFICIENT DOMESTIC CAPACITY TO PRODUCE REFORMULATED GASOLINE.—In accordance with paragraph (2) of section 211(k)(6)(A) of the Clean Air Act (42 U.S.C. 7545(k)(6)(A)), the Administrator may approve a State program approved under section 110, a State may submit to the Administrator a plan we might subscribe to, and Senate GRAHAM and I this afternoon are thinking of something we can do as part of whatever legislation we can write. So the questions are: What do consumers know about drug prices today? What do employers who purchase prescription drugs on behalf of their employees know about prices? What do health plans negotiating on behalf of their enrollees know about prices? What do physicians who prescribe drugs for their patients know about prices?

The reason for that is that the marvels of modern medicine have made it possible, through prescription drugs, to address a number of the maladies that affect all of us as part of humankind. The cost of those prescription drugs is literally going through the ceiling. This legislation is to deal specifically upon that in a moment.

For literally millions of people in this country, the cost of prescription drugs has been so prohibitive that medications that would address a medical problem that those individuals in many cases simply beyond the pale. So for many, it is fair to say, the choice is a Hobson’s choice. Do they eat in the evening, or do they take the prescription medication that has been prescribed by their physician? It would be my fondest hope and expectation, before this Congress adjourns sine die—that is, at the end of this legislative year—that we could enact prescription drug legislation. That would be my No. 1 priority. But I think all of us recognize there are some things we can do even ourselves if we pass a bill. An example is the mandatory reporting requirements that we passed in this legislation that deals with the price of drugs. We know what the cost is, but we are talking about the price. We have a lot of information on the cost. We know, for example, that we are spending on drugs in this country, prescription medications—in the last available year, 1999—almost $122 billion. We also know quite a bit about how much we in the Federal Government are spending for prescription drugs.

For example, the States and the Federal Government spent $17 billion in fiscal year 1999 for drugs, just under the Medicaid program alone. Those costs are going to escalate rather dramatically. What is missing, however, is some critically important information—information that would be important to consumers and those who negotiate on behalf of consumers, because what we don’t know, what we don’t have much information about is drug prices. The reason for that is some statutory prohibitions I am going to talk about and which this legislation specifically addresses.

So the questions are: What do consumers know about drug prices today? What do employers who purchase prescription drugs on behalf of their employees know about prices? What do health plans negotiating on behalf of their enrollees know about prices? What do physicians who prescribe drugs for their patients know about prices?

The answer is simply, very, very little: almost nothing. What little is known even is partially worthless information. We have the average wholesale price, but this is a truly meaningless figure.
During the course of my discussion this afternoon on the floor of the Senate, we are going to be talking about three kinds of prices: The average wholesale price, average manufacturer price, and the best price.

Just talking about the average wholesale price, that is a public list price set by manufacturers, the pharmaceutical industry; that is neither average nor wholesale and is a price set by the pharmaceutical companies. The best analogy I can give you is that it would be analogous to the price that appears as the sticker price on the window of a new car. Nobody pays that price. It really is not very helpful in terms of what you need to know when negotiating to purchase a car. And now there are a number of web sites and publications and manuals—a whole host of things that tell consumers this is what the manufacturer paid, these are the hold-backs by the dealers, these are the discounts and the commissions; here is the stuff that is not transparent. I focus your attention. You can get that information if you are purchasing an automobile, and you can get that information when you purchase a whole host of other things. But that information is not transparent in terms of what you need to know about finding out the price of prescription drugs, and that is because of some statutory limitations.

It is somewhat analogous to the statement Sir Winston Churchill made in 1939 in describing the Soviet Union. He went on to say: “A riddle, wrapped up in a mystery, inside an enigma.” That is a pretty fair characterization of what we know about the prices of prescription medications as sold by the manufacturer.

There are many different approaches as we deal with this prescription drug issue and want to extend it as either part of Medicare or some alternative approach. I have been privileged to serve on Finance Committee. I have been the vortex for this debate and discussion. I listened closely to my colleagues eloquently on the subject of prescription drugs, and, whether you are to the left or to the right of the political spectrum, or whether you consider yourself in the mainstream, a moderate, all of us worship at the shrine of competition. Everybody says what we need to do is to inject more competition into the system. I happen to subscribe to that because I do believe that by allowing the synergy of the free marketplace to work, it will be the most efficient and the most cost-effective way to deliver services. But there is an impediment to the operation of the free marketplace.

What does the free marketplace need to work? How do we ensure competition? Well, some of you may recall that course from school, Econ. 201; that is what it was called at the University of Nevada where I was enrolled. Basic economic theory dictates that the availability of real market-based information is critical to a free market and that price transparency is necessary. That is precisely what we do not have in this system we have created today.

The market today lacks market-based price information. A market simply cannot work without the availability of that price information. I emphasize the word ‘availability’. The information. That information is available to the public verges on the absurd. There is a complete void of useful information about prices. So, in effect, the employers who are negotiating on behalf of consumers are negotiating in the dark. They are at a serious disadvantage. It is as if they are blindfolded going into that negotiating arena. They don’t know where the end of the tunnel is. They don’t know what the real prices are. So one can fairly ask, how can even the most conscientious, effective employer or health plan operator negotiate good prices on behalf of consumers if they don’t have the by a wholesale information about market prices? They undoubtedly pay higher prices than they otherwise would, and ultimately these higher prices are translated into higher prices to the consumers; they are passed on. That is the nature of the system.

So what type of price information would be available, or should be available, that would be useful and helpful information? The average manufacturer price for a drug would be a useful thing for purchasers to know; that is, the average price at which a manufacturer sold a particular drug. That is what is actually paid for retail drugs. By law, that is, confidential, and that is one of the changes this legislation seeks to accomplish. That is confidential. You can’t get that information.

The average price actually paid to a manufacturer is supposed to be similar to the average manufacturer’s price, but, in point of fact, it diverges widely. The average wholesale price, to refresh your memory, is a list price that is meaningless, a price determined by the pharmaceutical industry. In theory, these prices should be tracking; in point of fact, they widely diverge. So it is the average manufacturer price, the price that is actually paid is, that is what we really want to know, and that is what we don’t know.

The other price we don’t know, and also by law is kept confidential, is the best price. That is the lowest price available to the private sector for a particular medication, whether it be Mevacor, Claritin, or any one of the other medications so many of us use today. That information is not available. So the average wholesale price—another utterly meaningless number, a fictional number—is available. The average manufacturer price is not; nor is the best price.

Knowledge about the average manufacturer price and the best price would certainly enable us to have lower prices for health plans, lower prices for employers, and lower prices for the consumers. But the public is denied this information.

Let me emphasize—because a number of you might be thinking: There we go again with a vast new bureaucracy to collect this data with all of the burdens and the limitations that would be generated. My friends, that is not the case because under the law, the Secretary of Health and Human Services currently collects the average manufacturer price and the best price.

In other words, we have this information. It is not something we don’t know about, or we have to create some new mechanism to gather. We have that information. It is there. But we are precluded by law from sharing that information with those who negotiate with the pharmaceutical industry to negotiate the best possible price for employees, members of health plans, or other organizations that provide prescription drugs to their clients, patient customer base—however you characterize them. All purchasers could use it to benefit those for whom they negotiate.

It is clear that we need to increase the level of knowledge consumers have about drug prices in today’s marketplace. We have the ability to see what these prices are and promote the fair market—will lower prices.

That is why my colleague, Senator GRAHAM, and I are introducing this legislation. We are simply talking about making the data that is collected available to those who are negotiating for prescription drugs. It would simply require the Secretary, who already collects this information, to provide the average manufacturer price of drugs and the best price available in the market.

These prices are collected to implement the Medicare prescription drug coverage. The prices are based on those prices. But because Medicaid is prohibited from disclosing the average manufacturer price, or the best price, the market doesn’t get the advantage of this information, and we are prohibited from knowing the price that Medicaid pays for each drug.

Let me say parenthetically that it is generally agreed that the price Medicaid pays is in point of fact the best price. So this would be a very relevant piece of information. We can’t say for sure even with respect to a federal funded program what we are spending on a particular drug. We don’t know what Medicaid pays for Claritin, Mevacor, or Prilosec. We just do not know that. We know the total price we are paying for drugs generally, and what we are spending for drugs. But we do not know what we are paying for them separately. This information needs to be made available because making price information available will help purchasers and consumers alike.

Today, anyone can get on the Internet to find the lowest price available
let this free marketplace that we all talk about that has produced such an extraordinary standard of living for us be the envy of the world. Nobody is suggesting that the free market could not, nor would, in my judgment, provide some pricing dynamics that would help to keep the costs down. Let an honest negotiating process occur.

The lack of market-based information has an effect on the Federal budget—not only for consumers in terms of the monies they pay for but all taxpayers.

Whether in Congress—and I profoundly hope we will in fact—makes that prescription drug benefit a part of Medicare, or a subsequent Congress, this is an idea whose time has come. It will occur. It may not occur in my time. I leave at the end of this year. But it is going to occur. There are dramatic cost implications. Without the benefit of this information, it will be very difficult.

Let’s just talk for a moment in terms of prices, information that is made available, and the generic formulas that we use for reimbursement.

Although a wholesale price is not a true market measure, it is set by the industry—it is used to determine Medicare reimbursement for the few drugs that are currently covered by Medicare.

The prescription Medicare benefit is very limited. I would like to see the Medicare prescription benefit extended through Medicare as an option, as we do not know, nor could we, of the spread. That is much less than what the pharmaceutical industry at a price that is substantially less than what Medicare is paying. That gouges the American taxpayer. That is the issue that concerns us.

As I have indicated, drug companies have artificially inflated this average wholesale price, which results in these rebates made by the drug companies to physicians, and the manufacturer then in turn provides the discounts, and the physicians can keep the difference. If the average wholesale price of the drug is $100, minus 5 percent would be $95, and if the physician actually only pays $50, the physician is getting $45 as part of that spread. That is much less than he is actually paying. Medicare, conversely, is reimbursing the physician at a far greater price than the physician is actually paying for that medication.

The need for better information has never been greater. Medicare drug benefit is critical and should be enacted this year. I truly hope it will be. Accurate market-based price information will ensure the best use of the taxpayer dollars financing this benefit and the lowest possible beneficiary coinsurance, that is, the amount, the coinsurance, the beneficiary has to pay.

Medicaid, which is a program, as we all know, that involves participation by the Federal and the State governments and made available to the poorest of our citizens, represents a rather substantial cost to the taxpayer. My recollection is that cost is in the neighborhood of about $17 billion a year. Here is how that formula worked. This is the Medicaid benefit. The average wholesale price is 10 percent. Remember, this is a price set by the pharmaceutical industry; it is not a market-driven price. Multiply that times the units—whatever the number of prescriptions, say an allergy drug or a blood pressure drug, for 30 or 60 levels. Times 15.1 percent of the average manufacturer price. This is the one we are precluded from knowing. Or take the average manufacturer price, minus the best price. This information we don’t know, but we should be able to get this information.

What can happen with respect to the Medicare reimbursements because the physicians who prescribe this medication get the average wholesale price minus 5 percent, we do not know what the physicians are actually paying the pharmaceutical industry for the drugs. According to the Justice Department, the Health and Human Services Office of the Inspector General, and our colleague in the other body who chairs the Commerce Committee, the average wholesale price has been manipulated in order to reap greater Medicare reimbursements.

The way that works, the doctor prescribes something covered by Medicare and reimburses the average wholesale price minus 5 percent. In point of fact, your physician may be paying much, much less to the pharmaceutical industry. So the spread is the physician’s profit, and there is potential for abuse. I am not suggesting in any way that a physician should not be compensated for his care. I am proud to say my son is a physician, a cardiologist. But you shouldn’t have to be able to get the wholesale price—which is this fiction we have talked about—and then allow the physician to seek payment from the pharmaceutical industry at a price that is substantially less than what Medicare is paying. That gouges the American taxpayer. That is the issue that concerns us.

for a given airline flight. I think the question needs to be asked: Why shouldn’t the public have access to price information on something that is so critical and that may be necessary to save one’s life, or to prevent the onset of other debilitating conditions? The marketplace has failed to ameliorate its impact, the information with respect to the average manufacturer price and the best price?

The bottom line is today there are no sources of good price information for consumers, thus keep-
at a time when the primary information consumers have about prescription drugs is through the $2 billion annually spent by the industry on direct-to-consumer advertising, and those ads never mention price—these are the things we are bombarded with on television; we see full-page paid-for ads in the leading newspapers in the country—at a time when Americans are traveling to foreign countries—to Canada and Mexico, in particular—to obtain lower prices, why shouldn’t we be doing whatever we can to encourage competition in the United States and to lower the price of drugs sold in this country?

I think it is a no-brainer. I think we should set the market forces in action. We simply need to allow the public to have access to readily available market-based information. This is common-sense, easy-to-understand, easy-to-implement legislation. We should pass it this year. There is no new bureaucracy created. We can have the information that we need to provide new employees would do is require it be made available. The potential benefits are enormous.

It will be interesting to see how this debate unfolds on this legislation because my colleagues have not heard the last of me on this issue. This makes a lot of sense, whether we do or do not succeed this year in extending a prescription benefit as part of Medicare. We ought to do it. We can do it. We should do it. I hope my colleagues will join me in a bipartisan effort to do so. I yield the floor.

By Ms. COLLINS (for herself and Ms. LANDRIEU):

S. 2964. A bill to amend the Internal Revenue Code of 1986 to provide new tax incentives to make health insurance more affordable for small businesses, and for other purposes; to the Committee on Finance.

ACCESS TO AFFORDABLE HEALTH CARE ACT

Ms. LANDRIEU. Mr. President, today I am introducing legislation, the Access to Affordable Health Care Act, that is designed to make health insurance more affordable both for individuals and for small businesses that provide health care coverage for their employees.

In the past few years, Congress has taken some major steps to expand access to affordable health coverage for all Americans. In 1996, the Health Insurance Portability and Accountability Act—also known as Kassebaum-Kennedy—was signed into law which assures that American workers and their families will not lose their health care coverage if they change jobs, lose their jobs, or become ill.

One of the first bills I sponsored on coming to the Senate was legislation to establish the State Children’s Health Insurance Program, which was enacted as part of the Balanced Budget Act. States have enthusiastically responded to the program, which now provides affordable health insurance coverage to over two million children nationwide, including 9,965 in Maine’s expanded Medicaid and CubCare programs.

Despite these efforts, the number of uninsured Americans continues to rise. At a time when unemployment is low and our nation’s economy is thriving, more than 44 million Americans—including 200,000 Maineans—do not have health insurance. Clearly, we must make health insurance more available and more affordable.

Most Americans under the age of 65 get their health coverage through the workplace. It is therefore a common assumption that people without health insurance are unemployed. The fact is, however, that most uninsured Americans are members of families with at least one full-time worker. According to the Health Insurance Association of America, almost seven out of ten uninsured Americans live in a family whose head of household works full-time.

In business is not just a segment of the economy—it is the economy. I am, therefore, particularly concerned that uninsured, working Americans are most often employees of small businesses. Nearly half of the uninsured workers nationwide in businesses with fewer than 25 employees.

According to a recent National Federation of Independent Businesses survey of its members, the cost of health insurance is the number one problem facing small businesses. And it has been since 1986. It is time for us to listen and to lend a hand to these small businesses.

Small employers generally face higher costs for health insurance than larger firms, which makes them less likely to offer coverage. Premiums are generally higher for small businesses because they do not have as much purchasing power. For example, it costs a small business $2,000 per year to purchase health insurance for its employees. Many small businesses are finding it difficult to keep up with these rising costs. My bill would provide relief by the new Access to Affordable Health Care Act, would help small employers to drop or turn down coverage when it is offered to them.

The legislation I am introducing today, the Access to Affordable Health Care Act, would help small employers cope with these rising costs. My bill would provide new tax incentives for small businesses to help make health insurance more affordable. It would encourage those small businesses that do not currently offer health insurance to do so and would help businesses that do offer coverage to lower their costs and make coverage even in the face of rising costs.

Under my proposal, employers with fewer than ten employees would receive a tax credit of 50 percent of the employer contribution cost of employee health insurance. Employers with ten to 25 employees would receive a 30 percent credit. Under my bill, the credit would be based on an employer’s yearly qualified health insurance expenses of up to $2,500 for individual coverage and $4,000 for family coverage.

The legislation I am introducing today would also make health insurance more affordable for individuals and families who must purchase health insurance on their own. The Access to Affordable Health Care Act would provide an above-the-line tax deduction for individuals who pay at least 50 percent of the cost of their health and long-term care insurance. Regardless of whether an individual takes the standard deduction or itemizes, he or she would be provided relief by the new above-the-line deduction.

My bill also would allow self-employed Americans to deduct the full amount of their health care premiums. While 25 million Americans are in families headed by a self-employed individual—of these, five million are uninsured. Establishing parity in the tax treatment of health insurance costs between the self-employed and those working for large businesses is not just a matter of equity. It will also help to reduce the number of uninsured, but working Americans. My bill will make health insurance more affordable for the 32,000 people in Maine who are self-employed. These people include our farmers, our hairdressers, our electricians, our plumbers, and the many owners of mom-and-pop stores that dot communities throughout the state.
Mr. President, the Access to Affordable Health Care Act would help small businesses afford health insurance for their employees, and it would also make coverage more affordable for working Americans who must purchase it on their own. I urge my colleagues to join me as cosponsors of this important legislation.

By Mr. HOLLINGS (for himself, Mr. GRAHAM, Mr. BREAUX, and Mr. CLELAND)

S. 2965. A bill to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE PORT AND MARITIME SECURITY ACT OF 2000

Mr. HOLLINGS. Mr. President, I rise today, to introduce the Port and Maritime Security Act of 2000. This legislation is long overdue. It is needed to facilitate future technological advances and increases in international trade, and ensure that we have the sort of security control necessary to ensure that our borders are protected from drug smuggling, illegal aliens, trade fraud, threats of terrorism as well as potential threats to our ability to mobilize U.S. military force.

The Department of Transportation recently commenced an evaluation of our marine transportation needs for the 21st Century. In September 1999, Transportation Secretary Slater released a preliminary report of the Marine Transportation System (MTS) Task Force—An Assessment of the U.S. Marine Transportation System. The report reflected a highly collaborative effort among public sector organizations, private sector organizations and other stakeholders in the MTS.

The report indicates that the United States has more than 1,000 harbor channels and 25,000 miles of inland, intracoastal and coastal waterways in the United States which serve over 300 ports, with more than 3,700 terminals that handle passenger and cargo movements. These waterways and ports link to 152,000 miles of railways, 460,000 miles of underground pipelines and 45,000 miles of interstate highways. Annually, the U.S. marine transportation system moves more than 2 billion tons of domestic and international freight, imports 3.3 billion tons of domestic oil, transports passenger and cargo, serves 78 million Americans engaged in recreational boating, and hosts more than 5 million cruise ship passengers.

The MTS provides economic value, as waterborne cargo contributes more than $742 billion to U.S. gross domestic product and creates employment for more than 13 million citizens. While these figures reveal the magnitude of our waterborne commerce, they don’t reveal the spectacular growth of waterborne commerce and the potential problems in coping with this growth. It is estimated that the total volume of domestic and international trade is expected to double over the next twenty years. The doubling of trade also brings up the troubling issue of how the U.S. is going to protect our maritime borders from crime, threats of terrorism, or even our ability to mobilize U.S. armed forces.

Security at our maritime borders is given substantially less federal consideration than airports or land borders. In the aviation industry, the Federal Aviation Administration (FAA) is intimately involved in ensuring that security measures are developed, implemented, and funded. The FAA works with various Federal officials to assess threats directed toward commercial aviation and to target various types of security measures as potential threats change. For example, during the Gulf War, airports were directed to ensure that no vehicles were parked within a set distance of the entrance to a terminal.

Currently, each air carrier, whether a U.S. carrier or foreign air carrier, is required to submit a proposal on how it plans to meet its security needs. Air carriers also are responsible for screening passengers and baggage in compliance with FAA regulations. The types of security equipment that are mandated and approved, and in many instances paid for by the FAA. The FAA uses its laboratories to check the machinery to determine if the equipment can detect explosives that are capable of destroying commercial aircraft. Only, we have learned from the Pan Am 103 disaster over Lockerbie, Scotland in 1988, Congress passed legislation in 1990 “the Aviation Security Improvement Act,” which was carefully considered by the Commerce Committee, to develop the types of measures I noted above. We also made sure that airports, the FAA, air carriers and law enforcement worked together to protect the flying public.

Following the crash of TWA flight 800 in 1996, we also leaped to spend money, when it was first thought to have been caused by a terrorist act. The FAA spent about $150 million on additional screening equipment, and we continue today to fund research and development for better, and more effective equipment. Finally, the FAA is responsible for ensuring that background checks (employment records/criminal records) of security screeners and those who are responsible for screening passengers and cargo are carried out in an effective and thorough manner. The FAA, at the direction of Congress, is responsible for certifying screening companies, and has developed ways to better test screeners. This is all done in the name of protecting the public. Seaports deserve no less consideration.

At land borders, there is a similar investment in security by the federal government. In TWEA-21, approved $134 million a year for five years for the National Corridors Planning and Development and Coordinated Border Infrastructure Program. Eligible activities under this program include improvements to existing transportation and supporting infrastructure that facilitate cross-border vehicles and cargo movements; construction of highways and related safety enforcement facilities that facilitate movements related to international trade and tourism; and improvements, including improvements relating to electronic data interchange and use of telecommunications, to expedite cross border vehicle and cargo movements; and planning, coordinating, design and location studies. By way of contrast, at U.S. seaports, the federal government invests nothing in infrastructure, other than the human presence of the U.S. Coast Guard, U.S. Customs Service, and the Immigration and Naturalization Service. And whatever equipment those agencies have to accomplish their mandates. Physical infrastructure is provided by state-controlled port authorities, or by private sector marine terminal operators. Currently, there are no controls or requirements in place, except for certain standards promulgated by the Coast Guard for the protection of cruise ship passenger terminals. Essentially, where sea ports are concerned we have abrogated the federal responsibility of border control to the state and private sector.

I think that the U.S. Coast Guard and Customs Agency are doing an outstanding job, but they are outgunned. There is simply too much money in the illegal activities they are seeking to curtail or eradicate, and there is too much traffic coming into, and out of the United States. For instance, in the latest data available, 1999, we had more than 10 million TEU (20-foot equivalent unit) shipping container. For the uninitiated, a TEU refers to a twenty-foot equivalent unit shipping container. By way of comparison, a regular truck measures 46-feet in length. So in translation, we imported close to 500,000 trailer loads of cargo. According to the Customs Service, seaports are able to inspect between 1 percent and 2 percent of the containers, so in other words, a drug smuggler has a 98 percent chance of going illegal entry.

It is amazing to think, that when you or I walk through an international airport, we will walk through a metal detector, and our bags will be x-rayed, and Customs will interview us, and may check our bags. However, at a U.S. seaport you could import a 48 foot truck load of cargo, and have at least a 98 percent chance of going illegal entry.

For instance, in my own state, the Port of Charleston which is the fourth largest container port in the United States. Customs officials have no equipment even capable of x-raying intermodal shipping containers. Customs, which is understaffed to start with, must physically open containers, and request the use of a canine unit from local law enforcement to help with drug or illegal contraband detection.

The need for the evaluation of higher scrutiny of our system of seaport security came at the request of treatment.
GRAHAM, and I would like to at this time commend him for his persistent efforts to address this issue. Senator GRAHAM has had problems with security at some of the Florida seaports, and although the state has taken some steps to address the issue, there is a great need for considerable improvement. Senator GRAHAM persuaded the President to appoint a Commission, designed similarly to the Aviation Security Commission, to review security at U.S. seaports.

The Commission visited twelve major U.S. seaports, as well as two foreign ports. It compiled a record of countless hours of testimony and heard from, and reviewed the security practices of the shipping industry. It also met with local law enforcement officials to discuss the issues and their experiences as a result of seaport related crime. Unfortunately, the report will not be publicly released until unit 2012, but the Commission found that twelve U.S. seaports accounted for 56 percent of the number of cocaine seizes, 32 percent of the marijuana seizes, and 65 percent of heroin seizes in commercial cargo shipments and vessels at all ports of entry nationwide. Yet, we have done relatively little, other than send in an understaffed contingency of Coast Guards and Customs officials to do whatever they can.

A problem confronting U.S. seaports is smuggling. For example, alien smuggling has become an increasingly lucrative enterprise. To illustrate, in August of 1999, I.N.S. officials found 182 Chinese men hiding aboard a container ship docked in Savannah, Georgia. The INS district director was quoted as saying: "This was a very sophisticated ring, and never in my 23 years with the INS have I seen anything as large or sophisticated." According to the GAO report, these INS efforts on alien smuggling (RPT Number: B-283952), smugglers collectively may earn as much as several billion dollars per year bringing in illegal aliens.

Another problem facing seaports is cargo theft. Cargo theft does not always occur at seaports, but in many instances the theft has occurred because of knowledge of cargo contents. Internationally, the port provides access to a lot of information and a lot of cargo to many different people along the course of its journey. We need to take steps to ensure that we do not facilitate theft. Losses as a result of cargo theft have been estimated as high as $2 billion annually, and it has been reported to have increased by as much as 20 percent recently. The FBI has become so concerned that it recently established a multi-district task force, Operation Hidden Stop, to crack down on cargo crime.

The other issues facing seaport security may be less evident, but potentially of greater threat. As a nation in general, we have been relatively lucky to have been free of some of the terrorist threats that have plagued other nations. However, we must not become complacent. U.S. seaports are extremely exposed. On a daily basis many cargo shipments come into contact with serious illness and death to potentially large populations of civilians living near seaports if targeted by terrorism.

The sheer magnitude of most seaports, the fact that only 30 percent of seaports are in the vicinity of established population centers, the open nature of the facility, and the massive quantities of hazardous cargoes being shipped through a port could be extremely threatening to the large populations that live in areas surrounding our seaports. The same conditions in U.S. seaports, that could expose us to threats from terrorism, could also be used to disrupt our abilities to mobilize militarily. During the Persian Gulf War, 95 percent of our military cargo was carried by sea. If the service, could have resulted in a vastly different course of history. We need to ensure that it does not happen to any future military contingencies.

As I mentioned before, our seaports are international highways, and consequently we should treat them as such. However, I am realistic about the possibilities for increasing seaport security, the realities of international trade, and the many functional differences between different seaport localities. Seaports by their very nature, are open and exposed to surrounding areas, and as such it will be impossible to control all aspects of security, however, sensitive or critical safety areas should be protected. I also understand that U.S. seaports have different security needs in form and scope. For instance, a seaport in Alaska, that has very little international cargo does not need the same degree of attention as a port in a major metropolitan center, which imports and exports thousands of international shipments. However, the legislation we are introducing today will allow for public input and will consider local issues in the implementation of new guidelines on port security, so as to address such details.

Substantively, the Port and Maritime Security Act establishes a multi-pronged effort to address security needs. As a whole, the bill gives rise to a new federal program to provide non-intrusive technology that have proven effective. The bill authorizes the Coast Guard to establish a task force on port security in consultation with U.S. Customs and the Maritime Administration.

The purpose of the task force is to implement the provisions of the act; to coordinate programs to enhance the security and safety of U.S. seaports; to provide effective programs for port safety issues; to coordinate with local port security committees established by the Coast Guard to implement the provisions of the bill; and to ensure that the public and local port security committees are kept informed about seaport security enhancement developments.

The bill requires the U.S. Coast Guard to establish local port security committees at each U.S. seaport. The purpose of these committees is to include members of the port authority, labor organizations, the private sector, and federal, state, and local government officials. These committees will be chaired by the U.S. Coast Guard's Captain-of-the-Port, and will implement the provisions and requirements of the bill locally, to ensure that local considerations are considered in the establishment of security guidelines.

The bill requires the task force, in consultation with the U.S. Customs Service and MarAd, to develop a system of providing port security threat assessments for U.S. seaports, and to revise this assessment at least triennially. The threat assessment shall be developed with the advice of local officials, through local port security committees, and ensure the port is made aware of and participates in the analysis of security concerns.

The bill also requires the task force to develop voluntary minimum security guidelines that are linked to the U.S. Coast Guard Captain-of-the-Port controls, to include a model port concept, and to include recommended best practices guidelines for use of multi-modal port committees. Local port security committees are to participate in the formulation of security guidelines, and the Coast Guard is required to pursue the international adoption of similar security guidelines. Additionally, the Maritime Administration (MarAd) is required to pursue the adoption of proper private sector accreditation of ports that adhere to guidelines (similar to a underwriters lab approval, or ISO 9000 accreditation) in their ports.

The bill authorizes MarAd to provide Title XI loan guarantees to cover the costs of port security infrastructure improvements, such as cameras and other monitoring equipment, fencing systems and other types of physical enhancements. The bill authorizes $10 million, annually for four years, to cover costs, as defined by the Credit Reform Act, which could guarantee up to $400 million in loans for security enhancements. The bill also establishes a matching grant program to develop and transfer technology to enhance security at U.S. seaports. The U.S. Customs Service may award up to $12 million annually for four years for this technology program, which is required to be awarded on a competitive basis. Long-term technology development is needed to ensure that we can develop non-intrusive technology that will allow trade to expand, but also allow us greater ability to detect criminal threats.

The bill also authorizes additional funding for the U.S. Customs Service to carry out the requirements of the
bill, and more generally, to enhance seaport security. The bill requires a report to be attached on security and a revision of 1997 document entitled “Port Security: A National Planning Guide.” The report and revised guide are to include a description of activities undertaken under the Port and Maritime Security Act of 2000, in addition to analysis of the effect of these activities on port security and preventing acts of terrorism and crime.

The bill requires the Attorney General, to the extent feasible, to coordinate reporting of seaport-related crimes and to work with state law enforcement officials to harmonize the reporting of data on cargo theft. Better data will be crucial in identifying the extent and location of criminal threats and will facilitate law enforcement efforts combating crime. The bill also requires the Secretaries of Agriculture, Treasury, and Transportation, as well as the Attorney General together to establish shared dockside inspection facilities at seaports for federal and state agencies, and authorizes $3 million, annually for four years, to carry out this section. The bill also requires the Customs Service to improve reporting of imports at seaports, and to eliminate user fees for domestic U.S.-flag carriers carrying in-bond domestic cargo.

Finally, the bill reauthorizes an extension of tonnage duties through 2006, and makes available $40,000,000 from the collections of these duties to carry out the Port and Maritime Security Act. These fees currently are set at certain levels, and are scheduled to be reduced in 2002. The legislation reauthorizes and extends the current fee level for an additional four years, but dedicates its use to enhancing our efforts to fight crime at U.S. seaports and to facilitating improved protection of our ports and seacoasts. To enhance our efforts to ward off potential threats of terrorism.

Mr. GRAHAM. Mr. President, I rise today, joined by Senators HOLLINGS, BREAUX, and CLELAND, to introduce the Port and Maritime Security Act of 2000, a bill that would significantly improve the overall security and cargo processing operations at U.S. seaports.

For some time, I have very been concerned that seaports—unlike our airports—lack the advanced security procedures and equipment that are necessary to prevent acts of terrorism, cargo theft and drug trafficking. In addition, although seaports conduct the vast majority of our international trade, the activities of law enforcement and trade-processing agencies—such as the Coast Guard, Customs, the Department of Agriculture, the FBI, and state and local agencies—are often uncoordinated and fragmented. Taken together, the lack of security and integrated coordination at seaports present an extremely attractive target for criminals and a variety of criminal activities.

Before discussing the specifics of this legislation, it is important to describe the circumstances that have caused the security crisis at our seaports. Today, U.S. seaports conduct 95 percent of the Nation’s international trade. Over the next twenty years, the total volume of international trade at seaports is expected to increase three-fold. In addition, the variety of trade and commerce that are carried out at seaports has greatly expanded. Bulk cargo, containerized cargo, passenger cargo and tourism, international transportation systems, and complex domestic and international trade relationships have significantly changed the nature and conduct of seaport commerce. This continuing expansion of activity at seaports has increased the opportunities for a variety of illegal activities, including drug trafficking, cargo theft, auto theft, illegal immigration, and the diversion of cargo, such as food, to avoid safety inspections.

In the face of these new challenges, it appears that the U.S. port management system has fallen behind the rest of the world. We lack a comprehensive, nationwide strategy to address the security issues that face our seaport system.

Therefore, in 1998, I asked the President to establish a Federal commission to evaluate both the nature and extent of crime and the overall state of security in domestic ports. The Commission developed recommendations for improving the response of Federal, State and local agencies to all types of seaport crime. In response to my request, President Clinton established the Interagency Commission on Crime and Security in U.S. Seaports on April 27, 1999.

Over the past year, the Commission has conducted on-site surveys of twelve (12) U.S. seaports, including the Florida ports of Miami and Port Everglades. Conference interviews and focus group sessions were held with representatives of Government agencies and the trade community. The focus group meetings with Federal agencies, State and local government officials, and the trade community were designed to solicit their input regarding issues involving crime, security, cooperation, and the appropriate government response to these issues. The Commission also visited two large ports—New Orleans and Felixstowe—in order to assess their security procedures and use their standards and procedures as a “benchmark” for operations at U.S. ports.

In February of this year, the Commission issued preliminary findings which outlined many of the common security problems that were discovered in U.S. seaports. Among other conclusions, the Commission found that: (1) intelligence and information sharing among law enforcement agencies needs to be improved; (2) almost half of the ports do not have any idea about the threats they face, because vulnerability assessments are not performed locally; (3) a lack of minimum security standards at ports and at terminals, warehouses, and trucking firms, leaves many ports and port users vulnerable to theft, pilferage, and unauthorized access by criminals; and (4) advanced equipment, such as small boats, cameras and high-sensitivity scale X-rays, are lacking at many high-risk ports. Although the Commission’s final report will not be released until later this summer, I have worked closely with them to draft this legislation.

The committees and I are introducing today will begin to address the problems of our seaports by directing the Commandant of the Coast Guard, in consultation with the Customs Service and the Maritime Administration, to establish a Task Force on Port Security. The new Task Force on Port Security will be responsible for implementing all of the provisions of our legislation. It will have a balanced representation, including Federal, State, local, and industry representatives familiar with port operations, including port labor.

To ensure full implementation of this legislation, the bill requires the U.S. Coast Guard to establish local port security committees at each U.S. seaport. Membership of these committees will include representatives of the local port authority, labor organizations, the private sector, and Federal, State, and local government officials. The committees will be chaired by the local U.S. Coast Guard Captain-of-the-Port.

In addition, our bill requires the Task Force on Port Security to develop a system of providing port security threat assessments for U.S. seaports, and to revise these assessments at least every three years. The local port security committees will participate in the analysis of threat and security concerns.

Perhaps most important, the bill requires the Task Force to develop voluntary minimum security guidelines for seaports, develop a “model port” concept for all seaports, and include recommended “best practices” guidelines for use by maritime terminal operators. Again, local port security committees are to participate in the formulation of these security guidelines, and the Coast Guard is required to pursue the international adoption—through the International Maritime Organization and other organizations—of similar security guidelines.

Some States and localities have already conducted seaport security reviews, and have implemented strategies to correct the security shortcomings that they have discovered. In 1999, Florida initiated comprehensive security review of seaports within the state. Led by James McDonough, Director of the governor’s Office of Drug Control, the review found that 75 percent of the Florida total-flow from Florida annually through ports throughout the State.
Both the Florida Legislature and the Florida National Guard recognized the need to address this growing problem and acted decisively. Legislation was introduced in the Florida Senate that called for the development and implementation of statewide port security plans, including requirements for minimum security standards and compliance inspections. In fiscal year 2003, the Florida National Guard will commit $1 million to provide counter-narcotics support at selected ports-of-entry. This will allow U.S. Customs Service interdiction efforts and enhance overall security at these ports.

In a July 21, 2000, editorial in the Tallahassee Democrat, Mr. McDonough identifies the evaluation of Florida’s seaports and the implementation of security standards as a priority initiative in stemming the flow of drugs into Florida.

We realize that U.S. seaports are a joint federal, state, and local responsibility. We seek to support comprehensive port security efforts such as the one in Florida. Therefore, our bill provides significant incentives for both port infrastructure improvements and research and development on new port security equipment.

The bill authorizes the Maritime Administration to provide title XI loan guarantees to cover the costs of port security infrastructure improvements, such as cameras and other monitoring equipment, fencing systems, as well as other physical security enhancements. The authorization level of $10 million annually, for four years, could guarantee up to $400 million in loans for seaport security enhancements.

In addition, the legislation will also establish a matching grant program to develop and transfer technology to enhance security at U.S. seaports. The U.S. Customs Service may award up to $12 million annually, for four years, for this entitlement program.

We also must improve the reporting on, and response to, seaport crimes as they take place. Therefore, the bill requires the Attorney General to coordinate reports of seaport related crimes and to work with State law enforcement officials to harmonize the reporting of data of cargo theft. To facilitate this coordination, the bill authorizes $2 million annually, for four years, to modify the Justice Department’s National Crime Reporting System. It also authorizes grants to states to help them modify their reporting systems to capture crime data more accurately.

In order to pay for all of these important initiatives, the bill would reauthorize an extension of tonnage duties through 2006. It would also make available $40,000,000 from the collection of these duties to carry out all of the provisions of the Port and Maritime Security Act. Currently, the collection of tonnage duties is directed towards a specific program. Implementing the provisions of the Port and Maritime Security Act of 2000 will produce concrete improvements in the efficiency, safety, and security of our nation’s seaports, and will result in a demonstrable benefit for those who currently pay tonnage duties.

Seaports play one of the most critical roles in expanding our international trade and protecting our borders from international threats. The “Port and Maritime Security Act” recognizes these important responsibilities of our seaports, and devotes the necessary resources to move ports into a 21st century posture. It requires the Attorney General to look towards the future by supporting this critical legislation—and by taking action to protect one of our most valuable tools in promoting economic growth.

Mr. President, I ask unanimous consent to print the July 21, 2000 editorial from The Tallahassee Democrat in the Record.

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

(From the Tallahassee Democrat, July 21, 2000)

**FLORIDA’S DRUG WAR: LOOKING BACK—AND AHEAD**

(By James R. McDonough)

The recent signing of anti-drug legislation by Gov. Jeb Bush should come as welcome news to Debbie Alumbaugh and parents like her.

In 1996, Michael Tiedemann, the Port Force woman’s 15-year-old son, choked to death on his vomit after getting sick from ingesting GHB and another drug. GHB is one of several “club” or “designer” drugs that are a growing problem in Tallahassee, as pointed out recently in a letter to the Democrat by Rosalind Tompkins, director of the newly created Anti-Drug Anti-Violence Alliance. The new law won’t bring Michael back, but it lessens the chance that GHB and other dangerous substances will fall into other young hands. Gov. Bush, who has made reducing drug abuse a top priority, approved the following anti-drug measures passed during the 2000 session:

A controlled substance act, which is aimed at blocking the production of drugs, and more established drugs such as methamphetamine. The new law addresses the trafficking, sale, purchase, manufacture and possession of these.

A nitrous oxide criminalization act that addresses the illegal possession, sale, purchase or distribution of this substance.

A money-laundering bill designed to tighten security at Florida’s seaports. The measure also creates a contraband interdiction team that will search vehicles for illegal drugs.

A bill that applies the penalties under Florida’s “10-20-Life” law to juveniles who carry a gun while trafficking in illegal drugs.

Gov. Bush approved a budget that includes an estimated $270 million for drug abuse prevention and treatment. This is a big step in the right direction, as these services, especially drug prevention programs aimed at children, are critical.

Considering the above legislation—along with the publication of the Florida Drug Control Strategic Plan called, “Ahead,” a survey that shows significant reductions in youth use of marijuana, cocaine and inhalants, and a decline in heroin and cocaine overdose deaths—the past year has shown some progress toward drug abuse.

Even with additional dollars for drug abuse treatment, the number of treatment beds still falls far short of demand. The wait time to enter a treatment program is measured in weeks. This is unacceptable; we must continue to narrow the treatment gap until everyone who needs this vital help can get it in a timely manner.

Our efforts cannot be solely focused on the demand for drugs. A sound drug control strategy must also address supply. The Office of Drug Control has several initiatives to stem the flow of drugs into Florida. One initiative is the Intelligence-driven Offutt counter-drug operations that combine the efforts of law enforcement agencies at the federal, state and local levels.

Our efforts will continue. As history has taught us, the struggle against drugs is one that never ends. The minute we believe we have put the matter to rest and relax our guard, drug use immediately begins to resurge. Conversely, if we address the problem in a rational, balanced way, drug abuse rates will come down. Because substance abuse has such pervasive impact on the family and on society, addressing the problem falls to the entire community—government, educators, community and business leaders, clergy, coaches and most importantly, parents.

By Mr. JEFFORDS (for himself, Mr. BAUCUS, Mr. EDWARDS, and Mr. ROTH):

S. 2966. A bill to amend the Fair Labor Standards Act of 1938 to prohibit discrimination in wages, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

**THE WAGE AWARENESS PROTECTION ACT**

Mr. JEFFORDS. Mr. President, it is with great pride that I introduce the Wage Awareness Protection Act.

We have made great strides in the fight against workplace discrimination. The enactment of the Civil Rights Act of 1964 has been a milestone and has been a great step toward ensuring the basic principles of equal opportunity and fairness in the workplace. At the time of the enactment, not one, but two laws, aimed at ensuring that women receive equal pay for equal work: the Equal Pay Act (“EPA”) of 1963, and to Title VII of the 1964 Civil Rights Act. More recently, Congress reaffirmed this commitment by passing the Civil Rights Act of 1991, which expanded the 1964 Civil Rights Act and gave victims of intentional discrimination the ability to recover compensatory and punitive damages.
Certainly a lot has changed since we first enacted these laws. It should come as no surprise that more women are participating in the labor force than ever before, with women now making up an estimated 46 percent of the workforce. Yet, it is also spending more time in school and are now earning over half of all bachelor’s and master’s degrees. In addition, women are breaking down longstanding barriers in certain industries and occupations.

Despite these advances, the unfortunate reality is that pay discrimination has continued to persist in some workplaces. In a recent hearing before the Committee on Health, Education, Labor and Pensions, we heard testimony that a principal reason why gender-based wage discrimination has continued is that many female employees are simply unaware that they are being paid less than their male counterparts. These unwitting victims of wage discrimination are often kept in the dark by employer policies that prohibit employees from sharing salary information. Employees are warned that they will be reprimanded or terminated if they discuss salary information with their co-workers.

I believe that a fundamental barrier to uncovering and resolving gender-based pay discrimination is fear of employer retaliation. Employees who suspect wage discrimination should be able to share their salary information with co-workers. I am not alone in my belief. According to a recent Business and Professional Women USA survey, Americans overwhelmingly support anti-retaliation legislation. And, 65 percent of those polled, said they believe legislation should protect those who suspect wage discrimination from employer retaliation for discussing salary information with co-workers.

The Worker Awareness Protection Act would protect employees from having blanket wage confidentiality policies preventing employees from sharing their salary information. In addition, this new legislation will bolster the Equal Pay Act’s retaliation provisions including providing workers with protection from employer retaliation for voluntarily discussing their own salary information with co-workers. I am excited about this legislation. It is my hope that it will help point the way to elimination of any pernicious discrimination practices.

I urge all my colleagues to join me in supporting this bill.

I ask unanimous consent that a copy of this bill be printed in the RECORD.

S. 2966

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 “Wage Awareness Protection Act”.

SEC. 2. PROHIBITED ACTS.

(a) Prohibition on Retaliation and Confidentiality Policies.—Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)) is amended—

(1) by redesignating paragraph (4) as paragraph (6); and

(2) by inserting after paragraph (3) the following:

“(4) It shall be unlawful for any person—

(A) to discharge or in any other manner discriminate against any employee because such employee—

(i) has made a charge, assisted, or participated in any manner in an investigation, hearing, or other proceeding under this subsection; or

(ii) has inquired about, discussed, or otherwise disclosed the wages of the employee, or another employee, covered by a confidentiality policy that is lawful under subparagraph (B); or

(B) to make or enforce a written or oral confidentiality policy that prohibits an employee from inquiring about, discussing, or otherwise disclosing the wages of the employee or another employee, except that nothing in this subparagraph shall be construed—

(i) to prohibit an employer from making or enforcing such a confidentiality policy, if the employer, in the course of carrying out the employer’s business, obtains information about the wages of other employees, that prohibits the employee from inquiring about, discussing, or otherwise disclosing the wages of another employee, except that an employee may discuss or otherwise disclose the employee’s own wages; and

(ii) to require the employer to disclose an employee’s wages.

(5) For purposes of sections 16 and 17, a violation of paragraph (4) shall be treated as a violation of paragraph (3), rather than as a violation of this section.”.

(b) CONFORMING AMENDMENT.—Section 6(d)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(3)) is amended by inserting “(other than paragraph (4))” after “this subsection”.

By Mr. MURKOWSKI (for himself, Mr. Gorton, Mr. Kerrey, and Mr. Jeffords):

S. 2967. A bill to amend the Internal Revenue Code of 1986 to facilitate competition in the electric power industry; to the Committee on Finance.

THE ELECTRIC POWER INDUSTRY TAX MODERNIZATION ACT

Mr. MURKOWSKI. Mr. President, today I am joined by Senators, GORTON, KERREY and JEFFORDS in introducing the Electric Power Industry Tax Modernization Act, legislation that will facilitate the opening up of the nation’s energy grid to electricity competition. This landmark legislation demonstrates the good faith of the most important players in the industry—the investor owned utilities (IOUs) and the municipal utilities.

In the Energy Committee, which I currently Chair, we have held more than 18 days of hearings and heard testimony from more than 160 witnesses on electricity restructuring. Although those 160 witnesses had many differing views, every witness agreed that the tax laws must be rewritten to reflect the new reality of a competitive electricity market.

Alternatively, 24 states have implemented laws deregulating their electricity markets. And the other 36 states are all considering deregulation schemes. Faced with that reality, the federal tax laws must be updated to ensure that tax laws which made sense when electricity was a regulated monopoly are not allowed to interfere with opening up the nation’s electrical infrastructure to competition.

Last October I held a hearing in the Finance Committee Subcommittee on Long Term Growth to examine all of the tax issues that confront the industry. At the end of the hearing I urged my colleagues to sit down at the negotiating table and hammer out a consensus that will resolve the tax issues.

The bill we are introducing today reflects the compromise that has been reached between the IOUs and the municipal utilities.

One of the major problems that the current tax rules create is to undermine the efficiency of the entire electric system in a deregulated environment. Use these rules effectively preclude public power entities from participating in State open access restructuring plans, without jeopardizing the exempt status of their bonds.

No one wants to see public power bonds issued to finance some new transmission facilities.

Another section of the bill changes the tax code to reflect the fact that the regulated monopoly model no longer exists. For example, the bill modifies the current rules regarding the treatment of nuclear decommissioning costs to make certain that utilities will have the resources to meet those future costs and clarifies the tax treatment of these funds if a nuclear facility is sold.

The bill also provides tax relief for utilities that spin off or sell transmission facilities, in return for grandfathering existing bonds. In addition, the bill allows tax-exempt bonds to be issued to finance some new transmission facilities.

I recognize that in making these two changes in the tax law, the municipal utilities have given up a substantial financing tool that has been at the heart of the controversy between the municipal utilities and the IOUs. At the same time, the bill updates the tax code to reflect the fact that the regulated monopoly model no longer exists. For example, the bill modifies the current rules regarding the treatment of nuclear decommissioning costs to make certain that utilities will have the resources to meet those future costs and clarifies the tax treatment of these funds if a nuclear facility is sold.

The bill also provides tax relief for utilities that spin off or sell transmission facilities to return participants in FERC approved regional transmission organizations.

Another section of the bill changes the tax rules regarding contributions in aid of construction for electric and transmission and distribution facilities. This is an especially important provision; however when this bill is considered in the Finance Committee, I intend to modify this proposal so that it is expanded to all contributions in aid of construction for electric transmission and distribution.

The IOUs and the Municipal utilities are to be commended for coming up...
with this agreement. However, there is one other element of the tax code that needs to be addressed if we are going to open the entire grid to competition. And that sector is the cooperative sector.

Currently, coops may not participate in wheeling power through their lines because of concern that they will violate the so-called 85–15 test. I urge the coops to sit down with the other utilities and reach an accord so that when we consider legislation, the coops will be included in a tax bill.

Mr. GORTON. Mr. President, today I am extremely pleased to co-sponsor the Electric Power Industry Tax Modernization Act. This legislation, when enacted, will contribute to a more reliable and efficient electric power industry that will provide benefits for all Americans connected to the interstate power grid.

I have been working for three years to resolve the tax problems for consumer-owned municipal utilities, those that are often referred to as Public Power. Nearly half the citizens of my state are served by Public Power. These problems are due to outdated tax statutes that were written in a different era where the emerging competition in the wholesale electricity market was not envisioned. The negative effects of these outdated tax provisions have impacted not only consumers of Public Power, but also tens of millions of other customers. Public Power is often prevented from sharing the use of their transmission systems solely to these tax provisions. These outdated tax provisions are negatively impacting the reliability of entire regions of our nation, adding stress to an already stressed system.

In addition to Public Power, other types of utilities are prevented from adapting to this new era of emerging competition by other constraints in this outdated area of the tax law. All of these uncertainties have led to a condition where investment has slowed in this sector of the economy as we need more investment to assure sufficient power plants and transmission lines to feed a growing economy that is increasingly dependent on reliable and affordable electricity.

This compromise bill includes the essence of my legislation, S. 386, The Bond Fairness and Protection Act that I introduced last year with Senator KERREY from Nebraska, a bill that included 32 co-sponsors in the Senate. This legislative language will allow Public Power to move into the future with certainty, and protects the millions of American citizens who hold current investments in Public Power.

The bill also includes legislative language that resolves conflicts for investor-owned utilities. These changes are also needed to solve problems in other parts of the outdated tax code. It pertains to electricity. The new provisions will also help contribute to a more reliable and orderly electric system in our nation.

I look forward to gaining additional support for this bill among the other members of the Senate, and I look forward to the Finance Committee's consideration of this legislation in September. As soon as this legislation can be enacted, American electricity consumers will be able to enjoy a more certain and reliable future regarding their electricity needs.

Mr. KERREY. Mr. President, today I wish to join my colleagues, Senator MURkowski, GORTON, and JEFFORDS in introducing legislation that will help ensure that customers receive reliable and affordable electricity. The Electric Power Industry Tax Modernization Act is the culmination of months-long discussions between shareholder-owned utilities and publicly-owned utilities. Without the diligence and patience exhibited by these groups, it is doubtful that Congress could be in the position to act on this issue. Additionally, I would like to recognize the efforts of Senator Gorton of Oregon, Mr. GORTON, whose efforts at getting these groups to sit down and discuss these issues was invaluable to the final agreement.

Mr. President, this legislation will ensure that Nebraskans continue to benefit from the publicly-owned power they currently receive. Nebraska has 154 not-for-profit community-based public power systems. It is the only state which relies entirely on public power for electricity. This system has served my state well as Nebraskans enjoy some of the lowest electricity rates in the nation.

In closing, I would urge my colleagues to join this bipartisan effort to address the changes steaming from electric restructuring.

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. 2967
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 "Electric Power Industry Tax Modernization Act".

SEC. 2. TAX-EXEMPT BOND FINANCING OF CERTAIN ELECTRIC FACILITIES
(a) RULES APPLICABLE TO ELECTRIC OUTPUT TRANSACTIONS.—Subpart A of part IV of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to tax exemption for certain electric output transactions not a private use bond) and section 141(b), no bond which was issued by such unit with respect to an electric output facility before the date of enactment of this subsection (or which is described in paragraph (2)(B), (D), (E) or (F) of section 141(b), no bond which was issued by such unit with respect to an electric output facility before the date of enactment of this subsection (or which is described in paragraph (2)(B), (D), (E) or (F) of such section) shall be treated as a private activity bond.

(b) Any bond issued to finance a qualifying transmission facility or a qualifying distribution facility.

(c) Any bond issued to finance equipment or facilities necessary to meet Federal or State environmental requirements applicable to an existing generation facility.

(d) Any bond issued to finance repair or modernization of facilities or facilities for the acquisition of property for the improvement of facilities or facilities such repairs or modernization may make an irrevocable election under this section to be a private activity bond.

(e) Any bond issued to finance repair of a qualifying transmission facility or a qualifying distribution facility.

(f) Any bond issued to finance equipment or facilities necessary to protect the environment.

(g) Any bond issued to finance equipment or facilities necessary to meet Federal or State environmental requirements applicable to an existing generation facility.

(h) Any bond issued to finance repair or modernization of facilities or facilities for the acquisition of property for the improvement of facilities.

(i) Any bond issued to finance equipment or facilities necessary to protect the environment.

SEC. 141A. ELECTRIC OUTPUT FACILITIES
(a) ELECTION TO TERMINATE TAX-EXEMPT BOND FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILITIES.—(1) IN GENERAL.—A governmental unit may make an irrevocable election under this paragraph to terminate certain tax-exempt financing for electric output facilities. If the governmental unit makes such election, then—

(A) except as provided in paragraph (2), on or after the date of such election the governmental unit may not issue with respect to an electric output facility any bond the interest on which is exempt from tax under section 103, and

(B) notwithstanding paragraph (1) or (2) of section 141(a) or paragraph 5 of section 141(b), no bond which was issued by such unit with respect to an electric output facility before the date of enactment of this subsection (or which is described in paragraph (2)(B), (D), (E) or (F) of such section) shall be treated as a private activity bond.

(2) EXCEPTIONS.—An election under paragraph (1) does not apply to any of the following bonds:

(A) Any bond issued to finance a qualifying transmission facility or a qualifying distribution facility.

(B) Any bond issued to finance equipment or facilities necessary to meet Federal or State environmental requirements applicable to an existing generation facility.

(C) Any bond issued to finance repair or modernization of facilities or facilities such repairs or modernization may make an irrevocable election under this section.

(D) Any bond issued to finance equipment or facilities necessary to protect the environment.

(E) Any bond issued to finance repair or modernization of facilities or facilities such repairs or modernization may make an irrevocable election under this section.

(F) Any bond issued to acquire or construct a qualified facility, as defined in section 494(c)(5). If such facility is in service during a period in which a qualified facility may be placed in service under such section, or (or) any electric property, as defined in section 494(c)(5).

(3) FORM AND EFFECT OF ELECTION.—(A) IN GENERAL.—An election under paragraph (1) shall be made by the governing body of the governmental unit with respect to an electric output facility before the date of enactment of this section.

(B) FORM AND EFFECT OF ELECTION.—(i) GENERAL RULE.—For purposes of paragraphs (1) and (2), the term ‘existing generation facility’ means an electric generation facility in service on the date of enactment of this section. (ii) PREEXISTING GENERATION FACILITY.—The term ‘preexisting generation facility’ means an electric generation facility in service before June 1, 2000.

(iii) QUALIFYING DISTRIBUTION FACILITY.—The term ‘qualifying distribution facility’ means a distribution facility which over open access distribution services described in subsection (b)(2)(C) are provided.

(iv) QUALIFYING TRANSMISSION FACILITY.—The term ‘qualifying transmission facility’ means a local transmission facility as defined in subsection (c)(3)(A) or which is engaged in a trade or business, with respect to its purchase of electricity generated by an electric output facility placed in service after such purchase is under a contract executed after such election.

(v) DEFINITIONS.—For purposes of this subsection:

(A) EXISTING GENERATION FACILITY.—The term ‘existing generation facility’ means an electric generation facility in service on the date of enactment of this section or the construction of which commenced before June 1, 2000.

(B) QUALIFYING DISTRIBUTION FACILITY.—The term ‘qualifying distribution facility’ means a distribution facility which over open access distribution services described in subsection (b)(2)(C) are provided.

(C) QUALIFYING TRANSMISSION FACILITY.—The term ‘qualifying transmission facility’ means a local transmission facility as defined in subsection (c)(3)(A) or which is engaged in a trade or business, with respect to its purchase of electricity generated by an electric output facility placed in service after such purchase.

SEC. 141B. Electric Output Facilities
Bonds issued or sold on or after the date of enactment of this section.
open access activity or a permitted sales transaction.

"(2) PERMITTED OPEN ACCESS ACTIVITIES.—For purposes of this section, the term ‘permitted open access activity’ means any of the following transactions or activities with respect to an electric output facility owned by a governmental unit:

"(A) transactions involving discriminatory open access transmission service and ancillary services

"(i) pursuant to an open access transmission tariff filed with and approved by FERC, but, in the case of a voluntarily filed tariff, only if the governmental unit voluntarily files a tariff as described in paragraph (c) or (h) of section 35.34 of title 18 of the Code of Federal Regulations or successor provision (relating to whether or not the issues of transmission organization not later than the later of the applicable date prescribed in such paragraphs or 60 days after the date of the enactment of this section

"(ii) under an independent system operator agreement, regional transmission organization agreement, or regional transmission group approved by FERC

"(iii) in the case of an ERCOT utility (as so defined in section 212(k)(2)(B) of the Federal Power Act (36 U.S.C. 262(k)(2)(B)), pursuant to a tariff approved by the Public Utility Commission of Texas.

"(B) Participation in

"(i) an independent system operator agreement, or

"(ii) a regional transmission organization agreement, or

"(iii) a regional transmission group, which has been approved by FERC, or by the Public Utility Commission of Texas in the case of an ERCOT utility (as so defined). Such authorization by FERC or the Public Utility Commission of Texas to a governmental unit for control of transmission facilities to an organization described in clause (i), (ii), or (iii).

"(C) Delivery on a non-discriminatory open access basis of electric energy sold to end-users served by distribution facilities owned by such governmental unit.

"(D) Delivery on a non-discriminatory open access basis of electric energy generated by generation facilities connected to distribution facilities owned by such governmental unit.

"(E) Other transactions providing non-discriminatory open access transmission or distribution services under Federal, State, or local law or regulations or similar programs, to the extent provided in regulations prescribed by the Secretary.

"(3) PERMITTED SALES TRANSACTION.—For purposes of determining whether a transaction is a permitted sales transaction, the term ‘permitted sales transaction’ means any of the following sales of electric energy from existing generation facilities (as defined in subsection (d)(1)(A)):

"(A) The sale of electricity to an on-system purchaser, if the seller provides open access distribution service under paragraph (2)(A)

"(B) The sale of electricity to a wholesale native load purchaser or in a wholesale stranded cost mitigation sale

"(1) if the seller provides open access transmission service described in subparagraph (A), (B), or (E) of paragraph (2), or

"(ii) if the seller owns or operates no transmission facilities and transmission providers to the seller’s wholesale native load purchasers provide open access transmission service described in subparagraph (A), (B), or (E) of paragraph (2), or

"(4) Definitions and special rules.—For purposes of this subsection:

"(A) ON-SYSTEM PURCHASER.—The term ‘on-system purchaser’ means a person whose electric facilities or equipment are directly connected with transmission or distribution facilities of a governmental unit, and such person—

"(i) purchases electric energy from such governmental unit at retail and either was a person to whom the governmental unit has a service obligation, or

"(ii) is a wholesale native load purchaser from such governmental unit.

"(B) WHOLESALE NATIVE LOAD PURCHASER.—The term ‘wholesale native load purchaser’ means a person served by a governmental unit.

"(C) WHOLESALE STRANDED COST MITIGATION SALE.—The term ‘wholesale stranded cost mitigation sale’ means 1 or more wholesale stranded cost mitigation sales made in accordance with the following requirements:

"(i) a governmental unit’s allowable sales under this subparagraph during the recovery period may not exceed the sum of its annual load losses for each year of the recovery period.

"(ii) the governmental unit’s annual load loss for each year of the recovery period is the amount (if any) by which—

"(I) the sales in the base year to wholesale native load purchasers which do not constitute a private business use; and

"(II) sales during that year to wholesale native load purchasers which do not constitute a private business use;

"(iii) if actual sales under this subparagraph during the recovery period are less than allowable sales under clause (i), the amount not sold (but not more than 10 percent of the aggregate allowable sales under clause (i)) may be carried over and sold as wholesale stranded cost mitigation sales in the calendar year following the recovery period.

"(D) RECOVERY PERIOD.—The recovery period is the period to wholesale native load purchasers which do not constitute a private business use.

"(E) START-UP YEAR.—The start-up year is whichever of the following calendar years is the governmental unit’s start-up year:

"(i) The year the governmental unit first issues or refunding bonds to be private activity bonds.

"(ii) The year in which at least 10 percent of the aggregate allowable sales under clause (i) may be carried over and sold as wholesale stranded cost mitigation sales in the calendar year following the recovery period.

"(F) PERMITTED SALES TRANSACTIONS UNDER EXISTING CONTRACTS.—A sale to a wholesale native load purchaser other than a person to whom the governmental unit had a service obligation under a contract which resulted in private business use in the base year shall be treated as a permitted sales transaction only to the extent that sales under the contract exceed the lesser of—

"(i) in any year, the private business use which results in the governmental unit having a service obligation under the contract; or

"(ii) the maximum amount of private business use which could occur (absent the enactment of this section) without causing the contracts to be required to be treated as a service obligation under subsection (d).

This subparagraph shall only apply to the extent that the sale is allocable to bonds issued before the date of the enactment of this section (or bonds issued to refund such bonds).

"(G) JOINT ACTION AGENCIES.—A joint action agency, or a member of (or a wholesale native load purchaser from) a joint action agency, which is entitled to make a sale described in paragraph (A) or (B) in a year, may use the entitlement to make the sale to the member (or purchaser), or the joint action agency, respectively.

"(H) CERTAIN BONDS FOR TRANSMISSION AND DISTRIBUTION FACILITIES NOT TAX EXEMPT.—

"(1) GENERAL RULE.—For purposes of this title, no bond the interest on which is exempt from Federal income tax under section 141 of the Internal Revenue Code of 1986 is issued before or on or after the date of the enactment of this subsection if any of the proceeds of such issue are used to finance—

"(A) any transmission facility which is not a local transmission facility, or

"(B) any start-up utility distribution facility.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) any qualified bond (as defined in section 141(e)), or

"(B) any eligible refunding bond (as defined in subsection (d)(6)), or

"(C) any bond issued to finance—

"(i) any repair of a transmission facility in service on the date of the enactment of this section, or

"(ii) any transmission facility necessary to comply with an obligation under a shared or reciprocal transmission agreement in effect on or before the date of the enactment of this section.

"(3) LOCAL TRANSMISSION FACILITY DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection:

"(A) LOCAL TRANSMISSION FACILITY.—The term ‘local transmission facility’ means a transmission facility which is located within the governmental unit’s distribution area or which is, or will be, necessary to supply electricity to serve retail native load or wholesale native load of 1 or more governmental units.

"(B) WHOLESALE NATIVE LOAD PURCHASER.—The term ‘wholesale native load purchaser’ means a person served by a governmental unit’s wholesale native load.

"(C) WHOLESALE NATIVE LOAD.—The term ‘wholesale native load’ is the electric load of end-users served by distribution facilities owned by a governmental unit.

"(D) RECOVERY PERIOD.—The term ‘recovery period’ means the recovery period for purposes of determining whether a transmission facility is a local transmission facility.

"(E) START-UP YEAR.—The start-up year is whichever of the following calendar years is the governmental unit’s start-up year:

"(i) The year the governmental unit first issues or refunding bonds to be private activity bonds.

"(ii) The year in which at least 10 percent of the aggregate allowable sales under clause (i) may be carried over and sold as wholesale stranded cost mitigation sales in the calendar year following the recovery period.

"(F) PERMITTED SALES TRANSACTIONS UNDER EXISTING CONTRACTS.—A sale to a wholesale native load purchaser other than a person to whom the governmental unit had a service obligation under a contract which resulted in private business use in the base year shall be treated as a permitted sales transaction only if the aggregate allowable sales under clause (i) are used to finance—

"(1) GENERAL RULE.—For purposes of this section, or

"(ii) any repair of a transmission facility in service on the date of the enactment of this section, or

"(iii) a transmission facility necessary to comply with an obligation under a shared or reciprocal transmission agreement in effect on or before the date of the enactment of this section.

"(3) LOCAL TRANSMISSION FACILITY DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection:

"(A) LOCAL TRANSMISSION FACILITY.—The term ‘local transmission facility’ means a transmission facility which is located within the governmental unit’s distribution area or which is, or will be, necessary to supply electricity to serve retail native load or wholesale native load of 1 or more governmental units.

"(B) WHOLESALE NATIVE LOAD PURCHASER.—The term ‘wholesale native load purchaser’ means a person served by a governmental unit.

"(C) WHOLESALE NATIVE LOAD.—The term ‘wholesale native load’ is—

"(i) the retail native load of a governmental unit’s wholesale native load purchaser;

"(ii) the electric load of purchasers (not described in clause (i)) under wholesale requirements contracts which do not constitute private business use under the rules in effect absent this subsection, and

"(ii) were in effect in the base year.

"Necessary to Serve Load.—For purposes of determining whether a transmission or distribution facility is, or will be, necessary to supply electricity to retail native load or wholesale native load, the term ‘necessary to serve load’ means—

"(i) electric reliability standards or requirements of national or regional reliability organizations, regional transmission organizations, or the Electric Reliability Council of Texas shall be taken into account, and
(ii) transmission, siting, and construction decisions of regional transmission organizations or independent system operators and State and Federal agencies shall be presumptive evidence regarding whether transmission facilities are necessary to serve national load.

(E) QUALIFYING UPGRADE.—The term 'qualifying upgrade' means an upgrade or addition to transmission facilities in service on the date of the enactment of this section which is ordered or approved by a regional transmission organization, by an independent system operator, or by a State regulatory or siting agency.

(4) START-UP UTILITY DISTRIBUTION FACIL-

ITy.—In the case of any distribution facility that is an independent system operator, or by a State governmental unit which did not operate an electric utility on the date of the enactment of this section, and (B) before the date on which such governmental unit operates in a qualified service area (as such term is defined in section 11(d)(3)(B)).

A governmental unit is deemed to have operated an electric utility on the date of the enactment of this section if it operates electric output facilities which were operated by another governmental unit to provide electric service to the public on such date.

(d) DEFINITIONS; SPECIAL RULES.—For purposes of this section:

(1) BASE YEAR.—The term 'base year' means the calendar year which includes the date of the enactment of this section or, at the election of the governmental unit, either of the 2 immediately preceding calendar years.

(2) DISTRIBUTION AREA.—The term 'distribution area' means the area in which a governmental unit owns distribution facilities.

(3) ELECTRIC OUTPUT FACILITY.—The term 'electric output facility' means an output facility that is an electric generation, transmission, or distribution facility.

(4) DISTRIBUTION FACILITY.—The term 'distribution facility' means an electric output facility that is not a generation or transmission facility.

(5) TRANSMISSION FACILITY.—The term 'transmission facility' means an electric output facility that operates at an electric voltage of 69 kv or greater, except that the owner of the facility may elect to treat any output facility provided in such law.

(6) ELIGIBLE REFUNDING BOND.—The term 'eligible refunding bond' means any State or local bond issued after an election described in subsection (a), with respect to permitted open access transactions entered into on or after April 14, 1996.

(7) CERTAIN EXISTING AGREEMENTS.—The amendment made by subsection (b) relating to repeal of the exception for certain non-governmental output facilities does not apply to any acquisition of facilities made pursuant to an agreement that was entered into before the date of the enactment of this Act.

(8) GOVERNMENT-OWNED FACILITY.—A governmental unit owns distribution facilities by a statement to that effect in the return for the taxable year in which the qualifying electric transmission transaction takes place.
place in such form and manner as the Secretary shall prescribe, and such election shall be binding for that taxable year and all subsequent taxable years.

(2) EFFECTIVE DATE.—Nothing in section 1033(k) of the Internal Revenue Code of 1986, as added by subsection (a), shall affect Federal or State regulatory policy respecting the extent that any acquisition premium paid in connection with the purchase of an asset in a qualifying electric transmission transaction can be recovered in rates.

(3) The amendments made by this subsection shall apply to transactions occurring after the date of the enactment of this Act.

(b) DISTRIBUTIONS OF STOCK TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

(1) IN GENERAL.—Section 355(e)(4) of the Internal Revenue Code of 1986 is amended by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively, and by inserting after subparagraph (B) the following new subparagraph:

"(C) DISTRIBUTIONS OF STOCK TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

"(i) IN GENERAL. —The distribution of the stock described in clause (II) shall not apply to any distribution that is a qualifying electric transmission transaction. For purposes of this subparagraph, a "qualifying electric transmission transaction" means a distribution of stock in a corporation whose primary trade or business consists of providing electric transmission services, where such stock is later acquired by another person that is an independent transmission company.

"(II) DISTRIBUTION TO REGIONAL TRANSMISSION COMPANY.—For purposes of this subsection, the term "independent transmission company" means—

"(A) a regional transmission organization approved by the Federal Energy Regulatory Commission,

"(B) a person who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) is not a market participant within the meaning of that subsection, and (or where the assets of such corporation are later acquired) by another person that is an independent transmission company.

"(III) DISTRIBUTION TO A MARKET PARTICIPANT.—For purposes of this subsection, the term "market participant" means—

"(A) the Federal Energy Regulatory Commission, or

"(B) a person that is approved by such Commission as consistent with Federal or State law or regulation (including authorization by a public service commission) to charge customers a greater amount for nuclear decommissioning costs, in which case the transferee (or both) may pay into the Fund such greater amount, or

"(C) a person that is required pursuant to Federal or State law or regulation (including authorization by a public service commission) to charge customers a greater amount for nuclear decommissioning costs, in which case the transferee (or both) is required pursuant to the terms of the transfer to contribute a greater amount for nuclear decommissioning costs, in which case the transferee or trans-feree (or both) may pay into the Fund such greater amount.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to distributions occurring after the date of the enactment of this Act.

SEC. 5. TAX TREATMENT OF NUCLEAR DECOMMISSIONING FUNDS.

(a) INCREASE IN AMOUNT PERMITTED TO BE PAID INTO NUCLEAR DECOMMISSIONING RESERVE FUND.—Subsection (b) of section 468A of the Internal Revenue Code of 1986 (relating to special rules for nuclear decommissioning costs) is amended to read as follows:

"(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

"(1) IN GENERAL.—The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the level funding amount determined pursuant to subsection (d), except—

"(A) where the taxpayer is permitted by Federal or State law or regulation (including authorization by a public service commission) to charge customers a greater amount for nuclear decommissioning costs, in which case the taxpayer may pay into the Fund such greater amount, or

"(B) in connection with the transfer of a nuclear powerplant, where the transferor or transferee (or both) is required pursuant to the terms of the transfer to contribute a greater amount for nuclear decommissioning costs, in which case the transferor or transferee (or both) may pay into the Fund such greater amount.

(2) CONTRIBUTIONS AFTER FUNDING PERIOD.—Notwithstanding any other provision of law, any deduction for nuclear decommissioning costs paid or incurred by the transferor or transferee (or both) of a nuclear powerplant under subsection (d) of section 468A(c)(2) of the Internal Revenue Code of 1986 relating to income and deductions of the taxpayer is amended to read as follows:

"(d) LEVEL FUNDING AMOUNTS.—Subsection (d) of section 468A of the Internal Revenue Code of 1986 relating to income and deductions of the taxpayer is amended to read as follows:

"(1) ANNUAL AMOUNTS.—For purposes of this section, the level funding amount for any taxable year shall equal the annual amount required to be contributed to the Fund in each year remaining in the funding period in order for the Fund to accumulate the assets of the Fund until such time as is anticipated to be expended.

(2) FUNDING PERIOD.—The funding period for a Fund shall end on the last day of the taxable year of the expected operating life of the nuclear powerplant.

(3) NUCLEAR DECOMMISSIONING COSTS.—For purposes of this section—

"(A) IN GENERAL.—The term ‘nuclear decommissioning costs’ means all costs to be incurred in connection with entombing, decontaminating, dismantling, removing, and disposing of the facilities of a nuclear powerplant, where the transferor’s or transferee’s (or both) current or former interest in the nuclear decommissioning costs allocable to the taxpayer’s current or former interest in the nuclear powerplant to which the Fund relates.

The annual amount described in the preceding sentence is determined by taking into account a reasonable rate of inflation for the nuclear decommissioning costs and a reasonable after-tax rate of return on the assets of the Fund until such assets are anticipated to be expended.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received after the date of the enactment of this Act.

By Mr. ALLARD: S. 2968. A bill to empower communities and individuals by consolidating and reforming the programs of the Department of Housing and Urban Development; to the Committee on Banking, Housing, and Urban Affairs.

LOCAL HOUSING OPPORTUNITIES ACT

Mr. ALLARD. Mr. President, today I am introducing the “Local Housing Opportunities Act”, legislation to empower communities and individuals by consolidating and reforming HUD programs. I believe that the following section-by-section description of the bill will be printed in the RECORD and that the text of the bill will be printed in the RECORD following the description.

In 1984, there were 240 separate programs at the Department of Housing and Urban Development (HUD). By 1997, the number of programs had grown to 328. Many of these programs have never been authorized by Congress. As a result, scarce resources are diverted away from core housing and enforcement programs, dramatically increasing the risks of mismanagement and fraud. HUD remains the only Cabinet level agency designated by the General Accounting Office (GAO) as a “High Risk” agency in order to protect the interests of taxpayers and improve the delivery of services to beneficiaries. Congress should transfer more programs to
the States and localities and enact legislation to consolidate, terminate, and streamline HUD programs.

SECTION BY SECTION DESCRIPTION

1. Prohibition of Unauthorized Programs at the Department of Housing and Urban Development (HUD) from carrying out any program that is not explicitly authorized in statute by the Congress. This provision takes effect one year after the effective date of the enactment or sufficient time to authorize those programs that it wishes to maintain. Within 60 days of the date of enactment, the Department of Housing and Urban Development (HUD) shall provide Congress with a detailed listing of every HUD program along with the statutory authorization for that program. This report shall be provided annually to the Senate Committee on Banking, Housing and Urban Affairs, the Senate Subcommittee on Housing and Transportation, the House Committee on Banking and Financial Services, and the House Subcommittee on Housing and Community Opportunity.

2. Elimination of Certain HUD Programs—Terminates certain programs as recommended by the HUD Secretary in the “HUD 2020 Program Repeal and Streamlining Act.” The Department has determined that these programs are unnecessary, outdated, or inactive.

Community Investment Corporation Demonstration—never funded. The Community Investment Corporation Financial Institutions program administered by the Department of the Treasury.


Solar Assistance Financing Entity—not funded in recent years.

Urban Development Action Grants—discontinued program, not funded in recent years.

Certain Special Purpose Grants—not funded since FY 1993 and FY 1995.

Moderate Rehabilitation Assistance in Disasters—no additional assistance for the Moderate Rehabilitation program has been provided (other than for the homeless under the McKinney Act) since FY 1989.

Rent Supplement Program—not funded for many years.


Repeal of HOPE I, II, and III—all HOPE funds have been awarded, no additional funding has been requested since FY 1995, and no further funding is anticipated.

Energy Efficiency Demonstration Program, section 961 of NAHA—never funded.

Technical Assistance and Training for IHAs—not funded since FY 1994.

Termination of the investor mortgages portion of the Section 203(k) rehabilitation mortgage insurance program as recommended by the HUD IG. Investor rehabilitation mortgages constitute approximately 20% of the FHA lending. This program, and recent IG audits have found this portion of the program to be particularly vulnerable to fraud and abuse by investor-owners. The largest portion of the program for curing out any program that is not explicitly authorized in statute by the Congress. This provision takes effect one year after the effective date of the enactment or sufficient time to authorize those programs that it wishes to maintain. Within 60 days of the date of enactment, the Department of Housing and Urban Development (HUD) shall provide the Congress with a detailed listing of every HUD program along with the statutory authorization for that program. This report shall be provided annually to the Senate Committee on Banking, Housing and Urban Affairs, the Senate Subcommittee on Housing and Transportation, the House Committee on Banking and Financial Services, and the House Subcommittee on Housing and Community Opportunity.

3. Improvement Loans in Urban Renewal Projects—unnecessary.

4. Rural Homeless Housing Assistance—not funded since FY 1994, all HUD homeless assistance will be part of the McKinney Homeless Assistance Performance Fund created under this legislation.

5. Innovative Homeless Initiatives Demonstration—not funded since FY 1995, all HUD homeless assistance will be part of the McKinney Homeless Assistance Performance Fund created under this legislation.

6. Emergency Relief of Los Angeles—not funded since FY 1994, all HUD homeless assistance will be part of the McKinney Homeless Assistance Performance Fund created under this legislation.

7. Long-term rental assistance to the homeless is retained.

III. Urban Homestead Requirement—Discontinued.

8. Rural Homeless Housing Assistance—not funded since FY 1994, all HUD homeless assistance will be part of the McKinney Homeless Assistance Performance Fund created under this legislation.


IV. Permanent “Moving To Work” Authorization—Prohibits HUD from carrying out the “Moving To Work” program.

II. Improve the Rural Housing Repair Loan Program

10. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.

11. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.


13. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

14. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


16. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

17. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


19. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

20. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


22. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

23. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


25. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

26. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


28. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

29. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


31. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

32. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


34. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

35. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


37. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

38. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


40. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

41. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.

42. National Defense Housing—authority for new insurance terminated in 1984, but provision never repealed.

43. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

44. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


46. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

47. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


49. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

50. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


52. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

53. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


55. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

56. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


58. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

59. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.

60. National Defense Housing—authority for new insurance terminated in 1984, but provision never repealed.

61. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

62. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


64. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

65. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


67. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.

68. Rural Homeowner Rehabilitation Assistance—authority for new insurance terminated in 1984, but provision never repealed.


70. Insurance for Investments (Yield Insurance) program never implemented, but authority and provision never repealed.
III. Enhance Efficiency of Rural Housing Preservation Grants—Eliminates the existing statutory requirement that prohibits a State from obligating more than 50 percent of its Preservation Grants to support a project or provide assistance to any one grantee. Many states receive only a small amount from this formula program. In many cases the money can only be matched in one percentage. Many states receive only a small amount from this formula program.

IV. Project Accounting Records and Practices—Requires section 515 rural housing borrowers to maintain records in accordance with GAAP (Generally Accepted Accounting Principles).

V. Operating Assistance for Migrant Farmworkers—Provides additional housing operating assistance payments in migrant and seasonal farm labor housing complexes.

VI. Authorization of Appropriations for Rental Vouchers for Relocation of Witnesses and Victims of Crime—Authorizes specific funding for vouchers for victims and witness assistance to compensate for tenant’s relocation in order to facilitate self-help housing. Utilizes the environmental review procedures of the environmental impact statement to review environmental quality and encourage economic opportunity and self-sufficiency. States electing the block grant would determine how funds are distributed to state agencies, public housing authorities, project owners, and tenants. During the first year of the performance agreement, states would receive the highest of the three to one match funded from other sources. The enhanced multi-part formula would be used to enhance the existing two years to three years, and also making it possible for PHAs to leverage contribution to private sources. The current authorizations have not been appropriated and HUD has yet to issue regulations that will allow the current authorization to be implemented.

VII. Reauthorize the Neighborhood Reinvestment Corporation through 2003—Reauthorizes the Neighborhood Reinvestment Corporation through 2003 to extend the current authorization of the Neighborhood Reinvestment Corporation which is to provide the necessary funding for low income housing and encourage economic opportunity and self-sufficiency. States electing the block grant would determine how funds are distributed to state agencies, public housing authorities, project owners, and tenants. During the first year of the performance agreement, states would receive the highest of the three to one match funded from other sources. The enhanced multi-part formula would be used to enhance the existing two years to three years, and also making it possible for PHAs to leverage contribution to private sources. The current authorizations have not been appropriated and HUD has yet to issue regulations that will allow the current authorization to be implemented.
receiving the performance agreement, that the performance agreement fails to comply with provisions of the Act. Eligible programs for inclusion in the block grant shall include the program for rental assistance under section 8(a) of the United States Housing Act of 1937; the programs for project-based assistance under section 8 of the United States Housing Act of 1967; the program for housing for the elderly under section 202 of the Housing Act of 1959; the program for housing for persons with disabilities under sections 811 and 813 of the United States Housing Act of 1974; the program for housing for people who have been battered by a family member under the Violence Against Women Act; and such other individual, entity, or agency as the Secretary shall determine.

The distribution of block granted funds within the State from programs included in the performance agreement shall be made by the Secretary, in consultation with the Governor and the legislative bodies of the State, to participating States.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Low-Income Housing Improvement Act of 2000." (b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

I. Tighten Language on Lobbying Restrictions

II. Sense of Congress Regarding Low-Income Housing Improvement Act

III. Title VIII—Private Sector Incentives

IV. Title IX—Enforcement

V. Title X—Effective Date

SEC. 1. Sense of Congress regarding low-income housing improvement act.

It is the sense of the Congress that the Low-Income Housing Improvement Act of 2000, and that the value of the caps should be increased by fifty percent in the year 2000, and that the level of the caps should be adjusted annually to account for increases in the cost-of-living.

I. Tighten Language on Lobbying Restrictions

To reward States for increases in the cost-of-living, and increasing homeownership. If at the end of the 5-year term of the performance agreement a State has failed to meet at least 80 percent of the performance goals submitted in the performance agreement, the Secretary shall terminate the performance agreement and the State or community shall be required to comply with the program requirements at the time of termination, of each program included in the performance agreement. To reward States that make significant progress in meeting performance goals, the HUD Secretary shall annually set aside sufficient funds to grant a reward of up to 5 percent of the funds allocated to participating States.

Title III—Homeless Assistance Reform

Sec. 301. Consolidation of HUD homeless assistance funds.

Sec. 302. Establishment of the McKinney Homeless Assistance Performance Fund.

Sec. 303. Repeal and savings provisions.

Title IV—Rural Housing

Sec. 401. Mutual and self-help housing technical assistance and training grants authorization.

Sec. 402. Enhancement of the Rural Housing Service loan program for the elderly.

Sec. 403. Enhancement of eligibility of rural housing preservation grants.

Sec. 404. Promotion of rural housing technical assistance and training.

Sec. 405. Operating assistance for migrant farm worker projects.

Title V—Voucher Reform

Sec. 501. Authorization of appropriations for rental vouchers for relocation of witnesses and victims of crime.

Sec. 502. Reporting to the lease addendum.

Sec. 503. Report regarding housing voucher program.

Title VI—Program Modernization

Sec. 601. Assistance for self-help housing providers.

Sec. 602. Local capacity building for community development and affordable housing.

Sec. 603. Work requirement for public housing residents: coordination of Federal housing assistance with State welfare reform work programs.

Sec. 604. Simplified FHA downpayment calculation.

Sec. 605. Flexible use of CDBG funds.

Sec. 606. Use of section 8 assistance in grandfamily housing assisted with HOME funds.

Sec. 607. Section 8 homeownership option downpayment assistance.

Sec. 608. Reauthorization of Neighborhood Reinvestment Corporation.

Title VII—State Housing Block Grants

Sec. 701. State control of public and assisted housing funds.

Title VIII—Private Sector Incentives

Sec. 801. Prohibition on use of appropriated funds for lobbying by the department.

Sec. 802. Regulations.

Title IX—Enforcement

In this Act—

(I) the term "Committees" means—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate and the Subcommittee on Housing and Transportation of that Committee; and

(B) the Committee on Banking and Financial Services of the House of Representatives and the Subcommittee on Housing and Community Opportunity of that Committee; and

(II) the department means the Department of Housing and Urban Development; and

(III) the term "Secretary" means the Secretary of Housing and Urban Development.

Title X—Effective Date

Except as otherwise expressly provided in this Act or an amendment made by this Act, this Act and the amendments made by this Act shall take effect on October 1, 2001.

Title I—Program Consolidation

Sec. 101. Prohibition of unauthorized programs at the Department.

Sec. 102. Elimination and consolidation of programs at the Department.

Sec. 103. HUD consolidation task force.

Title II—Community Empowerment

Sec. 201. Reauthorization of community development block grants and prohibition of set-asides.


Sec. 203. Urban homesteading requirement.

Sec. 204. Authorization of Moving to Work programs.

Title III—Homeless Assistance Reform

Sec. 301. Consolidation of HUD homeless assistance funds.

Sec. 302. Establishment of the McKinney Homeless Assistance Performance Fund.

Sec. 303. Repeal and savings provisions.

Title IV—Rural Housing

Sec. 401. Mutual and self-help housing technical assistance and training grants authorization.

Sec. 402. Enhancement of the Rural Housing Service loan program for the elderly.

Sec. 403. Enhancement of eligibility of rural housing preservation grants.

Sec. 404. Promotion of rural housing technical assistance and training.

Sec. 405. Operating assistance for migrant farm worker projects.

Title V—Voucher Reform

Sec. 501. Authorization of appropriations for rental vouchers for relocation of witnesses and victims of crime.

Sec. 502. Reporting to the lease addendum.

Sec. 503. Report regarding housing voucher program.

Title VI—Program Modernization

Sec. 601. Assistance for self-help housing providers.

Sec. 602. Local capacity building for community development and affordable housing.

Sec. 603. Work requirement for public housing residents: coordination of Federal housing assistance with State welfare reform work programs.

Sec. 604. Simplified FHA downpayment calculation.

Sec. 605. Flexible use of CDBG funds.

Sec. 606. Use of section 8 assistance in grandfamily housing assisted with HOME funds.

Sec. 607. Section 8 homeownership option downpayment assistance.

Sec. 608. Reauthorization of Neighborhood Reinvestment Corporation.

Title VII—State Housing Block Grants

Sec. 701. State control of public and assisted housing funds.

Title VIII—Private Sector Incentives

Sec. 801. Prohibition on use of appropriated funds for lobbying by the department.

Sec. 802. Regulations.

Title IX—Enforcement

In this Act—

(I) the term "Committees" means—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate and the Subcommittee on Housing and Transportation of that Committee; and

(B) the Committee on Banking and Financial Services of the House of Representatives and the Subcommittee on Housing and Community Opportunity of that Committee; and

(II) the department means the Department of Housing and Urban Development; and

(III) the term "Secretary" means the Secretary of Housing and Urban Development.

Title X—Effective Date

Except as otherwise expressly provided in this Act or an amendment made by this Act, this Act and the amendments made by this Act shall take effect on October 1, 2001.

Title I—Program Consolidation

Sec. 101. Prohibition of unauthorized programs at the Department.

Sec. 102. Elimination and consolidation of programs at the Department.

Sec. 103. HUD consolidation task force.

Title II—Community Empowerment

Sec. 201. Reauthorization of community development block grants and prohibition of set-asides.


Sec. 203. Urban homesteading requirement.

Sec. 204. Authorization of Moving to Work programs.

Title III—Homeless Assistance Reform

Sec. 301. Consolidation of HUD homeless assistance funds.

Sec. 302. Establishment of the McKinney Homeless Assistance Performance Fund.

Sec. 303. Repeal and savings provisions.

Title IV—Rural Housing

Sec. 401. Mutual and self-help housing technical assistance and training grants authorization.

Sec. 402. Enhancement of the Rural Housing Service loan program for the elderly.

Sec. 403. Enhancement of eligibility of rural housing preservation grants.

Sec. 404. Promotion of rural housing technical assistance and training.

Sec. 405. Operating assistance for migrant farm worker projects.

Title V—Voucher Reform

Sec. 501. Authorization of appropriations for rental vouchers for relocation of witnesses and victims of crime.

Sec. 502. Reporting to the lease addendum.

Sec. 503. Report regarding housing voucher program.
Title XI of the Housing and Community Development Act of 1992 (42 U.S.C. 5318 note) is repealed.
(c) Solar Assistance Financing Entity.—Section 912 of the Housing and Community Development Act of 1992 (42 U.S.C. 5311a) is repealed.
(d) Urban Development Action Grants.—(1) UDAG REPEAL.—Section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) is amended—
(2) in section 104(d)(1), by striking “or” and “or section 119’’; and
(3) in section 104(d)(2), by striking “or’’.
(G) in section 104(d)(2)(C), by striking “or 119’’;
(D) in section 107(e)(1), by striking “, and’’ and inserting “or section 106(a)(1)’’;
(E) in section 107(e)(2), by striking “section 106(a)(1), or section 119’’ and inserting “or section 106(a)(1)’’;
(F) in section 107(e)(3), by striking “(i) in paragraph (2), by adding “and’’ at the end;
(ii) by striking paragraph (3); and
(iii) by redesignating paragraph (4) as paragraph (3).
(e) SPECIAL PURPOSE GRANTS.—Section 107 of the Housing and Community Development Act of 1974 (42 U.S.C. 5307) is amended—
(1) in subsection (a)(1)—
(A) by striking subparagraphs (C), (D), and (G);
(B) by redesigning subparagraphs (E), (F), (H), and (I) as subparagraphs (C), (D), (E), and (F), respectively; and
(C) in subparagraph (D) (as redesignated by striking “(6)’’ and inserting “(5)’’); and
(2) in subsection (b)—
(A) in paragraph (4), by adding “and’’ at the end;
(B) by striking paragraphs (5) and (7); and
(C) by redesignating paragraph (6) as paragraph (5); and
(D) in paragraph (5) (as redesignated by striking “and’’ and inserting a period).
(f) Moderate Rehabilitation Assistance in Disasters.—Section 932 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437e note) is repealed.
(g) Rent Supplement Program.—(1) REPEAL.—Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701a) is repealed.
(2) REFERENCES.—Any reference in any provision of law to section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701a) shall be construed to refer to that section as in existence immediately before the effective date of this Act.
(h) National Homeownership Trust Fund.—Subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12801 et seq.) is repealed.
(i) Hope Programs.—(1) REPEAL OF HOPE I PROGRAM.—(A) HOPE I PROGRAM REPEAL.—Title III of the United States Housing Act of 1937 (42 U.S.C. 1437aa et seq.) is repealed.
(B) CONFORMING AMENDMENTS.—(1) HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974.—Section 203(e) of the Housing and Community Development Act of 1974 (42 U.S.C. 1439(e)) is amended by striking “(b)(1)” and inserting “(b)”.
(2) REPEAL OF HOPE II AND III PROGRAMS.—(A) HOPE II.—Subtitle B of title IV of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12871 et seq.) is repealed.
(B) HOPE III.—(1) IN GENERAL.—Subtitle C of title IV of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12871 et seq.) is repealed.
(II) CLOSEOUT AUTHORITY.—Notwithstanding the repeal made by clause (i), the Secretary may exercise any authority under sections 446(b), 446(c)(3), 446(c)(4), and 446(d) of title IV of the Cranston-Gonzalez National Affordable Housing Act (as amended by this paragraph) after the effective date of this Act, to the extent necessary to terminate the programs under subtitle C of title IV of that Act.
(C) AMENDMENT OF HOPE III PROGRAM AUTHORITY FOR CLOSEOUT.—(1) SALE AND RESALE PROCEEDS.—Section 446 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12875) is amended—
(I) in subsection (b), by striking “costs’’ and all that follows through “expenses’’;
(II) in subsection (c)(3), by striking “the Secretary or’’; and
(III) in subsection (c)(4)(a), by striking “the first sentence, by striking ‘‘fifty percent of any’’ and inserting ‘‘Any’’; and
(III) by striking the second and third sentences.
(D) ELIGIBILITY OF PRIVATE PROPERTY.—Section 446(4) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12875(a)) is amended—
(1) in paragraph (4), by striking “and’’ at the end;
(2) in subparagraph (2)(B), by striking “in paragraph (4), by adding “and’’ at the end;
(B) by striking paragraphs (5) and (7); and
(C) by redesignating paragraph (6) as paragraph (5); and
in paragraph (5) (as redesignated by striking “and’’ and inserting a period).
(2) CONFORMING AMENDMENTS.—(A) IN GENERAL.—Title IV of the Cranston-Gonzalez National Affordable Housing Act is amended—
(I) by striking sections 401 and 402 (42 U.S.C. 1437aaa note; 12870);
(II) in section 454(b)(2) (42 U.S.C. 12809c(b)(2)), by striking “to be used for the purposes of providing homeownership under subtitle B and subtitle C of this title’’; and
(III) in section 455 (42 U.S.C. 12809d), by striking subsection (d) and redesignating subsections (e) through (g) as subsections (d) through (f), respectively.
(B) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT.—Section 777(2) of the Department of Housing and Urban Development Act (42 U.S.C. 12712 note) is repealed.
(k) Technical Assistance and Training for Homeowners.—Section 917 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12871) is amended—
(1) in paragraph (1), by striking “(3)”; and
(2) by striking paragraph (2).
(l) Housing and Community Development Act of 1974.—Section 213(e) of the Housing and Community Development Act of 1974 (42 U.S.C. 1439(e)) is amended by striking “(b)(1)” and inserting “(b)”.
(m) Certificate and Voucher Assistance for Rental Rehabilitation Projects.—Section 8(a) of the United States Housing Act of 1937 (42 U.S.C. 1437f(a)) is repealed.
(n) Mortgage and Loan Insurance Programs.—(1) IN GENERAL.—Sections 203(b), 245(b), and titles VI, VII, and IX of the National Housing Act are repealed.
(2) ADDITIONAL AMENDMENTS.—The National Housing Act is amended—
(A) in section 1 (12 U.S.C. 1702), by striking “VII, VIII, IX’’; and
(B) in section 203(k)(5) (12 U.S.C. 1709(k)(5)), by striking the second sentence; and
(C) in section 223, by striking subsection (a) and inserting the following:
“(a) IN GENERAL.—Notwithstanding any of the provisions of this Act and without regard to limitations on eligibility contained in any section or title of this Act, other than the limitation in section 203(g), the Secretary is authorized upon application by the mortgagee, to insure or make commitments to insure under any section or title of this Act any mortgage—
(1) to refinance an existing mortgage insured under this Act, except that the principal amount of any such refinancing mortgage shall not exceed the original principal amount of the existing mortgage and shall bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor, except that—
(i) the principal amount of any such refinancing mortgage may equal the outstanding balance of an existing mortgage insured pursuant to section 245, if the amount of the monthly payment under such existing mortgage is less than the amount of the monthly payment under the refinancing mortgage, and shall not bear interest at such rate as may be agreed upon by the mortgagee and the mortgagor; and that—
(ii) in section 203(k)(5), by striking “(b)’’ and inserting “(a)’’.
(D) any multifamily mortgage that is refinanced under this paragraph shall be documented through amendment to the existing insurance contract and shall not be structured through the provisions of a new insurance contract; or
(E) executed in connection with the sale by the Government of any housing acquired pursuant to section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966’’;
and
(ii) in subsection (d)(5), by striking “A loan’’ and all that follows through “and loans’’ and inserting “Loans’’.
(o) TRANSITION RULES.—(1) EFFECT ON CONTRACTS.—The repeal of program authorities under this section shall not affect any legally binding obligation entered into before the effective date of this Act.
(2) SAVINGS PROVISIONS.—(A) IN GENERAL.—Except as otherwise provided in this Act, any funds or obligation authorized by, activity conducted under, or mortgage or loan insured under, a provision of law repealed by this section shall continue to be governed by the provision as in existence immediately before the effective date of this Act.
(B) INSURANCE.—The insurance authorities repealed by subsection (n)(1) and the provisions of the National Housing Act applicable to a mortgage or loan insured under any of such authorities or such other use specifically referred to in such provisions existed immediately before repeal, shall continue to apply to a mortgage or loan insured under any of such authorities or such other use specifically referred to in such provisions.

SEC. 103. HUD CONSOLIDATION TASK FORCE.
(a) In General.—There is established a task force to be known as the “HUD Consolidation Task Force” which shall—

(1) consist of the Comptroller General of the United States, the Secretary, and the Inspector General of the Department; and

(2) adopt an analysis of legislative and regulatory options to reduce the number of programs carried out by the Department through consolidation, elimination, and transfer of functions and agencies of the Federal Government and the State and local governments.

(b) Powers.—Not later than 6 months after the effective date of this Act, the HUD Consolidation Task Force shall submit to the Committees a report, which shall include the results of the analysis under subsection (a)(2).

TITLE II—COMMUNITY EMPOWERMENT

SEC. 201. REAUTHORIZATION OF COMMUNITY DEVELOPMENT Block Grants and Prohibition of Set-Asides.
(a) Reauthorization.—The last sentence of section 103 of the Housing and Community Development Act of 1974 (42 U.S.C. 5306) is amended to read as follows: “For purposes of assistance under section 106, there is authorized to be appropriated $4,850,000,000 for fiscal year 2001 and such sums as may be necessary for each of fiscal years 2002 through 2005.”.

(b) Prohibition of Set-Asides.—Section 103 of the Housing and Community Development Act of 1974 (42 U.S.C. 5306) is amended—

(1) in subsection (a), by inserting “(a) In General.—” after “SEC. 103:”; and

(2) by adding at the end the following:

“(b) Transfer of Unoccupied and Substandard HUD-Held Housing to Local Governments and Community Development Corporations.—

(1) Definitions.—In this subsection:

(A) COMMUNITY DEVELOPMENT CORPORATION.—The term ‘community development corporation’ means a nonprofit organization whose primary purpose is to promote community development by providing housing opportunities for low-income families.

(B) COST RECOVERY BASIS.—The term ‘cost recovery basis’ means, with respect to any sale of a residential property by the Secretary, that the purchase price paid by the purchaser is equal to or greater than or equal to the costs incurred by the Secretary in connection with such property during the period (beginning on the date on which the Secretary acquires title to the property and ending on the date on which the sale is consummated).

(C) MULTIFAMILY HOUSING PROJECT.—The term ‘multifamily housing project’ has the meaning given in section 203 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

(D) QUALIFIED HUD PROPERTY.—The term ‘qualified HUD property’ means any property that is owned by the Secretary and is—

(i) an unoccupied multifamily housing project;

(ii) a subdivision of a multifamily housing project; or

(iii) a subdivided unoccupied single family property that—

(I) has been determined by the Secretary not to be an eligible property under section 204(h) of the National Housing Act (12 U.S.C. 1710b); or

(II) is an eligible property under such section 204(h), but—

(aa) is not subject to a specific sale agreement under such section; and

(bb) has been determined by the Secretary to be inappropriate for continued use as a housing mechanism section 204(h) pursuant to paragraph (10) of such section.

(E) RESIDENTIAL PROPERTY.—The term ‘residential property’ means a property that is a multifamily housing project or a single family property.

(F) Secretary.—The term ‘Secretary’ means the Secretary of Housing and Urban Development.

(G) SEVERE PHYSICAL PROBLEMS.—The term ‘severe physical problems’ refers to a dwelling unit, with respect to a dwelling unit that—

(i) lacks hot or cold piped water, a flush toilet, or both a bathtub and a shower in the unit, or the exclusive use of a toilet is not provided in the unit; or

(ii) on not less than 3 separate occasions during the preceding winter months, was unoccupied for more than 6 consecutive hours due to a malfunction of the heating system for the unit;

(iii) has no functioning electrical service, exposed wiring, and is in which there is not a functioning electrical outlet, or has experienced 3 or more blown fuses or tripped circuit breakers during the preceding 90-day period;

(iv) is accessible through a public hallway in which there are no working light fixtures, loose or missing steps or railings, and no electrical outlets;

(v) has severe maintenance problems, including water leaks involving the roof, windows, doors, basement, or pipes or plumbing fixtures holes or open cracks in walls or ceilings, severe paint peeling or broken plaster, and signs of rodent infestation.

(H) SINGLE FAMILY PROPERTY.—The term ‘single family property’ means a 1- to 4-family residence.

(I) SUBSTANDARD.—The term ‘substandard’ means, with respect to a multifamily housing project, that 25 percent or more of the dwelling units in the project have severe physical problems.

(J) UNITED STATES OR LOCAL GOVERNMENT.—The term ‘unit of general local government’ has the meaning given that term in section 102(a) of the Housing and Community Development Act of 1974.

(K) UNOCCUPIED.—The term ‘unoccupied’ means, with respect to a residential property, that the unit of general local government having jurisdiction over the area in which the project is located has certified in writing that the property is not inhabited.

(L) TRANSFER AUTHORITY.—Notwithstanding the authority given in subsection (a) and the last sentence of section 204(g) of the National Housing Act (12 U.S.C. 1710g), the Secretary of Housing and Urban Development shall transfer ownership of any qualified HUD property included in the most recent list published by the Secretary under subsection (a) to the unit of government having jurisdiction for the area in which the property is located or to a community development corporation which operates within such a unit of general local government in accordance with this subsection, but only to the extent that units of general local government and community development corporations submit a written request for the transfer.

(3) TIMING.—The Secretary shall establish procedures that provide for—

(A) time deadlines for transfers under this subsection;

(B) notification to units of general local government and community development corporations of qualified HUD properties in their jurisdictions;

(C) such units and corporations to express interest in the transfer under this subsection of qualified HUD properties;

(D) a right of first refusal for transfer of qualified HUD properties to such units and corporations, under which the Secretary shall accept an offer to purchase such a property made by such unit or corporation during a period established by the Secretary;
but in the case of an offer made by a community development corporation only if the offer provides for purchase on a cost recovery basis; and

(2) written explanation, to any unit of general local government or community development corporation making an offer to purchase a qualified HUD property under this subsection, that the offer is not acceptable, the reason that such offer was not acceptable.

(4) OTHER DISPOSITION.—With respect to any qualified HUD property, if the Secretary does not accept an offer to purchase the property pursuant to the procedure established under paragraph (3), the Secretary shall determine whether the property is

(a) any residential property, the Secretary shall

(b) shall assess each residential property owned by the Secretary to determine whether the property is a qualified HUD property.

(c) SATISFACTION OF INDEBTEDNESS.—Before transferring ownership to any qualified HUD property pursuant to this subsection, the Secretary shall satisfy any indebtedness incurred in connection with the property to be transferred, by canceling the indebtedness.

(5) DETERMINATION OF STATUS OF PROPERTY.—To ensure compliance with the requirements of this section, the Secretary shall take the following actions:

(A) UPON ENACTMENT.—Not later than 60 days after the date of enactment of the Local Housing Opportunities Act, the Secretary shall assess each residential property owned by the Secretary to determine whether the property is a qualified HUD property.

(B) UPON ACQUISITION.—Upon acquiring any residential property, the Secretary shall promptly determine whether the property is a qualified HUD property.

(C) UPON ACQUISITION.—The Secretary shall promptly determine whether the property is a qualified HUD property.

(D) UPON ACQUISITION.—The Secretary shall promptly determine whether the property is a qualified HUD property.

(7) TENANT LEASES.—This subsection shall not affect the terms or the enforceability of any contract or lease entered into with respect to any residential property before the date that such property becomes a qualified HUD property.

(8) USE OF PROPERTY.—Property transferred under this subsection shall be used only for appropriate neighborhood revitalization efforts, including homeownership, rental assistance, and preservation consistent with local zoning regulations, local building codes, and subdivision regulations and restrictions of record.

(9) INAPPLICABILITY TO PROPERTIES MADE AVAILABLE FOR HOMELESS.—Notwithstanding any other provision of this subsection, this subsection shall not apply to any property that the Secretary determines is to be made available for use by the homeless pursuant to subsection E of part 291 of title 24, Code of Federal Regulations (as in effect on January 1, 2000), during the period that the properties are so available.

(10) PROTECTION OF EXISTING CONTRACTS.—This subsection may not be construed to alter, affect, or annul any legally binding obligations entered into with respect to a qualified HUD property before the property becomes a qualified HUD property.

(c) TRANSFER OF PROPERTY.—(1) The Secretary shall establish, by rule, regulation, or order, such procedures as may be necessary to carry out this section and the amendments made by this section.

SEC. 204. AUTHORIZATION OF MOVING TO WORK PROGRAM

Section 204 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (as contained in section 101(e) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996) (42 U.S.C. 1457f note) (5) to offer to purchase a qualified HUD property under this subsection, the Secretary shall

(1) in the section heading, by striking DEMONSTRATION and inserting PROGRAM;

(2) in subsection (a), by striking this demonstration and inserting this section;

(3) in subsection (b)—

(A) in the first sentence—

(i) by striking demonstration and inserting demonstration and inserting program under this section;

(B) in the second sentence—

(ii) in paragraph (1), by striking program under this section;

(4) in subsection (c)—

(A) in the preceding paragraph (1), by striking demonstration and inserting demonstration and inserting program under this section;

(B) in paragraph (3)—

(i) by striking program under this section;

(5) in subsection (d) and inserting the following:

(1) APPROVAL OF APPLICATIONS.—Not later than 60 days after receiving an application submitted in accordance with subsection (c), the Secretary shall approve the application, unless the Secretary makes a written determination that the applicant has a most recent score under the public housing management assessment system (as contained in section 6(c)(2) of the United States Housing Act of 1937 (or any successor assessment program for public housing agencies), that is among the lowest 20 percent of the scores of all public housing agencies;

(6) in subsection (e)—

(A) in paragraph (1)(A), by striking demonstration and inserting demonstration and inserting program under this section;

(B) in paragraph (2), by striking demonstration and inserting program under this section;

(7) in subsection (f), by striking demonstration under this part and inserting program under this section;

(8) in subsection (g)—

(A) in paragraph (1), by striking this demonstration and inserting program under this section;

(B) in paragraph (2), by striking demonstration and inserting program under this section;

(9) in subsection (h), by striking demonstration and inserting program under this section;

(10) in subsection (i), by striking demonstration and inserting program under this section;

(11) in subsection (j), by striking demonstration and inserting program.

SEC. 301. CONSOLIDATION OF HUD HOMELESS ASSISTANCE FUND.

The purpose of this section is to facilitate the effective and efficient management of the homeless assistance programs of the Department by—

(1) reducing and preventing homelessness by supporting the creation and maintenance of community-based, comprehensive systems dedicated to returning families and individuals to self-sufficiency;

(2) reorganizing the homeless assistance authorities under the Stewart B. McKinney Homeless Assistance Act into a McKinney Homeless Assistance Performance Fund;

(3) assisting States and local governments, in partnership with nonprofit service providers, to use housing funding more efficiently and effectively;

(4) simplifying and making more flexible the provision of Federal homeless assistance;

(5) maximizing the ability of a community to implement a coordinated, comprehensive system for providing assistance to homeless families and individuals;

(6) making more efficient and equitable the manner in which homeless assistance is distributed;

(7) reducing the Federal role in local decisionmaking for homeless assistance programs;

(8) reducing the costs to governmental jurisdictions and private nonprofit organizations in applying for and using assistance; and

(9) advancing the goal of meeting the needs of the homeless population through mainstream programs and establishing Continuum of Care programs necessary to achieve that goal.

SEC. 302. ESTABLISHMENT OF THE MCKINNEY HOMELESS ASSISTANCE PERFORMANCE FUND

Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11361 et seq.) is amended to read as follows:

"TITLE IV—MCKINNEY HOMELESS ASSISTANCE PERFORMANCE FUND

SEC. 401. DEFINITIONS.

In this title:

(A) ALLOCATION UNIT OF GENERAL LOCAL GOVERNMENT.—In general.—The term allocation unit of general local government means a metropolitan city or an urban county.

(B) CONSORTIA.—The term consortium means a regional entity comprised of metropolitan cities and urban counties, if the Secretary determines that the consortium—

(i) has sufficient authority and administrative capability to carry out the purposes of this title on behalf of its member jurisdictions; and

(ii) will, according to a written certification by the State (or States, if the consortium includes jurisdictions in more than 1 State), direct its activities to the implementation of a continuum of care system within the State or States.

(C) APPLICANT.—The term applicant means a grantee submitting an application under section 403.

(D) CONSOLIDATED PLAN.—The term consolidated plan means the single comprehensive plan that the Secretary prescribes for submission by jurisdictions (which shall be coordinated and consistent with any 5-year comprehensive plan of the public housing agency (as required under section 14e) of the United States Housing Act of 1937) that consolidates and fulfills the requirements of—

(A) the comprehensive housing affordability strategy under title I of the Cranston-Gonzalez National Affordable Housing Act;

(B) the community development plan under section 104 of the Housing and Community Development Act of 1974; and

(C) the submission requirements for formula funding under the Community Development Block Grant program (authorized by title I of the Housing and Community Development Act of 1974);

(D) HOME program authorized by title II of the Cranston-Gonzalez National Affordable Housing Act;
"(iii) the McKinney Homeless Assistance Performance Fund (authorized under this title); and

(iv) the AIDS Housing Opportunity Act (authorized under section 104 of the Cranston-Gonzalez National Affordable Housing Act).

(4) CONTINUUM OF CARE SYSTEM.—The term 'continuum of care system' means a system developed by a State or local homeless assistance board that includes—

(A) a system of outreach and assessment, including drop-in centers, 24-hour hotline counselors, and other activities designed to engage homeless individuals and families, bring them into the continuum of care system, and determine their individual housing and service needs;

(B) emergency shelters with essential services to help meet the needs of homeless individuals and families receiving shelter;

(C) transitional housing with appropriate supportive services to help ensure that homeless individuals and families are prepared to make the transition to increased responsibility and permanent housing;

(D) permanent housing, or permanent supportive housing, to meet the needs of homeless individuals and families;

(E) coordination between assistance programs provided under other Federal, State, and local programs that may be used to assist homeless individuals and families, including both targeted homeless assistance programs and other programs administered by the Department of Veterans Affairs, Labor, Health and Human Services, and Education;

and

(F) a system of referrals for subpopulations of the homeless (such as homeless veterans, families with children, battered spouses, individuals with mental illnesses, persons who have chronic problems with alcohol, drugs, or both, persons with other chronic health problems, and persons who have acquired immunodeficiency syndrome and related diseases) to the appropriate agencies, programs, or services (including health care, job training, and income support) necessary to meet their needs.

(5) GRANTEE.—The term 'grantee' means—

(A) an allocation unit of general local government or insular area that administers a grant under section 102; or

(B) an allocation unit of general local government or insular area that designates a public private nonprofit organization (or a combination of such organizations) to administer grant amounts under section 408(b)(2).

(6) IN ADDRESS INDIVIDUAL.—The term 'homeless individual' has the same meaning as in section 103 of this Act.

(7) INSULAR AREA.—The term 'insular area' means the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(8) LOW-DEMAND SERVICES AND REFERRALS.—The term 'low-demand services and referrals' means the provision of health care, mental health, substance abuse, and other supportive services and referrals for services in a noncoercive manner, which may include medication management, education, counseling, job training, and assistance in obtaining entitlement benefits and in obtaining other supportive services, including mental health and substance abuse treatment.

(9) METROPOLITAN CITY.—The term 'metropolitan city' has the same meaning as in section 101 of the Cranston-Gonzalez National Affordable Housing Act of 1974.

(10) PERSON WITH DISABILITIES.—The term 'person with disabilities' means a person who—

(A) has a disability as defined in section 223 of the Social Security Act; and

(B) is determined to have, as determined by the Secretary, a physical, mental, or emotional impairment which—

(i) is expected to be of long-continued and indefinite duration; and

(ii) substantially impedes his or her ability to live independently; and

(iii) is of such a nature that such ability could be improved by more suitable housing conditions;

(C) has a developmental disability, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act; or

(D) has the disease of acquired immunodeficiency syndrome (or any conditions resulting from the etiologic agent for acquired immunodeficiency syndrome, except that this subparagraph shall not be construed to limit eligibility under subparagraphs (A) through (C) or the provisions referred to in subparagraphs (A) through (C).

(11) PRIVATE NONPROFIT ORGANIZATION.—The term 'private nonprofit organization' means a private organization—

(A) no part of the net earnings of which inures to benefits of any member, founder, contributor, or one or more contributors; and

(B) that has a voluntary board;

(C) that has an accounting system, or has designated a fiscal agent in accordance with requirements established by the Secretary; and

(D) that practices nondiscrimination in the provision of services.

(12) PROSPECTIVE SUBSIDY.—The term 'prospective subsidy' means an amount that—

(A) provides housing or assistance for homeless individuals or families by carrying out activities under this title; and

(B) meets such minimum standards as the Secretary considers appropriate.

(13) PROGRAM.—The term 'program' means an entity that—

(A) provides housing or assistance for homeless individuals or families; and

(B) that practices nondiscrimination in the provision of services.

(14) SECRETARY.—The term 'Secretary' means the Secretary of Housing and Urban Development.

(15) STATE.—The term 'State' means each of the several States and the Commonwealth of Puerto Rico. The term includes an agency or instrumentality of a State that is established pursuant to legislation and designated by the chief executive officer of the State to act on behalf of the State with respect to the allocation unit for the State; and

(B) a multiyear strategy for implementing the continuum of care system, including appropriate timetables and budget estimates for accomplishing each element of the strategy;

(C) any specific performance measures and benchmarks for use in assessing the performance of the grantee under this title that are in addition to national performance measures and benchmarks established by the Secretary.

(16) SUBMISSION OF PLAN.—The State shall submit the multiyear plan identifying—

(i) in the case of a State carrying out its own activities under section 408(c)(2)(A), the activities to be carried out with assistance under this title that are consistent with the requirements established under section 408 of this Act; and

(ii) in the case of a State submitting a plan that is consistent with the requirements established under section 408 of this Act, the activities to be carried out with assistance under this title that are consistent with the requirements established under section 408 of this Act.

(17) UNIT OF GENERAL LOCAL GOVERNMENT.—The term 'unit of general local government' means a general local government, insular area, or State.

(18) URBAN COUNTY.—The term 'urban county' means a county, city, town, township, county, parish, village, or other general purpose political subdivision of a State.

(19) VERY LOW-INCOME FAMILIES.—The term 'very low-income families' has the same meaning as in section 3(b)(2)(A)(iv) of the Cranston-Gonzalez National Affordable Housing Act.
(ii) in the case of a State distributing grant amounts to State recipients under section 408(c)(2)(B), the criteria that the State will use in distributing amounts awarded under section 408(c) shall be consistent with the method of distribution, and the relationship of the method of distribution to the homeless assistance strategy; and

(2) any specific performance measures and benchmarks for use in assessing the performance of the grantee under this title that are in addition to national performance measures and benchmarks established by the Secretary.

(c) Submission Requirements for Applicants Other Than States.—Each application from an applicant other than a State shall include, at a minimum—

(1) the continuum of care submission described in subsection (b)(2);

(2) a determination on whether the assistance under this title will be administered by the jurisdiction, a public agency or private nonprofit organization, or the State, as appropriate under subsections (b) and (c) of section 408;

(3) certifications or other such forms of proof of commitments of financial and other resources sufficient to comply with the match requirements under section 405(a)(1);

(4) a certification that the applicant is following a current approved consolidated plan;

(5) a certification that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Fair Housing Act, and the grantee will affirmatively further fair housing; and

(6) a certification that the applicant will comply with the requirements of this title and other applicable laws.

(d) Submission Requirements for States.—Each application from a State shall include—

(1) the continuum of care submission described in subsection (b)(3);

(2) certifications or other such forms of proof of commitments of financial and other resources sufficient to comply with the match requirements under section 405(a)(1);

(3) a certification that the applicant is following a current approved consolidated plan;

(4) a certification that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Fair Housing Act, and the grantee will affirmatively further fair housing; and

(5) a certification that the State and State recipients will comply with the requirements of this title and other applicable laws.

(e) Application Approval.—The application shall be approved by the Secretary unless the Secretary determines that the application is substantially incomplete.

SEC. 404. ELIGIBLE PROJECTS AND ACTIVITIES; FUNDING MAINTENANCE OF EFFORT.

(a) Eligible Projects.—Grants under this title may be used to carry out activities described in subsection (b) in support of the following types of projects:

(1) Emergency Assistance.—Assistance designed to prevent homelessness or to meet the emergency needs of homeless individuals and families, including 1 or more of the following:

(A) Prevention.—Efforts to prevent homelessness of a very low-income individual or family to the maximum extent feasible. The recipient has received an eviction notice, notice of mortgage foreclosure, or notice of termination of utilities, if—

(i) the individual or family cannot make the required payments due to a sudden reduction in income or other financial emergency; and

(ii) the assistance is necessary to avoid imminent eviction, foreclosure, or termination of services.

(B) Outreach and Assessment.—Efforts designed to locate individuals and families about the availability of services, to bring them into the continuum of care system, and to determine which services or housing are appropriate to the needs of the individual or family.

(C) Emergency Shelter.—The provision of short-term emergency shelter with essential supportive services for homeless individuals and families.

(2) Safe Haven Housing.—A structure or a clearly identifiable portion of a structure that—

(A) provides housing and low-demand services and referrals for homeless individuals with a supportive environment;

(B) provides 24-hour residence for eligible individuals who may reside for an unspecified duration;

(C) provides private or semiprivate accommodations;

(D) provides for the common use of kitchen facilities, dining rooms, and bathrooms;

(E) may provide supportive services to eligible persons who are not residents on a drop-in basis; and

(F) provides occupancy limited to not more than 25 persons; and

(G) provides housing for victims of spousal abuse, and their dependents.

(3) Transitional Housing.—Housing and supportive services that are designed to facilitate the movement of homeless individuals to permanent housing, generally within 24 months.

(4) Permanent Housing and Permanent Housing and Supportive Services for Persons with Disabilities.—Permanent housing and supportive services for homeless persons with disabilities, the latter of which may be designed to provide housing and services to persons with disabilities, or may provide housing for such persons in a multifamily housing, condominium, or cooperative project.

(5) Single Room Occupancy Housing.—A unit for occupancy by 1 person, which need not (but may) contain food preparation or sanitary facilities, or both, and may provide services, including health services, substance abuse treatment, job training, and employment programs.

(b) Other Projects.—Such other projects as the Secretary determines will further the purposes of title I of the Homelessness Assistance and Management Reformer Act of 1997.

(c) Eligible Activities.—Grants under this title may be used to carry out the following activities in support of projects described in subsection (a):

(1) Homelessness Prevention Activities.—Short-term mortgage, rental, and utility payments and other short-term assistance designed to prevent that immediate threat to homelessness of the individuals and families described in subsection (a)(1)(A).

(2) Outreach and Assessment.—Drop-in centers, shelters, and other activities designed to engage homeless individuals and families, bring them into the continuum of care system, and determine their individual housing and service needs.

(3) Acquisition and Rehabilitation.—The acquisition, rehabilitation, or acquisition and rehabilitation of rental housing.

(4) New Construction.—The new construction of a project, including the cost of the site.

(5) Operating Costs.—The costs of operating a project, including salaries and benefits, maintenance, insurance, utilities, replacement reserve accounts, and furnishings.

(6) Lease-Purchase.—Leasing, since the acquisition and rehabilitation of existing structure or structures, or units within these structures, including the provision of long-term rental assistance.

(7) Tenant Assistance.—The provision of security or utility deposits, rent, or utility payments for the first month of residence at a location, and relocation assistance.

(8) Supportive Services.—The provision of essential supportive services including case management, housing counseling, job training and placement, primary health care, mental health services, substance abuse treatment, child care, transportation, emergency food and clothing, family violence prevention services, moving services, assistance in obtaining entitlement benefits, and referral to veterans services and referral to legal services.

(9) Administration.—

(A) In General.—Expenses incurred in—

(i) planning, developing, and establishing a program under this title; and

(ii) administering the program.

(B) Limitations.—Not more than the following amounts may be used for administrative costs under subparagraph (A):

(i) 10 percent of any grant amounts provided for a recipient for a fiscal year (including amounts used by a State to carry out its own activities under section 408(c)(1)(B)).

(ii) 5 percent of any grant amounts provided to a State for a fiscal year that the State uses to distribute funds to a State recipient under section 408(c)(1)(B).

(ii) 10 percent of any grant amounts provided for a recipient for a fiscal year (including amounts used by a State to carry out its own activities under section 408(c)(1)(A)).

(2) Limitations.—Not more than the following amounts may be used for capacity building:

(A) In General.—Building the capacity of private nonprofit organizations to participate in the continuum of care system of the recipient.

(B) Limitations.—Not more than the following amounts may be used for capacity building under subparagraph (A):

(i) 2 percent of any grant amounts provided for a recipient for a fiscal year (including amounts used by a State to carry out its own activities under section 408(c)(1)(B)).

(ii) 2 percent of any grant amounts provided to a State for a fiscal year that the State uses to distribute funds to a State recipient under section 408(c)(1)(B).

(11) Other Activities.—Other activities as the Secretary determines will further the purposes of title I of the Homelessness Assistance and Management Reform Act of 1997.

(c) Matching Requirement and Main-tenance of Effort.

(a) Matching Requirement.

(1) In General.—The recipient shall contribute 20 percent of the costs of each project to a State or the Secretary. If the recipient contributes less than 20 percent, the Secretary may provide additional matching funds to make contributions totaling not less than $1 for every $3 made available for the recipient.
for any fiscal year under this title to carry out eligible activities. At the end of each program year, each recipient shall certify to the Secretary that it has complied with this section, and shall include with the certification a description of the sources and amounts of the matching contributions. Contributions under this section may not come from Federal assistance under this title or amounts required under paragraph (1), a recipient shall not displace employed workers.

"(2) OCCUPANCY CHARGE.—Any homeless individual or family residing in a dwelling unit assisted under this title may be required to pay an occupancy charge in an amount determined by the Secretary providing the assistance, which may not exceed an amount equal to 30 percent of the adjusted income (as defined in section 3(b) of the United States Housing Act of 1937 or any other subsequent provision of law) for the purpose of eligibility for, or rental charges in, public housing of the individual or family. Occupancy charges paid may be reserved, in whole or in part, to assist residents in moving to permanent housing.

"SEC. 407. ALLOCATION AND DISTRIBUTION OF FUNDS.—

"(a) INSULAR AREAS.—

"(1) ALLOCATION.—For each fiscal year, the Secretary shall allocate assistance under this title to insular areas, in an amount equal to 0.20 percent of the amounts appropriated under the first sentence of section 402(b).

"(2) DISTRIBUTION.—The Secretary shall provide for the distribution of amounts reserved under paragraph (1) for insular areas pursuant to specific criteria or a distribution formula prescribed by the Secretary.

"(b) STATES AND ALLOCATION UNITS OF GENERAL LOCAL GOVERNMENT.—

"(1) IN GENERAL.—For each fiscal year, of the amounts appropriated under the first sentence of section 402(b) that remain after amounts are reserved for insular areas under subsection (a), the Secretary shall allocate assistance according to the formula described in paragraph (2).

"(2) FORMULA.—

"(A) ALLOCATION.—The Secretary shall allocate amounts for allocation units of general local government and States, in a manner that ensures that the percentage of the total amount available for fiscal year that is allocated for the allocation unit of general local government or State is equal to the percentage of the total amount available for fiscal year that is allocated for the allocation unit of general local government or State.

"(B) MINIMUM ALLOCATION.—

"(1) GRADUATED MINIMUM GRANT ALLOCATIONS.—A State, metropolitan city, or urban county shall be awarded funds in the first fiscal year after the effective date of this Act that are less than 85 percent in the second fiscal year after the effective date of this Act, not less than 80 percent in the third and fourth fiscal years after the effective date of this Act, and not less than 75 percent in the fifth full fiscal year after the effective date of this Act, but only if the amount appropriated in each such fiscal year exceeds $1,000,000,000. In that amount does not exceed $1,000,000,000 in any fiscal year, the jurisdiction shall receive its proportionate share of the amount appropriated which may not be less than the amount appropriated for any fiscal year for such jurisdiction.

"(ii) REDUCTION.—In any fiscal year, the Secretary may reduce the amount allocated under this subsection, if the Secretary determines that the jurisdiction has failed to comply with requirements of this title, or that such action is otherwise appropriate.

"(C) STUDY; SUBMISSION OF INFORMATION TO CONGRESS.—RELATION TO ALTERNATIVE METHODS OF ALLOCATION.—Not later than 1 year after the effective date of the Local Housing Opportunities Act, the Secretary shall—

"(i) the best available methodology for determining a formula relative to the geographic allocation of funds under this title that will be consistent with community development and other allocations bearing on the incidence of homelessness and factors that lead to homelessness.

"(ii) proposed alternatives to the formula submitted pursuant to subclause (I) for allocating funds under this section, including an evaluation and recommendation on a 75/25 percent formula and other allocations of flexible block grant homeless assistance between metropolitan cities and urban counties and States under subparagraph (A);

"(III) an analysis of the deficiencies in the current allocation formula described in section 106(b) of the Housing and Community Development Act of 1974;

"(IV) an analysis of the adequacy of current indices used as proxies for measuring homelessness; and

"(V) an analysis of the baselines underlying each of the proposed allocation methods;

"(ii) perform the duties required by this paragraph in ongoing consultation with—

"(I) the Subcommittee on Housing Opportunity and Community Development of the Committee on Banking, Housing, and Urban Affairs of the Senate;

"(II) the Subcommittee on Housing and Community Opportunity of the Committee on Banking and Financial Services of the House of Representatives;

"(III) organizations representing States, metropolitan cities, and urban counties;

"(IV) organizations representing rural communities;

"(V) organizations representing veterans;

"(VI) organizations representing persons with disabilities;

"(VII) members of the academic community; and

"(VIII) national homelessness advocacy groups; and

"(III) estimate the amount of funds that will be received annually by each entitlement community and nonentitlement area under each such alternative allocation system and compare such amounts to the amount of funds received by each entitlement community and nonentitlement area in prior years under this section.

"SEC. 408. ADMINISTRATION OF PROGRAM.

"(a) IN GENERAL.—The Secretary shall prescribe such procedures and requirements as the Secretary deems appropriate for administering grant amounts under this title.

"(b) ALLOCATION UNITS OF GENERAL LOCAL GOVERNMENT AND INSULAR AREAS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an allocation unit of general local government or insular area shall administer grant amounts received under subsection (a) or (b) of section 407 for any fiscal year.

"(c) INFORMATION AND ORGANIZATIONS DESIGNATED BY JURISDICTION.—

"(A) DESIGNATION OF OTHER ENTITIES TO ADMINISTER GRANT AMOUNTS.—An allocation unit of general local government or insular area may elect for any fiscal year to designate a public agency or a private nonprofit organization (or a collaboration of such organizations) to administer grant amounts received under subsection (a) or (b) of section 407 instead of the jurisdiction.
(B) Provision of Grant Amounts.—The Secretary may, at the request of a jurisdiction under subparagraph (A), provide grant amounts directly to the agency or organization designated under that subparagraph.

(c) States.—

(1) In General.—The State—

(A) may use not more than 15 percent of the amounts made available under section 407(b)(2) for a fiscal year to carry out its own homeless assistance program under this title; and

(B) shall determine the remaining grant amounts to State recipients.

(2) Distribution of Amounts to State Recipients.—

(A) In General.—

(i) Options.—States distributing amounts under paragraph (1)(B) to State recipients that are units of general local government shall, for each fiscal year, afford each such recipient the option of—

(I) administering the grant amounts on its own behalf;

(II) designating (as provided by subsection (b)(2)) a public agency or a private nonprofit organization (or a combination of such organizations) to administer the grant amounts on its behalf;

(III) entering into an agreement with the State, in consultation with private nonprofit organizations providing assistance to homeless individuals and families in the jurisdiction, under which the State will administer the grant amounts instead of the jurisdiction.

(ii) Effect of Designation.—A State recipient designating an agency or organization as provided by clause (i)(II), or entering into an agreement with the State under clause (i)(III), shall remain the State recipient for purposes of this title.

(iii) Direct Assistance.—The State may, at the request of the State recipient, provide grant amounts directly to the agency or organization designated under clause (i)(II).

(B) Application.—

(i) In General.—The State shall distribute grant amounts to State recipients (or to agencies or organizations designated under subparagraph (A)(i)(II), as appropriate) on the basis of an application containing such information as may be necessary—

(1) that each application shall reflect the State application requirements in section 408(c)(2)(A)(i); and

(2) that funds made available under this title shall not be recaptured or deducted from the grant receipt.

(ii) Waiver.—The State may waive the requirements in clause (i) with respect to one or more areas of activities, if the State determines that—

(I) the activities are necessary to meet the needs of homeless individuals and families within the jurisdiction;

(II) a continuum of care system is not necessary, due to the nature and extent of homelessness in the jurisdiction;

(III) the application satisfies the State application requirements in section 408(d) and evidence an intent to facilitate the establishment of a continuum of care system.

(iii) Waiver.—The State may waive the requirements in clause (i) with respect to one or more areas of activities, if the State determines that—

(I) the activities are necessary to meet the needs of homeless individuals and families within the jurisdiction; and

(II) a continuum of care system is not necessary, due to the nature and extent of homelessness in the jurisdiction.

(iv) Preference.—In selecting State recipients and making awards under subparagraph (B), the State shall afford preference to applicants that demonstrate higher relative levels of homeless need and fiscal distress.

SEC. 409. Citizen Participation.

(a) In General.—Each recipient shall ensure that appropriate representatives of private nonprofit organizations, and other interested groups and entities participate fully in the development and carrying out of the program authorized under this title.

(b) Allocation Units of General Local Government and Insular Areas.—The chief executive officer of each allocation unit of general local government or insular area shall designate an entity, which shall assist the jurisdiction—

(i) by developing the continuum of care system and other submission requirements, and by submitting the system and such other submission requirements for its approval under section 403(b); and

(ii) in overseeing the activities carried out with assistance under this title; and

(iii) in preparing the performance report under section 410(b).

(c) State Recipients.—The chief executive officer of the State shall designate an entity which shall assist the State—

(I) by developing the continuum of care system and other submission requirements, and by submitting the system and such other submission requirements for its approval under section 403(b); and

(II) in determining the percentage of the grant that the State should use—

(A) to carry out its own homeless assistance program under section 408(c)(1)(A); or

(B) to distribute amounts to State recipients under section 408(c)(1)(B).

(3) in carrying out the responsibilities of the State, if the State enters into an agreement with a State recipient to administer the amounts of the State recipient under section 408(c)(2)(A)(i)(III); and

(4) in overseeing the activities carried out with assistance under this title; and

(5) in preparing the performance report under section 410(b).

SEC. 410. Performance Reports, Reviews, Audits, and Grant Adjustments.

(a) National Performance Measures and Benchmarks.—The Secretary shall establish national performance measures and benchmarks to assist the Secretary, grantees, citizens, and others in assessing the use of funds made available under this title.

(b) General Performance and Evaluation Report.—

(1) In General.—Each grantee shall submit to the Secretary a performance and evaluation report on the use of funds made available under this title.

(2) Timing and Contents.—The report under subsection (a) shall be submitted at such time as the Secretary shall prescribe and contain an assessment of the performance of the grantee as measured against any applicable national performance measures and benchmarks (as established under subsection (a)), and such other information as the Secretary may require in connection with the performance of the grantee.

(c) Performance Reviews, Audits, and Grant Adjustments.—

(1) Performance Reviews and Audits.—

The Secretary shall, not less than annually, make such reviews and audits and as may be necessary or appropriate to determine—

(A) in the case of a grantee (other than a grantee referred to in subparagraph (B)), whether the grantee—

(i) has carried out its activities in a timely manner;

(ii) has made progress toward implementing the continuum of care system in conformity with its application under this title; and

(iii) has carried out its activities and certifications in accordance with the requirements of this title and other applicable laws; and

(B) in the case of States distributing grant amounts to State recipients, whether the State—

(i) has distributed amounts to State recipients in a timely manner and in conformance with the method of distribution described in its application for purposes of this section,

(ii) has carried out its activities and certifications in compliance with the requirements of this title and other applicable laws; and

(iii) has made such performance reviews and audits of the State recipients as may be necessary or appropriate to determine whether they have satisfied the applicable performance criteria set forth in subparagraph (A).

(2) Grant Adjustments.—The Secretary may make appropriate adjustments in the amount of grants in accordance with the findings of the Secretary under this subsection. With respect to assistance made available for State recipients, the Secretary may adjust, reduce, or withdraw such assistance, or take other action as appropriate in accordance with the performance reviews and audits of the State recipients under this section, except that amounts already properly expended on eligible activities under this title shall not be recaptured or deducted from future assistance to such recipients.

SEC. 411. nondiscrimination in programs and activities.

(a) No person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity operated, conducted, or financed in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1973 or with respect to an individual with a disability, as provided in section 504 of the Rehabilitation Act of 1973, shall also apply to any such program or activity.

SEC. 412. Retention of Records, Reports, and Audits.

(a) Retention of Records.—Each recipient shall keep such records as may be reasonably necessary—

(I) to disclose the amounts and the disposition of the grant amounts, including the funds made available under this title and the number of homeless individuals who have ended a chemical dependency or drug addiction.

(2) to ensure compliance with the requirements of this title.

(b) Access to Documents by the Comp Tucker General.—The Comptroller General of the United States, or any duly authorized representative of the Comptroller General, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient that are pertinent to grant amounts received in connection with this title.


(a) Authority To Provide Assistance.—

Beginning on the effective date of this Act, the Secretary may not make assistance under this title to the Stewart B. McKinney Homeless Assistance Act (as in existence immediately before such effective date), except pursuant to a legally binding commitment entered into before that date.

(b) Law Governing.—Any amounts made available under title IV of the Stewart B.
Title V—Voucher Reform

SEC. 501. AUTHORIZATION OF APPROPRIATIONS FOR RENTAL VOUCHERS FOR RELOCATION OF WITNESSES AND VICTIMS OF CRIME.

Section 8(o)(16) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(16)) is amended—

(1) in subparagraph (A), by striking “Of amounts made available for assistance under this subsection” and inserting “Of the amount made available under subparagraph (O)”; and

(2) in subparagraph (B), by striking “Of amounts made available for assistance under this section” and inserting “Of the amount made available under subparagraph (C)”; and

(3) by adding at the end the following:

“(C) Authorization of Appropriations.—

In addition to amounts made available to carry out this section in the fiscal year 2001, there is authorized to be appropriated to carry out this section $25,000,000 for each fiscal year.

SEC. 502. REVISIONS TO THE LEASE ADDENDUM.

Section 8(o)(7)(F) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)(F)) is amended striking the period at the end and inserting the following:

“(i) the provisions of any such addendum shall supplement any existing standard rental agreement to the extent that the addendum does not modify, and does not materially alter any material provision of the rental agreement; and

(ii) a provision of the addendum shall be nullified only to extent that the provision conflicts with applicable State or local law.”

SEC. 503. REPORT REGARDING HOUSING VOUCHER PROGRAM.

(a) In General.—The Secretary shall publish in the Federal Register a notice soliciting comments and recommendations regarding the means existing program under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) may be changed and enhanced to promote in-kind participation by private rental housing owners.

(b) Report.—Not later than 6 months after the effective date of this Act, the Secretary shall submit to the Committees a report on the results of the solicitation under subsection (a), which shall include a summary and analysis of the recommendations received, especially recommendations regarding legislative and administrative changes to the program described in subsection (a).

SEC. 504. CONDUCTING A STATUTORY INSPECTIONS ON A PROPERTY BASIS RATHER THAN A UNIT BASIS.

Section 8(o)(1) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(1)) is amended—

(1) in the paragraph heading, by inserting “AND PROPERTIES” after “UNITS”;

(2) in subparagraph (A)—

(A) by striking “Except as provided” and inserting the following:

“(i) Inspections Requirement.—Except as provided”;

and

(B) by adding at the end the following:

“(ii) Inspection and Certification on a Property Basis. The Secretary shall conduct inspection and certification on a property basis rather than a unit basis.

“(B) IN GENERAL.—For purposes of this sub-paragraph, each owner shall have the option...
of having the property of the owner inspected and certified on a property-wide basis, subject to the inspection guidelines set forth in subparagraphs (C) and (D).

(D) Delegation of property-wide inspection and the granting of waiver authority. —Any owner participating in the voucher program under this subsection as of the effective date of the Local Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12806 note) may delegate the authority to inspect each dwelling unit in the property of the owner individually or on a property-wide basis. Delegation is subject to the requirements of this section.

SEC. 602. LOCAL CAPACITY BUILDING FOR COMMUNITY DEVELOPMENT AND AFFORDABLE HOUSING.

Section 4 of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note) is amended—

(1) in subsection (a), by inserting "National Association of Housing Partnerships," after "Humanity,"; and

(2) in subsection (e), by striking "$40,000,000 for each of fiscal years 2001 through 2003.".

SEC. 603. WORK REQUIREMENT FOR PUBLIC HOUSING RESIDENTS. —COORDINATION OF FEDERAL HOUSING ASSISTANCE WITH STATE WELFARE REFORM PROGRAMS.

(a) In General.—Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended by adding at the end the following:

"SEC. 603. WORK REQUIREMENT. —

(a) In General.—Each family residing in public housing that is subject to the requirement under subsection (a), the public housing agency shall, 30 days before the expiration of each lease term of the family under section 6(1)(I), review and determine the compliance of the family with the requirement under subsection (a) of this section.

(b) DUE PROCESS.—Each determination under subparagraph (A) shall be made in accordance with the principles of due process and on a nondiscriminatory basis.

(c) NONCOMPLIANCE.—If a public housing agency determines that a family subject to the requirement under subsection (a) has not complied with the requirement, the agency—

(1) shall notify the family—

(I) of such noncompliance;

(II) that the determination of noncompliance is subject to an interactive grievance procedure under subsection (k); and

(III) that, unless the family enters into an agreement under clause (i) of this subparagraph, the family’s lease will not be renewed; and

(II) may not renew or extend the family’s lease upon expiration of the lease term and shall take such action as is necessary to terminate the tenancy of the household, unless the agency enters into an agreement, before the expiration of the lease term, with the landlord for the family to purchase or own a home.

(2) DUE PROCESS FOR NONCOMPLIANCE.—A public housing agency may not renew or extend any lease, or provide termination of the requirement under subsection (a) of this section, unless the agency—

(II) determines that the waiver, together with any other fair market rent or comparable units in the area, as established by the Secretary and the applicable formula under clause (ii) of this subsection, will result in the use of amounts described in subparagraph (A) that will provide the family with housing for such families.
"(B) ELIGIBLE FAMILIES.—A family described in this subparagraph is a family that consists of at least 1 elderly person (who is the head of household) and 1 or more of such person's grandchildren, great grandchildren, great nieces, great nephews, or great great grandchildren (as defined by the Secretary), but does not include any parent of such grandchildren, great grandchildren, great nieces, great nephews, or great great grandchildren. Such term includes any such grandchildren, great grandchildren, great nieces, great nephews, or great great grandchildren who have been legally adopted by such elderly person.";

SEC. 607. SECTION 8 HOMEOWNERSHIP OPTIONS FOR AGRICULTURAL WORKERS.

(a) AMENDMENTS.—Section 8(t)(y) of the United States Housing Act of 1937 (42 U.S.C. 1437f(y)) is amended—

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following:

"(7) DOWNPAYMENT ASSISTANCE.—

"(A) AUTHORITY.—A public housing agency may, in lieu of providing monthly assistance payments under subsection (c) to each child of a family eligible for such assistance and at the discretion of the public housing agency, provide assistance to the family in the form of a down payment assistance toward the purchase of a dwelling for fiscal year 2001 and each fiscal year thereafter to be provided in advance in appropriations Acts.

"(B) AMOUNT.—The amount of a downpayment grant on behalf of an assisted family may not exceed the amount that is equal to the sum of the assistance payments that would be made during the first year of assistance on behalf of the family, based upon the income of the family at the time the grant is to be made."

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect immediately after the amendments made by section 555(c) of the Quality Housing and Work Responsibility Act of 1998 take effect pursuant to section 608.

SEC. 608. REAUTHORIZATION OF NEIGHBORHOOD REINVESTMENT CORPORATION.

Section 608(a)(1) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8107(a)(1)) is amended by striking the first sentence and inserting the following: "There is authorized to be appropriated to the corporation under this title $250,000,000 for fiscal year 2001, $95,000,000 for fiscal year 2002, and $95,000,000 for fiscal year 2003."

TITLE VII—STATE HOUSING BLOCK GRANT

SEC. 701. STATE CONTROL OF PUBLIC AND ASSISTED HOUSING FUNDS.

Title I of the United States Housing Act of 1937 (42 U.S.C. 1437) is amended by adding at the end the following:

"SEC. 37. STATE HOUSING BLOCK GRANT.

(a) PURPOSE.—The purpose of this section is to provide to States funds that will enable the States to provide maximum freedom to States to determine the manner in which to implement assisted housing reforms.

(b) AUTHORITY.—Notwithstanding any other provision of law, a State may assume control of the Federal housing assistance funds available to residents in that State following the execution of a performance agreement with the Secretary in accordance with this subsection.

"(1) IN GENERAL.—A State may, at its option, execute a performance agreement with the Secretary under which the provisions of law concerning section 23(k) of the Act shall not apply to such State, except as otherwise provided in this section.

"(2) APPROVAL OF PERFORMANCE AGREEMENT.—A performance agreement submitted to the Secretary under this section shall be approved by the Secretary unless the Secretary determines, within 60 days after receiving the performance agreement, that the performance agreement is in violation of the provisions of this section.

"(3) TERMS OF PERFORMANCE AGREEMENT.—

Each performance agreement executed pursuant to this section shall include each of the provisions of this section.

"(4) AMENDMENT TO PERFORMANCE AGREEMENT.—A State may amend a performance agreement, submitted to the Secretary under the performance agreement, in any manner the Secretary determines, within 60 days after receiving the performance agreement, that the performance agreement is in violation of the provisions of this section.

"(5) REVISE DATES.—In any amendment of a performance agreement, the Secretary shall revise the time periods for performance as determined under section 23(k) of the Act so as to provide the State with alternatives consistent with the performance goals.

"(6) EFFECTIVE DATE.—The amendments made by this section apply to the execution of a performance agreement on or after October 1, 1999.
recommendations for a block grant formula that reflects the relative low-income level and affordable housing needs of each State.

"(b) Performance Review.—

"(1) In General.—If at the end of the 5-year term of the performance agreement a State has failed to meet at least 80 percent of the performance goals submitted in the performance agreement, the Secretary shall terminate the performance agreement and the State shall be required to comply with the program requirement, in effect at the time of termination, of each program included in the performance agreement.

"(2) State that seeks to renew its performance agreement shall notify the Secretary of its renewal request not less than 6 months prior to the end of the term of the performance agreement. A State that has met at least 80 percent of its performance goals submitted in the performance agreement at the end of the 5-year term may, at the Secretary’s request, enter into a performance agreement for an additional 5-year period. Upon the completion of the 5-year term of the performance agreement or as soon thereafter as the State submits data required under the agreement, the Secretary shall renew, for an additional 5-year term, the performance agreement of any State or community that has met at least 80 percent of its performance goals.

"(1) Performance Reward Fund.—To reward States that make significant progress in meeting performance goals, the Secretary shall annually set aside sufficient funds to grant to a State up to 5 percent of the funds allocated to participating States.

"(1) Definitions.—In this section:

"(1) Community.—The term ‘community’ means any local governing jurisdiction within a State.

"(2) Secretary.—The term ‘Secretary’ means the Secretary of Housing and Urban Development.

"(3) State.—The term ‘State’ means each of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa.”

TITLE VIII—PRIVATE SECTOR INCENTIVES

SEC. 801. SENSE OF CONGRESS REGARDING LOW, INCOME, AND MIDDLE CLASS HOUSING: STATE CEILINGS AND PRIVATE ACTIVITY BOND CAPS.

(a) FINDINGS.—Congress finds that—

(1) the low-income housing tax credit and private activity bonds have been valuable resources in the effort to increase affordable housing;

(2) the low-income housing tax credit and private activity bonds effectively utilize the ability of the States to deliver resources to the areas of greatest need within their jurisdictions; and

(3) the value of the low-income housing tax credit and the private activity bonds have been eroded by inflation.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the State ceiling for the low-income housing tax credit should be increased by 40 percent in the year 2000, and the level for the State ceiling should be adjusted annually to account for increases in the cost of living; and

(2) the private activity bond cap should be increased by 50 percent in the year 2000, and the value of the cap should be adjusted annu-

SEC. 802. REGULATIONS.

Not later than 6 months after the date of enactment of this Act, the Secretary shall issue such regulations as may be necessary to carry out this Act.
fall, and experts predict wildly different futures for them. Many children do well throughout elementary school, only to slip and fall between the cracks in middle school. This so-called “achievement gap” opens wide in middle school and grows throughout high school if it is not remedied. 

Raising test scores in K-12 education has brought the achievement-gap issue to the forefront of the national education debate and created a new opportunity to support those states that are making a real effort to improve student achievement. But trying to close the gap by simply bumping up test standards only pushes kids out of school rather than across the gap.

Few have really looked at the most logical place to begin to close the gap: summer school. Students take their achievement tests in April but have to return to school in the fall. Summer school is one place to begin helping students close the gap, yet the Federal government is missing the opportunity to create and support successful summer academic programs.

The legislation I am introducing today, the Student Education Enrichment Development Act, or SEED Act, will leverage summer academic programs to boost student performance. SEED will support all struggling students by providing the first federal funds to backstop state and local efforts to develop, plan, implement, and operate high-quality summer academic enrichment programs.

The disparity in school performance tied to race and ethnicity, known as the achievement gap, shows up in grades, test scores, course selection, and college completion. To a large extent, these factors predict a student’s success in school, whether a student will go to college, and how much money the student will earn when he or she enters the working world. It happens in cities and in suburbs and in rural school districts. The gaps are so pronounced that in 1996, several national tests found African-American and Hispanic 12th graders scoring at roughly the same levels in reading and math as white 8th graders. By 2019, when they are 24 years old, current trends indicate that the white children who are now nearing the end of their first year in school will be twice as likely as their African-American classmates, and three times as likely as Hispanic classmates in a college degree.

In Oregon last year, only 52 percent of the tenth graders met the state’s standard for reading, while only 36 percent met the standard for math. But students in Oregon are actually doing better than the national average. More than two-thirds of American high-school seniors graduated last year without being able to read at a proficient level. Results like these are the reason we need SEED.

This year’s Time Magazine reports that at least 25 percent of our U.S. school districts are mandating summer school for struggling students—twice that number in poor urban areas. While these programs are helping some students, the results should be better. Only 40 percent of New York students who failed state exams and completed summer school passed on the state exam for their second attempt. In the Pacific Northwest, Seattle canceled its summer program after students made only meager academic gains. I ask unanimous consent that the article from Time magazine be included in the record at the conclusion of my statement.

Schools should strive to meet higher standards, and we should have high expectations for every child. But our kids should not be punished because our education system has failed them. It’s time to make sure every child learns and succeeds. According to a recent study, more than half of our teachers promoted unprepared students because the current system does not provide adequate options.

High-quality summer academic programs will give struggling students a chance to succeed in a system that has failed them and help reverse the trend of poor student performance by preparing students to succeed where they have previously failed. Over the past years, we’ve heard a lot of rhetoric about education, but empty promises won’t help our kids learn. Our children deserve more.

I am pleased to be joined by Senators LANDRIEU, BREAUX and BAYH in introducing the bill today, and ask unanimous consent that a copy of the bill be printed in the RECORD.

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

SEC. 1. SHORT TITLE.
This Act may be cited as the “Student Education Enrichment Demonstration Act”.

SEC. 2. FINDINGS.
Congress finds that—

(1) States are establishing new and higher academic standards for students in kindergarten through grade 12;

(2) Federal funding streams are specifically designed to help States and school districts with the costs of providing students who are struggling academically, with the extended learning time and accelerated curriculum that the students need to meet high academic standards;

(3) freight weights now require State accountability tests to determine student grade-level performance and progress;

(4) nineteen States now require State accountability tests to graduate students;

(5) sixteen States now have the power to close chronically failing schools on the basis of test results;

(6) sixteen States now have the power to close chronically failing schools on the basis of test results;

(7) nineteen States currently require students to pass State accountability tests to graduate from high school;

(8) six States link student promotion to results on State accountability tests;

(9) excessive percentages of students are not meeting their State standards and are failing to perform at high levels on State accountability tests; and

while the Chicago Public School District implemented the Summer Bridge Program to help remediate their students in 1997, no State has yet created and implemented a demonstration program to help public school students who are not meeting State-determined standards.

SEC. 4. DEFINITIONS.
In this Act:

(1) ELEMENTARY SCHOOL; SECONDARY SCHOOL; LOCAL EDUCATIONAL AGENCY; STATE EDUCATIONAL AGENCY.—The terms “elementary school”, “secondary school”, “local educational agency”, and “State educational agency” have the meanings given the terms in title I, part A of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6111).

(2) SECRETARY.—The term “Secretary” means the Secretary of Education.

(3) STUDENT.—The term “student” means an elementary school or secondary school student.

SEC. 5. GRANTS TO STATES.
(a) IN GENERAL.—The Secretary shall establish a demonstration program through which the Secretary shall make grants to States educational agencies, on a competitive basis, to enable the agencies to assist local educational agencies in carrying out high quality summer academic enrichment programs as part of statewide education accountability programs.

(b) ELIGIBILITY AND SELECTION.—(1) ELIGIBILITY.—For a State educational agency to be eligible to receive a grant under subsection (a), the State served by the State educational agency shall—

(A) have in effect all standards and assessments required under section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6111); and

(B) compile and annually distribute to parents of public school students in that State reports, at a minimum, includes information on student and school performance for each of the assessments required under section 1111 of the Elementary and Secondary Education Act of 1965.

(2) SELECTION.—In selecting States to receive grants under this section, the Secretary shall make the selections in a manner consistent with the purpose of this Act.

(c) APPLICATION.—(1) IN GENERAL.—To be eligible to receive a grant under this section, a local educational agency shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) CONTENTS.—Such application shall include—

(A) information describing specific measurable results and objectives to be achieved in the State through the summer academic enrichment programs carried out under this Act, which may include specific measurable educational performance improvements and benefits relating to—

(i) increased student academic achievement;

(ii) decreased student dropout rates; or

(iii) other factors as the State educational agency may choose to measure; and
(B) information on criteria, established or adopted by the State, that—
(i) the State will use to select local educational agencies for participation in the summer academic enrichment programs carried out under this Act; and
(ii) at a minimum, will assure that grants provided under this Act are provided to—
(1) local educational agencies in the State that have the highest percentage of students not meeting basic or minimum required standards for State assessments required under section 1112 of the Elementary and Secondary Education Act of 1965;
(2) local educational agencies that submit grant applications under section 6 describing programs that demonstrate that the summer academic enrichment programs carried out under this Act will be both highly successful and replicable; and
(3) an assortment of local educational agencies serving urban, suburban, and rural areas.

SEC. 6. GRANTS TO LOCAL EDUCATIONAL AGENCIES.

(a) IN GENERAL.—
(1) FIRST YEAR.—
(A) IN GENERAL.—For the first year that a State educational agency receives a grant under this Act, the State educational agency shall use only funds made available through the grant to make grants to eligible local educational agencies in the State to pay for the Federal share of the cost of carrying out the summer academic enrichment programs, except as provided in subparagraph (B).
(B) TECHNICAL ASSISTANCE AND PLANNING ASSISTANCE.—The State educational agency may use not more than 5 percent of the funds—
(i) to provide to the local educational agencies technical assistance that is aligned with the curriculum of the agencies for the programs;
(ii) to enable the agencies to obtain such technical assistance from entities other than the State educational agency that have demonstrated success in using the curriculum; and
(iii) to assist the agencies in planning activities to be carried out under this Act.
(2) SUCCEEDING YEARS.—
(A) IN GENERAL.—For the second and third year that a State educational agency receives a grant under this Act, the State educational agency shall use the funds made available through the grant to make grants to eligible local educational agencies in the State to pay for the Federal share of the cost of carrying out the summer academic enrichment programs, except as provided in subparagraph (B).
(B) TECHNICAL ASSISTANCE AND PLANNING ASSISTANCE.—The State educational agency may use not more than 5 percent of the funds—
(i) to provide to the local educational agencies technical assistance that is aligned with the curriculum of the agencies for the programs;
(ii) to enable the agencies to obtain such technical assistance from entities other than the State educational agency that have demonstrated success in using the curriculum; and
(iii) to assist the agencies in evaluating activities carried out under this Act.

(b) APPLICATION.—
(1) IN GENERAL.—To be eligible to receive a grant under this section, a local educational agency shall submit an application to the State educational agency at such time, in such manner, and containing such information as the Secretary or the State may require.
(2) CONTENTS.—The State shall require that such applications include, to the greatest extent practicable—
(A) information that—
(i) demonstrates that the local educational agency will carry out a summer academic enrichment program funded under this section;
(ii) that provides intensive high quality programs that are aligned with challenging State content and student performance standards and that are focused on reinforcing and boosting the core academic skills and knowledge of students who are struggling academically, as determined by the State;
(iii) that focuses on accelerated learning, rather than remediation, so that students served through the program will make the high levels of progress (such as the hours per day and days per week of that contact, and the total length of the program);
(iv) that is based on, and incorporates best practices developed from, research-based enrichment methods and practices;
(v) that has a proposed curriculum that is directly aligned with State content and student performance standards;
(vi) for which only teachers who are certified and licensed, and are otherwise fully qualified teachers, provide academic instruction to students enrolled in the program;
(vii) that offers the State in the program professional development and technical assistance that are aligned with the approved curriculum for the program; and
(viii) that includes parental involvement component that seeks to involve parents in the program's topics and students' daily activities; and
(ii) may include—
(I) the proposed curriculum for the summer academic enrichment program;
(II) the local educational agency's plan for recruiting highly qualified and highly effective teachers to participate in the program; and
(III) a schedule for the program that indicates that the program is of sufficient duration and intensity to achieve the State's goals and objectives described in section 5(c)(2)(A); and
(B) an outline indicating how the local educational agency will utilize other applicable Federal, State, local, or other funds, other than funds made available through the grant, to support the program;
(C) an explanation of how the local educational agency will use instructional personnel or highly qualified personnel who volunteer to work with the type of student targeted for the program will work with the program and that the instruction provided through the program will be provided by qualified teachers;
(D) an explanation of the types of intensive training or professional development, aligned with the curriculum of the program, that will be provided for staff of the program;
(E) an explanation of the facilities to be used for the program;
(F) an explanation regarding the duration of the periods of time that students and teachers in the program will have contact for instructional purposes (such as the hours per day and days per week of that contact, and the total length of the program); (G) an explanation of the proposed student/teacher ratio for the program, analyzed by grade level; (H) an explanation of the grade levels that will be served by the program; (I) an explanation of the approximate cost per student for the program; (J) an explanation of the salary costs for teachers in the program; and (K) a description of a method for evaluating the effectiveness of the program at the local level;
(L) information describing specific measurable goals and objectives, for each academic subject in which the program will provide instruction, that are consistent with, or more rigorous than, the adequate yearly progress goals established by the State under section 1111 of the Elementary and Secondary Education Act of 1965; (M) a description of how the local educational agency will involve parents and the community in the program in order to raise academic achievement; and (N) a description of how the local educational agency will acquire any needed technical assistance that is aligned with the curriculum of the agency for the program, the State educational agency or other entities with demonstrated success in using the curriculum.
(c) PRIORITY.—In making grants under this section, the State educational agency shall give priority to applicants who demonstrate a high level of need for the summer academic enrichment programs.

(d) FEDERAL SHARE.—
(1) IN GENERAL.—The Federal share of the cost described in subsection (a) is 50 percent.
(2) NON-FEDERAL SHARE.—The non-Federal share of the cost may be provided in cash or in kind, fairly evaluated, including plant, equipment, or services.

SEC. 7. SUPPLEMENT NOT SUPPLANT.

Funds appropriated pursuant to the authority of this Act shall be used to supplement and not supplant other Federal, State, local public or private funds expended to provide academic enrichment programs.

SEC. 8. REPORTS.

(a) STATE REPORTS.—Each State educational agency that receives a grant under this Act shall annually prepare and submit to the Secretary a report. The report shall describe—
(1) the method the State educational agency used to make grants to eligible local educational agencies and to provide assistance to schools under this Act;
(2) the specific measurable goals and objectives described in section 5(c)(2)(A) for each of the local educational agencies receiving a grant under this Act in the State and the extent to which each of the agencies met each of the goals and objectives in that preceding year;
(3) the steps that the State will take to ensure that any such local educational agency who did not meet the goals and objectives in that year will meet the goals and objectives in the year following the submission of the report on the plan the State has for revoking the grant of such an agency and redistributing the grant funds to existing or new programs;
(4) how eligible local educational agencies and schools used funds provided by the State educational agency under this Act; and
(5) the degree to which progress has been made toward meeting the goals and objectives described in section 5(c)(2)(A).
(b) REPORT TO CONGRESS.—The Secretary shall annually prepare and submit to Congress a report. The report shall describe—
(1) the methods the State educational agencies used to make grants to eligible local educational agencies and to provide assistance to schools under this Act; and
(2) how eligible local educational agencies and schools used funds provided under this Act; and
by Mr. HARKIN:
S. 2971. A bill to amend the Clean Air Act to phase out the use of methyl tertiary butyl ether in fuels or fuel additives, to promote the use of renewable fuels, and for other purposes; to the Committee on Environment and Public Works.

CLEAN AND RENEWABLE FUELS ACT OF 2000

By Mr. HARKIN,
Mr. HARKIN, Mr. President. I am introducing today legislation designed to address the extensive problems that have been caused by the gasoline additive methyl tertiary butyl ether (MTBE). These appropriate provisions to the reformulated gasoline (RFG) program in the Clean Air Act.

It has become absolutely clear that MTBE has to go. Even in Iowa, where we are not required to have oxygenated fuels or RFG, a recent survey found a surprising level of water contamination with MTBE. So my legislation requires a phased reduction in the use of MTBE in motor fuel and then a prohibition on MTBE in fuel of fuel additives two years after enactment. Retail pumps dispensing gasoline with MTBE would be labeled so that consumers know what they are buying. And in order to facilitate an orderly phase-out of MTBE, EPA may establish a credit trading system for the dispensing and sale of MTBE.

My legislation recognizes the benefits that have been provided by the oxygen content requirement in the reformulated gasoline program. Oxygen additives reduce emissions of carbon monoxide, toxic compounds and fine particulate matter. So my legislation continues the oxygen content requirement, but it does allow for certain actions that would alleviate concerns about whether alternative oxygen additives will be available after MTBE is removed from gasoline. The bill allows for averaging of the oxygen content upon a proper showing and it also would allow for a temporary reduction or waiver of the minimum oxygen content requirement in very limited circumstances.

The legislation also ensures that all health benefits of the reformulated gasoline program are maintained and improved. The bill includes very strong provisions to ensure that there is no backsliding in air quality and health benefits from cleaner burning reformulated gasoline. The petroleum companies would also be prohibited from taking any actions that would diminish in some areas and putting them back into gasoline in other areas of the country that are not subject to the more stringent air quality standards. Those are referred to as the anti-dumping protections. These restrictions on highly polluting aromatic and olefin content of reformulated gasoline.

My legislation also recognizes the important role of renewable fuels in improving our environment, building energy security for our nation, and increasing farm income, economic growth and job creation, especially in rural areas. The legislation creates a renewable content requirement for gasoline and for diesel fuel.

Overall, this legislation will get MTBE out of gasoline, maintain and improve the air quality and health benefits of the reformulated gasoline program and the Clean Air Act, and put our nation on a solid path toward greater use of renewable fuels.

I ask unanimous consent that a section-by-section summary of this legislation be printed in the Record. I urge my colleagues to support this important legislation.

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

SECTION-BY-SECTION SUMMARY—CLEAN AND RENEWABLE FUELS ACT OF 2000

Section 1. Short title
The bill may be cited as the ‘Clean and Renewable Fuels Act of 2000’.

Section 2. Use and cleanup of methyl tertiary butyl ether

Prohibition Except in Specified Nonattainment Areas: Section 211(c) of the Clean Air Act is amended—
January 1, 2001, a person shall not sell or dispense to ultimate consumers any fuel or fuel additive containing MTBE in any area that is not a nonattainment area in which reformulated gasoline is required to be used and in which MTBE was used to meet the oxygen content requirement prior to January 1, 2000.

Interim Period for Use of MTBE: The Administrator shall issue regulations requiring, during the one-year period beginning one year after enactment of the Clean Air Act, the reduction in the quantity of MTBE that may be sold or dispensed for use in a fuel or fuel additive, and during the one-year period beginning two years after enactment of the Clean Air Act, the reduction in the quantity of MTBE that may be sold or dispensed for use in a fuel or fuel additive. In no area may the quantity of MTBE required for use as a fuel or fuel additive increase.

Basis for Reductions: Equitable Treatment: The basis for reductions shall be the quantity of MTBE used or sold during the one-year period ending on the date of enactment. The regulations requiring such reductions shall be to the maximum extent practicable provide for equitable treatment on a geographical basis and among manufacturers, refiners, distributors and retailers.

Trading of Authorizations to Sell or Dispense MTBE: To facilitate the orderly and efficient reduction in the use of MTBE, the regulations may allow the sale and purchase of authorizations to sell or dispense MTBE for use in a fuel or fuel additive.

Law enforcement: The Administrator shall issue regulations requiring any person selling or dispensing gasoline that contains MTBE at retail prominently to label the gasoline dispensing system with a sign that states that the gasoline contains MTBE and providing such information concerning the human health and environmental risks of MTBE as the Administrator determines.

Prohibition on Use of MTBE or Other Ethers: Effective three years after enactment, a person shall not manufacture, introduce into commerce, offer for sale, sell, or dispense a fuel or fuel additive containing MTBE or any other ether compound. The Administrator may waive the prohibition on an ether compound other than MTBE upon a determination that it does not pose a significant risk to human health or the environment.

State Authority to Regulate MTBE: A State may impose such restrictions, including prohibition, on the sale or use of MTBE in a fuel or fuel additive that is consistent with the State determination as it determines appropriate to protect human health and the environment.

Remedial Action Requirement: MTBE contamination would be prioritized in state source water assessment programs. EPA shall issue guidelines for MTBE cleanup and may enter into cooperative agreements for, and provide technical assistance to, voluntary pilot programs for the cleanup of MTBE and the protection of private wells from MTBE contamination.

Section 3. Reformulated gasoline—in general; oxygen content

Opt-in Areas; General Provisions: Regulations issued for the reformulated gasoline program shall apply to specified nonattainment areas and opt-in areas. The regulations shall require the greatest possible reduction in the quantity of MTBE and other oxygenated and other compounds and emissions of toxic air pollutants and precursors of toxic air pollutants.

Waiver of Per-Gallon Oxygen Content Requirement: The Administrator shall issue regulations establishing a procedure providing for the submission of applications for a waiver of any per-gallon oxygen content requirement otherwise established and the averaging of oxygen content over an appropriate period of time, not exceeding a year. An application for such a waiver shall be submitted to the Secretary of the Interior and the Secretary of Energy and the Secretary of Agriculture, the Administrator shall act on the application not later than 90 days after its receipt. The Administrator shall ensure that the human health and environmental benefits of the reformulated gasoline program are fully maintained during the period that any waiver.

Temporary Reduction of Oxygen Content Requirement: Upon application of a state, the Secretary of Energy with the concurrence of the Secretary of the Interior and the Secretary of Agriculture finds that there is an insufficient supply of oxygenates in an area the Administrator approves the application.
may temporarily reduce or waive the oxygen content requirement for the area to the extent necessary to ensure an adequate supply of reformulated gasoline. A temporary waiver would be effective for 90 days, or a shorter period if a sufficient supply of oxygenates exists, and may be extended for an additional 90-day period. The regulations shall ensure that such waivers and environmental benefits of the reformulated gasoline program are fully maintained during the period of any temporary waiver of the oxygen content requirement.

Section 4. Limitations on aromatics and olefins in reformulated gasoline

Aromatic Content: The aromatic hydrocarbon content of reformulated gasoline shall not exceed the average aromatic hydrocarbon content in reformulated gasoline meeting the statutory formulation for year 1999 or calendar year 2000; and no gallon of reformulated gasoline shall have an aromatic hydrocarbon content in excess of 30 percent.

Olefin Content: The olefin content of reformulated gasoline shall not exceed 8 percent by volume; the average olefin content shall not exceed the average olefin content of reformulated gasoline meeting the statutory formulation for either calendar year 1999 or calendar year 2000; and no gallon of reformulated gasoline shall have an olefin content in excess of 10 percent.

Section 5. Reformulated gasoline performance standards

Emissions of Volatile Organic Compounds: Required reductions in VOC emissions shall be on a mass basis and, to the maximum extent practicable using available science, on the basis of ozone forming potential of VOCs and taking into account the effect on ozone formation of reducing carbon monoxide emissions.

Emissions of Toxic Air Pollutants and Precursors: The required reductions shall apply to toxic air pollutants or precursors of toxic air pollutants. The required emissions reductions shall be on a mass basis and, to the maximum extent practicable using available science, on the basis of relative toxicity or carcinogenic potency, whichever is more protective of human health and the environment.

Section 6. Anti-backsliding

Ozone Forming Potential: The Administrator shall set performance standards to ensure that the ozone forming potential, taking into account all ozone precursors, of the aggregate emissions during the high ozone season from vehicles using reformulated gasoline does not exceed the ozone forming potential of emissions when using reformulated gasoline that complies with the regulations in effect on January 1, 2000.

Specified Pollutants: The Administrator shall revise performance standards to ensure that the emissions of specified pollutants or their precursors when using reformulated gasoline do not exceed the aggregate emissions of such pollutants or precursors when using reformulated gasoline that complies with the regulations in effect on January 1, 2000. The specified air pollutants are toxic air pollutants, oxides of nitrogen, carbon monoxide, and fine particulate matter, which contributes to regional haze.

Adjunctive Adjustments for Carbon Monoxide Emissions: In carrying out the ozone anti-backsliding requirement, the Administrator shall adjust the performance standard to take into account carbon monoxide emissions that are greater than the carbon monoxide emissions of reformulated gasoline containing 2 percent oxygen by weight and meeting other performance standards. An adjustment to the VOC emission reduction requirement necessary to achieve this reduction shall be credited toward the requirement for VOC emissions reductions under section 182 of the Clean Air Act.

Updating of Baseline Emissions: Not later than 3 years after enactment, the Administrator shall revise the performance standards to redefine the term “baseline vehicles” used in the provisions to determine the mean vehicles representative of vehicles (including off-road vehicles) in use as of January 1, 2000.

Section 7. Certification of fuels

Combined Reductions of Ozone Forming VOCs and Carbon Monoxide: In certifying a fuel formulation or slate of fuel formulations as equivalent to reformulated gasoline, the Administrator shall determine whether the combined reductions in emissions of VOCs and carbon monoxide result in a reduction in ozone concentration equivalent to or greater than the reduction achieved by reformulated gasoline meeting the statutory formula and performance requirements. A certified fuel formulation or slate of fuel formulations shall reduce ozone emissions attributable to such oxygen content from vehicles other than baseline vehicles.

Section 10. Renewable content of gasoline and diesel fuel

Renewable Content of Gasoline: Not later than September 1, 2000, the Administrator shall issue regulations requiring each refiner, blender or importer of gasoline to comply with renewable content requirements. On and after January 1, 2001, gasoline sold or introduced into commerce by a refiner, blender or importer other than gasoline covered under section 182 as a reformulated gasoline, the Administrator shall determine whether the renewable content requirement is met.

Credit Program: The Administrator shall establish a program for renewable fuel credits trading on a quarterly average basis. The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may consider the change in carbon monoxide or toxic air pollutants attributable to gasoline sold or introduced into commerce by a refiner, blender or importer in calendar year 1999 or calendar year 2000 in the annual review of the renewable fuel content requirement.

Waiver: A waiver from the renewable fuel content requirement may be granted for an area in part or whole in consultation with the Secretary of Agriculture and the Secretary of Energy. The waiver may only be granted for an area upon a determination that renewable fuel credits trading would severely harm the economy or environment of the area, or there is inadequate

July 27, 2000

Congressional Record — Senate S7885
domestic supply or distribution capacity with respect to fuels from renewable sources and only after a determination that use of the credit trading program would not alleviate the fuel shortage which the provision is based. A waiver shall terminate after one year, or at such earlier time as is determined appropriate by the Administrator, but may be renewed after consultation with the Secretary of Agriculture and the Secretary of Energy.

Laundering: The Administrator shall issue guidance to the States for labeling at the point of retail sale of fuel derived from a renewable source and the major fuel additive components of the fuel.

Reports to Congress: Concerning the renewable content requirement, the Administrator shall report to Congress at least every 3 years (all regarding reductions in emissions of air pollutants; (2) in consultation with the Secretary of Agriculture, regarding the impact on demand for farm commodities, biomass and other material used for producing fuel derived from renewable sources; the adequacy of food and feed supplies; and the effect upon farm income, employment and economic growth, particularly in rural areas; and (3) in consultation with the Secretary of Energy, describing greenhouse gas emission reductions; the effect on U.S. energy security and reliance on imported petroleum.

Renewable Content Dated Fuel: Not later than September 1, 2000, the Administrator shall issue regulations applicable to each refiner, blender, or importer of diesel fuel to ensure that diesel fuel sold or introduced into commerce in the United States complies with renewable content requirements. The Administrator shall establish requirements for the content of diesel fuel that is derived from renewable sources in the States the requirements of the program for gasoline, using the same definition of fuel derived from a renewable source. The regulations shall provide for credit trading and waiver applications on similar terms to those of the program for gasoline.

Prevention of effects on Highway Apparitions: Petitions would be protected from any adverse impacts as a consequence of the sale and use within a State of ethanol in determining the payments attributable to a State for Highway Trust Fund and the minimum guarantee based on payments into the Highway Trust Fund.

By Mr. KERRY (for himself, Mr. GRASSLEY, Mr. SARBANES, Mr. LEVIN, and Mr. ROCKEFELLER): S. 2972. A bill to combat international money laundering and protect the United States from the misuse of its financial system, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE INTERNATIONAL COUNTER-MONEY LAUNDERING AND FOREIGN ANTICORRUPTION ACT OF 2000

Mr. KERRY. Mr. President, I believe the United States must do more to stop international criminals from washing the blood off their profits from the sale of drugs, from terror or from organized crime. We must bring money into the United States financial system.

That is why today, along with Senators GRASSLEY, SARBANES, LEVIN, and ROCKEFELLER, I am introducing the International Counter-Money Laundering and Foreign Anticorruption Act of 2000 which will give the Secretary of the Treasury the tools to crack down on international money laundering activities and protect the integrity of the U.S. financial sector from the influx of tainted money from abroad.

I very much appreciate work of the Secretary of Treasury Lawrence Summers in the development of this legislation. Secretary Summers has been a leader in bringing the issue of money laundering to the attention of the American public and the Congress. Earlier this year, Secretary Summers said, "The attack on money laundering is an essential front in the war on narcotics and the broader fight against organized crime worldwide. Money laundering may look like a polite form of white collar crime, but it is the companion of brutality, deceit and corruption." I am deeply saddened that I will not have the pleasure with Senator PAUL COVERDELL, who was to be the primary cosponsor of this legislation. His passing is a tremendous loss to the both to the American people and the U.S. Senate.

Money laundering is the financial side of international crime. It occurs when criminals seek to disguise money that was illegally obtained. It allows terrorists, drug cartels, organized crime groups, corrupt foreign government officials and others to preserve the profit from their illegal activities and to finance new crimes. It provides the fuel that allows criminal organizations to conduct their ongoing affairs. It has a corrosive effect on international markets and financial institutions. Money launderers rely upon the existence of jurisdictions outside the United States that offer bank secrecy and special tax or regulatory advantages to non-residents, and often complement those advantages with weak financial supervision and regulatory regimes.

Today, the global volume of laundered money is estimated to be 2-5 percent of global Gross Domestic Product, between $600 billion and $1.5 trillion. The effects of money laundering extend far beyond the parameters of law enforcement, creating international political issues while generating domestic political crises. International investigators have taken advantage of the advances in technology and the weak financial supervision in some jurisdictions to place their illicit funds into the United States financial system. Globalization and advances in communications and technologies allow criminals to move their illicit gains faster and farther than ever before. The result has been a proliferation of international money laundering havens. The ability to launder money into the United States through these jurisdictions has allowed corrupt foreign officials to systematically divert public assets to their personal use, which in turn undermines U.S. efforts to promote democratic institutions and stable, vibrant economies abroad.

In February, State and Federal regulators formally sanctioned the Bank of New York for "deficiencies" in its anti-money laundering program, including lax auditing and risk management procedures involving their international banking business. The sanctions were based on the Bank of New York's involvement in an international laundering scheme where more than $7 billion in funds were transmitted from Russia into the bank. Federal investigators are currently attempting to tie the $7 billion to criminal activities in Russia such as corporate theft, political graft or racketeering.

In November 1999, the minority staff of the Senate Governmental Affairs Subcommittee on Investigations released a report on private banking and laundering havens. The report describes a number of incides where high level government officials have used private banking accounts with U.S. financial institutions to launder millions of dollars from foreign governments.

Representatives from Citigroup testified at a Subcommittee hearing that the bank had been slow to correct controls over their private banking accounts.

During the 1980's, as chairman of the Senate Permanent Subcommittee on Investigations, I helped investigate the Bank of Credit and Commerce International (BCCI), and uncovered a complex money laundering scheme. Unlike any ordinary bank, BCCI was from its earliest days made up of multiplying layers of affiliates, related to one another through an impenetrable series of holding companies, affiliates, subsidiaries, banks-within-banks, insider dealings, and nominee relationships.

By fracturing corporate structure, record keeping, regulatory review, and audits, the complex BCCI family of entities was able to evade ordinary legal restrictions on the movement of capital and goods as a matter of daily practice and routine. In creating BCCI as a vehicle fundamentally free of government control, its creators developed an ideal mechanism for facilitating illicit activity by others.
money laundering standards. Back in 1988, I included a provision in the State Department Reauthorization bill that requires major money laundering countries to adopt laws similar to our own on reporting currency, or face sanctions if they resist. Panama, one potential trouble spot, wound up negotiating what were called Kerry agreements with the United States and became less vulnerable to the placement of U.S. currency by drug traffickers in the process.

Unfortunately, other nations—some small, remote islands—have moved in the other direction. Many have passed laws that provide for excessive bank secrecy, anonymous company incorporation, economic citizenship, and other provisions that directly conflict with well-established international anti-money laundering standards. In doing so, they have become money laundering havens for international criminal networks. Some even blatantly advertise the fact that their laws protect anyone doing business from U.S. law enforcement.

Just last month, the Financial Action Task Force, an intergovernmental body developed to develop and promote policies to combat financial crime, released a report naming fifteen jurisdictions—including the Bahamas, the Cayman Islands, Russia, Israel, Panama, and the Philippines—that have failed to take adequate measures to combat international money laundering. This is a clear warning to financial institutions in the United States that they must begin to scrutinize many of their financial transactions with customers in these countries as possibly being linked to crime and money laundering. Soon, the Financial Action Task Force will develop bank advisories and criminal sanctions that will have the effect of driving legitimate financial business from these nations, depriving them of a lucrative source of revenue. This report has provided important information that governments and financial institutions around the world should learn from in developing their own anti-money laundering laws and policies.

The Financial Stability Forum has recently released a report that categorizes offshore financial centers according to their perceived quality of supervision and degree of regulatory cooperation. The Organization for Economic Cooperation and Development (OECD) has begun a new crackdown on harmful tax competition. Members of the European Union has reached an agreement in principle on sweeping changes to bank secrecy laws, intended to bring cross-border investment income within the net of tax authorities.

The actions by the Financial Action Task Force, the European Union and others show a renewed international focus and commitment to curbing financial abuse around the world. I believe the United States has a similar obligation to use this new information to update our anti-money laundering status.

The International Counter-Money Laundering and Anticorruption Act of 2000 which I am introducing today would provide the tools the U.S. needs to crack down on international money laundering havens and protect the integrity of the financial system from the influx of tainted money from abroad. The bill provides for actions that will be graduated, discretionary, and targeted, in order to focus actions on international transactions involving known criminals. It allows legitimate international commerce to continue to flow unimpeded. It will give the Secretary of the Treasury—acting in consultation with other senior government officials and the Congress—the authority to designate a specific foreign jurisdiction, foreign financial institution, or class of international transactions as being of "primary money laundering concern."

Then, on a case-by-case basis, the Secretary will have the option to require banks to pierce the veil of secrecy that foreign criminals hide behind. In other cases, the Secretary will have the option to require the identification of those using a foreign bank's correspondent or payable-through accounts. And if these transparency provisions were deemed to be inadequate to address specific foreign problems identified, the Secretary will have the option to restrict or prohibit U.S. banks from continuing correspondent or payable-through banking relationships with money laundering havens and rogue foreign banks. Through these steps, the Secretary will help prevent laundered money from slipping undetected into the U.S. financial system and, as a result, increase the pressure on foreign money laundering havens to bring their regulations up to international anti-money laundering standards.

The passage of this legislation will make it much more difficult for international criminal organizations to launder the proceeds of their crimes into the United States.

This bill fills in the current gap between bank advisories and International Emergency Economic Powers Act (IEEPA) sanctions by providing five new intermediate measures. Under current law, international anti-money laundering tools available to the federal governments are advisory, an important but relatively limited measure instructing banks to pay close attention to transactions that involve a given country, and full-blown economic sanctions under the IEEPA. This legislation gives five additional measures to increase the government's ability to apply pressure against targeted jurisdictions or institutions.

This legislation will in no way jeopardize our relationship with the American public. The focus is on foreign jurisdictions, financial institutions and classes of transactions that present a threat to the United States, not on American citizens. The actions that the Secretary of the Treasury is authorized to take are designed solely to combat the abuse of our banks by specifically identified foreign money laundering threats. This legislation is in no way similar to the severe regulations that were proposed by the regulators last year. Further, the intent of this legislation is not to add additional regulatory burdens on financial institutions, but to give the Secretary of the Treasury the ability to take action against existing money laundering threats.

Let me repeat, this legislation only gives the discretion to use these tools to the Secretary of the Treasury. There is no automatic trigger which forces action whenever evidence of money laundering is uncovered. Before any action is taken, the Secretary of the Treasury, in consultation with other senior government officials, will first determine whether a specific country, financial institution or type of transaction is of primary money laundering concern. Then, a calibrated response will be developed that will consider the effectiveness of the address of the threat, whether other countries are taking similar steps, and whether the response will cause harm to U.S. financial institutions and other firms.

This legislation will give the ability of the Secretary to combat the international money laundering and help protect the integrity of the U.S. financial system. This bill is supported by the heads of all the major federal law enforcement agencies. The House Banking Committee recently reported out this legislation with a bipartisan 33-1 vote. I believe this legislation deserves consideration by the Senate during the 106th Congress.

Today, advances in technology are bringing the world closer together than ever before and opening up new opportunities for economic growth. However, with these new advantages come equally important obligations that must do everything possible to insure that the changes in technology do not give comfort to international criminals by giving them new ways to hide the financial proceeds of their crimes. I believe that this legislation is a first step toward limiting the scourge of money laundering will help stop the development of international criminal organizations.

Mr. SARBANES. Mr. President, I am pleased to join Senators KERRY, GRASSLEY, LEVIN, and ROCKEFELLER in introducing the Clinton/Gore administration's International Counter-Money Laundering and Foreign Anti-Corruption Act of 2000 (the "ICMLA"). Money laundering poses an ongoing threat to the financial stability of the United States. It is estimated by the Department of the Treasury that the global volume of laundered money accounts for between 2-5 percent of the global GDP.

The ICMLA is designed to bolster the United States ability to counter the
laundering of the proceeds of drug trafficking, organized crime, terrorism, and official corruption from abroad.

The bill broadens the authority of the Secretary of the Treasury, ensures that banking transactions and financial relationships are reported, and enhances the government's ability to apply well-calibrated pressure against foreign jurisdictions and entities that are of "primary money laundering concern" to the United States.

Under current law, the only counter-money laundering tools available to the federal government are adjustments of a financial institution's powers of civil and criminal penalties for violations of the Bank Secrecy Act and its regulations. This bill clarifies that structuring a transaction is a criminal offense and extends the presumptive GTO period from 60 to 180 days.

Fourth, section 203 of the bill permits a bank, upon request of another bank, to include suspicious illegal activity in written employment references. Under this provision, banks would be permitted to share information concerning the possible involvement of a current or former officer or employee in potentially unlawful activity without fear of civil liability for sharing the information.

Finally, title III of the bill addresses corruption by foreign officials and ruling elites. Pursuant to a sense of Congress, the Secretary of the Treasury, in consultation with the Attorney General and the financial services regulators, is mandated to issue guidelines concerning the possible involvement of a current or former officer or employee in potentially unlawful activity without fear of civil liability for sharing the information.

The ICMLA addresses many of the shortcomings of current law. The Secretary of the Treasury is granted additional authority to require greater transparency of transactions and accounts as well as to narrowly target penalties and sanctions. The reporting and collection of additional information on suspicious activity will greatly enhance the ability of bank regulators and law enforcement to combat the laundering of drug money, proceeds from corrupt regimes, and other illegal activities.

Mr. President, the House Banking Committee passed the identical antimoney laundering bill by a vote of 31 to 1 on June 8, 2000. I hope that we can move this legislation expeditiously in the Senate.

By Mr. KERRY (for himself and Mr. HOLLINGS):

S. 2973. A bill to amend the Magnuson-Stevens Fishery Conservation and Management Act to improve fishery management and enforcement, and fisheries data collection, research, and assessment, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE MAGNUSON-STEVENS ACT AMENDMENTS OF 2000

Mr. KERRY. Mr. President, I rise today to introduce the Magnuson-Stevens Act Amendments of 2000. I would like to thank Mr. HOLLINGS for joining me as an original cosponsor of this legislation to reauthorize and update the Magnuson-Stevens Fishery Conservation and Management Act. As my colleagues and I well remember, we last considered this legislation only four years ago with the Sustainable Fisheries Act—a three-year effort in itself. As in 1996, I look forward to working with members of the Commerce Committee as we update and improve this most important legislation.

Mr. President, the fishery resources found off U.S. shores are a valuable national heritage. In 1998, the last year for which we have figures, U.S. commercial fisheries produced $3.1 billion in dockside revenues, contributing a total of more than $25 billion to the Gross National Product. By weight of catch, the United States is the world's fifth largest fishing nation, harvesting over 4 million tons of fish annually. The United States is also a significant seafood exporter, with exports valued at over $8 billion in 1998. In addition to supporting the commercial seafood industry, U.S. fishery resources provide enjoyment for about 9 million saltwater anglers who take home roughly 200 million pounds of fish yearly.

Over the past year, the Commerce Committee under Senator SNOWE's leadership has been holding a series of hearings around the country in preparation for this year's reauthorization. These hearings have pointed to one central theme—while there is certainly room for improving fisheries management under the Magnuson-Stevens Act, the sweeping changes we made in 1996 are still being implemented in each region. In fact, a number of regions are showing good progress, including New England where the yellowtail flounder and haddock stocks are rebounding. For this reason, I believe this year's reauthorization should leave in place the sweeping changes we made with the Sustainable Fisheries Act, and focus on providing adequate resources, and any organizational or other changes necessary for NOAA Fisheries and Regional Fishery Management Councils to achieve the goals set forth in the Sustainable Fisheries Act.

Mr. President, the bill I introduce today outlines a proposal for making this a reality. While we have added increasingly complex technical and scientific requirements to the fisheries management process, we have failed in many cases to provide the resources necessary to meet these requirements. Effective fisheries management for the future will rely on committing adequate resources and direction to the fisheries managers as well as the fishing participants. These include providing necessary funding increases to both the agency and the Councils, creation of a national observer program, establishing a national cooperative research program with the fishing industry, and ensuring that we are collecting the socioeconomic data we need to design management measures that
make sense for fishermen. This legislation aims to remedy this by providing a significant increase in funding, and specifying amounts required to support both the new initiatives and existing programs.

Over the years, we have reauthorized the Magnuson-Stevens Act many times, and each time we have wrestled with the question of how to improve the ability of the Regional Fisheries Management Councils to effectively and fairly implement the requirements of the Act. This bill suggests ways in which to begin remedying these concerns. First, the bill would clarify that the Secretary of Commerce must ensure representation on the Council of all qualified persons who are concerned with fisheries conservation and management. While fishermen are the source of tremendous wisdom and expertise needed in managing these fisheries, there are others such as scientists and those with other relevant experience who may also provide valuable service to the Councils. To help the Secretary meet this requirement, the bill requires Governors to consult with members of recreational, commercial, and other fishing or conservation interest before developing a list of nominees to send to the Secretary. We would like to see all those who can provide constructive attention to our fishery management problems to work together to forge innovative and effective solutions.

In addition, we must increase independent scientific involvement in the Councils, and my legislation would provide that Councils must involve Science and Statistics Committee members in the development and amendment of fisheries management plans.

I do know of the grave concerns expressed by conservation groups, fishermen, scientists and managers about problems with the existing fishery management process. I believe we need to address these questions, both with respect to the Councils and the Agency. I would like to work on this further with my colleagues as we go forward, but in the meantime this bill asks the National Academy of Sciences to bring together international and regional experts to evaluate what works and what may be broken in the current system, and what additional changes may be necessary to modernize and make more effective the entire fishery management process.

In our series of hearings around the country, we have consistently heard a call from both industry and conservation groups for observer coverage in our fisheries. We have failed to adequately provide funding mechanisms for observer coverage; each year, federally funded observers are deployed in as few as five to seven fisheries, and observer coverage is rarely over 20 percent. Without observer coverage, there is little confidence we will have scientifically significant data, particularly data on actual levels of bycatch. I have included provisions to ensure that each fishery management plan details observer coverage and monitoring needs for a fishery, and created a new National Observer Program. This national program would address technical and administrative responsibilities over regional observer programs. I have also included provisions to allow Councils or the Secretary to develop observer monitoring plans, and have established a fishery observer fund which would include funds appropriated for this purpose, as well as the federal new bycatch incentive program, or deposited through fees established under this section.

In the 1996 reauthorization, we took a first step in dealing with the issue of bycatch by instructing NMFS to implement a standardized bycatch reporting methodology. Nonetheless, I believe we have a long way to go in dealing with the bycatch problem in many of our fisheries. In addition to establishing a national observer program, my bill would establish a task force to recommend measures to monitor, manage, and reduce bycatch and unobserved fishing mortality. The Secretary would then be charged with implementing these recommendations. In addition, I have included a provision to reduce the amount of bycatch reduction incentive programs that could include a system of fines, non-transferable bycatch quotas, or preferences for gear types with low-bycatch rates.

It is also time for us to move forward on ecosystem-based fishery management. We do not yet have the data to actually manage most of our fisheries on an ecosystem basis, but I still believe we must begin the preparation and consideration of fishery ecosystem plans. We must strive to understand the complex ecological and socioeconomic environments in which fish and fisheries exist, if we hope to anticipate the effects that fishery management will have, and to anticipate the effects that ecosystem change will have on fisheries. My legislation would require each Council to develop one fishery ecosystem plan for a marine ecosystem under its jurisdiction. Each ecosystem plan would have to include the listing of data and information needs identified during development of the plan, and the means of addressing any scientific uncertainties associated with the plan.

One of the most resounding comments we heard at all of our regional hearings was the need to continually improve scientific information, and to involve the fishing industry in the collection of this information. My bill would establish a national cooperative research program, patterned after the successful cooperative research program in the New England scallop fishery, for projects that are developed through partnerships among federal and state managers, fishing industry representatives, and academic institutions. Priority would be given to projects to reduce bycatch, conservation engineering projects, projects to identify and protect essential fish habitat or habitat area of particular concern, projects to collect fishery ecosystem information and improve predictive capabilities, and projects to compile social and economic data on fisheries.

Over the years, I have heard much complaint that NMFS does not communicate effectively with the fishing industry or the general public. To remedy this, my bill establishes a fisheries outreach program within NMFS to heighten public understanding of NMFS research and technology, train Council members on implementation of National Standards 1 and 8 requirements of the Regulatory Flexibility Act, and identify means of improving quality and reporting of fishery-dependent data. New provisions would also require improvement of the transparency of the stock assessment process and methods, and increase access and compatibility of data relied upon in fishery management decisions. I have required the Secretary to periodically review fishery data collection methods, and to establish a Center for Independent Peer Review under which independent experts would be provided for special peer review functions.

Mr. President, I have also included provisions to address one of our biggest problems in fisheries today—too many fishermen chasing too few fish. It is true that many of our fisheries are overcapitalized. A buyout in New England several years ago failed to deal with this problem, and according to Penny Dalton, Assistant Administrator for Fisheries, in a recent USA Today article, the buyout “jump-started recovery in the New England groundfish fishery.” A section of my bill would require the Secretary to evaluate overcapacity in each fishery, and identify measures planned or taken to reduce any such overcapacity. My legislation would also require the Secretary to periodically review fishery data collection methods, and to establish a Center for Independent Peer Review under which independent experts would be provided for special peer review functions.

In 1996, we enacted a new concept in depredating, and requiring protection and identification of, essential fish habitat (EFH). While there has been much outcry that essential fish habitat has been identified too broadly and that EFH consultation processes have resulted in delays, today, the Secretary says we have a few real problems resulting from such designations. As a result, I do not feel it is necessary to significantly modify EFH provisions. Instead, I believe we can improve the current work of NMFS and the Councils to identify EFH, and areas that are the habitat areas of particular concern” (HAPCs). I have added new provisions that would require Councils to protect and identify
HAPCs as part of existing requirements to identify and protect EFH. My bill would clarify that HAPCs are to be identified pursuant to the NMFS EFH guidelines, and that these areas should receive priority identification and protection, so that we are oftentimes the areas that first attract to fisheries to fishing, breeding, and recruiting. It is crucial that we improve our understanding of fisheries, habitat, and my bill would establish an interagency research project on the management of non-fishery impacts to HAPCs.

Finally, Mr. President, I would like to address the issue of individual fishing quotas, which have been the subject of much debate over the past few years. There is a moratorium on these programs in place until September 30, 2006, and we have been getting consideration of this new management tool for too long. We must begin debate and consideration of the panoply of exclusive quota-based programs that have developed over the past several years, which must include adoption of legislative guidance for these programs. For this reason, the bill suggests a set of national criteria that would permit establishment of exclusive quota-based programs. It would establish the basis of quotas, fishing cooperatives, and individual fishing quotas—but still protect the concerns of those who do not wish to employ these tools. I invite all those who are interested in these issues to come in the discussion with me and colleagues and me on the appropriate way to address this national issue as we move forward this session.

I understand the many concerns of small fishermen in New England regarding the use of these tools. First, no region would have to implement an exclusive quota-based program without approval of a 3/5 majority of eligible permit holders through a referendum process. Any exclusive quota-based program developed under my legislation would have to meet a set of national criteria. These national criteria would include provisions specifically aimed at protecting small fishermen in New England specifically to protect small fishermen and crew members; and (4) requiring programs to consider the effects of consolidation of quota shares and establish limits necessary to prevent inequitable concentration of quota share or significant impacts on other fisheries or fishing communities. To respond to the concern that we must ensure quota-based programs meet conservation objectives, the bill would provide a 7-year review of the performance of conservation requirements of the Act.

Finally, any quota-based program would have to have a plan to rationalize the fishery—which in some cases would require a buyout of excess capacity under section 312(b) of the Act.

Mr. President, I believe this legislation provides the funding, tools, and programs to ensure that the important changes made in the 1996 amendments are implemented effectively and improved where necessary. During the last reauthorization, our nation’s fisheries were at a crossroads, and action was needed to address our marine resource management problems, to preserve the way of life of our coastal communities, and to promote the sustainable use and conservation of our marine resources for future generations and for the economic good of the nation. We made changes in 1996 that were good for the environment, good for the fish, and good for the fishermen. We must stay the course, and this bill will help us do just that. In addition to the innovative tools, such as exclusive quota-based programs and the new national observer program, to further advance fisheries management. Mr. President, I remain committed to the goal of establishing scientifically and economically sustainable fisheries, so that fishing will continue to be an important part of the culture of coastal communities as well as the economy of the Nation and Massachusetts.

By Mrs. FEINSTEIN: S. 2975. A bill to limit the administrative expenses and profits of managed care entities to not more than 15 percent of their premium revenues; to the Committee on Finance.

MANAGED CARE HEALTH BENEFITS INTEGRITY ACT OF 2000

Mrs. FEINSTEIN. Mr. President, today, I am introducing the Health Benefits Integrity Act to make sure that most health care dollars that people and employers pay into a managed care health insurance plan get spent on health care and not on overhead. Under my bill, managed care plans would be limited to spending 15 percent of their premium revenues on administration. This means that if they spend 15 percent on administration, they would spend 85 percent of premium revenues on health care benefits or services.

This bill was prompted by study by the Inspector General (IG) for the U.S. Department of Health and Human Services reported under a USA Today headline in February, “Medicare HMOs Hit for Lavish Spending.” The IG reviewed 222 managed care plans that contract with Medicare and found that in 1999 the average amount allocated for administration ranged from a high of 32 percent to a low of three percent. The IG recommended that the Department establish a ceiling on the amount of administrative expenses, and those ceilings would be limited to spending 15 percent of premium revenues. The IG also recommended that the Department establish a ceiling on the amount of administrative expenses, and that ceilings would be limited to spending 15 percent of premium revenues.

The shift from fee-for-service to managed care as a form of health insurance has been rapid in recent years. Nationally, 86 percent of people who have employment-based health insurance (81.3 million Americans) are in some form of managed care. Around 16 percent of Medicare beneficiaries are in managed care nationally (40 percent in California), a figure that doubled between 1997 and 1999. By Congressional Budget Office predicts that 31 percent of Medicare beneficiaries will be in managed care. Between 1997 and 1999, the number of health plans contracting with Medicare went from 161 to 299. As for Medicaid, in 1993, 3.8 million people (14 percent of Medicaid beneficiaries) were in managed care. Today, 16.6 million (54 percent) are in managed care.

In California, the State which pioneered managed care, the nation’s most generous state for beneficiaries, estimated 88 percent of the insured are in some form of managed care. Of the 3.7 million Californians who are in Medicare, 40 percent (1.4 million) are in
managed care, the highest rate in the U.S. As for Medicaid in California, 2.5 million people (50 percent) of beneficiaries are in managed care. And so managed care is growing and most people think it is here to stay.

I am pleased to say that in California we already have a regulation along the lines of the bill I am proposing. We have in place a regulatory limit of 15 percent on commercial HMO plans’ administrative expenses. This was established in my State for commercial plans because of questionable expenses—like those the HHS IG found in Medi-care HMO plans and because prior to the regulation, some plans had administrative expenses as high as 30 percent of premium revenues.

This bill would never begin to address all the problems patients experience with managed care in this country. That is why we also need a strong Patients Bill of Rights bill. I hope, however, this bill will discourage abuses by the HHS Inspector General and will help assure people that their health care dollars are spent on health care and are not wasted on outings, parties, and other activities totally unrelated to providing health care services.

I call on my colleagues to join me in enacting this bill.

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

S. 2976. A bill to amend title XXI of the Social Security Act to allow States to provide health benefits coverage for parents of children eligible for child health assistance under the State children’s health insurance program; to the Committee on Finance.

FAMILY HEALTH INSURANCE PROGRAM ACT OF 2000

Mrs. FEINSTEIN. Mr. President, today, Senators BYRD, BOXER and I are introducing legislation to allow States, at their option, to enroll parents in the State-Children’s Health Insurance Program, known as S–CHIP. This bill could provide insurance to 2.7 million parents nationwide and 356,000 parents in California by using unspent allocations. States will otherwise lose on September 30, 2000. Congress has appropriated a total of $12.9 billion for S–CHIP for fiscal years 1998, 1999, and 2000, or about $4.3 billion for each fiscal year. California received $564.6 million in 1998, $566.1 million in 1999, and $763.5 million in 2000. Right now California stands to lose $588 million just in fiscal year 1998 funds because California has faced many hurdles in enrolling children. That is in part why we are introducing this bill, to increase enrollment of more children and to help states use available S–CHIP funds.

S–CHIP is a low-cost health insurance program for low-income children up to age 19 that Congress created in the Balanced Budget Act of 1997. After three years S–CHIP covers approximately two million children across the country, out of the three to four million children estimated to be eligible.

Congress created it as a way to provide affordable health insurance for uninsured children in families that cannot afford to buy private insurance.

States can choose from three options when designing their S–CHIP program: (1) expansion of their current Medicaid program; (2) creation of a separate State insurance program; or (3) a combination of both approaches. In California, S–CHIP, known as Health Families, is set up as a public-private program rather than a Medicaid expansion. Healthy Families allows California families to use federal and State S–CHIP funds to purchase private managed care insurance for their children. Under the federal law, States generally cover children in families with incomes up to 200 percent of poverty, although States can go higher if their Medicaid eligibility was higher than that when S–CHIP was enacted in 1997. In California, eligibility was raised to 250 percent in November 1999, increasing the number of Californians eligible for Health Families.

Basic benefits in the California S–CHIP program include inpatient and outpatient hospital services, surgical and medical services, lab and x-ray services, and well-baby and well-child care. Additional services which States are encouraged to provide, and which California has elected to provide, are prescription drugs and mental health, vision, hearing, dental, and preventive care services such as prenatal care and routine physical examinations. In California, enrollees pay a $5.00 co-payment per visit which generally applies to inpatient services, selected outpatient services, and various other health care services.

The United States faces a serious health care crisis that continues to grow as more and more people are becoming uninsured. Despite the robust health of the economy, the U.S. has come a long way in the uninsured by nearly five million since 1994. Currently, 44 million people (or 18 percent) of the non-elderly population are uninsured. In California, 23.3 percent, or 7.3 million, are uninsured. One study cited in the May 2000 California Journal found that as many as 2,333 Californians lose health insurance every day. A May 29, 2000 San Jose Mercury article cited California’s emergency room doctors who “estimate that anywhere between three and 50 employers) do not offer health insurance. In fact, forty percent of Californians that are able to purchase mid-priced homes, declined 11 percent from 1999 to 2000. With prices like these, many families are unable to afford health insurance even though they work full-time.

Many low-income people work for employers who do not offer health insurance. In fact, forty percent of California small businesses (those employing between three and 50 employees) do not offer health insurance, according to a Kaiser Family Foundation study in June.

We need to give hard-working, lower income American families affordable, comprehensive health insurance, and this bill does that.

The President has proposed to cover parents under the S–CHIP program. The California Medical Association and Alliance of Catholic Health Care support our bill.

Current law requires States to spend federal S–CHIP dollars within three years of the appropriation. Many States, including California, could lose millions of dollars of unspent federal
Fiscal Year 1998 funds on September 30, 2000. I am working to get an extension of that deadline. In the meantime, we could begin to cover parents while getting that extension and working to increase funds for the program. According to estimates from the Health Care Financing Administration, the following 30 States could lose the following amounts, totaling $1.9 billion. Arizona, California, Georgia, Illinois, Louisiana, Michigan, New Mexico, and Texas stand to lose the most money. These eight States alone would lose $1.4 billion.

<table>
<thead>
<tr>
<th>States</th>
<th>Millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>77.2</td>
</tr>
<tr>
<td>Arkansas</td>
<td>45.4</td>
</tr>
<tr>
<td>California</td>
<td>588.8</td>
</tr>
<tr>
<td>Colorado</td>
<td>12.9</td>
</tr>
<tr>
<td>Connecticut</td>
<td>9.4</td>
</tr>
<tr>
<td>Delaware</td>
<td>3.8</td>
</tr>
<tr>
<td>District of Columbia</td>
<td>2.4</td>
</tr>
<tr>
<td>Florida</td>
<td>41.5</td>
</tr>
<tr>
<td>Georgia</td>
<td>78.1</td>
</tr>
<tr>
<td>Hawaii</td>
<td>8.9</td>
</tr>
<tr>
<td>Idaho</td>
<td>4.1</td>
</tr>
<tr>
<td>Iowa</td>
<td>1.4</td>
</tr>
<tr>
<td>Kansas</td>
<td>1.5</td>
</tr>
<tr>
<td>Louisiana</td>
<td>73.3</td>
</tr>
<tr>
<td>Maryland</td>
<td>26.7</td>
</tr>
<tr>
<td>Michigan</td>
<td>51.4</td>
</tr>
<tr>
<td>Minnesota</td>
<td>28.3</td>
</tr>
<tr>
<td>Montana</td>
<td>1.8</td>
</tr>
<tr>
<td>Nevada</td>
<td>18.6</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>7.5</td>
</tr>
<tr>
<td>New Jersey</td>
<td>7.8</td>
</tr>
<tr>
<td>New Mexico</td>
<td>57.9</td>
</tr>
<tr>
<td>North Dakota</td>
<td>2.9</td>
</tr>
<tr>
<td>Ohio</td>
<td>19.8</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>37.6</td>
</tr>
<tr>
<td>Oregon</td>
<td>18.3</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>0.64</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>4.6</td>
</tr>
<tr>
<td>South Dakota</td>
<td>4.4</td>
</tr>
<tr>
<td>Tennessee</td>
<td>26.4</td>
</tr>
<tr>
<td>Texas</td>
<td>443.6</td>
</tr>
<tr>
<td>Utah</td>
<td>1.7</td>
</tr>
<tr>
<td>Vermont</td>
<td>1.6</td>
</tr>
<tr>
<td>Virginia</td>
<td>38.4</td>
</tr>
<tr>
<td>Washington</td>
<td>45.1</td>
</tr>
<tr>
<td>West Virginia</td>
<td>11.3</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>23.0</td>
</tr>
<tr>
<td>Wyoming</td>
<td>6.9</td>
</tr>
</tbody>
</table>

Our bill would offer another option for States like mine to use these unspent funds. I urge my colleagues to join us in supporting and passing this bill. By giving States the option to cover parents—whole families—we can reduce the number of uninsured with existing funds and encourage the enrollment of more children and we can help keep people healthy by better using this valuable, but currently under-utilized program.

By Mrs. FEINSTEIN:

S. 2977. A bill to establish in the establishment of an interpretive center and museum in the vicinity of the Diamond Valley Lake in southern California to ensure the protection and interpretation of the paleontology discoveries made at the lake and to develop a trail system for the lake for use by pedestrians and nonmotorized vehicles; to the Committee on Energy and Natural Resources.

BILL TO ESTABLISH AN INTERPRETIVE CENTER AROUND DIAMOND VALLEY LAKE

Mrs. FEINSTEIN, Mr. President, I am pleased to introduce a bill today to benefit 17 million citizens of Southern California and visitors from around the country and world through the development of the Western Center for Archaeology and Paleontology. At this center, visitors will be able to marvel at the archaeological and paleontological pasts of the Ice Age up to the European settlement period.

Additionally, visitors will enjoy unprecedented recreational opportunities through an interlinked system of hiking, biking, and equestrian trails wandering through the grasslands, chaparral, and oak groves that surround the reservoir. The total cost of the project is $58 million. The State has agreed to contribute one-quarter of the Metropolitan Water District has agreed to contribute one-quarter, and other local governments will also contribute one-quarter. This bill will authorize the federal government’s share of one-quarter or $14 million. I urge the Senate to adopt this legislation.

By Mr. DASCHLE (for himself, Mr. BINGMAN, Mr. CONRAD, Mr. BAUCUS, Mr. KERREY, Mr. KOHL, Mr. AKAKA, Mr. JOHNSON, Mr. REID, Mr. KENNEDY, and Mr. DODD):

S. 2978. A bill to recruit and retain more qualified individuals to teach in Tribal Colleges or Universities; to the Committee on Indian Affairs.

THE TRIBAL COLLEGE OR UNIVERSITY LOAN FORGIVENESS ACT.

Mr. DASCHLE, Mr. President, our tribal colleges and universities have come to play a critically important role in educating Native Americans across the country. For more than 30 years, these institutions have proven instrumental in providing a quality education for those who had previously been failed by our mainstream educational system. Before the tribal college movement began, only six or seven out of 100 Native American students attended college. Of those few, only one or two would graduate with a degree. Since these institutions have curricula that is culturally relevant and is often focused on a tribe’s particular philosophy, culture, language and economic needs, they have a high success rate in educating Native American people. As a result, I am happy to say that tribal college enrollment has increased 62 percent over the last six years.

The results of a tribal college education are impressive. Recent studies show that 91 percent of 1998 tribal college and university graduates are working or pursuing additional education one year after graduating. Over the last ten years, the unemployment rate of recently polled tribal college graduates was 15 percent, compared to 28 percent on many reservations overall.

While tribal colleges and universities have been highly successful in helping Native Americans obtain a higher education, many challenges remain to ensure the future success of these institutions. These schools rely heavily on federal resources to provide educational opportunities for all students. As a result, I strongly support efforts to provide additional funding to these colleges through the Interior, Agriculture, and Human Resources, and Education Appropriations bills.

In addition to resource constraints, administrators have expressed a particular frustration over the difficulty they experience in attracting qualified individuals to teach at tribal colleges. Geographical isolation and low faculty salaries have made recruitment and retention particularly difficult for many of these schools. This problem is increasing as enrollment rises.

That is why I am introducing the Tribal College or University Loan Forgiveness Act. This legislation will provide loan forgiveness to individuals who commit to teach for up to five years in one of the 32 tribal colleges nationwide. Individuals who have Perkins, Direct, or Guaranteed loans may qualify to receive up to $15,000 in loan forgiveness. This program will provide these schools extra help in attracting qualified teachers, and thus help ensure that deserving students receive a high-quality education.

This measure will benefit individual students and their communities. By providing greater opportunities for Native American students to develop skills and expertise, this bill will spur economic growth and help bring prosperity and self-sufficiency to communities that desperately need it. Native Americans and the tribal college systems deserve nothing less. I believe our responsibility was probably best summed up by one of my state’s greatest leaders, Sitting Bull. He once said, “Let us put our minds together and see what life we can make for our children.”

I am pleased that Senators BINGMAN, CONRAD, BAUCUS, KERREY, KOHL, AKAKA, JOHNSON, REID, KENNEDY, and DODD are original cosponsors of this bill, and I look forward to working with my colleagues to pass this important legislation.

I ask unanimous consent that the text of the Tribal Colleges or University Loan Forgiveness Act be printed in the RECORD following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:
(a) Short Title.—This Act may be cited as the "Tribal College or University Teacher Loan Forgiveness Act".

(b) Loan Forgiveness.—

(1) AMENDMENTS.—Section 465(a) of the Higher Education Act of 1965 (20 U.S.C. 1087eea(a)) is amended—

(A) in paragraph (2)—

(i) in subparagraph (H), by striking ''or'' and inserting ''and'';

(ii) in subparagraph (I), by striking the provision inserted by section 316(b); and

(B) in paragraph (3), by striking ''(2)'' and inserting ''(1)'' and adding at the end the following:

''(J) the year, when applied to employment as a teacher, means an academic year as defined by the Secretary.''

(c) EFFECTIVE DATE.—The amendments made by paragraph (2) shall be effective for service performed during academic year 1998–1999 and succeeding academic years, notwithstanding the provision of the promissory note under which a loan under part E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087ff et seq.) was made.

(d) PERKINS LOANS.—

(1) PROGRAM AUTHORIZED.—The Secretary shall authorize the issuance of a loan under section 316(b) to a borrower on or after the date of enactment of the Tribal College or University Teacher Loan Forgiveness Act, who—

(A) has been employed as a full-time teacher at a Tribal College or University as defined in section 316(b); and

(B) is not in default on a loan for which the borrower seeks repayment or cancellation.

(2) QUALIFIED LOAN AMOUNTS.—

(A) PERCENTAGES.—Subject to paragraph (2), the Secretary shall authorize the obligation to repay a qualified loan amount, in accordance with subsection (b), for any new borrower on or after the date of enactment of the Tribal College or University Teacher Loan Forgiveness Act, who—

(i) has been employed as a full-time teacher at a Tribal College or University as defined in section 316(b); and

(ii) is not in default on a loan for which the borrower seeks repayment or cancellation.

(B) 20 percent of such total amount, for employment as a teacher, means an academic year as defined by the Secretary.

(3) TREATMENT OF CONSOLIDATION LOANS.—A loan amount for a loan made under section 428C may be a qualified loan amount for the purposes of this subsection only to the extent that such loan amount was used to repay loans made, insured, or guaranteed under part B or D for a borrower who meets the requirements of subsection (a), as determined in accordance with regulations prescribed by the Secretary.

(c) REGULATIONS.—The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this section.

(d) CONSTRUCTION.—Nothing in this section shall be construed to authorize any refunding of any loan.

(e) PREVENTION OF DOUBLE BENEFITS.—No borrower may, for the same service, receive a benefit under this paragraph or subsection (d) of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq.).

(f) DEFINITION.—For purposes of this section, the term "employment as a teacher" means an academic year as defined by the Secretary.

By Mr. GRAHAM (for himself and Mr. MACK):

S. 2979. A bill to amend the Internal Revenue Code of 1986 to clarify the status of professional employer organizations and to promote and protect the interests of professional employer organizations, their customers, and workers; to the Committee on Finance.

PROFESSIONAL EMPLOYER ORGANIZATION WORKERS BENEFITS ACT OF 2000

Mr. GRAHAM. Mr. President, today along with my Finance Committee colleague, Senator MACK, I am introducing the Professional Employer Organization Workers Benefits Act of 2000. This legislation will expand retirement and health benefits for workers at small and medium-sized businesses in this country.

The bill makes it easier for certified professional employer organizations (PEO's) to assist small and medium-sized businesses in complying with the many responsibilities of being an employer. It permits PEO's to collect Federal employment taxes on behalf of the employer and provide benefits to the small business' workers. For many of these workers, the pension, health and other benefits that a PEO provides would not be available from the small business itself because they are too costly for the small business to provide on its own. The average client of a PEO is a small business with 18 workers and an average worker. PEO's have the expertise and can take advantage of economies of scale to provide health and retirement benefits in an affordable and efficient manner.

A recent Dunn & Bradstreet survey of small businesses found that only 39 percent offered health care and just 19 percent offer retirement plans. We must take every opportunity to assist these small businesses in providing retirement and health benefits to their employees. Some creative way to bridge the gap between what workers need and what small businesses can afford to provide. In fact, one analyst at Alex. Brown & Sons estimates that 40 percent of companies in a PEO coemployment relationship upgrade their total employee benefits package as a result of the partnership with the PEO. Twenty-five percent of those companies offer health and other benefits for the first time.

Over the past few years, small and medium-sized businesses have sought out the services offered by PEO's. In response, many states have created programs to recognize, license and regulate PEO's to ensure that a viable industry could grow. Unfortunately, federal law has not kept pace. Current rules for who can collect employment taxes and provide benefits do not fit with the PEO model. Under some interpretations, PEO's would be prohibited from performing the very services that small businesses are asking them to undertake.

This legislation clarifies the tax laws to make it clear that PEO's meeting certain standards will be able to assist small businesses in providing employee benefits and collecting Federal employment taxes. This bill is a narrower version of a provision that was included in the pension legislation I sponsored in the last Congress. This new bill incorporates comments we received from interested parties over the course of the past year, including those received from the Treasury and Labor Departments. As a result the bill we are introducing today is much improved from previous versions.

In addition, I would like to make clear what this bill does not do. Unlike some versions, this bill applies only to PEO's, and not to temporary staffing agencies. Further, this bill applies only to the two specific areas of tax law—employment taxes and employee benefits. It does not affect any other law nor does it affect the determination of who is the employer for any other purpose. The bill specifically provides that it creates no inferences that the small business is the employer for any other purpose. The bill specifically provides that it creates no inferences that the small business is the employer for any other purpose. The bill specifically provides that it creates no inferences that the small business is the employer for any other purpose. The bill specifically provides that it creates no inferences that the small business is the employer for any other purpose.

With this narrower focus, this legislation can be considered on its own merits, without getting bogged down in larger disputes involving contingent workforces and independent contractors. Those issues are important ones that Congress may want to examine, but we should not allow them to delay resolution of the unrelated PEO issues addressed by this bill.

I look forward to working with Senator MACK, my other colleagues on the Finance Committee, and the administration to move this bill during the 106th Congress so that we can help small and medium-sized businesses operate more efficiently while at the same time expanding the benefits available to their workers.

Mr. President, I ask unanimous consent that the following explanation of professional employer organizations be included in the Record.

"The bill would amend the Internal Revenue Code of 1986 to clarify the treatment of certified professional employer organizations—called Certified Professional Employer Organizations (CPEOs)—for employee benefit and employment tax purposes. Generally, the bill provides that an entity that meets certain requirements may be certified as a CPEO by the Internal Revenue Service (IRS) and will be allowed (1) to take responsibility for employment taxes with respect to employees of an unrelated client and (2) to provide such workers with employee benefits..."
under a single employer plan maintained by the CPEO.

While the legislation will allow the CPEO to take responsibility for certain functions, the bill expressly states (1) that it does not override the common law determination of an individual’s employer and (2) that it will not affect the determination of who is a common law employer. An individual who is an employer under other provisions of law (including the characterization of an arrangement as a MWEA under ERISA), Status as a common law employer under other laws is not determinative; this exception would not be a factor in determining employment status under current rules.

CERTIFICATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS

In order to be certified as a CPEO, an entity must demonstrate to the IRS by written application that it meets (or, if applicable, will meet) certain requirements. Generally, the requirements for certification will be developed by the IRS using the ERO (electronic return originator) program and the requirements to practice before the IRS (as described in Circular 230) as a model. Standards will include review of the experience of the PEO and issuance of an opinion by a certified public accountant on the PEO financial statements. To be certified, the applicant must demonstrate to the IRS by written application that it meets (or, if applicable, will meet) certain requirements.

The CPEO must notify the IRS in writing of any change that affects the continuing accuracy of any representation made in the initial certification request. In addition, after initial certification, the CPEO must continue to file copies of its audited financial statements with the IRS by the last day of the sixth month following the end of the fiscal year. Procedures would be established for suspending or revoking CPEO status (similar to the procedures the IRS uses for revoking ERO status). There would be a right to administrative appeal from an IRS denial, suspension, or revocation or certification.

CPEO RELATIONSHIP WITH PARTICULAR WORKERS

After certification, a CPEO will be allowed to take responsibility for employment taxes and to provide employee benefits to “worksites employees.” A worker who performs services at a client’s worksite is a “worksites employee” if the worker (and at least 85% of the individuals working at the worksite) are subject to a written contract that expressly states (1) that it does not override the common law determination of who is an employer under other provisions of law (including the characterization of an arrangement as a MWEA under ERISA), Status as a common law employer under other laws is not determinative; this exception would not be a factor in determining employment status under current rules.

While the determination of whether non-contiguous locations are reasonably proximate is a facts and circumstances determination, certain situations will be deemed not to be reasonably proximate. If the worksite is separated from all other client worksites by at least 35 miles, it will not be considered reasonably proximate. Thus, a client (or any member of its controlled group) that maintains two worksites that are more than 35 miles apart could treat the worksites as separate for purposes of applying the 85% test. Similarly, a worksite will not be considered reasonably proximate to another if the worksite operates in a different business but receives work from other worksites within the 35-mile radius pursuant to standards similar to those established in Revenue Procedure 91-64 (relating to industry classification). Thus, a client that maintained a restaurant and a hardware store in the same town could treat them as separate worksites because they are in different industries, based on all the facts and circumstances, under rules prescribed by the IRS, a worksite would not be reasonably proximate if it operates independently for any reason (that is unrelated to employment taxes and employee benefits). For example, a convenience store and a restaurant which have no supervisory personnel in common but which are under common ownership control could, under rules prescribed by the IRS, be treated as different worksites. Similarly, two non-contiguous wholesale and retail operations as different worksites. Similarly, two non-contiguous wholesale and retail operations (that is unrelated to employment taxes and employee benefits) could be reasonably proximate if it operates independently for any reason. For example, a client which maintains two retail stores would be treated as separate worksites because they are not under common ownership control and sold different products. The CPEO employee benefit plans.

To the extent consistent with the Internal Revenue Code (and corresponding provisions of other federal laws), the CPEO may generally provide worksite employees with most types of retirement plans. The CPEO may also provide a plan covering employees at a worksite for which the client is a single employer for testing purposes. The CPEO may be required to offer a plan covering nonworksite employees, (2) to the extent such plan covers worksite employees of the same client, or (4) to other plans maintained by members of the CPEO’s controlled group.

The legislation also treats any worksite employees as “per se” leased employees of the client, thus requiring clients to include all worksite employees in plan testing. In accordance with current leased employee rules, the client would take into account CPEO plan contributions on behalf of worksite employees. Consistent with this treatment of worksite employees, the client would be permitted to combine the worksite employees’ employee benefit plan maintained by the CPEO with the plan maintained by the CPEO, or the extent such plan covers worksite employees of the same client, or (4) to other plans maintained by members of the CPEO’s controlled group.

CPEO EMPLOYEE BENEFIT PLANS

For purposes of Internal Revenue Code (and corresponding provisions of other federal laws) that reference the size of the employer or number of employees, the CPEO will generally be applied based on the size or number of employees and worksite employees of the CPEO. For purposes of COBRA, the CPEO will be treated as a single employer even if the client is not a qualified employer under those rules. Similarly, a CPEO welfare benefit plan will be treated as a single employer plan for purposes of Internal Revenue Code section 4980B(a) and COBRA requirements are met at the CPEO level. However, a client which could meet the size requirements for eligibility for an MSA or a SIMPLE plan could contribute to such an arrangement maintained by the CPEO. Nondiscrimination Testing.—The legislation provides that clients will not generally receive significantly better or worse treatment with respect to coverage, nondiscrimination or other Internal Revenue Code rules that would apply to an arrangement maintained by the CPEO.

The portion of the CPEO plan covering worksite employees with respect to a client will generally cover worksite employees at a client’s location and all other nonexcludable employees of the client taking into account section 414(b), (c), (m), (n) (with respect to any employees classified as worksite employees) and (o), but one client’s worksite employees would not be included in applying the coverage or other nondiscrimination provisions. The CPEO plan covering worksite employees of other clients, (2) to the portion of the CPEO plan covering nonworksite employees, (3) to other plans maintained by the CPEO (except to the extent such plan covers worksite employees of the same client), or (4) to other plans maintained by members of the CPEO’s controlled group.

The legislation also treats any worksite employees as “per se” leased employees of the client, thus requiring clients to include all worksite employees in plan testing. In accordance with current leased employee rules, the client would take into account CPEO plan contributions on behalf of worksite employees. Consistent with this treatment of worksite employees, the client would be permitted to combine the worksite employees’ employee benefit plan maintained by the CPEO with the plan maintained by the CPEO, or the extent such plan covers worksite employees of the same client, or (4) to other plans maintained by members of the CPEO’s controlled group.

The legislation also treats any worksite employees as “per se” leased employees of the client, thus requiring clients to include all worksite employees in plan testing. In accordance with current leased employee rules, the client would take into account CPEO plan contributions on behalf of worksite employees. Consistent with this treatment of worksite employees, the client would be permitted to combine the worksite employees’ employee benefit plan maintained by the CPEO with the plan maintained by the CPEO, or the extent such plan covers worksite employees of the same client, or (4) to other plans maintained by members of the CPEO’s controlled group.

The legislation also treats any worksite employees as “per se” leased employees of the client, thus requiring clients to include all worksite employees in plan testing. In accordance with current leased employee rules, the client would take into account CPEO plan contributions on behalf of worksite employees. Consistent with this treatment of worksite employees, the client would be permitted to combine the worksite employees’ employee benefit plan maintained by the CPEO with the plan maintained by the CPEO, or the extent such plan covers worksite employees of the same client, or (4) to other plans maintained by members of the CPEO’s controlled group.

The legislation also treats any worksite employees as “per se” leased employees of the client, thus requiring clients to include all worksite employees in plan testing. In accordance with current leased employee rules, the client would take into account CPEO plan contributions on behalf of worksite employees. Consistent with this treatment of worksite employees, the client would be permitted to combine the worksite employees’ employee benefit plan maintained by the CPEO with the plan maintained by the CPEO, or the extent such plan covers worksite employees of the same client, or (4) to other plans maintained by members of the CPEO’s controlled group.

The legislation also treats any worksite employees as “per se” leased employees of the client, thus requiring clients to include all worksite employees in plan testing. In accordance with current leased employee rules, the client would take into account CPEO plan contributions on behalf of worksite employees. Consistent with this treatment of worksite employees, the client would be permitted to combine the worksite employees’ employee benefit plan maintained by the CPEO with the plan maintained by the CPEO, or the extent such plan covers worksite employees of the same client, or (4) to other plans maintained by members of the CPEO’s controlled group.

The legislation also treats any worksite employees as “per se” leased employees of the client, thus requiring clients to include all worksite employees in plan testing. In accordance with current leased employee rules, the client would take into account CPEO plan contributions on behalf of worksite employees. Consistent with this treatment of worksite employees, the client would be permitted to combine the worksite employees’ employee benefit plan maintained by the CPEO with the plan maintained by the CPEO, or the extent such plan covers worksite employees of the same client, or (4) to other plans maintained by members of the CPEO’s controlled group.

The legislation also treats any worksite employees as “per se” leased employees of the client, thus requiring clients to include all worksite employees in plan testing. In accordance with current leased employee rules, the client would take into account CPEO plan contributions on behalf of worksite employees. Consistent with this treatment of worksite employees, the client would be permitted to combine the worksite employees’ employee benefit plan maintained by the CPEO with the plan maintained by the CPEO, or the extent such plan covers worksite employees of the same client, or (4) to other plans maintained by members of the CPEO’s controlled group.

The legislation also treats any worksite employees as “per se” leased employees of the client, thus requiring clients to include all worksite employees in plan testing. In accordance with current leased employee rules, the client would take into account CPEO plan contributions on behalf of worksite employees. Consistent with this treatment of worksite employees, the client would be permitted to combine the worksite employees’ employee benefit plan maintained by the CPEO with the plan maintained by the CPEO, or the extent such plan covers worksite employees of the same client, or (4) to other plans maintained by members of the CPEO’s controlled group.

The legislation also treats any worksite employees as “per se” leased employees of the client, thus requiring clients to include all worksite employees in plan testing. In accordance with current leased employee rules, the client would take into account CPEO plan contributions on behalf of worksite employees. Consistent with this treatment of worksite employees, the client would be permitted to combine the worksite employees’ employee benefit plan maintained by the CPEO with the plan maintained by the CPEO, or the extent such plan covers worksite employees of the same client, or (4) to other plans maintained by members of the CPEO’s controlled group.

The legislation also treats any worksite employees as “per se” leased employees of the client, thus requiring clients to include all worksite employees in plan testing. In accordance with current leased employee rules, the client would take into account CPEO plan contributions on behalf of worksite employees. Consistent with this treatment of worksite employees, the client would be permitted to combine the worksite employees’ employee benefit plan maintained by the CPEO with the plan maintained by the CPEO, or the extent such plan covers worksite employees of the same client, or (4) to other plans maintained by members of the CPEO’s controlled group.
be included in applying the nondiscrimination rules to any plans maintained by the CPEO or members of its controlled group).

In applying nondiscrimination rules to plans maintained by other entities within the CPEO’s controlled group for workers who are not worksite employees, worksite employees, or both, the requirements discussed above, in the example above, worksite employees performing services for Corporation X or Corporation Y would not be taken into account. All employees maintained by other members of the CPEO’s controlled group.

For purposes of testing a particular client’s portion of the plan under the rules above, generically applicable to that client, the plan would as if the client maintained that portion of the plan. Thus, if the terms of the benefits available to the client’s worksite employees are satisfied on a plan provided on a plan under section 401(k) testing safe harbor, then that client could take advantage of the safe harbor. Similarly, a client that meets the eligibility criteria for a SIMPLE 401(k) plan would be allowed to utilize the SIMPLE rules to demonstrate compliance with the applicable nondiscrimination rules for that client.

Application of other qualified plan and welfare benefit plan rules generally will be determined based on the CPEO group. In cases where a client relationship the assets attributed to the client’s portion of the plan under the rules to any plans maintained by the CPEO or members of its controlled group.

An entity designated as a CPEO must accept responsibility for employment taxes with respect to wages the plan to satisfy applicable nondiscrimination requirements with respect to that client will be treated as one plan as applied to other clients. Existing government programs for correcting violations would be available to the CPEO for the plan and, in the event of correction failures tested at the client level, to the client portion of the plan with the fee to be based on the size of the affected client’s portion of the plan. Moreover, the CPEO plan will be treated as a single employer plan for purposes of obtaining a determination letter.

**EMPLOYMENT TAX LIABILITY**

An entity designated as a CPEO must accept responsibility for employment taxes with respect to wages it pays to worksite employees performing services for clients. Such liability will be exclusive or primary, as provided above. It is expected that the CPEO would (as provided by the Secretary) be required, on an ongoing basis, to provide the IRS with a list of clients for which employment tax liability has been assumed and a list of clients for whom it no longer has employment tax liability. Reporting and remittance applicable to the CPEO (as provided by the Secretary). In addition, the remittance frequency of employment taxes will be determined with reference to collections and the liability of the CPEO.

Wages paid by the client during the calendar year prior to the assumption of employment tax liability would be counted toward the applicable FICA or FUTA tax wage base for the year in determining the employment tax liability of the CPEO (and vice versa). Exceptions to payments as wages or activities as employment with respect to the required payment of employment taxes, are determined by reference to the client. Also, for purposes of crediting state unemployment insurance (SUI) taxes against FUTA tax liability, payments by the CPEO (or transmitted by the CPEO for the client) with respect to worksite employees would be taken into account. Thus, in determining FUTA liability, CPEO’s would be treated as the employer for crediting SUI collection purposes on essentially the same terms as they would be authorized to self withholding, FICA and FUTA. The bill is, however, limited to Federal law and does not address the issue of whether a CPEO (i) would be eligible for SUI credits for collection or (ii) how the state experience rating formula would be applied to the CPEO. Determinations with respect to these issues will be made pursuant to state law.

A CPEO will have exclusive liability for employment taxes with respect to wages paid by the client (including owners of the client who are worksite employees) if the CPEO meets the net worth requirement and, at least semiannually, any examination level attestation from an independent certified public accountant that states that the accountant has found no material misstatement with respect to a particular customer in cases where there is an undue and large risk with respect to the ultimate collection of taxes.

For any tax period for which any of these criteria for exclusive liability for employment taxes are not satisfied, or to the extent the client has not made adequate payments to the CPEO for the payment of wages, taxes, and benefits, the CPEO will have primary liability and the client will have secondary liability with respect to employment taxes. In that instance, the IRS will assess and attempt to collect unpaid employment taxes against the CPEO first and may not generally take any action against a client with respect to liability for employment taxes until at least 45 days following the date the IRS mails a notice and demand to the CPEO. For this purpose, the statute of limitations for assessment or collection against the client will not expire until one year after the date a notice and demand to the CPEO (in the same manner as transferee liability under section 6901(c)) is served on the CPEO. With respect to employment taxes withheld by the CPEO, the client will be liable to the IRS for taxes, penalties (applicable to client actions or to the time periods after assessment) to the client but not to the CPEO. With respect to employment taxes withheld by the CPEO, the client will have secure or not to a particular customer. In cases where there is an undue and large risk with respect to the ultimate collection of taxes. These provisions will be effective on January 1, 2002. The IRS will be directed to establish the PEO certification program at least three years after the enactment of this legislation. The bill directs the IRS to accommodate transfers of assets in existing plans maintained by a CPEO or PEO clients into a new plan (or annuity) under the requirements of the legislation (e.g., client-by-client nondiscrimination testing) without regard to whether or not such plans might fail the exclusion. The client’s fiduciaries may be considered common law employees of the client.

Mr. THOMAS. Mr. President, I rise today to join my colleagues in introducing the ‘‘Personal Health Care in the 21st Century Act.’’ I am pleased to have worked with my colleagues in crafting this bill that will address the
needs of rural providers and beneficiaries as we begin the new century.

This legislation establishes a grant and loan program to assist rural providers in acquiring the necessary technologies to improve patient safety and meet the changing record-keeping requirements. Rural hospitals and other providers do not have the capital needed to purchase these expensive technologies nor the resources to train their staff. This new program will enable the otherwise underserved to purchase such crucial equipment as patient tracking systems, bar code systems to avoid drug errors and software equipped with artificial intelligence.

Another reason this legislation is so important is because it will bring equity to the Medicare Disproportionate Share Hospital (DSH) program, which has been inherently biased against rural providers since it was implemented in 1986. The premise of this program is to give hospitals that provide a substantial amount of care to income patients additional funding to assist with the higher costs associated with caring for this population.

Mr. President, the current DSH program does almost nothing for rural hospitals. Different eligibility requirements have been established for rural and urban providers. To qualify for the increased payments the DSH program provides, urban hospitals are required to demonstrate that 15 percent of their patient load consists of Medicaid patients and Medicare patients eligible for Supplemental Security Income. However, rural hospitals must meet a higher threshold of 45 percent. Mr. President, there is no justification for this iniquity. Our bill will level the playing field by applying the same eligibility threshold currently enjoyed by urban hospitals to all rural hospitals as well. According to the Medicare Payment Advisory Commission, the DSH program will open the doors to 55 percent of all rural hospitals to benefit from the DSH program—a significant increase over the 15.6 percent of rural hospitals currently participating.

The "Rural Health Care in the 21st Century Act" also addresses other inequities faced by rural providers because federal regulators do not adequately reflect the unique circumstances of delivering health care in rural America. This bill provides rural hospitals with a 10 percent bonus payment as they have average per episode costs that are 20 percent higher than urban agencies.

Rural Health Clinics and Critical Access Hospitals are a key component of maintaining a health care delivery system and emergency services in rural communities. This legislation makes modifications to the Balanced Budget Act to ensure these providers will continue to be an integral part of the rural health care system.

Mr. President, I believe this bill is an important step in ensuring rural providers are treated equally under federal programs. This equalization must be accomplished so we can guarantee that rural Medicare beneficiaries have the same choices and access to services as their urban counterparts.

By Mr. BROWNBACK (for himself, Mr. DASCHLE, Mr. DEWINE, Mr. KERREY, Mr. GRASSLEY, Mr. BYRD, and Mr. LUGAR):

S. 2982. A bill to enhance international conservation, to promote the role of carbon sequestration as a means of slowing the building of greenhouse gases in the atmosphere, and to reward and encourage voluntary, pro-active environmental efforts on the issue of global climate change; to the Committee on Finance.

INTERNATIONAL CARBON SEQUESTRATION INCENTIVE ACT

Mr. BROWNBACK. Mr. President, I rise today to introduce the International Carbon Sequestration Incentive Act, which I have joined by Senators DASCHLE, DEWINE, KERREY, GRASSLEY and BYRD.

Environmental issues have traditionally been filled with controversy—pitting beneficial environmental measures against hard-working small business owners and their interests. It is unfortunate that the atmosphere surrounding environmental debate is filled with accusations of blame rather than basic problem-solving.

From listening to the public discourse surrounding environmental issues, one would think there is no other choice but to handicap our booming economy in order to have a clean environment, despite the fact that pollution is often, unfortunately, an unavoidable consequence of meeting public needs.

Mr. President, I stand here today to illustrate that there is a better way to deal with important environmental concerns. There is a way to encourage the most efficient and productive industries, protecting the worst. There is a way to create environmental incentives and environmental markets, rather than only environmental regulations. There is a way to chip away at environmental challenges, rather than demonizing an "all or nothing" stance.

This bill—the International Carbon Sequestration Incentive Act, takes a pro-active, incentive-driven approach to one of the most difficult environmental issues of our time—global climate change.

Specifically, this bill provides investment tax credits for groups who invest in international carbon sequestration projects—including investments which prevent deforestation and protect forest resources in developing countries. These projects will reduce the amount of carbon dioxide emitted into the air—helping to offset climate change since carbon dioxide is one of the main greenhouse gases.

This bill achieves these environmental benefits by promoting carbon sequestration—the process of converting carbon dioxide in the atmosphere into carbon which is stored in plants, trees and soils.

Under this bill, eligible projects can receive funding at a rate of $2.50 per ton of carbon stored or sequestered—up to 50% of the total project costs. The minimum length of these projects is 30 years and the Implementing Panel can only approve $200 million in tax credits each year.

Why do this? Carbon dioxide is a greenhouse gas that contributes to global warming. While there is debate over the role in which human activity plays in speedup the warming process, there is broad consensus that there are increased carbon levels in the atmosphere today.

Until now, the only real approach seriously considered to address climate change was an international treaty which calls for emission limits on carbon dioxide—which would mean limiting the amount of pollution an industry can emit. This treaty—the Kyoto treaty, also favored exempting developing nations from emission limits—putting the U.S. economy at a distinct disadvantage. Approaching the issue of climate change in this fashion would be very costly and would not respond to the global nature of this problem.

Instead, my approach encourages offsetting greenhouse gases through improved land management and conservation—and by engaging developing nations rather than cutting them out of the process.

In addition to reducing greenhouse gas emissions, sponsored projects under this bill will also help to preserve the irreplaceable biodiversity that flourishes in the Earth's tropical rain forests and other sensitive eco-systems. In addition to diverse plant life, these projects will benefit countless endangered and rare species.

This bill requires investors to work closely with foreign governments, nongovernmental organizations and indigenous peoples to find the capital necessary to set aside as much as the last great resources of the planet. Rain forests have been called the lungs of the Earth—helping to filter out pollution and provide sanctuary for numerous pharmaceutical finds which may one day cure many of our human diseases.

This bill rewards the partnership and pro-active vision of companies that want to be part of the solution to climate change. We are lucky in the fact that the U.S. auto industry is already looking at this issue and working to find a way to contribute. An example of what this bill would promote can be seen by looking at the Noel Kempf Mercado National Park in Bolivia.

By looking at these photos [DISPLAY FOREST SCENES], Noel Kempf is a beautiful, biodiverse part of the world. This park spans nearly 4 million acres in Bolivia, hosts several hundred species of rare and endangered wildlife—including 130 species of mammals, 620 species of birds and 70 species of reptiles—not to mention 110 different species of orchids and grasses.
This park was in direct danger of deforestation. The land would have been cleared and eventually turned into large commercial farming operations. The loss of this park would have led to carbon dioxide emissions of between 25-36 million tons as well as increased commercial agricultural competition.

Instead, the Bolivian government came together with The Nature Conservancy, American Electric Power and other investors to preserve the park and conduct extensive verification of the carbon stored in trees and soils of the now protected area.

Companies like American Electric Power, BP Amoco and Pacificorp want to invest in projects like Noel Kempff because they want to promote the role of carbon sequestration as a means to combat climate change. These companies have taken a big step in contributing to the solution—think how much more good they, and other companies, could do if there were incentives to encourage this activity.

In the U.S., we are lucky enough to have programs like the Conservation Reserve Program and federal parks—which help preserve some of the natural resources of this great nation. Unfortunately, many countries do not have access to the kind of capital it takes to make similar investments in their own countries. It is therefore, a worthy investment in the world environment—since climate change is a global problem, to chip away at this problem by doing what we know helps reduce pollution and greenhouse gases: planting and preserving trees.

This bill is designed to encourage more participation in projects like the Noel Kempff Park. By using limited and very targeted tax credits, we have an opportunity as a nation—to take a leadership role on climate change without crushing our own economy. This bill also furthers the goal of including the United States in the efforts to stabilize the climate. Since climate change is a global problem, to chip away at this problem by doing what we know helps reduce pollution and greenhouse gases: planting and preserving trees.

Mr. President, I do not pretend that this bill will resolve the climate change issue. That is not my intent. Rather, this bill takes the view that good can be done where we do agree that good can be achieved—we should move forward. It is my hope that this bill will contribute to the solution on climate change and help pave the way we view environmental problems.

By Mr. AKAKA (for himself and Mr. INOUYE):
S. 2963. A bill to provide for the return of land to the Government of Guam, and for other purposes; to the Committee on Energy and Natural Resources.

THE GUAM OMNIBUS OPPORTUNITIES ACT

Mr. AKAKA. Mr. President, I rise to introduce the Guam Omnibus Opportunities Act, which seeks to address important issues to the people of Guam dealing with land, economic develop-
claims by U.S. citizens against Japan. As a consequence, the U.S. inherited these claims, which was acknowledged by Secretary of State John Foster Dulles when the issue was raised during consideration of the treaty before the Committee on Foreign Relations in 1952.

Considerable historical information indicates that the United States intended to remedy the issue of war reparation for the people of Guam. In 1945, the Guam Moritorious Claims Act was enacted which authorized the Navy to adjudicate and settle war claims in Guam. Under property damage for a period of one year. Claims in excess of $5,000 for personal injury or death were to be forwarded to Congress. Unfortunately, the Act never fulfilled its intended purposes due to the limited time frame for claims and the preoccupation of the local population with recovery from the war, resettlement of their homes, and rebuilding their lives.

On March 25, 1947, the Hopkins Commission, a civilian commission appointed by the Navy Secretary, issued a report which recommended the enactment of the Guam Moritorious Claims Act and recommended that the Act be amended to provide on the spot settlement and payment of all claims, both property and for the death and personal injury.

Despite the recommendations of the Hopkins Commission, the U.S. government failed to remedy the flaws of the Guam Moritorious Act when it enacted the War Claims Act of 1948, legislation which provided compensations for U.S. citizens who were victims of the Japanese war effort during World War II. Guamanians were U.S. nationals at the time of the enactment of the War Claims Act, thereby making them ineligible for compensation. In 1950, with the enactment of the Organic Act of Guam, Guamanians became U.S. citizens.

In 1962, Congress again attempted to address the remaining circumstances of U.S. citizens and nationals that had not received reparations from previous enacted laws. Once again, however, the Guamanians were inadvertently made ineligible because policymakers assumed that the War Claims Act of 1948 included them. Section 6 brings closure to this longstanding issue.

In summary, Mr. President, the Guam Omnibus Opportunities Act will go a long way toward resolving issues that the Federal Government has been working on with the Government of Guam on economic development and social issues. I look forward to working with my colleagues in the Senate to resolve these issues to assist Guam in achieving greater economic self-sufficiency.

By Mr. CONRAD:

S. 2984. A bill to amend the Internal Revenue Code of 1986 and to provide a refundable caregivers tax credit, to the Committee on Finance.

LONG-TERM CAREGIVERS ASSISTANCE ACT OF 2000

Mr. CONRAD. Mr. President, today I am introducing the Long-Term Caregivers Assistance Act of 2000, a proposal that will provide much needed assistance to individuals with long-term care needs and their caregivers.

Nationwide, more than 8 million individuals require some level of assistance with activities of daily living. Over the next 30 years, this number is expected to increase significantly as our nation experiences an unprecedented growth in its elderly population.

We know that for many people living on homes to obtain care is not their first choice, and the cost of nursing home care can be prohibitive, and such care often takes individuals away from their communities. While federal support for long-term care is primarily spent on nursing home services, many people receive assistance with their long-term care needs in the home from their families, often without the help of public assistance or private insurance.

Nationwide, nearly 37 million individuals provide unpaid care to family members of all ages with functional or cognitive impairments. In my state, there are about 61,000 individuals providing informal caregiving services.

Unfortunately, the need for long-term care can cause substantial financial burdens on individuals and their families. According to a recent study, almost two-thirds of those serving as caregivers suffer financial setbacks—either loss of their jobs or thousands of dollars in lost wages and other benefits over a caregiver's lifetime. This is a burden that caregivers and their families should not have to bear alone.

For this reason, I am introducing this proposal to provide a $2,000 tax credit that could be used by individuals with substantial care needs or by their caregivers.

Taxpayers who have long-term care needs, or who care for others with such needs, may not have the same ability to pay taxes as other taxpayers—a reasonable and legitimate concern in a tax system based on the principle of ability-to-pay. Providing a tax credit is an equitable and efficient way of helping caregivers and individuals with long-term care needs meet their formal and informal costs.

I recognize that this tax credit is only a piece of the long-term care puzzle—but I believe that it is an important piece. This credit could be used to help pay for prescription drugs or other out-of-pocket expenses. It could be used to pay for some formal home care services. It could also be used to help families with some of the expenses they incur in caregiving.

We must act now to address the long-term care needs of our nation. I urge my colleagues to support this important legislation.

By Mr. DURBIN (for himself and Mr. KENNEDY):

S. 2985. A bill to amend the Agricultural Trade Act of 1978 to authorize the Commodity Credit Corporation to reallocate certain unobligated funds from the export enhancement program to other agricultural trade development programs; to the Committee on Finance.

PROVIDING SCHOOL LUNCHES TO HUNGRY CHILDREN—THE AGRICULTURAL FLEXIBILITY IN EXPORT DEVELOPMENT AND ASSISTANCE ACT OF 2000

Mr. DURBIN. Mr. President, if you had happened to be in the Senate Dining Room a few months ago, you might have seen a group of people having lunch and wondered what in the world would gather them. It was George McGovern, Senators Bob Dole and TED KENNEDY, Agriculture Secretary Dan Glickman, Congressmen Jim McGovern and TONY HALL and myself all at one table.

The answer to your question is that we were working together on a bipartisan initiative that could have a positive impact on children around the world and be of great benefit to America's farmers.

Former Senator and now Ambassador McGovern has advocated an idea to emulate one of the most beneficial programs ever launched on behalf of children in this country—the school lunch program.

He has worked with Senator Dole and others to establish an international school lunch program and President Clinton has jump-started this proposal with his announcement that the United States would provide food surpluses for the initiative.

Today, I am introducing legislation to provide a long-term funding source for international school feeding programs that will allow such programs to expand and reach more kids.

Today there are more than 300 million children throughout the world—more kids than the entire population of the United States—who go through the day and then to bed hungry. Some 130 million of these kids don't go to school right now, mainly because their parents need them to stay at home or work to pitch in any way that they can.

In January of this year, I traveled to sub-Saharan Africa, the epicenter of the AIDS crisis, with more than two-thirds of AIDS cases worldwide. There I saw first-hand the horrible impact AIDS is having on that continent. I met a woman in the town of Nalongo Nassozi, who is a 63-year-old widow.

All of her children died from AIDS and she has created an "orphanage" with 16 of her grandchildren now living in her home. People like Mary need our help to keep these kids in school.

Linking education and nutrition is not a new idea. Private voluntary organizations like CARE, Catholic Relief Services, ADRA, World Vision, Save the Children and Food for the Hungry are already helping kids with education, mother-child nutrition programs and school feeding programs.
These organizations and the World Food Program operate programs in more than 90 countries at this time, but typically can only target the poorest children in the poorest districts of the country.

Senator McGovern, Senator Dole, myself and others have called for an expanded effort, and as I noted earlier, President Clinton has responded. I applaud the President for the program he announced last Sunday in Okinawa. This initiative is expected to help serve a solid, nutritious meal to nine million children every day they go to school.

Think about it: for only 10 cents a day for each meal, we can feed a hungry child and help that child learn. With what you or I pay for a Big Mac, fries and a soft drink, we could afford to feed two classrooms of kids in Ghana or Nepal.

**The Benefits of School Feeding Programs**

While we need to consider the costs of any international school feeding program, I think we should also look at the benefits.

Malnourished children find it difficult to concentrate and make poor students. But these school feeding programs help concentration, they have many benefits, including increased attendance rates and more years of school attendance, improved girls’ enrollment rates, improved academic performance, lower malnutrition rates, later attention spans and later ages for marriage and childbirth.

These benefits ripple in many directions: higher education levels for girls and later marriage for women help slow population growth; greater educational levels overall help spur economic development; and giving needy children a meal at school could also help blunt the terrible impact AIDS is having throughout Africa, where there are more than 10 million AIDS orphans who no longer have parents to feed and care for them.

**Domestic Benefits**

Some will question our involvement in overseas feeding programs, so let me describe what we’re doing at home and how we benefit from these efforts.

This year, we’re spending more than $20 billion in our food stamp program. More than half of this amount goes to kids. We’re also spending over $9 billion for school child nutrition programs, and more than $4 billion for the WIC program. Given this sum total, we need to do more. Many people who are eligible for these programs are not aware of it and the Department of Agriculture must do a better job getting the word out. Still, these figures put the costs of an international school feeding effort in perspective: they will be a small fraction of what we’re spending here at home.

Through our international efforts, we share some of what we have learned with less fortunate countries. But we also benefit.

An international school lunch program will provide a much-needed boost to our beleaguered farm economy, where surpluses and low prices have been hurting farmers for the third year in a row. Congress has provided more than $20 billion in emergency aid to farmers over the last three years. Buying farm products from this proposal could boost the marketplace, helping U.S. farmers and needy kids in the process. It is a common-sense proposal for helping our farmers, and the right thing to do.

**Second, the Education of Children Leads to Economic Development**

This initiative also benefits parents—education of children leads to economic development, which in turn increases demand for U.S. products in the future. Some of the largest food aid recipients in the 1950s are now our largest commercial customers.

Finally, let’s consider the positive foreign policy implications of this measure. It helps fulfill the commitments we made in Rome in 1996 to work to improve world food security and helps satisfy the commitment to net food importing developing countries to spend over $5 billion annually on similar programs.

My legislation would free up our largest commercial customers.

**We Can’t and Shouldn’t Do This Alone**

The United States shouldn’t go it alone. This needs to be an international effort. If the full costs for this program are shared fairly among developed countries, as we do now for United Nations peacekeeping efforts or humanitarian food aid relief efforts, then our resource commitments will be multiplied many times over. I encourage the Administration to continue its efforts to gain multilateral support for this initiative.

We also should seek the involvement and commitment of America’s corporations and philanthropic organizations. Companies can contribute books and school supplies, computer equipment, kitchen equipment, construction supplies and management expertise.

**Proposed Legislation**

The food aid laws we already have in place allocate too much of USAID to start up these kinds of programs, but resources are limited.

The President’s initiative is a concrete first step in the effort to assure that every kid is going to school, and that every kid going to school has a meal.

However—and this is not to detract in any way from the important action he has taken—the President’s initiative relies on surplus commodities. That can be a possible approach at this time. But we may not always have an overabundance. We all hope for and are working for an end to the farm crisis, which means the quantity of surplus commodities will decline. We need to look at how we will continue to pay for this program in the future as it helps more children and as surplus commodities dwindle.

**To Maintain Flexibility While Ensuring Our Food Aid Goals Are Addressed**

To maintain flexibility while ensuring our food aid goals are addressed, the measure would require that a minimum of 75 percent of reallocated EEP funding be spent for either PL480 (Title I or Title II) or Food for Progress food aid, with at least half of this amount devoted to school feeding or child nutrition programs. It would allow up to 20 percent of the reallocated funds to be spent on the Market Access Program to promote agricultural exports, and a maximum of 10 percent to be spent on the Foreign Market Development (Cooperator) program.

To ensure new artificial restraints don’t block our intention in this legislation, the measure also raises the caps currently in place regarding the quantity of food aid permitted under Food for Progress and the amount that may be used to pay for the administrative expenses associated with the program.

Both the Coalition for Food Aid and Friends of the World Food Program support this measure. Some food aid commodity groups such as the American Soybean Association and the National Corn Growers Association also support it.

Mr. President, I urge my colleagues to join me as cosponsors of this legislation and in support of the broader effort to respond to the nutrition needs of 300 million children, 130 million of whom are not but could and should be in school. With our help, these statistics can change.

Mr. HUTCHINSON. Mr. President, I rise today to introduce the Just Opportunities in Bidding (JOB) Act which is...
necessary to ensure that companies who seek to do business with our government are treated fairly. The JOB Act would prohibit the implementation of proposed regulations which would dramatically amend the Federal Acquisition Regulation.

I have many concerns about these proposed regulations, but I am deeply troubled by the discrimination which it will inevitably foster when implemented. The regulations will de facto amend our nation’s laws and give government contracting officers, who are not trained in the interpretation of these laws, unfettered discretion to deny contracts to companies based on any alleged violation of any labor and employment, environmental, antitrust, tax, or consumer protection laws over the three years immediately preceding the contract. This is a dramatic change from the current requirements of the Federal Acquisition Regulation which requires that violations must be substantial to trigger denial of contract eligibility and does not extend to unrelated, past violations.

The proposed regulations would also allow for the denial of contracts on the basis of federal complaint issued by outside, interested parties. Moreover, the proposal’s terminology is vague and extremely subjective—placing tremendous discretion in the hands of federal contracting officers. That is discretion that they do not need nor qualified to exercise. Terms such as “legal compliance” by bidders are well-intentioned, I am sure, however, I view this as a trial lawyer’s greatest wish come true. What does “legal compliance” mean? Does it mean that employers must ensure that they are 100 percent in compliance with all of the pertinent laws? Can even the most prudent employers guarantee that their worksites are 100 percent in compliance with federal tax, labor, environmental, and antitrust statutes and regulations? That’s certainly a question which many creative lawyers will undoubtedly rush to answer in courthouses across our nation.

This proposal is in direct contradicition to existing policy which is to fulfill governmental needs for goods and services at a fair and reasonable price from contractors who are technically qualified and able to perform the contract. Our current policy is based upon a good balance between our desire to get the best value for our constituents’ taxdollars while being fair to all qualified companies who want to have the opportunity to provide their goods and services to the government. The proposed regulations will result in the unjustified exclusion of many of these companies from the bidding process and will result in less competition, reduced opportunities for minority employees—especially small businesses—and less value for our constituents’ taxdollars.

As elected representatives of our constituents, we cannot condone this and as a legislative body we must refuse to allow a continuation of this Administration’s legislation by regulation. The JOB Act would require the GAO to thoroughly examine this issue and report their findings. To me, this is a sound and reasonable approach rather than a political one. If you agree that the proposed regulations—and the millions of American workers, employers, and taxpayers that they will affect—deserve more thorough consideration, join me in my effort to enact the JOB Act.

I ask consent that the text of the bill be included in the RECORD.

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

S. 2986

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 “Just Opportunities in Bidding Act of 2000”.

SEC. 2. REGULATIONS PROHIBITED PENDING COMPTROLLER GENERAL REVIEW.

(a) REGULATIONS NOT TO HAVE LEGAL EFFECT.—The proposed regulations referred to in subsection (c) shall not take effect and may not be enforced.

(b) LIMITATION ON ADDITIONAL PROPOSED REGULATIONS.—No proposed or final regulations on the same subject matter as the proposed regulations referred to in subsection (c) may be issued before the date on which the Comptroller General submits to Congress the report required by section 3.

(c) COVERED REGULATIONS.—Subsection (a) applies to the following:

(1) The proposed regulations that were published in the Federal Register, volume 64, number 131, beginning on page 37360, on July 9, 1999.

(2) The proposed regulations that were published in the Federal Register, volume 65, number 127, beginning on page 38030, on June 30, 2000.

SEC. 3. COMPTROLLER GENERAL REVIEW OF CONTRACTOR COMPLIANCE WITH FEDERAL LAW.

The Comptroller General shall—

(1) conduct a general review of the level of compliance by Federal contractors with the Federal laws that—

(A) are applicable to the contractors; and

(B) affect—

(i) the rights and responsibilities of contractors to participate in contracts of the United States; and

(ii) the administration of such contracts with respect to contractors; and

(2) submit to Congress a report on the findings resulting from the review.

By Mr. ROBERTS (for himself, Mr. Grassley, Mr. Jeffords, and Ms. Thomas): S. 2987. A bill to amend title XVIII of the Social Security Act to promote access to health care services in rural areas, and for other purposes; to the Committee on Finance.

RURAL HEALTH CARE IN THE 21ST CENTURY ACT

Mr. ROBERTS. Mr. President, I rise today to introduce the Rural Health Care in the 21st Century Act of 2000. This legislation will improve access to technology necessary to improve rural health care and expand access to quality health care in rural areas.

The future of health care in this country is being challenged by a variety of factors. The nation is associated with managed care, an increasing elderly population and the drive to ensure the solvency of the federal Medicare Trust Fund are just a few of the factors placing pressure on health care facilities and health care providers across the country. Small, rural hospitals that provide services to a relatively low volume of patients are faced with even greater challenges in this environment.

The bill I am introducing today takes critical steps to improve access to high technology in rural areas and establishes a new high technology acquisition grant and loan program to improve patient safety and outcomes. At the same time hospitals update equipment, comply with new regulatory requirements and join the effort to reduce medical errors, many hospitals are finding it difficult to access the financial backing necessary to acquire the telecommunications equipment necessary to meet their competitive solutions. This bill establishes a 5-year grant program through the Office of Rural Health Policy that allows hospitals, health care centers and related organizations to apply for matching grants to purchase the advanced technologies necessary to improve patient safety and keep pace with the changing records management requirements of the 21st Century.

This bill also increases Disproportionate Share Hospitals payments to rural hospitals. The Medicare DSH adjustment is based on a complex formula and the hospital’s percentage of low-income patients. This percentage of low-income patients is different for each hospital, depending on where the hospital is located and the number of beds in the hospital. This bill establishes one formula to distribute payments to all hospitals covered by the inpatient PPS. This will give rural hospitals an equal opportunity to qualify for the DSH adjustment.

Twenty-five percent of our nation’s senior citizens live in rural areas where access to modern health care services is often lacking. Critical steps to improve access to technology in rural areas have evolved significantly and can serve to connect rural patients to the health care providers that they need. This bill includes provisions of S. 2565, a telehealth bill introduced by my colleague from Vermont, Senator Jaffords. These provisions address eight areas of Medicare reimbursement policy that need improvement. It eliminates requirements for fee-sharing between providers and provides a standard professional fee to the health care professional who delivers the site where the patient is presented for a standard facility fee. The requirement for a telepresenter is
eliminated and the codes that can be billed for are expanded to reflect current practice. All rural counties and urban HPSAs are covered by this legislation and demonstration projects are established to access reimbursement for store and forward activities. Also, the bill is clarified to allow home health agencies to incorporate telehomecare into their care plans where appropriate.

The Medicare Rural Hospital Flexibility Program established by the Balanced Budget Act of 1997 allows rural hospitals to be reclassified as limited service facilities, known as Critical Access Hospitals. Critical Access Hospitals are important components of the rural health care infrastructure. They are working to provide quality health care services in sparsely populated areas of the country. However, they are restricted by burdensome regulations and inadequate Medicare payments. In addition, staffing requirements, Congress intended to reimburse CAH inpatient and outpatient hospital services on the basis of reasonable costs. This legislation exempts Medicare swing beds in CAHs for the Skilled Nursing Facility (SNF) Prospective Payment System (PPS) and reimburses based on reasonable costs, and provides reasonable cost payment for ambulance services and home health services in CAHs.

In addition, this legislation directs the Secretary of HHS to establish a procedure to ensure that a single FI will provide services to all CAHs and allows CAHs to choose between two options for payment for outpatient services: (1) reasonable costs for facility-based services, or (2) an all-inclusive rate which combines facility and professional services.

This bill permanently guarantees pre-Balanced Budget Act payment levels for outpatient services provided by rural hospitals with under 100 beds, modifies the 50 bed exemption language and for Rural Health Clinics those visits are also excluded from the PPS for beneficiaries who reside in rural areas by increasing the standardized payment per 60-day episode by 10 percent.

Current law allows states the option to reimburse hospitals for Qualified Medicare Beneficiary (QMB) services attributable to deductibles and coinsurance amounts. However, many state Medicaid programs have chosen not to pay these costs, leaving rural hospitals with a significant portion of unpaid bad debt expenses. This is especially burdensome since federal law prohibits hospitals from seeking payment for the cost-sharing amounts from QMB patients. This legislation provides additional relief to rural hospitals by restoring 100% Medicare bad debt reimbursement for QMB services. Although, as a general rule, scholarships are excluded from income, the Internal Revenue Service has taken the position that National Health Service Corps scholarships are included in income. Imposing taxes on the scholarships could have disastrous effects on a program that for over 20 years has helped funnel doctors, nurse practitioners, physician assistants, and other health professionals into medically underserved areas. This provision excludes from gross income of certain scholarships any amounts received under the National Health Service Corps Scholarship Program.

Finally, this bill includes important technical corrections to the Balanced Budget Refinement Act of 1999. This bill extends the option to rebase target amounts to all Sole Community Hospitals and allows Critical Access Hospitals to receive reimbursement for lab services on a reasonable cost basis.

Exciting changes are taking place in rural America. This legislation will enable small rural hospitals to take advantage of the latest technology and improve health care for rural residents across the country. Mr. President, I invite my colleagues to join me in support of this endeavor. I am unanimous consent that a copy of the bill appear in the CONGRESSIONAL RECORD.

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

S. 2867
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
(a) SHORT TITLE.—This Act may be cited as the "Rural Health Care in the 21st Century Act of 2000".
(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:
Sec. 1. Short title; table of contents.
Title I—High Technology
Sec. 101. High technology acquisition grant and loan program.
Sec. 102. Refinement of medicare reimbursement for telehealth services.
Sec. 103. Extension of medicare demonstration projects.
Title II—Improvements in the disproportionate share hospital (DSH) program.
Sec. 201. Disproportionate share hospital adjustment for rural hospitals.
Title III—Improvements in the critical access hospital (CAH) program.
Sec. 301. Treatment of swing-bed services furnished by critical access hospitals.
Sec. 302. Treatment of ambulance services furnished by certain critical access hospitals.
Sec. 303. Treatment of home health services furnished by certain critical access hospitals.
Sec. 304. Designation of a single fiscal intermediary for all critical access hospitals.
Sec. 305. Establishment of an all-inclusive payment option for outpatient critical access hospital services.

Title IV—Outpatient Services Furnished by Rural Providers
Sec. 401. Permanent guarantee of pre-BBA payment levels for outpatient services furnished by rural hospitals.
Sec. 402. Provider-based rural health clinic cap exemption.
Sec. 403. Payment for certain physician assistant services.
Sec. 404. Exclusion of rural health clinic services from the PPS for skilled nursing facilities.
Sec. 405. Bonus payments for rural home health agencies.

Title V—Bad Debt
Sec. 501. Restoration of full payment for bad debts of qualified medicare beneficiaries.

Title VI—National Health Service Corps Scholarship Program
Sec. 601. Exclusion of certain amounts received under the National Health Service Corps scholarship program.

Title VII—Technical Corrections to Balanced Budget Refinement Act of 1999
Sec. 701. Extension of option to use rebased target amounts to all sole community hospitals.
Sec. 702. Payments to critical access hospitals for clinical diagnostic laboratory testing.

Title I—High Technology

Sec. 101. High Technology Acquisition Grant and Loan Program.
(a) Establishment of Program.—Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by inserting after section 330D the following:

SEC. 330E. HIGH TECHNOLOGY ACQUISITION GRANT AND LOAN PROGRAM.
"(a) Establishment of Program.—The Secretary, acting through the Director of the Office of Rural Health Policy (of the Health Resources and Services Administration), shall establish a High Technology Acquisition Grant and Loan Program for the purpose of—
(1) improving the quality of health care in rural areas through the acquisition of advanced medical technology;
(2) fostering the development of the network described in subsection (b);
(3) promoting resource sharing between urban and rural facilities; and
(4) improving patient safety and outcomes through the acquisition of high technology, including software, information services, and staff training.
(b) Grants and Loans.—Under the program established under subsection (a), the Secretary, acting through the Director of the Office of Rural Health Policy, may award grants and make loans to any eligible entity (as defined in subsection (d)) for any costs incurred by the eligible entity in acquiring eligible equipment and services (as defined in subsection (d)(2)).
(c) Limitations.—
(1) In General.—Subject to paragraph (2), the total amount of grants and loans made
under this section to an eligible entity may not exceed $100,000.

'(2) FEDERAL SHARING.—

'(A) GRANTS.—The amount of any grant awarded under this section may not exceed 70 percent of the costs to the eligible entity in acquiring eligible equipment and services.

'(B) LOANS.—The amount of any loan made under this section may not exceed 50 percent of the costs to the eligible entity in acquiring eligible equipment and services.

(d) DEFINITIONS.—In this section:

'(1) ELIGIBLE ENTITY.—The term 'eligible entity' means a hospital, health center, or any other entity that the Secretary determines is appropriate that is located in a rural area.

'(2) ELIGIBLE EQUIPMENT AND SERVICES.—The term 'eligible equipment and services' includes—

'(i) unit dose distribution systems;

'(ii) software and information services and staff training;

'(iii) wireless devices to transmit medical orders;

'(iv) clinical health care informatics systems, including bar code systems designed to avoid medication errors and patient tracking systems; and

'(v) any other technology that improves the quality of health care provided in rural areas.

'(e) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section there are authorized to be appropriated such sums as may be necessary to carry out this section for each of the fiscal years 2001 through 2006.

SEC. 102. REFINEMENT OF MEDICARE REIMBURSEMENT FOR TELEHEALTH SERVICES.

(a) REVISION OF TELEHEALTH PAYMENT METHODOLOGY AND ELIMINATION OF FEE-SHARING REIMBURSEMENT.—Section 4206(b) of the Balanced Budget Act of 1997 (42 U.S.C. 1395l note) is amended to read as follows:

''(a) REIMBURSEMENT FOR TELEHEALTH SERVICES.—

'(1) IN GENERAL.—The Secretary shall pay to—

'(A) the physician or practitioner at a distant site that provides an item or service under subsection (a) an amount equal to the amount that such physician or practitioner would have been paid had the item or service been furnished without the use of a telecommunications system; and

'(B) the originating site a facility fee for facilities furnished in connection with such item or service.

'(2) AMOUNT OF PAYMENTS.—

'(A) IN GENERAL.—The amount of any payment for an item or service under this section shall be subject to the coinsurance and deductible requirements under subsections (a)(1) and (b) of section 1833 of the Social Security Act (42 U.S.C. 1395l).

'(B) LIMITATION.—The Secretary shall not pay an amount under this section unless—

'(i) determining the amount of payment to be made under the prospective payment system for the item or service furnished for the asynchronous transmission of health care information in single or multimedia formats.

'(c) R EIMBURSEMENT FOR MEDICARE BENEFICIARIES WHO DO NOT RESIDE IN A HPSA.—Section 4206(a) of the Balanced Budget Act of 1997 (42 U.S.C. 1395l note), as amended by subsection (b), is amended—

'(1) by striking ''Not later than'' and inserting the following: ''TELE-MEDICARE BENEFICIARIES WHO DO NOT RESIDE IN A HPSA. —''

'(2) by striking ''furnishing a service for which payment shall be made under the prospective payment system for the item or service furnished under this Act'' and inserting ''to an eligible tele-health beneficiary''; and

'(3) by adding at the end the following new subparagraph:

'(C) any other technology that improves the quality of health care provided in rural areas.

'(d) ELIMINATION OF REQUIREMENT FOR TELECOMMUNICATIONS SYSTEM.—(1) IN GENERAL.—Section 4206 of the Balanced Budget Act of 1997 (42 U.S.C. 1395l note), as amended by subsection (c), is amended—

'(A) IN GENERAL.—Nothing in this section shall be construed as requiring an eligible telehealth beneficiary to be provided with a physician or practitioner for the provision of an item or service via a telecommunications system.

'(B) ELIGIBLE TELEHEALTH BENEFICIARY DEFINED.—In this section, the term 'eligible telehealth beneficiary' means a beneficiary under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) that resides in—

'(A) an area that is designated as a health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A));

'(B) a county that is not included in a Metropolitan Statistical Area;

'(C) an area that is medically underserved (as defined in section 330(b)(3) of the Public Health Service Act (42 U.S.C. 254b(b)(3))); or

'(D) an area in which there is a Federal telemedicine demonstration program.

'(e) TELEHEALTH COVERAGE FOR DIRECT PATIENT CARE.—

'(1) IN GENERAL.—Section 4206 of the Balanced Budget Act of 1997 (42 U.S.C. 1395l note), as amended by subsection (c), is amended—

'(A) in subsection (a)(1), by striking ''professional consultation via telecommunications systems with a physician'' and inserting ''items and services for which payment may be made under the prospective payment system for the item or service furnished via a telecommunications system by a physician''; and

'(B) by adding at the end the following new subsection:

'(f) PAYMENT FOR ITEMS AND SERVICES.—Payment for items and services provided pursuant to subsection (a) shall include payment for professional consultations, office visits, office psychiatry services, including any service identified as of July 1, 2000, by HCPCS codes 98241–98275, 99001–99095, 90081, 90082, and 90815, and any additional item or service specified by the Secretary.''

'(g) CONSTRUCTION RELATING TO HOME HEALTH SERVICES.—(1) IN GENERAL.—Section 1814(a)(2)(C) of the Social Security Act (42 U.S.C. 1395u(b)(18)(C)) is amended by adding at the end the following new subparagraph:

'(2) STANDARDS FOR HOME HEALTH SERVICES.—The standards established under this Act for home health services provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) shall be consistent with the standards established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) with respect to the provision of care in rural areas.'
TITLE II—IMPROVEMENTS IN THE DISPROPORTIONATE SHARE HOSPITAL (DSH) PROGRAM

SEC. 201. DISPROPORTIONATE SHARE HOSPITAL ADJUSTMENT FOR RURAL HOSPITALS.

(a) APPLICATION OF UNIFORM 15 PERCENT THRESHOLD.—Section 1886(d)(5)(F)(v) of the Social Security Act (42 U.S.C. 1395w(d)(5)(F)(v)) is amended by striking "exceeds"—(and all that follows and inserting "equals"—"and all that follows and inserting "equals")—"15 percent"—(in section 201 of the Rural Health Care in the 21st Century Act (113 Stat. 1501A–371), as enacted into law by section 201 of the Budget Refinement Act of 1999 (113 Stat. 1501A–371), as enacted into law by section 201 of the Balanced Budget Refinement Act of 1999 (113 Stat. 1501A–371), as enacted into law by section 1000(a)(6) of Public Law 106–113)."

(b) CHANGE IN PAYMENT FORMULA.—Section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395w(d)(5)(F)) is amended—

(1) in clause (iv), by striking "and that—"—(and all that follows and inserting "is equal to")—"15 percent"

(2) in clause (vii), by striking "clause (v)(I)" and "(v)(II)"—(and all that follows and inserting "clause (v)(I)")—

(3) by striking clause (vii) and inserting the following new clause:

(vii) No hospital described in clause (iv) shall receive an amount under this section that is less than the payment amount that would have been made under this section if the amendments made by section 201 of the Rural Health Care in the 21st Century Act (113 Stat. 1501A–371), as enacted into law by section 201 of the Budget Refinement Act of 1999 (113 Stat. 1501A–371), as enacted into law by section 201 of the Balanced Budget Refinement Act of 1999 (113 Stat. 1501A–371), as enacted into law by section 1000(a)(6) of Public Law 106–113)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to cost reporting periods beginning on or after October 1, 1999.

SEC. 202. TREATMENT OFAMBULANCE SERVICES FURNISHED BY CERTAIN CRITICAL ACCESS HOSPITALS.

(a) EXEMPTION FROMAMBULANCE FEE SCHEDULE.—(1) IN GENERAL.—Section 1834(l)(1)(B) of the Social Security Act (42 U.S.C. 1395x(v)(1)(B)) is amended by striking "(as defined in section 1861(kk)))" after "(as defined in section 1861(kk)))" and inserting "drug (as defined in section 1861(kk)))"—(and all that follows and inserting "drug")—"(as defined in section 1861(kk)))".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to cost reporting periods beginning on or after October 1, 2000.

SEC. 203. TREATMENT OF HOME HEALTH SERVICES FURNISHED BY CERTAIN CRITICAL ACCESS HOSPITALS.

(a) EXEMPTION FROM SNF PPS.—Section 1888(e)(7) of the Social Security Act (42 U.S.C. 1395v(a)(7)) is amended—

(1) in the heading, by striking "TRANSITION" and inserting "TREATMENT OF"

(2) in subparagraph (A), by striking "IN GENERAL. —The" and inserting "EXEMPTION.—Except as provided in subparagraph (C), the"

(3) in subparagraph (B), by striking "for which all that follows the period at the end and inserting "other than critical access hospitals"; and

(4) adding at the end the following new subparagraph:

"(C) CRITICAL ACCESS HOSPITALS.—In the case of facilities described in subparagraph (B) that are critical access hospitals—

"(i) the prospective payment system established under this subsection shall not apply to services furnished pursuant to an agreement described in section 1883; and

"(ii) such services shall be paid on the basis specified in subsection (a)(3) of such section.

(b) PAYMENT BASIS FOR SWING-BED SERVICES FURNISHED BY CRITICAL ACCESS HOSPITALS.—Section 1883(a) of the Social Security Act (42 U.S.C. 1395l(a)) is amended—

(1) in paragraph (2)(A), by inserting "other than a critical access hospital" after "any hospital"; and

(2) by adding at the end the following new paragraph:

"(3) Notwithstanding any other provision of this title, a critical access hospital shall be paid for services furnished under an agreement described in this section on the basis of the reasonable costs of such services (as determined under section 1861(v))."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to cost reporting periods beginning on or after October 1, 1999.

SEC. 302. TREATMENT OFAMBULANCE SERVICES FURNISHED BY CERTAIN CRITICAL ACCESS HOSPITALS.

(a) EXEMPTION FROMAMBULANCE FEE SCHEDULE.—(1) IN GENERAL.—Section 1834(l)(1)(B) of the Social Security Act (42 U.S.C. 1395x(v)(1)(B)) is amended by adding at the end the following new paragraph:

"(B) in subparagraph (S), by striking the preceding sentence with the left margin of such subparagraph with the left margin of subparagraph (T)."

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to cost reporting periods beginning on or after October 1, 1999.

(b) EXEMPTION FROM REASONABLE COST REDUCTIONS.—(1) EXEMPTION.—Section 1861(v)(1)(U) of the Social Security Act (42 U.S.C. 1395x(v)(1)(U)) is amended by inserting after the first sentence the following new sentence: "The reductions required by the preceding sentence shall not apply in the case of ambulance services that are provided in a locality on or after October 1, 1999, by a critical access hospital that is owned and operated by a critical access hospital in providing such services (described in section 1834(l)(8), the amount paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined under such section.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to cost reporting periods beginning on or after October 1, 1999.

SEC. 303. TREATMENT OF HOME HEALTH SERVICES FURNISHED BY CERTAIN CRITICAL ACCESS HOSPITALS.

(a) EXEMPTION FROM HOME HEALTH INTERIM PAYMENT SYSTEM.—Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395l(v)(1)(L)) is amended by adding at the end the following new clause:

"(L) The preceding provisions of this subparagraph shall not apply to home health services furnished by a critical access hospital in providing such services (described in section 1866(a)(2)(A)).".

(b) EFFECTIVE DATE.—The amendments made by this subsection shall apply to cost reporting periods beginning on or after October 1, 2000.

SEC. 304. PERMANENT GUARANTEE OF PRE-BBA PAYMENT LEVELS FOR OUTPATIENT CRITICAL ACCESS HOSPITAL SERVICES.

(a) ALL-INCLUSIVE PAYMENT OPTION FOR OUTPATIENT CRITICAL ACCESS HOSPITAL SERVICES.—Section 1834(g) of the Social Security Act (42 U.S.C. 1395m(g)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) IN GENERAL.—At the election of a critical access hospital, the amount of payment for outpatient critical access hospital services under this part shall be determined under paragraph (2) or (3), such amount determined under either paragraph without regard to the amount of the customary or other charge;"

and

(2) by striking paragraph (3) and inserting the following new paragraph:

"(3) ALL-INCLUSIVE RATE.—If a critical access hospital elects this paragraph to apply, with respect to both diagnostic and professional services, there shall be paid amounts equal to the reasonable costs of the critical access hospital in providing such services (except that the costs of clinical diagnostic laboratory services furnished by a critical access hospital the amount of payment shall be equal to 100 percent of the reasonable costs of the critical access hospital in providing such services), less the amount that such hospital may charge as described in section 1866(a)(2));".

(b) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in the enactment of section 403(d) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (113 Stat. 1501A–371), as enacted into law by section 1000(a)(6) of Public Law 106–113.

SEC. 401. PERMANENT GUARANTEE OF PRE-BBA PAYMENT LEVELS FOR OUTPATIENT CRITICAL ACCESS HOSPITAL SERVICES.

(a) IN GENERAL.—Section 1833(a)(7)(D) of the Social Security Act (42 U.S.C. 1395l(a)(7)(D)), as added by section 202 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (113 Stat. 1501A–371), as enacted into law by section 1000(a)(6) of Public Law 106–113, is amended to read as follows:
TITLE VI—BUDGET REFINEMENT

SEC. 501. RESTORATION OF FULL PAYMENT FOR BAD DEBTS OF QUALIFIED MEDICAL BENEFICIARIES.

(a) Medical Mastodon. -The amendment made by subsection (a) shall apply to payees of care concerning on or after April 1, 2001.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payees of care beginning on or after April 1, 2001.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payees of care beginning on or after April 1, 2001.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payees of care concerning on or after April 1, 2001.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payees of care beginning on or after April 1, 2001.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payees of care beginning on or after April 1, 2001.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payees of care beginning on or after April 1, 2001.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to payees of care beginning on or after April 1, 2001.
Mr. FRIST. Mr. President, I rise today to introduce a bill with my friend and colleague Senator KERREY to resolve the controversy that has erupted over the Federal Communications Commission’s creation of a new, commercial low-power FM radio service.

As you undoubtedly know, the FCC’s low-power FM rules will allow the creation of thousands of noncommercial FM radio stations with coverage of about one mile or so. Although these new stations will give churches and community groups new outlets for expression of their views, commercial FM broadcasters as well as National Public Radio oppose the new service. They argue that the FCC ignored studies showing that the new low-power stations would cause harmful interference to the reception of existing full-power FM stations.

Mr. President, legislation before the House of Representatives would call a halt to the institution of low-power FM service by requiring further independent study of its potential for causing harmful interference to full-power stations, and Senator GREGG has introduced the same legislation in the Senate. While this would undoubtedly please existing FM radio broadcasters, it understandably angers the many parties who are anxious to apply for the new low-power licenses.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.

It is the last of these items, the lack of long-term planning for the Space Station, an issue on which the Science, Technology, and Space Subcommittee of the Commerce Committee has repeatedly questioned NASA.
as the expert agency with the experience and engineering resources required to make such determinations.

The Act gives full-power broadcasters the right to file a complaint with the Commission against any low-power FM licensee for causing harmful interference, and stipulates that the costs of the proceeding shall be borne by the losing party. Finally, to make sure that the FCC does not relegate the interests of full-power radio broadcasters to secondary importance in its eagerness to launch the new low-power FM service, the bill requires the FCC to complete all rulemakings necessary to implement full-power stations’ transition to digital broadcasting no later than June 1, 2001.

Mr. President, this legislation strikes a fair balance by allowing non-interfering low-power FM stations to operate without further delay, while affecting only those low-power stations that the FCC finds to be causing harmful interference with full-power broadcasters. So, are the fears of interference claims than any number of fur-

proceedural remedy with costs assigned to the losing party, the bill will discourage the creation of low-power stations that the FCC finds to be causing harmful interference even as it discourages full-power broadcasters from making unwarranted interference claims. And for these reasons it will provide a more definitive resolution of opposing interference claims than any number of further studies ever could.

Mr. President, in the interests of would-be new broadcasters, existing broadcasters, but, most of all, the listening public, I urge the enactment of the Low Power Radio Act of 2000.

Mr. KERRY. Mr. President, I am pleased to introduce today the Low Power Radio Act of 2000 with Senator McCain. Low power FM radio is an effort to bring more diversity to the airwaves. Though radio airwaves belong to the public, only a handful of people currently control what we hear on-air. Low power FM will expand that number by thousands, giving a voice to local governments, community groups, churches, and schools.

I understand that there is some concern that these new low-power signals will interfere with existing full-power stations. I believe these fears are greatly exaggerated. The Federal Communications Commission (FCC) has decades-long experience dealing with FM-spectrum issues, and they have conducted extensive testing to ensure that these new stations will not cause interference.

Should interference occur, however, I believe that full-power stations must have a process for alleviating the problem. The Low Power Radio Act allows any broadcaster or listener to file a formal complaint with the FCC. If the FCC determines that a low-power station is causing harmful interference, the low power station will be removed from the airwaves while a technical remedy is found. To discourage frivolous complaints, however, the FCC is authorized to charge the costs associated with the proceeding as well as punitive damages onto any full-power station who files a complaint without any purpose other than to impede a low-power radio transmission.

This initiative represents a considerable period of testing and public comment. Delaying implementation will only result in more conflicting engineering studies without guaranteeing that interference will not occur. I believe that it is time to let low power FM go forward. The Low Power Radio Act gives the FCC the authority to resolve harmful interference complaints on a case-by-case, common sense basis. It is a compromise that can work to the benefit of existing broadcasters, potential low power licensees, and all radio listeners.

By Mr. KERRY (for himself and Mr. Finkgold):

S. 2990. A bill to amend chapter 42 of title 28, United States Code, to establish the Judicial Education Fund for the payment of reasonable expenses of judges participating in seminars, to prohibit the acceptance of seminar gifts, and for other purposes; to the Committee on the Judiciary.


Mr. KERRY. Mr. President, I send to the desk a bill for introduction. The bill is entitled the Judicial Education Reform Act of 2000. Mr. Finkgold is cosponsoring the legislation.

Mr. President, as the arbiters of justice in our democracy, judges must be honest and fair in their duties. As importantly, if the rule of law is to have force in our society, citizens must have faith that judges approach their duties honestly and fairly, and that their decisions are based solely on the law and the facts of each case. Even if every judge were uncorrupt and incorruptible, their honesty would mean nothing if the public loses confidence in them. Court rulings are effectively only if the public believes that they have been arrived at through impartial decision-making. The judiciary must avoid the appearance of conflict as fastidiously as it avoids conflict.

Recent press coverage and an investigation by the public interest law firm Community Rights Counsel have revealed that more than 230 federal judges have taken more than 500 trips to resort locations for legal seminars paid for by corporations, foundations, and individuals between 1192 and 1998. Many of these sponsors have one-sided legal agendas in the courts designed to advance their interests at the expense of the public interest. In many cases, judges accepted seminar trips while relevant cases were pending before their court. In some cases, judges ruled in favor of a litigant bankrolled by a seminar sponsor. And in one case a judge ruled one way, attended a seminar and returned to switch his vote to agree with the legal views expressed by the sponsor of the trip.

The proposal that federal judges are accepting all-expense-paid trips that combine highly political legal theory with stays at resort locations from persons with interests before their courts as an appearance of conflict that is unacceptable and unnecessary. At a minimum, it creates a perception of improper influence that erodes the trust the American people must have in our judicial system.

Fortunately, the problems posed by improper judicial junkets can be remedied and the appearance of judicial impartiality restored. The Judicial Education Reform Act will seek to close the loophole that allows for privately-funded seminars by requiring federal judges to live by the same rules that now govern federal prosecutors. The proposal is modeled after the successful Federal Judges’ Ethics Reform Act that now govern federal prosecutors. The proposal is modeled after the successful Federal Judges’ Ethics Reform Act.

Specifically, the legislation bans privately-funded seminars by prohibiting judges from accepting seminars as gifts, providing appropriate exceptions, such as where a judge is a speaker, presenter or panel participant in such a seminar. The proposal establishes a Judicial Education Fund of $2 million within the U.S. Treasury for the payment of expenses incurred by judges attending seminars approved by the Board of the Federal Judicial Center. It requires the Judicial Conference to promulgate guidelines to ensure that the Board approves only those seminars that are conducted in a manner that will maintain the public’s confidence the judiciary. Finally, the proposal requires that the Board approve a seminar only after information on its content, presenters, funding and litigation activities of sponsors and presenters are provided. If approved, information on the seminar must be posted on the Internet.

Mr. President, in introducing this legislation, I am not charging the federal judiciary or any single judge with improper behavior. I do not question the integrity of judges, rather I question a system that creates the clear appearance of conflict. I understand the need for education. Our economy has mainstreamed once exotic technologies in communication, medicine and other fields, and it is important that judges have access to experts to keep current on technological advances. And I recognize we need forums exposed to diverse legal views and to test current legal views. The Judicial Education Reform Act legislation provides
$2 million for precisely that purpose. No judge will be without access to continuing education. But, that education will not be funded by private entities with broad legal agendas before the federal courts, or, as has happened in some of the most unfortunate cases, private entities with.cosmological ties pending before participating judges.

Finally, Mr. President, I ask unanimous consent to place in the record a statement from the Honorable Abner J. Mikva on this subject. Mr. Mikva is a former judge, former teacher, and former adviser about judges who were notorious to King George, rather than the cause of justice. But a pure heart is not all that judges must bring to the bench. For the system to work as it should, the judges must be perceived to be honest, to be without bias, to have no tilt in the cause that is being heard. That perception of integrity is much more difficult to obtain. After spending 15 years as a judge and a lifetime as a lawyer and law-maker, I can safely say that the number of judges who are guilty of outright dishonesty—malum in se—were happily very few. Even taking into account that I started practicing law in Chicago in the bad old days, the number of crooked judges was small. But that is not what people believe—then or now.

The framers and attenders to our judicial system have taken many steps to help foster the notion of the integrity of its judges. Some relate to smoke and mirrors—the high bench, the "all rise" at the beginning of the judicial proceedings, the dress the judges in the bucolic surroundings of their chambers, which, very few environmentalists are invited to address the judges in the bucolic surroundings where the seminars are held. But I doubt it. More importantly, any citizen who reads the newspapers that report what judges are doing behind closed doors under such questionable sponsorship, will doubt it even more.

The federal judiciary has a very effective Federal Judicial Center. It already provides many of the educational services that these special interest groups seek to provide to judges. Admittedly, the Center is using taxpayer funds and must answer to Congress, the local attorneys are not an excuse for this. The last ones I attended were in South Bend, Indiana in December.) The purpose of Center sponsored programs is as vanilla as it claims: there is no agenda to get the judges to per- form in the future. But undermine public confidence in the decisions that judges who attend the seminars ultimately make. I am pleased, therefore, to join with my colleagues in the effort to protect judges from being brainwashed to further some special interest.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of private entities with cases pending before judges, or the "takings clause" of the Constitution. Moreover, the influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

Some of these seminars are conducted at posh vacation resorts in locations such as Amelia Island, Florida and Hilton Head, South Carolina, and include ample time for expense-paid recreation. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.

One-sided seminars given in wealthy resorts funded by wealthy corporate interests to "educate" our judges in a manner of views that are not at all comforting. The influence of powerful interests on judicial decision-making through these education seminars is not consistent with the image of an impartial judiciary.
ability of the Department of Justice and Federal Trade Commission to enforce existing antitrust laws regarding brand name drugs and generic drugs; to the Committee on the Judiciary.

**DRUG COMPETITION ACT**

Mr. LEAHY. Mr. President, I have heard a lot of outrageous examples of greed in my life but one of the worst is when pharmaceutical giants pay generic companies to keep low-cost drugs from senior citizens and from families. If Dante were still alive today I am certain he would find a special resting place for those who engage in these conspircacies.

The Federal Trade Commission and the New York Times deserve credit for exposing this problem. Simply stated: some manufacturers of patented drugs—often brand-name drugs—are paying millions each month to generic drug companies to keep lower-cost products off the market. This hurts senior citizens, it hurts families, it cheats healthcare providers and it is disgraceful.

These pharmaceutical giants and their generic partners then share the profits gained from cheating American families. The companies have been able to get away with this by signing secret deals with each other not to compete. My bill, which I am introducing today, will expose these deals and subject them to immediate investigation and action by the Federal Trade Commission, or the Justice Department. This solves the most difficult problem faced by federal investigators—finding out about the improper deals. This bill does not change the so-called Hatch-Waxman Act, it does not amend FDA law, and it does not slow down the drug approval process but it is needed to enforce the existing antitrust laws to be enforced because the enforcement agencies have information about deals not to compete.

Fortunately, the FTC was able to get copies of a couple of these secret contracts and instantly lowered the boom on the companies.

Mr. President, I ask unanimous consent that an editorial in the July 26, New York Times, called "Driving Up Drug Prices" be printed in the RECORD.

The New York Times, called "Driving Up Drug Prices" be printed in the RECORD.

Mr. LEAHY. Mr. President, I have heard a lot of outrageous examples of greed in my life but one of the worst is when pharmaceutical giants pay generic companies to keep low-cost drugs from senior citizens and from families. If Dante were still alive today I am certain he would find a special resting place for those who engage in these conspircacies.

The Federal Trade Commission and the New York Times deserve credit for exposing this problem. Simply stated: some manufacturers of patented drugs—often brand-name drugs—are paying millions each month to generic drug companies to keep lower-cost products off the market. This hurts senior citizens, it hurts families, it cheats healthcare providers and it is disgraceful.

These pharmaceutical giants and their generic partners then share the profits gained from cheating American families. The companies have been able to get away with this by signing secret deals with each other not to compete. My bill, which I am introducing today, will expose these deals and subject them to immediate investigation and action by the Federal Trade Commission, or the Justice Department. This solves the most difficult problem faced by federal investigators—finding out about the improper deals. This bill does not change the so-called Hatch-Waxman Act, it does not amend FDA law, and it does not slow down the drug approval process but it is needed to enforce the existing antitrust laws to be enforced because the enforcement agencies have information about deals not to compete.

Fortunately, the FTC was able to get copies of a couple of these secret contracts and instantly lowered the boom on the companies.

Mr. President, I ask unanimous consent that an editorial in the July 26, New York Times, called "Driving Up Drug Prices" be printed in the RECORD.

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

**DRIVING UP DRUG PRICES**

Two recent antitrust actions by the Federal Trade Commission and a related federal court decision have exposed the way some pharmaceutical companies conspire to keep low-priced drugs out of reach of consumers. Manufacturers of patented drugs are paying millions of dollars to generic manufacturers of generic drugs if they agree to keep products off the market. The drug companies split profits from maintaining a monopoly at the consumer's expense. The commission is taking aggressive action to curb the practice. It needs help from Congress to close loopholes in federal law.

Dissatisfied with the supply of generic drugs, Congress passed the Hatch-Waxman act in 1984 to encourage manufacturers to challenge weak or invalid patents on brand-name drugs. The act grants temporary protection from competition to the first manufacturer that gets permission from federal authorities to sell a generic drug before the patent on a brand-name drug expires. For 180 days, the federal government promises to approve no other applications. But as reported Sunday by Sheryl Gay Stolberg and Jeff Gerth of The Times, drug companies are undermining Congress's intent.

Hochest, the maker of drugs to treat hypertension and angina, agreed in 1997 to pay Andrx Pharmaceuticals to delay bringing its generic alternative to a $1.3 billion-a-year market. That brought charges against the companies last March and a federal judge declared last month in a private lawsuit that the agreement violated antitrust laws.

In a second case, Abbott Laboratories paid Geneva pharmaceuticals to delay selling a generic alternative to an Abbott drug that treated meningitis in infants. The drug companies deny that their agreements violate antitrust laws, presenting them as private preliminary settlements between companies engaged in patent disputes. But as reported Sunday by Sheryl Gay Stolberg and Jeff Gerth of The Times, drug companies are undermining Congress's intent.

The manufacturers deny that their agreements violate antitrust laws, presenting them as private preliminary settlements between companies engaged in patent disputes. But as reported Sunday by Sheryl Gay Stolberg and Jeff Gerth of The Times, drug companies are undermining Congress's intent.

The drug companies deny that their agreements violate antitrust laws, presenting them as private preliminary settlements between companies engaged in patent disputes. But as reported Sunday by Sheryl Gay Stolberg and Jeff Gerth of The Times, drug companies are undermining Congress's intent.

The drug companies deny that their agreements violate antitrust laws, presenting them as private preliminary settlements between companies engaged in patent disputes. But as reported Sunday by Sheryl Gay Stolberg and Jeff Gerth of The Times, drug companies are undermining Congress's intent.

The drug companies deny that their agreements violate antitrust laws, presenting them as private preliminary settlements between companies engaged in patent disputes. But as reported Sunday by Sheryl Gay Stolberg and Jeff Gerth of The Times, drug companies are undermining Congress's intent.

Instead, we should let the FTC and Justice look at every single deal that could lead to abuse so that only the deals that are consistent with the intent of that law will be allowed to stand.

This bill was quickly drafted because I wanted my colleagues to be able to look at it over the recess so that we can be ready to act when we get back in session.

I look forward to suggestions from other Members on this matter and from brand-name and generic companies who will work with me to make sure this loophole is closed. I am not interested in comments from companies who want to continue to cheat consumers.

I ask unanimous consent to print the bill in the RECORD.

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

S. 2993

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

**SECTION 1. SHORT TITLE**

This Act may be cited as the "Drug Competition Act of 2000."

**SEC. 2. FINDINGS.**

Congress finds that—

(1) prescription drug costs are increasing at an alarming rate and are a major worry of senior citizens and American families;

(2) there is a potential for drug companies owning patents on brand-name drugs to enter to private financial deals with generic drug companies in a manner that could tend to restrain trade and greatly reduce competition and increase prescription drug costs for American citizens; and

(3) enhancing competition between generic drug manufacturers and brand name manufacturers can significantly reduce prescription drug costs to American families.

**SEC. 3. PURPOSE.**

The purposes of this Act are—

(1) to provide timely notice to the Department of Justice and the Federal Trade Commission regarding agreements between companies owning patents on branded drugs and companies who could manufacture generic or equivalent versions of such branded drugs; and

(2) by providing timely notice, to—